ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	20WC026791
Case Name	Vernon Sanders v. Chicago Transit Authority
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	23IWCC0397
Number of Pages of Decision	15
Decision Issued By	Stephen Mathis, Commissioner, Marc Parker, Commissioner

Petitioner Attorney	Jason M. Whiteside
Respondent Attorney	Elizabeth Meyer

DATE FILED: 9/1/2023

/s/Stephen Mathis, Commissioner

Signature

/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 Temporary Disability	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

VERNON SANDERS,

Petitioner,

vs. NO: 20 WC 26791

CHICAGO TRANSIT AUTHORITY,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by Respondent and notice given to all parties, the Commission, after considering the issues[1] of whether Petitioner sustained an accidental injury arising out of and occurring in the course of his employment on October 28, 2020, entitlement to temporary disability benefits, entitlement to incurred medical expenses, and the nature and extent of any permanent disability, and being advised of the facts and law, modifies the Decision of the Arbitrator as stated below, but otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

CONCLUSIONS OF LAW

I. Accident

Relying on *McAllister v. Illinois Workers' Compensation Commission*, 2020 IL 124848, as well as the Personal Comfort Doctrine to find Petitioner was in the course of his employment, and further finding Petitioner was exposed to a qualitatively greater neutral risk and therefore the incident arose out of his employment, the Arbitrator found Petitioner sustained a compensable accident on October 28, 2020. The Commission's review of the evidence yields the same outcome, however, we write separately as our analysis differs. Specifically, the Commission finds a traveling employee analysis is required.

[1] Respondent's Petition for Review identifies causal connection as an issue, however no related arguments were made in its Statement of Exceptions or during oral arguments, and thus the Commission views the issue as forfeited.

A "traveling employee" is defined as "one who is required to travel away from his employer's premises in order to perform his job." *The Venture-Newberg-Perini, Stone & Webster v. Illinois Workers' Compensation Commission*, 2013 IL 115728, ¶ 16, quoting *Cox v. Illinois Workers' Compensation Commission*, 406 Ill. App. 3d 541, 545 (1st Dist. 2010). The Commission finds Petitioner clearly meets this definition: as a bus operator for Respondent, Petitioner's job requires him to drive a bus along a designated route on the public streets. Courts generally regard traveling employees differently from other employees when considering whether an injury arose out of and in the course of employment. *The Venture-Newberg-Perini, Stone & Webster* at ¶ 17. A traveling employee is deemed to be in the course of his employment from the time that he leaves home until he returns. *Kertis v. Illinois Workers' Compensation Commission*, 2013 IL App (2d) 120252WC, ¶ 16. An injury sustained by a traveling employee arises out of his employment if he was injured while engaging in conduct that was reasonable and foreseeable, *i.e.*, conduct that "might normally be anticipated or foreseen by the employer." *Kertis* at ¶ 16, quoting *Robinson v. Industrial Commission*, 96 Ill. 2d 87 (1983). It is with these standards in mind that we analyze Petitioner's October 28, 2020 injury.

The record reflects Petitioner departed Respondent's garage and commenced Ashland Run 6004 on the morning of October 28, 2020. Prior to his return to the garage, Petitioner sustained the injury at issue. Therefore, as Petitioner was in the midst of his assigned route and had yet to return to Respondent's premises, the Commission finds Petitioner was in the course of his employment. The record further reflects Respondent's supervisors set the operators' schedules, including providing "estimated" times for lunch breaks; when an operator's break time approaches, a relief operator meets the bus along the route and continues the run. T. 8, 29-30. On October 28, 2020, Petitioner was driving northbound on Ashland and when his lunch break approached, another operator met the bus at Ashland and 74th to relieve Petitioner; Petitioner disembarked, the relief operator continued on with the route, and Petitioner started to cross 74th to catch the bus back to the garage so he could take his lunch. T. 12. Petitioner explained Respondent's garage was the only place he could take his lunch because "everything was closed down for COVID." T. 13. While walking in the crosswalk, Petitioner was hit by a vehicle. The Commission finds Petitioner was injured while engaging in conduct that was reasonable and foreseeable: returning to Respondent's premises for his employer-scheduled, *i.e,*, anticipated and foreseen, break. The Commission finds Petitioner sustained an accidental injury arising out of and occurring in the course of his employment on October 28, 2020.

II. Corrections

1 - The Commission corrects the Decision to reflect Petitioner established entitlement to Temporary Total Disability ("TTD") benefits for 11 2/7 weeks, representing October 29, 2020 through January 15, 2021.

2 – The Commission clarifies the Order to reflect the medical expenses award is subject to §8.2.

All else is affirmed.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed July 28, 2022, as modified above, is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $960.00 per week for a period of 11 2/7 weeks, representing October 29, 2020 through January 15, 2021, that being the period of temporary total incapacity for work under §8(b).

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay the reasonable and necessary medical expenses detailed in Petitioner's Exhibit 6, as provided in §8(a), subject to §8.2 of the Act. Respondent shall be given a credit for medical benefits that have been paid, and Respondent shall hold Petitioner harmless from any claims by any providers of the services for which Respondent is receiving this credit, as provided in §8(j) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $864.00 per week for a period of 40 weeks, as provided in §8(d)2 of the Act, for the reason that the injuries sustained caused the 8% loss of use of the person as a whole.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $864.00 per week for a period of 17.71 weeks, as provided in §8(e)10 of the Act, for the reason that the injuries sustained caused the 7% loss of use of the left arm.

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

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

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

/s/ *Stephen J. Mathis*

/s/ *Deborah L. Simpson*

SPECIAL CONCURRING OPINION

This case was scheduled for Oral Arguments on August 9, 2023, before a three member panel of the Commission including members Deborah J. Baker, Stephen J. Mathis, and Deborah L. Simpson, at which time Oral Arguments were either heard, waived or denied. Subsequent to

Oral Arguments and prior to the departure of Commissioner Baker, the panel members had reached agreement as to the results set forth in this decision and opinion, as evidenced by the internal Decision worksheet initialed by the entire three member panel, but no formal written decision was signed and issued.

Although I was not a member of the panel in question at the time Oral Arguments were heard, waived or denied, and I did not participate in the agreement reached by the panel members in this case, I have reviewed the Decision worksheet showing how Commissioner Baker voted in this case, as well as the provisions of the Supreme Court in *Zeigler v. Industrial Commission*, 51 Ill. 2d 342 (1972), which authorizes signature of a Decision by a member of the Commission who did not participate in the Decision. Accordingly, I am signing this Decision in order that it may issue.

September 1, 2023 /s/ *Marc Parker*

mck

O:8/9/23

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ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	20WC026791
Case Name	Vernon Sanders v. Chicago Transit Authority
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	10
Decision Issued By	Rachael Sinnen, Arbitrator

Petitioner Attorney	Jason M. Whiteside
Respondent Attorney	Elizabeth Meyer

DATE FILED: 7/28/2022

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

/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

Vernon Sanders
Employee/Petitioner

v.

Chicago Transit Authority
Employer/Respondent

Case # **20** WC **26791**

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 **5.23.22**. 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. [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. [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 **10.28.20**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $**74,880.00**; the average weekly wage was $**1,440.00**.

On the date of accident, Petitioner was **49** years of age, ***single*** with **0** dependent children.

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

Respondent ***has 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 $**TBD** under Section 8(j) of the Act.

ORDER

Respondent shall pay Petitioner directly for unpaid medical bills as outlined in Petitioner's Exhibit 6 as provided in Section 8(a) of the Act for the following providers: City of Chicago Department of Finance ($2,791.00), Holy Cross Hospital ($3,335.75), CEP America Illinois ($684.00), Chicago Pain and Orthopedic Institute ($628.25), Berwyn Diagnostic/Archer MRI ($4,475.00), Windy City Anesthesia ($220.00), Midwest Specialty Pharmacy ($4,040.10). 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 $960/week for 12 2/7 weeks, commencing 10.28.20 through 1.15.21, as provided in Section 8(b) of the Act.

Respondent shall pay Petitioner permanent partial disability benefits of $864/ week for a total of 57.710 weeks, because the injuries sustained caused the 8% loss of use of the person as a whole as provided in Section 8d2 of the Act and 7% loss of use of the arm pursuant to Section 8e10 of the Act. See Conclusions of Law for Arbitrator's considerations under §8.1b(b) of the Act.

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

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

JULY 28, 2022

Signature of Arbitrator

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

VERNON SANDERS,	)	
	)	
Petitioner,	)	
	)	
	)	
	)	
Vs.	)	**No. 20 WC 26791**
	)	
	)	
	)	
CHICAGO TRANSIT AUTHORITY,	)	
	)	
Respondent.	)	

STATEMENT OF FACTS

This matter proceeded to hearing on May 23, 2022 in Chicago, Illinois before Arbitrator Rachael Sinnen on Petitioner's Request for Hearing. Issues in dispute include accident, causal connection, unpaid medical bills, temporary total disability "TTD" benefits, and nature and extent of the injury. Arbitrator's Exhibit "Ax" 1.

Direct Examination of Petitioner, Vernon Sanders

Petitioner, Vernon Sanders, testified upon direct examination that he currently works for Respondent, Chicago Transit Authority (CTA), as a Bus Operator (Transcript on Arbitration, hereinafter "T" at 7). Petitioner has worked for Respondent since 1997 (T at 7). Petitioner has been a full time Bus Operator for Respondent since February of 2000 (T at 8). As a Bus Operator, Petitioner's duties included "running schedule, pull out, pick the people up, provide service, adequate service, safe and friendly service, on time on a regular schedule." (T at 8).

Accident date of October 28, 2020

On October 28, 2020, Petitioner was working for Respondent on a schedule dictated by his supervisor. (T at 8). He was following policies and procedures indicated by CTA. (T at 8). The time of his break was included in his schedule and depended on the scheduled shift. (T at 9). On 10/28/20, Petitioner was working as a Bus Operator on one of his regularly scheduled days. (T at 9). Petitioner started his A.M. shift near 5:30 or 6:00 AM. (T at 9). He was scheduled to have his break near 9 am. (T at 10). Petitioner never had his break; he was on his way to the garage to have his scheduled lunch break. (T at 10).

Leading up to the accident, Petitioner was on his bus route and was relieved by another Bus Operator. (T at 11). As he was relieved by another Operator, Petitioner disembarked his bus to cross 74th street northbound. (T at 12). Petitioner was crossing the street to board another bus toward the CTA garage. (T at 12). There was nowhere else for Petitioner to have the scheduled lunch break due to COVID-19 forced closures. (T at 13).

Immediately after alighting the bus, "an SUV, making a left turn… hit me." Petitioner was struck by a moving vehicle and rolled over the top of the hood. (T at 13). Witnesses called emergency response and police and ambulance arrived on the scene. *(Id)*.

Medical Treatment

City of Chicago Fire Department Ambulance escorted Petitioner from the scene of the accident to Holy Cross Hospital. (PX1). The paramedics noted that Petitioner was an injured pedestrian in a collision with a car moving about 30 MPH at 8:41 am (PX2). The impression was injury to shoulder or upper arm. (Id).

At Holy Cross Hospital, Petitioner complained of left shoulder and posterior elbow pain. X-rays were taken but revealed no fractures or dislocations. He was given a sling and discharged. (PX3).

The day after the accident, Petitioner treated at Chicago Pain and Orthopedic Institute. (PX5). Petitioner was restricted from work and MRI's were obtained. On 11/16/2020, an MRI revealed Petitioner's shoulder had a 3 mm tear of the infraspinatus, described as "low to moderate grade footprint insertional tear of the infraspinatus." Petitioner's left elbow MRI revealed "high grade partial thickness to full thickness tear with near complete width of the triceps tendon at the distal insertion."

On 11/30/2020, Dr. Sclamberg diagnosed Petitioner with "left near complete triceps rupture with mild retraction with left shoulder infraspinatus rotator cuff tear." He recommended surgical repair to the triceps tendon. (PX5).

Petitioner's Current Condition

On direct exam, Petitioner testified that on the trial date, he still had residual symptoms from the accident. (T at 21). He testified that his shoulder has lost movement and power. (*Id)*. He testified that his activities of daily living are affected, that he has a loss in grip strength, range of motion, and pain. (*Id.*). Petitioner testified that he still has a lump on his neck and back that he wants to get "checked out." His ability to perform his work duties were affected after the accident. (T at 22). Petitioner's ongoing symptoms impaired his ability to perform his job at present. (T at 22).

Cross Examination of Petitioner

On cross-examination, Petitioner admitted that he did not receive the recommended surgery to his elbow. He agreed that a CTA schedule revealed his break to be between 8:29 am and 9:25 am. (T at 24). He testified that his lunch break was designated to occur on 74th and Ashland, where the accident occurred, and that is where relief would come to continue the route. (T at 25). Petitioner

testified that he studied the CTA rulebook. (T at 27). Petitioner testified that he no longer works the route where the accident occurred because “that route was crazy.” (T at 28).

Re-Direct Examination of Petitioner

Petitioner testified that he could not take the bus off the route to take a break. (T at 29). Petitioner further testified that he could not stop the bus to have his break if he “wanted to have a sandwich quickly.” He testified that it was his employer’s policy and procedure to be relieved and then go have a break. *(Id.)* He agreed that he was following CTA’s policy and procedures on October 28th when he was hit. He did not violate any CTA rules and was obeying the pedestrian traffic control signals. (T at 30).

CONCLUSIONS OF LAW

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

Issue C, whether the accident arose out of and in the course of Petitioner's employment by Respondent, the Arbitrator finds as follows:

The phrase "in the course of employment" refers to the time, place, and circumstances of the injury. McAllister v. Illinois Workers' Compensation Comm'n, 2020 IL 124848, ¶ 34. A compensable injury occurs 'in the course of' employment when it is sustained while he performs reasonable activities in conjunction with his employment. Id.

Under the personal comfort doctrine, injuries sustained by an employee while in the performance of reasonably necessary acts of personal comfort may be found to have occurred 'in the course of' her employment, since they are incidental to the employment. Chicago Extruded Metals v. Industrial Comm'n, 77 Ill. 2d 81, 84, 395 N.E.2d 569, 32 Ill. Dec. 339 (1979). The personal comfort doctrine does not answer the whole question of compensability because it addresses only the "in the course of" requirement; the "arising out of" requirement must be met independently. Circuit City Stores, Inc. v. Illinois Workers' Compensation Comm'n, 391 Ill. App. 3d 913, 920-21 (2nd Dist. 2009).

"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.

The third category of risk includes neutral risk that have no particular employment or personal characteristics. Illinois Consolidated Telephone Co. v. Industrial Comm'n, 314 Ill. App. 3d 347, 732 N.E.2d 49 (5th Dist. 2000). “Injuries resulting from a neutral risk generally do not arise out of

the employment and are compensable under the Act only where the employee was exposed to the risk to a greater degree than the general public." Springfield Urban League v. Illinois Workers' Compensation Comm'n, 2013 IL App (4th) 120219WC, 990 N.E.2d 284. "Such an increased risk may be qualitative, such as some aspect of the employment contributed to the risk, or qualitative, such as when the employee is exposed to a common risk more frequently than the general public. Metropolitan Water Reclamation District of Greater Chicago v. Illinois Workers' Compensation Comm'n, 407 Ill. App. 3d 1010, 944 N.E.2d 800 (1st Dist. 2011).

In this case, the Arbitrator finds that Petitioner's accident was in the course of employment under the personal comfort doctrine. The Arbitrator further finds that Petitioner's accident arose out of his employment as he was exposed to a qualitative risk more frequently than the general public.

Petitioner was a "Bus Operator," for CTA and his duties included operating the bus, "running schedule, pull out, pick the people up, provide service, adequate service, safe and friendly service, on time on a regular schedule." (T at 8). Each Bus Operator must be relieved by another Operator to begin having a break. Petitioner credibly testified that his employer set the scheduled breaks depending on the shift. (*Id).* Respondent's Exhibit 1 indicates that Petitioner was to start and end his break on 74th and Ashland where the accident occurred. (Rx 1 at 12). Page 14 of Respondent's Exhibit 3 reveals Respondent employer's policy with regard to "Adherence to Schedules." (RX3). CTA's policy is that "Operators must drive in accordance with their schedules, running time and time points for their runs. Operators must report any deviation from schedule on the Bus Operator's Daily Report." (RX3 at 14). Petitioner testified that he was not allowed to take the bus off the route to take a break. (T at 29). He was not allowed to pull over to have his break. (T at 30). It was employer's policy and procedure to be relieved and then go have a break. (T at 30).

Overall, the Arbitrator finds that Petitioner's accident arose out of and in the course of his employment by Respondent.

Issue F, whether Petitioner's current condition of ill-being is causally related to the injury, the Arbitrator finds as follows:

To obtain compensation under the Act, a claimant must prove that some act or phase of his employment was a causative factor in his ensuing injuries. A work-related injury need not be the sole or principal causative factor, as long as it was *a* causative factor in the resulting condition of ill-being. Even if the claimant had a preexisting degenerative condition which made him more vulnerable to injury, recovery for an accidental injury will not be denied as long as he can show that his employment was also a causative factor. Thus, a claimant may establish a causal connection in such cases if he can show that a work-related injury played a role in aggravating his preexisting condition. Sisbro, Inc. v. Industrial Comm'n, 207 Ill. 2d 193, 205, 797 N.E.2d 665, 278 Ill. Dec. 70 (2003). "A chain of events which demonstrates a previous condition of good health, an accident, and a subsequent injury resulting in disability may be sufficient circumstantial evidence to prove a causal nexus between the accident and the employee's injury." International Harvester v. Industrial Com., 93 Ill. 2d 59, 63 442 N.E.2d 908 (1982).

Petitioner credibly testified to the accident that occurred on 10/28/2020 where he was alighting his bus for a scheduled break when he was hit by a motor vehicle. (T at 13). Petitioner's first exhibit

is an Illinois Traffic Crash Report indicating that Petitioner had been struck by a motor vehicle on 74th and Ashland and taken to Holy Cross Hospital (PX1). The City of Chicago Fire Department noted that on 10/28/20, a vehicle struck Petitioner on his left side causing him to roll over the hood and off the side of the vehicle. He had pain in the upper left arm and minor swelling noted. (PX2). On the accident date, Petitioner was treated for left shoulder and left arm pain at Holy Cross Hospital. (PX3). The date after the accident, Petitioner immediately sought follow up care at Chicago Pain and Orthopedic Institute, where treatment and diagnostics revealed tears in the left shoulder and elbow. (PX5). There is no evidence of symptoms or treatment prior to the accident date, but Petitioner's x-rays and MRI's revealed structural pathology within 2 weeks of the accident date, further evidencing acute onset and causal connection. (PX6). On 11/30/2020, Petitioner was diagnosed with "Left near complete triceps rupture with mild retraction with left shoulder infraspinatus rotator cuff tear." (PX5 at 15). Further, Dr. Sclamberg opined that Petitioner's "current condition and well-being is related to his injuries described. He was struck by an SUV and landed on that side, hyperextending his arm avulsing the triceps tendon off and injuring his rotator cuff." (PX5 at 16).

Given Petitioner's credible testimony, corroborated by consistent medical reports, and Dr. Sclamberg's opinion, the Arbitrator finds Petitioner's current condition of ill-being causally related to the injury.

Issue J, whether the medical services that were provided to Petitioner were reasonable and necessary and whether Respondent has paid all appropriate charges for all reasonable and necessary medical services, the Arbitrator finds as follows:

Section 8(a) of the Act states a Respondent is responsible "…for all the necessary first aid, medical and surgical services, and all necessary medical, surgical and hospital services thereafter incurred, limited, however, to that which is reasonably required to cure or relieve from the effects of the accidental injury…" A claimant has the burden of proving that the medical services were necessary, and the expenses were reasonable. See Gallentine v. Industrial Comm'n, 201 Ill.App.3d 880, 888 (2nd Dist. 1990).

Having found for Petitioner on accident and causal connection, the Arbitrator finds that the care Petitioner incurred following his accident was reasonable, necessary, and casually connected to his October 28, 2020 injury.

For his injuries, Petitioner was immediately treated by Chicago Fire Department at the scene of the accident. (PX2). He was immediately taken to Holy Cross Hospital Emergency Department where diagnostic images were taken to evaluate the extent of injuries. (PX3). Follow up care at Chicago Pain and Orthopedic Institute included diagnostic images, pain medications, and an arm sling. (PX5). Petitioner was recommended a surgery to the elbow which was delayed pending worker's compensation approval. (*Id*). The Arbitrator also finds that Petitioner's pain medication prescribed at CPOI were medically necessary. (PX8).

The Arbitrator finds that Respondent is responsible for all related medical bills including the following, pursuant to section 8(a) and 8.2 (medical fee schedule) of the Act:

1. **City of Chicago Department of Finance in the amount of $2,791.00;**
2. **Holy Cross Hospital in the amount of $3,335.75;**
3. **CEP America Illinois in the amount of $684.00;**
4. **Chicago Pain and Orthopedic Institute in the amount of $628.25;**
5. **Berwyn Diagnostic/Archer MRI in the amount of $4,475.00;**
6. **Windy City Anesthesia in the amount of $220.00;**
7. **Midwest Specialty Pharmacy in the amount of $4,040.10;**

Respondent shall hold petitioner harmless from any claims by any providers of the services for which Respondent is receiving this credit, as provided in Section 8(j) of the Act.

Issue K, 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).

Having found for Petitioner on all prior issues, the Arbitrator finds that Petitioner is entitled to TTD benefits. Petitioner was medically restricted from work during that period. (See PX5). Petitioner credibly testified that he was off work from the date of the accident until January 15, 2021 without any worker's compensation benefits. (T at 20).

Based on the above, the Arbitrator finds Respondent liable for 11 2/7 weeks of TTD benefits (10.28.20 through 1.15.21) at a weekly rate of $960.00.

Issue L, the nature and extent of the injury, the Arbitrator finds as follows:

In determining PPD benefits, Section 8.1b(b) of the Act directs the Commission to consider: "(i) the reported level of impairment pursuant to subsection (a); (ii) the occupation of the injured employee; (iii) the age of the employee at the time of the injury; (iv) the employee's future earning capacity; and (v) evidence of disability corroborated by the treating medical records." 820 ILCS 305/8.1b(b); Con-Way Freight, Inc. v. Illinois Workers' Compensation Comm'n, 2016 IL App (1st) 152576WC, ¶ 22, 67 N.E.3d 959. "No single enumerated factor shall be the sole determinant of disability." 820 ILCS 305/8.1b(b).

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

With regard to subsection (ii) of Section 8.1b(b), Petitioner is still a Bus Operator for Respondent. As a Bus Operator, Petitioner's duties included "running schedule, pull out, pick the people up, provide service, adequate service, safe and friendly service, on time on a regular schedule." (See T at 8). The Arbitrator assigns moderate weight to this factor as Petitioner will continue his job duties despite residual symptoms from the accident. (See T at 21-22).

With regard to subsection (iii) of Section 8.1b(b), the Arbitrator assigns moderate weight to the fact that Petitioner was 49 years of age at the time of his accident. Petitioner has many working years in front of him and Petitioner credibly testified to ongoing impairments and discomfort with work duties and activities of daily living.

With regard to subsection (iv) of Section 8.1b(b), the Arbitrator assigns little weight to this factor, which is Petitioner's future earning capacity, as Petitioner was able to return to his pre-injury job.

Finally, with regard to subsection (v) of Section 8.1b(b), evidence of disability corroborated by the treating medical records, the Arbitrator places great weight on this factor. Petitioner credibly testified to residual symptoms from the accident for his cervical spine, shoulder, and elbow. He testified that his shoulder has lost movement and power. He testified that his activities of daily living are affected, that he has a loss in grip strength, range of motion, and pain. (See T at 21). Petitioner's testimony is consistent with the medical records showing a 3 mm tear of the infraspinatus in the left shoulder and a high-grade partial thickness to full thickness tear in the left elbow with near complete width of the triceps tendon at the distal insertion. Although Dr. Sclamberg recommended surgical repair to the triceps tendon, Petitioner did not undergo the surgery as Respondent denied treatment.

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 arm pursuant to §8e10 of the Act and 8% loss of use of the person as a whole pursuant to §8d2 of the Act which corresponds to a total of 57.710 weeks of permanent partial disability benefits at a weekly rate of $864.00.

It is so ordered:

Arbitrator Rachael Sinnen

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	20WC003745
Case Name	Michele Abramson v. Presence Saint Joseph Hospital
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	23IWCC0398
Number of Pages of Decision	25
Decision Issued By	Carolyn Doherty, Commissioner

Petitioner Attorney	David Menchetti
Respondent Attorney	Lisa Azoory-Keller

DATE FILED: 9/5/2023

/s/Carolyn Doherty, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

MICHELE ABRAMSON,

Petitioner,

vs. NO: 20 WC 3745

PRESENCE SAINT JOSEPH HOSPITAL,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Petitioner herein and notice given to all parties, the Commission, after considering the issues of causal connection, medical expenses, prospective medical care, 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 thereof.

The Commission modifies the Decision of the Arbitrator regarding the issues of causal connection, medical expenses, temporary total disability, and permanent partial disability.

I. Causal Connection

The Arbitrator found that Petitioner's current condition of ill-being was partly causally connected to the work accident. Regarding causal connection for the right hand, the Arbitrator adopted the opinion of Respondent's Section 12 examiner, Dr. Cohen, that the medical records supported finding a temporary aggravation of Petitioner's right thumb CMC osteoarthritis. Regarding the left hand, the Arbitrator accepted Dr. Cohen's opinions that he had no way to relate the left thumb problems and surgeries to the accident and that there was no way to attribute any of the left thumb pathology to overcompensation. On review, Petitioner argues that the current condition of ill-being of her left hand and thumb is causally related to the undisputed work accident. The Commission agrees.

A successful claimant must prove that some act or phase of her employment was a causative factor in his ensuing injuries. *Land and Lakes Co. v. Industrial Comm'n*, 359 Ill. App. 3d 582, 592 (2005). "Every natural consequence that flows from an injury that arose out of and in the course of one's employment is compensable under the Act absent the occurrence of an independent intervening accident that breaks the chain of causation between the work-related injury and an ensuing disability or injury." *National Freight Industries v. Illinois Workers' Compensation Comm'n*, 2013 IL App (5th) 120043WC, ¶ 26. Otherwise, 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) "It is axiomatic that employers take their employees as they find them." *Id*. Thus, even if the claimant had a preexisting degenerative condition which made her more vulnerable to injury, recovery for an accidental injury will not be denied as long as she can show that her employment was also *a* causative factor. *Id*. A claimant may establish a causal connection in such cases if she can show that a work-related injury played a role in aggravating her preexisting condition. *Mason & Dixon Lines, Inc. v. Industrial Comm'n*, 99 Ill. 2d 174, 181 (1983); *Azzarelli Construction Company v. Industrial Comm'n*, 84 Ill. 2d 262, 266 (1981). A claimant also may rely on the "chain of events" in her case to demonstrate the aggravation or acceleration of a preexisting condition. See *Schroeder v. Illinois Workers' Compensation Comm'n*, 2017 IL App (4th) 160192WC, ¶¶ 25-29. Moreover, the Commission has routinely found compensable overuse injuries to the contralateral extremity where an individual injures one extremity and during treatment through overuse in favoring that injured member, suffers a deteriorating condition on the contralateral side. See, *e.g*., *Pate v. State of Illinois – Illinois Department of Corrections – Parole*, Ill. Workers' Comp. Comm'n, No. 15 WC 25533, 20 IWCC 759 (Dec. 22, 2020) (and authorities cited therein).

In this case, the Commission concludes that the record supports a finding that Petitioner's right hand and thumb injury caused her to compensate for the right hand injury and overuse her left hand. As a result, Petitioner began to report left thumb and hand symptoms while treating for her right thumb injury and working light duty under significant right-hand restrictions.

In so finding, the Commission notes that Petitioner testified that her duties as a registered nurse involved cleaning, assisting with patient services, and reaching during patient care. Petitioner was working full duty, using both hands without incident, prior to her undisputed accident of April 24, 2017. As a result of the undisputed accident, Petitioner sought treatment on April 27, 2017 at Physician's Immediate Care and was released to work with significant restrictions on the use of her right hand. Petitioner testified that she worked light duty through August 7, 2017, and that throughout the entire period of light duty she wore a splint on her right hand. Petitioner further testified that she noticed pain in her left hand at home and at work during this period, including difficulty opening doorknobs, preparing things in her kitchen, and performing activities of daily living. Tr. 25-26. Petitioner further testified that she noticed left hand pain because she was overcompensating and using her left hand in positions that were not normal for a right-handed person. Tr. 26-27.

Petitioner's testimony regarding her left hand and thumb symptom development and progression is sufficiently corroborated by her treatment records. On April 27, 2017, Physician's Assistant Julianne Wong prescribed the use of a right hand splint as directed, consistent with

Petitioner's testimony. Thereafter, Petitioner underwent the prescribed occupational therapy and continued wearing the right splint. At a follow up appointment on June 12, 2017, Petitioner saw Dr. Vitello. The notes from the June 12, 2017 follow up visit noted "Overall pain in the left hand is better but still pain with grasping and twisting." Petitioner testified that she disagreed with that record insofar as it could be read to indicate that she did not return to work with pain in both hands. JX 1, p. 16; Tr. 42-43.

While continuing follow up treatment for her right hand and thumb complaints, Petitioner continued to work light duty under right hand restrictions and wearing a splint. On July 13, 2017, Dr. Siddharth Tambar noted that Petitioner had chronic bilateral hand pain for two years duration and was in physical therapy for both hands. Dr. Tambar noted, "work related injury to the right hand in April 2017, … saw Dr. Vitello, ortho surgeon, chronic OA reported on X-ray done. In PT for the right hand but PT also treating the left hand as well. Wears braces for right and left hands, more often worn on the right hand. Currently working light duty. Pain mainly over the thumbs, stiffness through the hands. Weakness in both hands. … Crepitus felt and heard in thumbs, swelling in both hands. Stiffness in the mornings but not painful until she uses hands. Pain in hands with vocational activities and repetitive use as a nurse working 12-13 hour shifts, pain progressive over the years. Pains worse since work-related injury in April. No longer able to ride bike because of pain with gripping handlebars. Pain with activities such as turning doorknobs, using scissors, opening containers, turning key in ignition, pushing medications through syringes. ADLs limited due to hand pains." In addition to noting right hand problems, the physical exam notes indicate "…swelling in left index finger and left 1st CMC joint. Tenderness over … left wrist 1st extensor and flexor compartments, … right and left CMC joints. … Left wrist pain with flexion, …grip weakness left and right hands…" Dr. Tambar's impression was "48 year old woman, history chronic hand pains, right thumb injury in April, with pain in right and left hands." Petitioner was to return in 2 weeks for follow up.

On a July 31, 2017 follow-up visit, Dr. Tambar noted that Petitioner had a "history of seronegative rheumatoid arthritis, chronic hand pains, right thumb injury in April, with pain in right and left hands." He noted the bilateral hand pain was worse in the left hand versus the right and that Petitioner was in PT working on both hands with no improvement in the left hand. Dr. Tambar further noted, "Took Prednisone and swelling reduced but no pain relief. Worst pains along thumbs/thenar especially with any pressure applied. Working light duty due to hand pains and difficulty with vocational activities as a RN. Mild limitation with adls." Physical exam revealed swelling in right and left thumbs. TTD over bilateral thumbs, thenar, 2nd MCP joint, and PIP joints." His impression was "hand pains; active RA, possibly component of OA as well." Dr, Tambar ordered x-ray of the left hand on September 15, 2017 which showed a possible proximal phalanx dislocation.

On September 18, 2017, Dr. Vitello noted that Petitioner had complained of pain to the left thumb for a few months, which coincides with the period during which Petitioner worked light duty wearing a right hand splint. On September 28, 2017, Dr. Tambar noted "history of seronegative RA, chronic hand pains, right thumb injury in April, with pain in right and left hands. Here for follow up… bilateral hand pains, worse with performing work duties. Swelling in the mornings, worse swelling after work shifts. … Left thumb dislocation on recent x–ray,

wearing splint, saw hand surgery, Dr. Vitello, surgery recommended. Second opinion by another hand surgeon, Dr. Chen scheduled."

On October 6, 2017, Petitioner saw Dr. Kevin Chen at Illinois Bone and Joint Institute. On the intake form, Petitioner listed a left thumb date of onset of injury in approximately "July/Sept". Dr. Chen noted "Michele Abramson is a 48 year old woman who is right handed and works as a registered nurse. She states that her injury first occurred on 06/23/17 [sic] and 06/24/17 [sic] when she was lifting up a 400 pound patient, he grabbed her right thumb, she has severe pain and swelling after that. She has seen Dr. Vitello for this issue and during that time, she also started experiencing left thumb pain. She does not remember the exact traumatic events to the left thumb and believes that she may have been overcompensating with the left thumb. She recently started care with rheumatologist and was also placed on methotrexate. She states it is very difficult for her to use her bilateral thumbs. She also received a recent x-ray on 09/15/2017. It shows that her left thumb MCP joint is incompletely dislocated." Surgery was prescribed to treat the left thumb chronic MCP joint dislocation. Following surgery, Dr. Chen released Petitioner from his care on February 18, 2020.

Regarding the left thumb, Respondent's section 12 examiner Dr. Cohen, testified that he could not relate the left thumb complaints and condition to the accident of April 2017. In in his opinion there is little medical rationale to the phenomenon of overcompensation. However, Dr. Cohen conceded that Petitioner's job duties could cause the manifestation of symptoms from a pre-existing condition. While testifying that that he did not understand how Petitioner's left thumb symptoms could have worsened after April 24, 2017, he agreed that Petitioner did report left thumb symptoms to her treating doctor. In addition, Dr. Cohen ultimately conceded that if one has a chronic inflammatory condition as in this case and was using a chronically arthritic hand more than they were before, it could certainly lead to greater symptoms in that hand.

The Commission affirms the Arbitrator's finding that there was a causal connection between Petitioner's undisputed accident and the condition of her right hand through August 7, 2017. Based on Petitioner's left hand over use and reliance on her left hand when working under right hand restrictions, left thumb symptom development during treatment and splinting of the right hand, documented left hand symptom complaints buttressed by objective findings on exam, the chain of events and the concessions of Dr. Cohen, the Commission further modifies the Decision of the Arbitrator to find a causal connection between the undisputed accident and the aggravation and acceleration of Petitioner's left hand condition due to overcompensation and overuse through February 18, 2020, when Dr. Chen released Petitioner from care.

II. Medical Expenses

Petitioner did not introduce any medical bills into evidence and did not make any specific claim for medical expenses in the Request for Hearing, though Respondent claimed that no bills were owed. The Arbitrator technically made no award of medical expenses in the "Order" section of the Decision. However, the parties stipulated at the hearing that if there is any award of medical expenses: Respondent will resolve any awarded bills directly with the providers; Respondent's liability for such bills is limited to that provided for by the lesser of the fee schedule or the negotiated rate; Respondent is entitled to a Section 8(j) credit for any payments

by Respondent's group medical plan on any awarded bills; Respondent is entitled to a Section 8(j) credit for any non-occupational indemnity benefits or other benefits for which a Section 8(j) credit may be allowed; and Respondent is entitled to a credit for amounts already paid. The parties also stipulated that Petitioner agreed to cooperate with Respondent in obtaining properly coded medical bills and any other information necessary to properly resolve any awarded bills. Respondent agreed to hold Petitioner harmless for any claim from Respondent's group medical plan for the payment of reasonable, necessary, and related bills for which a Section 8(j) credit was taken. The Commission concludes that Petitioner is entitled to her reasonable and necessary medical expenses for the treatment of her right hand through August 7, 2017, and her left hand through February 18, 2020, to be paid by Respondent pursuant to the written stipulation of the parties submitted at the hearing in this matter.

III. Temporary Total Disability

The Arbitrator awarded no temporary total disability benefits regarding Petitioner's right hand because Petitioner worked light duty from April 27, 2017, through her release to full duty work on August 7, 2017. The Commission agrees with this aspect of the Decision. However, having found a causal connection between the accident and the condition of Petitioner's left hand, the Commission awards benefits of $819.47 per week (based on the stipulated average weekly wage of $1,229.20) for a period of 94 and 1/7ths weeks, commencing May 1, 2018, through February 18, 2020, which is the period after Petitioner was released from employment with Respondent through the date when Dr. Chen released Petitioner from care for the left hand.

IV. Permanent Partial Disability

Lastly, the Arbitrator awarded Petitioner permanent partial disability benefits representing a 5% loss of use of the right hand. On review, Petitioner seeks an award representing a 25% loss of use of the right hand and a 50% loss of the left hand.

Subsection (b) of section 8.1b of the Act lists five factors upon which the Commission must base its determination, including: (i) the level of impairment contained within a permanent partial disability impairment report; (ii) the claimant's occupation; (iii) the claimant's age at the time of injury; (iv) the claimant's future earning capacity; and (v) evidence of disability corroborated by the treating medical records. 820 ILCS 305/8.1b(b) (West 2022). However, "[n]o single enumerated factor shall be the sole determinant of disability." *Id.* § 305/8.1b(b)(v).

The Arbitrator correctly gave no weight to subsection (i), as no permanent partial disability impairment report or opinion was submitted into evidence.

The Arbitrator gave "some" weight to subsection (ii), noting that Petitioner is no longer working, but not because of the work injuries. Regarding the right hand, the Commission gives this factor little weight, as Petitioner's condition essentially resolved by August 7, 2017. Regarding the left hand, the Commission gives Petitioner's occupation significant weight, as her continued work as a nurse undoubtedly contributed to the overuse of her left hand until such time as her employment with Respondent ended, almost a year after her right hand condition had resolved.

The Arbitrator also gave "some" weight to subsection (iii). The Commission finds that Petitioner's age (48) carries little weight regarding to the temporarily aggravated condition of her right hand, but carries greater weight regarding the Petitioner's left hand, given the greater seriousness of the condition of-ill being, with residual effects that Petitioner will endure for a significant period.

The Arbitrator gave "some" weight to subsection (iv). The Commission assigns greater weight to this factor than did the Arbitrator in light of Petitioner's bilateral hand injuries.

Lastly, the Arbitrator again gave "some" weight to subsection (v). Petitioner has bilateral thumb CMC joint arthritis, coupled with rheumatoid arthritis. Petitioner's left hand required a left thumb MCP joint fusion, a revision MCP joint fusion and EPL tenolysis, a left thumb extensor pollicis longus tendon tenolysis with removal of symptomatic hardware, and yet another left thumb tenolysis of EPL tendon with Z-plasty of the first webspace, contracture release, and adductor pollicis fascia release. The treatment records indicate that Petitioner's condition was aggravated and complicated by a bad result to these multiple surgical procedures. The Commission assigns this factor the greatest weight in our analysis.

Considering the entirety of the record, the Commission agrees with the Arbitrator's award representing the 5% loss of use of the right hand, given that the injury resolved more quickly with fewer apparent residual effects. The Commission additionally awards benefits representing a 20% loss of use of the left hand, given the greater weight of the statutory factors regarding the left hand, particularly the residual effects of the multiple surgeries.

In all other respects, the Commission affirms and adopts the Decision of the Arbitrator.

IT IS THEREFORE FOUND BY THE COMMISSION that there was a causal connection between Petitioner's accident and the condition of her right hand through August 7, 2017, and the condition of her left hand through February 18, 2020.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator dated April 19, 2023, is modified as stated herein. The Commission otherwise affirms and adopts the Decision of the Arbitrator.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent shall pay Petitioner's reasonable and necessary medical expenses for the treatment of her right hand from the accident date through August 7, 2017, and her left hand from the accident date through February 18, 2020, pursuant to the terms of the stipulation of the parties submitted at the hearing in this matter.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $819.47 per week commencing May 1, 2018, through February 18, 2020, a period of 94 and 1/7ths weeks, that being the period of temporary total incapacity for work under section 8(b) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay

Petitioner permanent partial disability benefits of $737.52 per week for 10.25 weeks, because the injuries sustained caused the 5% loss of the right hand, as provided in Section 8(e)(9) of the Act. Respondent also shall pay Petitioner permanent partial disability benefits of $737.52 per week for 41 weeks, because the injuries sustained caused the 20% loss of the left hand, as provided in Section 8(e)(9) of the Act.

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

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

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

September 5, 2023

o: 08/24/23
CMD/kcb
045

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

/s/ *Marc Parker*
Marc Parker

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	20WC003745
Case Name	Michele Abramson v. Presence Saint Joseph Hospital
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	17
Decision Issued By	Jeffrey Huebsch, Arbitrator

Petitioner Attorney	David Menchetti
Respondent Attorney	Lisa Azoory-Keller

DATE FILED: 4/19/2023

THE INTEREST RATE FOR THE WEEK OF APRIL 18, 2023 4.87%

/s/ Jeffrey Huebsch, Arbitrator

Signature

M. Abramson v. Presence St. Joseph Hospital, 20 WC 003745

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

Michele Abramson Case # **20** WC **003745**
Employee/Petitioner
v.
Presence Saint Joseph Hospital
Employer/Respondent

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

DISPUTED ISSUES

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

FINDINGS

On **April 24, 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, in part*** causally related to the accident.

In the year preceding the injury, Petitioner earned $**63,918.40**; the average weekly wage was $**1,229.20**.

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

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

Respondent ***has*** 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 under Section 8(j) of the Act, per the Stipulation of the Parties.

ORDER

All benefits are denied regarding any claimed injury to Petitioner's left hand/thumb.

Respondent shall pay Petitioner permanent partial disability benefits of PD benefits of $737.52/week for 10.25 weeks because the injuries sustained caused Petitioner to suffer the 5% loss of use of the right hand, in accordance with §8(e)9 of the Act.

Respondent shall pay Petitioner the compensation benefits that have accrued from 4/24/2017 through 8/25/2022 in a lump sum, and shall pay the remainder of the award, if any, in weekly payments.

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

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

APRIL 19, 2023

Signature of Arbitrator

FINDINGS OF FACT

Petitioner, a former Registered Nurse for Respondent, Presence St. Joseph Hospital, alleges injury to her bilateral thumbs and hands as a result of an April 24, 2017 accident/manifestation date. Petitioner was working on the medical/surgical floor at the time of injury. (Tr. 13) Petitioner is right-hand dominant. (Tr. 15)

Petitioner testified that her job as a registered nurse involved constant turning, pushing, pulling, lifting, holding, crushing medications and drawing/flushing medications. She stated that she dealt with equipment, carts and industrial-type outlets that were not easily accessible. (Tr. 13) Petitioner used SCD compression devices and also pushed/pulled electrical cords into outlets. (Tr. 15). Petitioner stated that placing an electrical cord into an outlet caused her burning and crushing pain (Tr. 15). She also obviously was involved in patient care/contact as a RN which involved the use of her hands.

Petitioner testified that on April 24, 2017, as she was helping to move a morbidly obese patient, the patient inadvertently grabbed her right hand. (Tr. 17-18) At the end of her shift, Petitioner noticed difficulty with both of her hands with typing, charting and with her strength. (Tr. 18) Petitioner then stated on direct examination that she noticed those sensations in only the right hand. (Tr. 18) Petitioner reported an injury on April 25 or April 27, 2017. (Tr. 19, 20) Employee Health directed her to an emergent care facility. (Tr. 20)

Petitioner testified that she went to Physician's Immediate Care on April 27, 2017 and she was released to work light duty. (Tr. 21) In her light duty position, Petitioner was assigned to a task involving a bulletin board and also helped with patient guest services. She testified that she was also assigned to clean the tops of shelves of two stock rooms, making sure that nothing touched the ceiling. (Tr. 23).

Petitioner testified that while working light duty, she noticed pain when at home and at work. (Tr. 25). Specifically, Petitioner had difficulty opening doorknobs, preparing things in her kitchen, brushing her hair and performing activities of daily living. (Tr. 25) Petitioner stated that she noticed left hand pain because she was overcompensating and using her left hand in positions that weren't normal for a right-handed person. (Tr. 26) Petitioner noticed that items would fall out of her hands and that she never had problems with either hand prior to the timeframe she worked light duty (Tr. 27).

Petitioner's last day of work was October 6, 2017, the first date she saw Dr. Chen. (Tr. 29). After that, Petitioner took a Family Medical Leave and did not return to any kind of work thereafter. (Tr. 29) Petitioner testified that an employment separation occurred around May 1, 2018. (Tr. 30)

At the time of trial, Petitioner stated that she was weak in both hands and that activities of daily living, including vacuuming in her home, chores and walking her dog, cause her pain. (Tr. 33-34) Petitioner stated that the pain was invisible and that nobody could see the autoimmune issues that she had. (Tr. 35).

On cross-examination, Petitioner testified that the morbidly obese patient that she was moving on the date of accident grabbed her right thumb, but that all of her surgeries involved the left thumb. (T. 37-38). She stated that she sought medical care for her right thumb after the injury and that she didn't mention the left thumb to Physician's Immediate Care, Dr. Vitello or Dr. Tambar (Tr. 38-39). Petitioner also stated that at the time she came under the care of Dr. Chen in October 2017, she advised the physician of a right thumb injury, not a left thumb injury (Tr. 39).

Petitioner stated that she was released to full duty work on August 7, 2017. (Tr. 40).

Petitioner testified on cross-examination that in her four-month light duty timeframe from April 24, 2017 to August 7, 2017, her job involved significant walking, bending and reaching. (Tr. 41). She stated that some of the job duties were administrative, some job duties were physical, and that the job duties were varied. (Tr. 41)

Petitioner stated on cross-examination that the history within Dr. Vitello's June 12, 2017 note was inaccurate. (Tr. 43). If Dr. Tambar wrote in his July 13, 2017 note that she was having bilateral hand pain for two years in duration, she would disagree with that statement. (Tr. 43) If Dr. Tambar wrote that Petitioner's pain was progressively getting worse over the years, that history was inaccurate. (Tr. 44) If the very first note from Physician's Immediate Care indicated that Petitioner had previous soreness in her right hand prior to the work injury, she would disagree (Tr. 44).

Petitioner testified that when she first came under the care of Dr. Tambar in July 2017, she was diagnosed with Rheumatoid Arthritis and was having an active flare up. (Tr. 45) Petitioner stated that she started to notice pain in her left hand and thumb on April 25, 2017, because she immediately needed to start using her left hand (Tr. 45-46).

Petitioner stated that when she is having active inflammation or a flare up, her joint pain gets worse. (Tr. 46) After her full duty release, Petitioner experienced pain in her left thumb both at work and outside of work. For example, Petitioner had pain when getting a gallon of milk at the grocery store. She stated that the left-hand pain began immediately after the right-hand injury (Tr. 47) Petitioner stated that the left thumb pain didn't start at work at that it was with her wherever she went. (Tr. 46)

Petitioner stated that none of her physicians ever advised her that her left thumb condition was due to overcompensation. (Tr. 49) She stated that none of her physicians ever told her directly that her left thumb condition was due to the repetitive nature of her job. (Tr. 49). Petitioner further testified that it was probably correct that none of her physicians ever stated that the left thumb condition was due to the April 24th (or April 25th) event. (Tr. 50) Regarding whether she had any discussion with her physicians about job duties, Petitioner stated that nobody really checked on what she was doing. (Tr. 50)

Petitioner initially did not recall a fall involving her right hand in early May 2018 (Tr. 51) When confronted with Dr. Chen's chart note regarding the fall, Petitioner stated that she remembered the incident. She thought the bus was going to make the light and the driver slammed on the brakes. She went forward a little bit and got thrusted. (Tr. 52)

Petitioner agreed that her physicians discussed her inability to heal from the surgeries due to her rheumatoid arthritis. (Tr. 53)

Dawn Palella testified on behalf of Respondent. Her employer on April 25, 2017 was either Presence or AMITA, and that her employer changed to Ascension after AMITA. Palella testified that she is an 11-year employee and that her job title is Associate Health Nurse. (Tr. 60). Her job duties in April and October 2017 included being a liaison for workers' compensation injuries and associate accommodations. (Tr. 60) Her responsibilities included setting up claims, seeing what care employees would need, getting employees the assistance they needed and coordinating treatment (Tr. 61)

Palella stated that she knew Petitioner because of the April 24, 2017 injury and that she came to know about the injury because Petitioner filled out an incident report on April 25, 2017 relating to her right hand and thumb (Tr. 62) Palella stated that Petitioner did not tell her about an injury to her left hand or left thumb at that time. (Tr. 62)

Palella testified that she was familiar with the job duties of a nurse and that she actually worked as a floor nurse in the early part of her career. The job duties of a registered nurse included getting reports, helping with patient care, passing medications and acting as a coordinator between all the care physicians. (Tr. 63-64) Palella stated that Respondent's Exhibit Two – the job description of a Registered Nurse – accurately represented the job duties of a registered nurse in 2011 and going forward. (Tr. 64). Palella agreed that the job description accurately notated hand and arm movements as occasional, and that gripping was also occasional (Tr. 65). Palella stated that pinching may come into play for the job duties of a nurse, and that the job duties of a nurse were varied. (Tr. 65-66)

Palella stated that the hospital was able to accommodate light duty restrictions after the work injury. Restrictions included avoiding strong gripping and repetitive movements of the hand. (Tr. 67) With regard to the job duties of a nurse in light duty, Palella stated that the hospital did not put Petitioner back on bedside duty and that she would not act as a bedside nurse. Petitioner was an adjunct and additive, not counted in the total tally of nurses on the floor (T. 68)

In December 2017, Palella testified that she became aware that Petitioner wanted to dismiss her case because of an email she received, and that the dismissal pertained to her case involving the bilateral thumbs, not another case. (Tr. 69-70)

On cross-examination, Palella stated that she could not quantify a nurse's use of the hands and thought that walking was the main job duty. (Tr. 70-71) Palella stated that Petitioner had various managers during her light duty timeframe. If a manager asks an employee to do tasks outside of their restrictions, Palella testified that it is the employee's responsibility to decline those tasks (Tr. 78)

On re-direct examination, Palella testified that Petitioner never reported left thumb pain prior to October 6, 2017. If Petitioner reported left thumb pain to someone other than Palella, she [Palella] would have come to know about it. (Tr. 85) When an employee reports pain, the supervisor is supposed to instruct the employee to go to employee health. Palella stated that Petitioner was never sent to Employee Health prior to October 6, 2017 for left thumb pain. (Tr. 86) Palella further testified that there is no exact light duty job description, but that Petitioner's roles would have been supportive such as answering phones, monitoring tech, looking at equipment in the storeroom, checking vitals and doing ancillary paperwork. (Tr. 87-88) Palella stated that the job tasks in the light duty role was more administrative than in the registered nurse position and that the light duty employees are not doing a nurse's job. (Tr. 88).

Petitioner completed an Employee Report of Work Injury on April 27, 2017. (RX3) Petitioner wrote that she injured her right hand when repositioning a morbidly obese patient. Specifically, the patient grabbed Petitioner's right hand.

On April 27, 2017, Petitioner was seen at Physician's Immediate care for pain in the right thumb and hand after transitioning a morbidly obese patient. Petitioner admitted to having soreness to these areas with some movements but stated that she usually could still grip and twist. On physical examination, Petitioner displayed tenderness at the right MCP joint and had a positive Finkelstein's test on the right. X-rays of the right hand were normal. Petitioner's diagnoses included trigger finger of the right middle finger, trigger finger of the right ring finger. Petitioner was advised to avoid strong gripping with the right hand, limit repetitive motion with the right hand, refrain from lifting from waist to shoulder greater than 10 pounds with her right arm, and refrain from lifting below the waist greater than 10 pounds with her right arm. (JX1, p. 1-6)

On May 1, 2017, Petitioner returned to Physician's Immediate Care with an overall improvement in her pain. Petitioner still felt that her fingers were swollen when she made a grip. Her thumb was painful with movements. Petitioner's diagnoses included trigger finger of the right middle finger and right ring finger. Petitioner was given the same work restrictions as the previous visit and advised to continue Mobic. (JX1, p. 7—12)

On May 8, 2017, Petitioner was evaluated by orthopedic physician Dr. Vitello. Petitioner complained of right hand pain since April 24, 2017. Petitioner reported that she was helping to transfer an obese patient and was pulling the pad underneath her several times. At that point, her right hand caused pain during the transfer. Dr. Vitello's assessment was osteoarthritis of the right thumb CMC joint. X-rays were performed, which demonstrated chronic right thumb CMC joint arthrosis and subluxation. Dr. Vitello recommended follow-up in four weeks as well as a consultation with occupational therapy. (JX 13-15)

On June 12, 2017, Petitioner returned to Dr. Vitello and reported stiffness in the hand and localized soft tissue swelling in the right hand. She displayed decreased pinch strength but had no tingling. Dr. Vitello wrote that Petitioner's left hand pain was better, but she still had pain with grasping and twisting (this appears to be an error, as the remainder of the chart for this visit refers to the right hand thumb CMC joint). Dr. Vitello made an assessment of traumatic arthropathy of the right hand. He recommended occupational therapy and follow-up in four weeks' time. (JX1, p. 16-18)

On July 10, 2017, Dr. Vitello wrote that Petitioner's right hand pain was improving with time, but that she still had pain with forceful gripping. The diagnosis history was pain in right hand, pain in right wrist, primary osteoarthritis uns(?) hand, traumatic arthropathy uns(?) hand. On physical examination, Petitioner displayed swelling of the hands and her right thumb CMC remained swollen and tender with palpation. Overall, Petitioner had less pain and improved mobility. Dr. Vitello assessed that Petitioner had aggravated her right thumb CMC arthritis and recommended occupational therapy. MMI was anticipated in four weeks' time. (JX 1, p. 19-20)

On July 13, 2017, Petitioner was evaluated by Rheumatologist Dr. Siddharth Tambar for a new patient evaluation. Dr. Tambar wrote that Petitioner was being seen for chronic bilateral hand pain for two years duration, right greater than left. Dr. Tambar noted that Petitioner injured her right hand in April 2017 while moving an obese patient. She was in PT for her right hand, but was receiving PT for her left hand as well. Wears braces for both hands, but wears the right brace more. Pain mostly over the thumbs, stiffness throughout the hands. Weakness in both hands. Crepitus felt and heard in thumbs, swelling in both hands. Dr. Tambar further wrote that Petitioner had pain in her hands with vocational activities and repetitive use as a nurse working 12-13 hour shifts, and that her pain was progressively getting worse over the years, pains worse since injury in April. Petitioner had pain with activities such as turning knobs, using scissors, opening containers, turning key in ignition and pushing medication through syringes. No longer rides a bike because of pain gripping handlebars. ADLs limited due to hand pains. Petitioner's past medical history included thyroid disease, osteoarthritis and seizures. The physician noted that Petitioner had moderate to severe findings on ultrasound and exam consistent with rheumatoid arthritis. He indicated that ultrasound findings in the right hand indicated risk for erosive disease, and Methotrexate was recommended. (JX 1, p. 21-23)

On July 31, 2017, Petitioner had a follow up visit with Dr. Tambar. The physician noted that Petitioner had a history of seronegative rheumatoid arthritis and chronic bilateral hand pain, left worse than right. Petitioner had no pain relief from Prednisone. Dr. Tambar wrote that Petitioner had active Rheumatoid Arthritis, possibly a component of osteoarthritis. He recommended continuation of Methotrexate and stated that Petitioner's thyroid could be contributing to the pain. (JX1, p. 30-31)

On August 7, 2017, Petitioner had a follow-up visit for her right hand and thumb pain with Dr. Vitello. On physical examination, Petitioner displayed minimal tenderness with pain or pressure, and she was overall improved. Dr. Vitello wrote that Petitioner could return to work at full duty and follow up on an as-needed basis. The assessment was "right thumb arthritis." (JX1, p. 32-33)

Petitioner testified that she returned to work full duty after Dr. Vitello's release. (Tr. 25)

On September 15, 2017, Petitioner was seen by her primary care physician, Dr. Klor-Gross at Presence Medical Group, for an annual exam. X-rays of the left hand were taken on that date, which demonstrated a dislocated thumb at the proximal phalanx. (JX1, p. 52)

On September 18, 2017, Petitioner had a follow up visit with Dr. Vitello. The noted indicates that the "patient complains of pain to the left thumb for a few months. No injury that she recalls." Petitioner told Dr. Vitello that her left thumb had been painful for 3 to 4 months with no trauma. Dr. Vitello's assessment was dislocation of the left thumb MP joint. There is no mention of the right hand/thumb. (JX1, p. 53)

On September 29, 2017, Petitioner had a follow up visit with Dr. Tambar. Petitioner's rheumatoid arthritis was partially improved but she demonstrated at least moderately active based on her symptoms on exam. The physician recommended increased Methotrexate and possible biologic therapy thereafter. For the left thumb, Dr. Tambar recommended a splint followed by surgery. (JX1, p. 57)

On October 6, 2017, Petitioner was evaluated by Dr. Kevin Chen at Illinois Bone and Joint Institute for an initial evaluation. The physician wrote that Petitioner sustained injury on June 23 and June 24, 2017 when she was lifting a 400 pound patient. Specifically, the patient grabbed Petitioner's right thumb and she had significant pain and swelling after that. Dr. Chen noted that Petitioner had seen Dr. Vitello and also started to experience left thumb pain. Petitioner reported to Dr. Chen that she did not remember the exact traumatic events to the left thumb and believed that she may have been "overcompensating" with the left thumb. The physician made an impression of left thumb metacarpal phalangeal joint dislocation that appeared to be chronic. The physician explained to Petitioner that the chronic MCP joint dislocation could be difficult to fix, as it had been out for such a long time. However, Dr. Chen stated that surgical intervention could be tried. If they were unable to fix her thumb and make it stable, she may benefit from MCP fusion. (JX1, p. 62-63)

In an accompanying patient questionnaire dated October 6, 2017, Petitioner indicated that she had left thumb dislocation for an "uncertain" reason. In response to the question regarding where the injury occurred, Petitioner wrote "uncertain." She indicated that the onset of pain was in approximately July or September 2017. When asked to circle where she was having pain (right, left or both), petitioner checked off "left." (JX1, p. 59)

On November 7, 2017, Petitioner had a follow up visit with Dr. Tambar for her active rheumatoid arthritis and chronic hand pain. Dr. Tambar wrote that Petitioner had a "left thumb dislocation injury in 4-2017" with pain in the bilateral hands. Dr. Tambar noted that Petitioner's RA was severely active when she was off Methotrexate. Tambar recommended Enbrel and a high dose of Omega 3 and tumeric supplementation. (JX1, p. 76-77)

On January 31, 2018, Petitioner underwent a left thumb MCP joint fusion at Illinois Bone and Joint Institute with Dr. Chen. There is no mention of the right thumb/hand. (JX1, p. 84-86)

On February 8, 2018, Petitioner was evaluated by Dr. Chen, status post left thumb MCP fusion from January 31, 2018. Petitioner was doing well and taking Norco (once per day) with ibuprofen and had no issues. Left thumb x-rays taken on that day demonstrated MCP joint fusion with hardware in good position. Dr. Chen

recommended follow-up in one week time for suture removal. There is no mention of the right thumb/hand. (JX1, p. 93-94)

On February 16, 2018, Petitioner returned to Dr. Chen for an evaluation. Petitioner reported no problems at home, but still had pain in her left thumb. Physical examination of the left thumb demonstrated a well-healed fusion. Petitioner was able to flex and extend the IP joint of her thumb, and sensation was intact to light touch throughout the thumb. There is no mention of the right hand/thumb. (JX1, p. 96)

On March 16, 2018, Petitioner reported that her left thumb somewhat hurt her, and that she was using a brace and doing some home exercises. Dr. Chen recommended therapy for soft tissue mobilization and active extension of the EPL of the left thumb. There is no mention of the right hand/thumb. (JX1, p. 97-98)

On April 27, 2018, Petitioner reported to Dr. Chen that her left thumb was slowly advancing in therapy. X-rays of the left thumb taken on that date demonstrated status post MCP fusion. The hardware was stable and in good position and had not shifted. Dr. Chen stated that Petitioner should refrain from using the left thumb for any pinching or lifting and recommended continuation of therapy and follow-up in six weeks' time. There is no mention of the right hand/thumb. (JX1, p. 100-101)

On May 4, 2018, Petitioner was seen by Dr. Chen who wrote that Petitioner had sustained a fall the previous week. Petitioner had some swelling over the ulnar side of her right hand. X-rays were taken, which were negative for fracture, but showed osteoarthritis and joint space narrowing of the right thumb. (JX1, p. 103-104)

On June 7, 2018, Petitioner reported to Dr. Chen that her left thumb continued to hurt her and that she was starting to plateau in therapy with range of motion. Regarding her right thumb, Petitioner reported continued pain at the base. With regard to the left thumb, Dr. Chen stated that Petitioner may eventually need hardware removal to prevent tendon adhesions in the future. Regarding the right thumb, Petitioner may eventually be a candidate for a CMC arthroplasty. Petitioner reported that when she was not using her thumb she had no pain and she was able to sleep through the night on weekends. (JX1, p. 112-113)

On July 2, 2018, Petitioner underwent a CT of the left upper extremity which was said to demonstrate "some degree of fusion." When Dr. Chen visualized images himself, he stated that the fusion site was not healed throughout. (JX1, p. 115)

On July 3, 2018, Petitioner returned to Dr. Chen and reported continued pain in her left thumb. Petitioner reported that her left thumb hurt her whenever she jolted it. Dr. Chen stated that Petitioner's fusion site was likely not completely healed and suggested further surgery in another two months, when there was more of a chance of fusion of the MCP joint of the left thumb. There is no mention of the right hand/thumb. (JX1, p. 116-117)

On September 6, 2018, Petitioner reported continued left thumb pain to Dr. Chen. Dr. Chen recommended a left thumb hardware removal with possible revision fusion of the MCP joint. Petitioner indicated her desire to proceed with surgery. (JX1, p. 118-119)

On September 19, 2018, Petitioner underwent a left thumb removal of hardware and revision MCP joint fusion, and EPL tenolysis**.** (JX1, p. 149)

On September 27, 2018, Petitioner had a follow up visit with Dr. Chen, status post left thumb revision fusion of the MCP joint. Her pain was well-controlled and she reported no numbness in the thumb. X-rays of the left thumb demonstrated an intact MCP fusion site with a screw that was not shifted since the surgery. Dr. Chen

placed Petitioner in a thumb spica cast to protect the fusion site. There is no mention of the right hand/thumb. (JX1, p. 157-158)

On November 1, 2018, Ptitioner reported 5/10 pain in her left thumb to Dr. Chen and stated that she had been keeping her cast on. Petitioner reported no other issues. The physician stated that he would like Petitioner to transfer out of the thumb spica cast and into a removable cast. He recommended gentle therapy for the finger and follow-up in six weeks' time. There is no mention of the right hand/thumb (JX1, p. 162)

On December 6, 2018, Petitioner returned to Dr. Chen for her left thumb pain. The impression was status post left thumb metacarpophalangeal fusion with beginning signs of failure. The physician was surprised that Petitioner's thumb was still not healing and wanted to get some lab work to see if there was a metabolic cause for her inability to heal. There is no mention of the right hand/thumb. (JX1, p. 165-166)

On January 21, 2019, Petitioner was seen by Dr. Krol-Gross for hyperlipidemia and hypothyroidism. Petitioner was again assessed with rheumatoid arthritis of multiple sites with a negative rheumatoid factor, hypothyroidism, mild intermittent asthma without complication and some form of epilepsy. (JX1, p. 189-191)

On February 1, 2019, Petitioner had a follow-up visit with Dr. Chen. Petitioner reported that her left arm was still very painful, and that she had been wearing the brace and taking Vitamin D pills. Dr. Chen made an impression of left thumb metacarpophalangeal fusion that was not clinically healing. He recommended Vitamin D pills and some lab work. If Petitioner continued to show signs of nonhealing, they would consider another revision surgery. There is no mention of the right hand/thumb. (JX1, p. 195-197)

On March 7, 2019, Petitioner was evaluated by Dr. Jain, Rheumatologist. Petitioner presented with a major complaint of pain in both of her hands and rheumatoid arthritis. Dr. Jain stated that Petitioner's hand function was decreased while on her medications, and that she was having problems with activities of daily living. Dr. Jain discussed various medications for Petitioner's rheumatoid arthritis that might help her. (PX1, p. 1-4)

On March 8, 2019, Petitioner returned to Dr. Chen and reported that her left thumb pain was slightly better with the brace. Dr. Chen stated that the fusion site had still not fused and believed that she was a candidate for left thumb revision fusion of the nonunion of the MCP joint. There is no mention of the right hand/thumb. (JX1, p. 198-199)

On March 27, 2019, Petitioner underwent a left thumb extensor pollicis longus tendon tenolysis with removal of symptomatic hardware, fusion site bone grafting with distal radius autograft. (JX1, p. 201-202)

On April 4, 2019, Petitioner reported that her left thumb was doing well and pain was controlled with narcotics. Dr. Chen recommended therapy for her left thumb to improve range of motion. There is no mention of the right hand/thumb. (JX1, p. 205-206)

On April 30, 2019, Petitioner returned to Dr. Jain in follow up for her rheumatoid arthritis. Petitioner reported less morning pain and stiffness but still had a lot of functional issues. Dr. Jain's assessment was rheumatoid arthritis of multiple sites without organ or system involvement and positive rheumatoid factor. The physician recommended continuation of Humira, counseled Petitioner on exercise and recommended follow up in two months' time. (PX1, p. 30-31)

On May 10, 2019, Petitioner had a follow-up visit with Dr. Chen and reported that therapy was improving in her left thumb. There is no mention of the right hand/thumb. (JX1, p. 209-210)

On June 20, 2019, Petitioner returned to Dr. Chen reporting improvement in her left thumb. Petitioner was able to do more activities with her left thumb, including pulling on her clothes, and was happy with her progress. Dr. Chen noted that Petitioner was gradually regaining range of motion in her left thumb, and recommended continuation of physical therapy. There is no mention of the right hand/thumb. (JX1, p. 212-213)

On June 26, 2019, Petitioner returned to Dr. Jain who wrote that Petitioner had "lots of chronic pain issues." Dr. Jain again made an assessment of rheumatoid arthritis in multiple sites without organ or system involvement in a positive rheumatoid factor. The physician noted that Petitioner's active inflammation seemed better with Humira. Petitioner was advised to follow up with her hand surgeon. (JX1, p. 28-29)

On July 30, 2019, Petitioner returned to Dr. Chen who noted that symptoms were gradually improving in the left thumb. X-rays of the left thumb demonstrated a stable fusion. The physician recommended continuation of physical therapy and home exercise. Dr. Chen discussed the possibility of a revision tenolysis, as well as first webspace deepening for the left hand. There is no mention of the right hand/thumb. (JX1, p. 214-215)

On September 10, 2019, Petitioner reported pain and stiffness in her left thumb to Dr. Chen. Dr. Chen offered another surgery for extensor tendon tenolysis as well as first webspace contracture release with the webspace deepening with a Z plasty. The physician explained that the extensor tendon of the thumb had scarred back down after the surgery. There is no mention of the right hand/thumb. (JX1, p. 217-218)

On September 25, 2019, Petitioner returned to Dr. Jain for complaints in her bilateral hands. Dr. Jain recommended that Petitioner start prednisone and continue Humira. (PX1, p. 14)

On October 2, 2019, Petitioner underwent a left thumb tenolysis of EPL tendon, Z-plasty of the first webspace, contracture release, and adductor pollicis fascia release. (JX1, p, 219-220)

On October 10, 2019, Petitioner returned to Dr. Chen post-operatively. Petitioner reported continued pain with some slight tingling over the ulnar side of the left thumb. Dr. Chen recommended continued therapy and suture removal in one week. There is no mention of the right hand/thumb. (JX1, p. 221-222)

On October 17, 2019, Petitioner's sutures were removed by Dr. Chen. The physician recommended continued therapy for the left thumb, due to lack of active extension of the IP joint. (JX1, p. 223)

On November 14, 2019, Petitioner advised Dr. Chen that she was unsure if she had any significant improvement since surgery. The physician recommended continuation of physical therapy and did not think any further surgery would help. There is no mention of the right hand/thumb. (JX1, p. 224-225)

On December 4, 2019, Petitioner returned to Dr. Jain for bilateral hand pain with worsening stiffness and pain. The physician stated that Petitioner's symptoms were likely due to active rheumatoid arthritis. Petitioner was advised to follow up with her primary care physician and Dr. Chen. (PX1, p. 24)

On December 10, 2019, Dr. Chen stated that it was unfortunate that Petitioner's surgery did not help her and that potentially, this was a function of her rheumatoid arthritis. Dr. Chen recommended cessation of therapy. The physician also explained that he was out of options to help her improve her thumb. There is no mention of the right hand/thumb. (JX1, p. 226-227)

On January 6, 2020, Petitioner advised Dr. Chen that her left thumb was still having wound issues and that the scab would not fall off. There is no mention of the right hand/thumb. (JX1, p. 228-229)

On January 21, 2020, Petitioner advised Dr. Chen that she was doing well in terms of wound healing and that a new eschar had formed, but was no longer draining. Petitioner was not having any increased pain. Dr. Chen did not believe that any further surgery was indicated. Petitioner stated that she did not want to undergo any surgery for the right hand, due to the complications on the left. Dr. Chen stated that Petitioner may have issues with her right thumb in the future. (JX1, p. 230-231)

On January 22, 2020, Petitioner returned to Dr. Jain and reported that her right hand hurt more than her left hand and noted that basic activities beyond her ADLs including shoveling snow and maintaining her property led to significant pain. (PX1, p. 22)

On February 18, 2020, Petitioner reported to Dr. Chen that her left thumb was doing better in terms of wound healing, but that it still hurt her. The physician did not believe that Petitioner was a candidate for any further surgery and recommended occupational therapy. Dr. Chen recommended follow-up on an as-needed basis. (JX1, p. 232)

On April 1, 2020, Petitioner returned to Dr. Jain with worsening pain/stiffness. Dr. Jain made the same assessment as the previous visit, which was rheumatoid arthritis with rheumatoid factor of multiple sites without organ or system involvement. (PX1, p. 20-21)

On June 4, 2020, Petitioner was seen by Dr. Chen for numbness in her thumb that radiated into the lateral forearm, which Dr. Chen suspected to be left cervical radiculopathy. (JX1, p. 235)

On July 8, 2020, Petitioner was seen for an Independent Medical Examination by Dr. Mark Cohen. Dr. Cohen reviewed medical records from May 8, 2017 to February 18, 2020. Regarding the right thumb, Dr. Cohen diagnosed Petitioner with chronic right thumb arthritis and deformities (JX1, p. 243) It may have been possible that Petitioner temporarily aggravated her right thumb symptoms from the April 2017 work event, but that none of the events of that day would have changed the natural history of her bilateral chronic hand and thumb deformities. (JX1, p. 244)

At his November 8, 2021 deposition, Dr. Cohen could not relate Petitioner's right thumb condition to the work injury, stating that her symptoms were secondary to chronic arthritis and that Petitioner's inflammatory arthritic condition that led to her progressive instability, pain and dysfunction if the condition was not adequately controlled. (RX 1, p. 17-18)

With respect to causality regarding the left thumb, Dr. Cohen stated that there was no way to attribute any of Petitioner's left thumb pathology to overcompensation. Furthermore, there was no way to associate Petitioner's chronic metacarpophalangeal joint dislocation to the April 24, 2017 work event. The type of dislocation described in the radiographs, Dr. Cohen stated, was typically chronic and occurred secondary to inflammatory arthropathy conditions. (JX1, p. 243-244). Dr. Cohen concluded that any work restrictions for Petitioner were not related to any work event, and that Petitioner had reached MMI for both hands. (JX1, p. 244)

At his deposition, Dr. Cohen explained that there is little medical rationale to the phenomenon of overcompensation, and that the phenomenon would fall in the category of a manifestation of symptoms of an underlying condition. Using one joint more frequently did not lead to progression of arthritis or pathology. Dr. Cohen addressed a theory of repetitive trauma at the time of his deposition and reviewed a job description. Dr. Cohen concluded that Petitioner's conditions of ill-being were not related to any alleged repetitive work duties. (RX1)

Petitioner treated with Dr. Jain from August 27, 2020 to December 30, 2021 for bilateral hand pain, neck pain and lumbar pain. In that timeframe, Dr. Jain noted that Petitioner had failed multiple biologic treatments including Methotrexate, Humira and Embrel. (PX1, p. 5) Petitioner completed Orencia treatment in that timeframe. (PX1)

From December 28, 2021 to June 14, 2022, Petitioner treated with Dr. Shah in the Pain Clinic at Swedish Hospital for cervical, thoracic and lumbar conditions. (PX3)

CONCLUSIONS OF LAW

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

Section 1(b)3(d) of the Act provides that, in order to obtain compensation under the Act, the employee bears the burden of showing, by a preponderance of the evidence, that he or she has sustained accidental injuries arising out of and in the course of the employment. 820 ILCS 305/1(b)3(d). To obtain compensation under the Act, Petitioner has the burden of proving, by a preponderance of the evidence, all of the elements of her claim (O'Dette v. Industrial Commission, 79 Ill. 2d 249, 253 (1980)), including that there is some causal relationship between her employment and her injury. Caterpillar Tractor Co. v. Industrial Commission, 129 Ill. 2d 52, 63 (1989)

Decisions of an arbitrator shall be based exclusively on evidence in the record of proceeding and material that has been officially noticed. 820 ILCS 305/1.1(e)

WITH RESPECT TO ISSSUES (C) and (F), WHETHER PETITIONER SUSTAINED AN ACCIDENT THAT AROSE OUT OF HER EMPLOYMENT BY RESPONDENT AND WHETHER PETITIONER'S CURRENT CONDITIONS OF ILL-BEING ARE CAUSALLY RELATED TO SUCH INJURY, THE ARBITRATOR FINDS:

With regard to Petitioner's right thumb/hand, the Arbitrator finds that Petitioner sustained an accident that arose out of and in the course of her employment. With regard to her left hand/thumb, Petitioner failed to meet her burden of proof that she suffered an accidental injury that arose out of her employment and that her left thumb/hand condition is related to any work accident. With regard to the right thumb, Petitioner sustained a temporary aggravation of her preexisting CMC arthritic condition, ending on August 7, 2017.

The Parties do not dispute that Petitioner suffered an accidental injury to her right thumb on the date of accident. (AX1). Regarding causal connection for the right thumb/hand, the medical records placed into evidence only support a temporary aggravation of Petitioner's right thumb CMC osteoarthritis, ending on August 7, 2017 when Dr. Vitello released Petitioner to full duty work. Dr. Vitello's diagnosis on the August 7, 2017 visit and thereafter was "right thumb arthritis." At the time of discharge, Dr. Vitello wrote that Petitioner could return to work full duty, that she was overall improved, and that she should follow up on an as-needed basis. Petitioner testified that she returned to full duty work after August 7, 2017. (JX1, p.32) After Petitioner's full duty discharge, the medical records reference the right thumb sporadically and intermittently, with none of Petitioner's physicians commenting on causal connection.

The only medical opinion in evidence regarding causal connection for the right thumb/hand after Petitioner's full duty release is that of Respondent's §12 examiner, Dr. Mark Cohen. In his July 8, 2020 IME report, Dr. Cohen concluded that Petitioner could possibly have suffered a temporary aggravation of her preexisting right thumb condition as a result of the April 24, 2017 work event. (Resp. Ex. 2, p. 6-7) Although it was possible that Petitioner could have suffered a temporary aggravation of her preexisting condition, Dr. Cohen stated that the work event would not have changed the natural history of Petitioner's chronic hand and thumb deformities. (Id.)

At his November 8, 2021 deposition, Dr. Cohen could not relate Petitioner's right thumb condition to the work injury. Dr. Cohen opined that Petitioner's right thumb/hand symptoms were secondary to chronic arthritis, the same diagnosis Dr. Vitello made after Petitioner's full duty release. Dr. Cohen further stated that Petitioner's inflammatory arthritic condition would have led to her progressive instability, pain and dysfunction if the condition was not adequately controlled. (RX 1, p. 17-18) Petitioner testified that she tried many medications for her inflammatory arthritic condition, which failed. Petitioner further stated that her joint pain is worse with an active flare up. (Tr. 46)

Considering Dr. Cohen's opinions in the light most favorable to Petitioner, Petitioner suffered a temporary aggravation of her preexisting arthritic condition as a result of the work injury. There are no medical opinions to the contrary after Petitioner's full duty release on August 7, 2017. Dr. Cohen's opinions are consistent with Dr. Vitello's diagnosis of right thumb arthritis after August 7, 2017.

Petitioner's testimony about her ongoing condition is consistent with the opinions of Dr. Cohen. The medical records do not demonstrate that Petitioner's right-sided symptoms were any worse than her left-sided symptoms after her full duty release. The medical records point to the opposite conclusion. That is, after Petitioner's full duty release for her right thumb, her left thumb started to become more symptomatic. Petitioner sustained an injury to her right thumb/hand, yet all her surgeries were performed on the left hand. The medical records are absent of mention of right thumb pain after the November 7, 2017 visit with Dr. Tambar and up until June 7, 2018, a period of more than six months. (JX1, p.79-111) The medical records are again absent of reference of the right thumb after the June 7, 2018 visit and until September 25, 2019, a period of more than a year. (JX1, p. 111 to PX1, p. 14)

Petitioner has RA and ongoing symptomatic osteoarthritis in both thumb CMC joints. Causation regarding Petitioner's left thumb is not established. Supportive medical testimony establishing causation relative to Petitioner's left thumb/hand condition is absent. Petitioner agreed that her left thumb condition was not related to a single, identifiable accident on April 24, 2017. She agreed on cross-examination that her right thumb only was involved in the accident. Petitioner agreed that she reported an injury to her right hand, not her left hand, to Physician's Immediate Care, Dr. Vitello, Dr. Tambar and Dr. Chen.

Petitioner relies on the theory that her left thumb condition occurred and/or developed due to overcompensation while working light duty for her right thumb. Petitioner stated that the pain in her left thumb started immediately after she started her light duty position, but that the pain didn't start at work. Specifically, Petitioner stated that "The pain didn't start at work. The pain was with me wherever I went, whether it was the grocery store, getting a gallon of milk. The pain was there wherever I went, and the left hand pain began immediately after that right hand injury." (Tr. 46-47)

Petitioner did not present any medical opinions to support a theory of compensability for repetitive trauma or overcompensation. On the contrary, the medical records reflect that Petitioner's left thumb condition manifested intermittently, with no features of work-relatedness, and that the onset of symptoms occurred with an active flare-up of petitioner's rheumatoid arthritis. (Tr. 46) The first mention of the left hand is within Dr. Vitello's June 12, 2017 note, indicating that Petitioner's left hand pain was improving, with no mention of

work. As states above, this may have been a typo. (JX1, p. 16) Dr. Tambar's July 13, 2017 note indicates that Petitioner had been having bilateral hand pain for two years in duration with no mention of overcompensation, repetitive trauma, or single identifiable injury. (JX1, p. 21) In his September 18, 2017 note, Dr. Vitello wrote that Petitioner had been having left thumb pain for a few months with no injury that she recalled, and no trauma. (JX1, p. 53)

Petitioner stated that she noticed pain in her left hand and thumb on April 25, 2017 (Tr. 45-46), which tends to contradict any theory of overuse or overcompensation. As with the right thumb, Respondent's § 12 examiner is the only physician who rendered an opinion on causation. Dr. Cohen disagreed that the phenomenon of overcompensation could have caused Petitioner's left thumb condition and explained that this theory would fall into the category of a manifestation of symptoms from an underlying condition. Using one joint more frequently, Dr. Cohen stated, did not lead to progression of arthritis or pathology. (RX1)

Petitioner testified that activities both outside of work and at work caused her to be symptomatic after her full duty release for the right hand. As she stated, "Yes. Any activity I did, daily living activity, yes. The pain didn't start at work. The pain was with me wherever I went, whether it was the grocery store, getting a gallon of milk. The pain was there wherever I went, and the left hand pain began immediately after the right hand injury." (Tr. 47) Petitioner agreed that she had an inflammatory arthritic condition, that many of her medications over the years failed, that her pain is worse with an active flare-up (Tr. 46) and that she was prevented from healing from her surgeries because of her R.A. (Tr.53) Petitioner was diagnosed with rheumatoid arthritis in July 2017, coinciding with her manifestation of symptoms in the left thumb. (Tr. 45)

The Arbitrator finds further support in the records that Petitioner's left thumb condition had a non-work related etiology:

On October 6, 2017, Dr. Chen made an impression of left thumb metacarpal phalangeal joint dislocation that appeared to be chronic. (JX1, p. 62)

On December 4, 2019, Dr. Jain stated that Petitioner's symptoms were likely due to her active rheumatoid arthritis and noted that Petitioner remained off steroids failing Humira. (PX1, p. 24)

On December 10, 2019, Dr. Chen stated that it was unfortunate that Petitioner's surgery did not help her and that this was potentially a function of Petitioner's rheumatoid arthritis. (JX1, p. 226-227)

There is no expert medical opinion that persuades the Arbitrator that Petitioner's injuries were work related and not merely the result of a normal degenerative process. See: University of Illinois v. Illinois Workers' Compensation Commission, 2021 Ill. App. 4th 210236WC-U Petitioner's testimony did not, and could not, establish that her injuries were the result of her employment, as opposed to the natural progression of her preexisting conditions. Medical expert testimony is required where a preexisting condition is involved, because the relevant inquiry is whether the injuries sustained by Petitioner resulted from or were accelerated by her work activities, which is a medical question and not within the common knowledge of a laymen.

As in University of Illinois, the only evidence that Petitioner presented in the instant case regarding causal connection was her own testimony regarding repetitive and/or overuse/overcompensation activities she performed. The Arbitrator adopts Dr. Cohen's opinions on causation, the only medical causation opinion in evidence. In doing so, the Arbitrator notes that Dr. Chen and Dr. Jain also indicated that Petitioner's left thumb symptoms had a non-work-related etiology. As such, benefits are denied regarding any claimed injury to Petitioner's left thumb.

WITH REGARD TO ISSUE (J), WERE THE MEDICAL SERVICES PROVIDED TO PETITIONER REASONABLE AND NECESSARY, THE ARBITRATOR FINDS:

Petitioner did not introduce any medical bills into evidence. The Arbitrator defers to the 8(j) stipulation the Parties jointly introduced into evidence to determine medical bills owed on the right hand/thumb up until August 7, 2017. With regard to Petitioner's left hand/thumb, given the Arbitrator's conclusions regarding accident and causation, above, this issue is moot.

WITH REGARD TO ISSUE (K) TTD, THE ARBITRATOR FINDS:

With regard to the right thumb/hand, Petitioner worked light duty from April 27, 2017 up until her fully duty release on August 7, 2017. (Tr. 25) Given the Arbitrator's finding that Petitioner suffered a temporary aggravation of her preexisting CMC joint arthritis condition ending on August 7, 2017, no TTD is owed.

With regard to any claim for TTD related to Petitioner's left thumb/hand, given the Arbitrator's findings on the issues of accident and causation, , the issue of TTD is moot.

WITH REGARD TO ISSUE (L) THE NATURE AND EXTENT OF PETITIONER'S INJURIES, THE ARBITRATOR FINDS:

As the Arbitrator has found in Petitioner's favor on the issues of accident and causation as to her right thumb/hand condition, only, the Arbitrator's consideration of factors in §8.1b(b) is limited to the right thumb/hand only.

With regard to subsection (i) of §8.1 b(b), no permanent partial disability impairment report and/or opinion was submitted into evidence. Accordingly, this factor is given no weight in determining PPD.

With regard to subsection (ii) of §8.1 b (b), the occupation of the employee, Petitioner was a Registered Nurse at the time of the accident. Petitioner sustained a temporary aggravation of her preexisting condition of CMC joint arthritis and was released to full duty work by Dr. Vitello. Petitioner is no longer working, but her inability to return to work is not related to the work injuries. The Arbitrator gives some weight to this factor in degerming PPD.

With regard to subsection (iii) of §8.1 b(b), Petitioner was 48 years old at the time of the accident. Petitioner is no longer working, and the Arbitrator gives some weight to this factor in determining PPD.

With regard to subsection (iv) of §8.1b(b), Petitioner did not prove a loss of earning capacity as a result of the injury. The Arbitrator gives some weight to this factor in determining PPD.

With regard to subsection (v) of §8.1 b(b), evidence of disability corroborated by the treating medical records, Petitioner testified that she has pain with activities of daily living. Petitioner suffered a temporary aggravation of her preexisting right thumb arthritis, and her disability is limited from the date of accident to August 7, 2017. In the timeframe from the date of accident to her full duty release by Dr. Vitello, Petitioner experienced pain with gripping and twisting (JX1, p. 4) as well as swelling and stiffness (JX1, p. 13). The bottom line is that Petitioner has bilateral thumb CMC joint arthritis, coupled with RA and complicated by a bad result to the surgical procedures that were performed on her left thumb. The Arbitrator gives some weight to this factor in determining PPD.

The Arbitrator notes that the thumb CMC joint is located in the hand and any impairment related to this joint impairs the function of the hand. Accordingly the award for PPD herein is made on the basis of loss of use of the Petitioner's right hand.

Having considered all five factors set forth in §8.1b(b) of the Act and taking into consideration the entirety of the evidence adduced, the Arbitrator finds that the injuries sustained caused Petitioner to suffer 5% loss of use of the right hand in accordance with §8(e)9 of the Act.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC020691
Case Name	Timothy Dobbins v. Aerotek, et al.
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b) Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	23IWCC0399
Number of Pages of Decision	16
Decision Issued By	Marc Parker, Commissioner

Petitioner Attorney	David Feuer, Melvyn Romanoff
Respondent Attorney	Martin T. Spiegel, Jeff Goldberg

DATE FILED: 9/5/2023

/s/Marc Parker, Commissioner

Signature

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

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Timothy Dobbins,

Petitioner,

vs. No. 21 WC 020691

Aerotek Staffing & Recruiting,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by Petitioner herein and notice given to all parties, the Commission, after considering the issues of causal connection, medical expenses, prospective medical care, and temporary 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 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 49-y/o machine operator, claims repetitive injuries to his right elbow and both hands from repetitive work on July 6, 2021. He testified his job required him to move boxes of lids to a machine, where he would glue the lids and place them in the machine to be wrapped. The lids varied in size and weighed up to 2 lbs. each. Often, 15-25 lids would be stuck together and Petitioner would have to separate them by pulling them apart, dropping them on the floor, or hitting them against something. Petitioner testified those activities were repetitive and took force, and that he spent a large part of his workday separating lids.

While working on July 6, 2021, Petitioner's hands and right elbow began hurting. He reported this to HR, and they sent him to Concentra, where he received medical treatment and physical therapy. He also treated at Fox Valley Orthopedics; and after that, he came under the care of Dr. Gerber and Dr. Fink.

Records from Petitioner's first treatment at Concentra on July 7, 2021 documented his complaint of right elbow pain from constant lifting. Their diagnosis at that time was right lateral epicondylitis and a strain of the right forearm. At Petitioner's first visit to Fox Valley Orthopedics on August 13, 2021, he complained of pain in his right elbow and hands, and of lumps on his palms. Petitioner's treatment on that date focused on his right elbow. However, on August 24, 2021, records from Fox Valley Orthopedics documented Petitioner's history of having pain in both hands and tingling in his fingers since his injury.

On August 28, 2021, Dr. Gerber reported Petitioner had paresthesias radiating into both hands and wrists. On September 8, 2021, Dr. Fink also noted Petitioner's complaints of tingling and finger numbness since July 6, 2021. Following an EMG, Dr. Fink diagnosed Petitioner with bilateral carpal tunnel and bilateral Dupuytren's nodules with beginning contractures. He reported these conditions were traumatic in origin. Dr. Fink recommended carpal tunnel releases and the removal of the Dupuytren's palmar contractures, but Petitioner has yet to undergo those procedures.

Petitioner underwent a Section 12 examination by Dr. Vender on May 9, 2022. Dr. Vender diagnosed Petitioner with right elbow lateral epicondylitis and flexor stenosing tenosynovitis of his small fingers, but opined that none of Petitioner's conditions – carpal tunnel syndrome, right lateral epicondylitis, or trigger fingers – were causally related to his job duties. Dr. Vender believed Petitioner did not have a significant exposure to forceful activities with duration, or forceful gripping on a repetitive basis. He admitted, however, that if Petitioner's work activities were more forceful and repetitive than he understood, that could change his causation opinion.

At Arbitration, Petitioner testified that he can barely lift things. His hands sometimes shake, and he has to force himself to do housework and cleaning. He has not worked since July 2021.

The Arbitrator found that only Petitioner's right elbow epicondylitis was causally related to his work activities. The Arbitrator did not find Petitioner's hand injuries were causally related; he did not believe Petitioner's testimony was credible regarding the onset and extent of his hand complaints. The Arbitrator found the opinions of Section 12 examiner, Dr. Vender, more persuasive than those of Petitioner's treating physicians, and consequently, denied awarding Petitioner any medical expenses, prospective care, or temporary total disability.

The Commission views the evidence differently than the Arbitrator, and finds Petitioner proved that, in addition to his right elbow condition, his bilateral hand and wrist conditions were causally related to his July 6, 2021 work activities.

Petitioner testified, without contradiction, that the activities he performed with his hands and arms for most of his shift were repetitive and forceful. His hand and wrist symptoms, though mild at first, were documented in the medical records from his first treatment on July 7, 2021. On that date, Concentra documented his complaint of right wrist pain upon resisted extension, flexion, supination, and pronation. On July 13, 2021, Petitioner's physical therapy records also reported that his right elbow pain and throbbing occasionally radiated to his wrist, and that he demonstrated a painful grip and painful wrist extension. Petitioner's painful grip and painful wrist extension findings were documented by his physical therapist at multiple subsequent visits.

The August 13, 2021 report from Fox Valley Orthopedics documented that Petitioner had pain not only in his right elbow, but also, "both hands from a work injury on 7/6/2021." Their August 24, 2021 report documented Petitioner's complaints of tingling in the first three fingers of both hands. By the time Petitioner saw Dr. Fink on September 9, 2021, he was experiencing tingling and numbness in all of his fingers. Dr. Fink diagnosed Petitioner's palmar lumps as being Dupuytren's nodules, and ordered a nerve conduction study. Following that test on September 16, 2021, Dr. Fink confirmed Petitioner's diagnosis of bilateral carpal tunnel syndrome.

The Commission finds that Petitioner's hand symptoms began mildly at the time of his accident, and gradually progressed in severity until his EMG/NCV test and his orthopedic surgeon confirmed the diagnoses of his hand and wrist conditions. The Commission does not find persuasive Dr. Vender's opinion that Petitioner's hand conditions were not related to his work; Dr. Vender assumed Petitioner's job duties were not forceful and repetitive enough to have caused those conditions. We find the evidence shows that they were.

The Commission awards Petitioner his unpaid medical bills from Prescription Partners, Summerlin Medical Equipment, Lake Shore Open MRI, Spine MD, Fullerton Drake Medical Center, and Gold Coast Orthopaedics, from July 6, 2021 through September 14, 2022, pursuant to the fee schedule. Dr. Gerber's treatment plan supports our finding that Petitioner's medical expenses were reasonable, necessary, and causally related. All of Petitioner's bills were for treatment of his right elbow and/or bilateral hand and wrist conditions as a result of his July 6, 2021 work accident. That some of Petitioner's conservative treatment may not have resulted in the hoped-for improvement of his symptoms, does not render that treatment unreasonable or unnecessary.

The Commission also awards Petitioner prospective medical care consisting of the bilateral carpal tunnel releases and removal of his Dupuytren's nodules and contractures recommended by Dr. Fink. He reported those conditions were traumatic in origin, and first recommended surgery for those conditions on October 23, 2021. At his last examination of Petitioner on February 10, 2022, Dr. Fink continued to recommended Petitioner undergo hand and wrist surgery.

The Commission does not find Petitioner proved a need for further treatment to his right elbow at this time. At his last visit with Dr. Gerber for his elbow on April 4, 2022, Dr. Gerber

reported Petitioner's elbow was, "improving and moving toward better overall function." At that time, Dr. Gerber recommended Petitioner discontinue therapy for his elbow until his hand surgery could be performed. There is no current recommendation for elbow treatment in the record.

Finally, the Commission finds Petitioner proved entitlement to temporary total disability benefits for a period of 53-1/7 weeks, from September 8, 2021 through September 14, 2022. While he did continue to work modified duty for a short period of time after his July 6, 2021 accident, the September 8, 2021, Work Status Form from Goldcoast Orthopaedic authorized Petitioner completely off work beginning that date. Subsequent Work Status Forms from Goldcoast Orthopaedic continued Petitioner's off work status.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed October 13, 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 $431.55 per week for 53-1/7 weeks, for the period of September 8, 2021 through September 14, 2022, that being the period of temporary total incapacity from work under §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 right elbow and bilateral hands and wrists between July 6, 2021 and September 14, 2022, as provided by §8(a) and §8.2 of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall authorize and pay for the prospective medical care recommended by Dr. Fink, consisting of bilateral carpal tunnel releases and removal of his Dupuytren's nodules and contractures, pursuant to §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.

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. 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.

September 5, 2023

MP/mcp
o-07/20/23
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/s/ *Marc Parker*
Marc Parker

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC020691
Case Name	Timothy Dobbins v. Aerotek, et al.
Consolidated Cases	
Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	10
Decision Issued By	Stephen Friedman, Arbitrator

Petitioner Attorney	Melvyn Romanoff, David Feuer
Respondent Attorney	Martin Spiegel, Jeff Goldberg

DATE FILED: 10/13/2022

THE INTEREST RATE FOR THE WEEK OF OCTOBER 12, 2022 4.03%

/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)

Timothy Dobbins
Employee/Petitioner

v.

Aerotek, et al.
Employer/Respondent

Case # **21** WC **020691**

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 **September 14, 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, **July 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 in part*** causally related to the accident.

In the year preceding the injury, Petitioner earned $**33,660.64**; the average weekly wage was $**647.32**.

On the date of accident, Petitioner was **49** years of age, ***single*** with **0** dependent children.

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

Respondent shall be given a credit of $**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

Because Petitioner failed to prove by a preponderance of the evidence that there are any unpaid medical bills that are reasonable, necessary, and causally related to the accident, Petitioner's claim for medical is denied.

Because Petitioner failed to prove by a preponderance of the evidence that there is any recommended medical care that is reasonable, necessary, and causally related to the accident, Petitioner's claim for prospective medical is denied.

Because Petitioner failed to prove by a preponderance of the evidence that he has been totally disabled for any condition of ill being causally related to the accident, 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.

OCTOBER 13, 2022

/s/ Stephen J. Friedman
Signature of Arbitrator

ICArbDec19(b)

Statement of Facts

Petitioner Timothy Dobbins testified that on July 6, 2021, he was employed by Respondent Aerotek Staffing. Petitioner testified he is left handed. His job was a machine operator/laborer. He has worked for Respondent for about five months. His duties were putting lids in a machine, physical labor, picking, packing, pulling the lids for barrels. He works at a gluing station. He put glue around the lid. He put the rims around the plastic lids. He would get the lids using a pallet jack. Then he would take them and put them in the machine. He testified that the lids would stick together. He would loosen them by banging them against something. He testified he did forceful activities all day. The forceful activity was taking the stuck lids apart. There could be 10, 15 or 25 stuck together. When the lids come out of the machine, he puts them on the drying station. He would also wrap them after they were done and put stickers on them so they could be shipped out. Each lid weighted about 2 pounds for the larger ones. If his job was completed, he would do other various duties including working in the warehouse moving skids. Petitioner testified that he had to grip the lids to pull them apart. He performed his work with both hands. Sometimes it would be with his arms extended.

Petitioner testified that on July 6, 2021, both his hands were hurting. He was shaking them because of the nerve damage. He testified his right elbow was bothering him first and his right hand, and then his left hand and elbow. Employee Incident Report signed by Petitioner states that at 8:00 AM on July 6, 2021, Petitioner noticed swelling in his right elbow. The body part injures is “right elbow.” Petitioner states the injury was “constant pushing, pulling, lifting, getting prepared to get lids in using pallet jack to the machine.” Petitioner listed Diabetes as a medical condition. Petitioner testified he has diabetes and takes insulin (RX 5). Petitioner signed the Application for Adjustment of Claim on July 14, 2021, alleging the body part affected was “right elbow” (RX 4).

Petitioner was seen at Concentra on July 7, 2021 complaining of an injured right elbow from constant lifting. His occupation is listed as laborer. Symptoms were located in the right elbow and radial aspect of the right elbow. Examination of the right wrist noted appearance was normal, no tenderness, palpates normal, full range of motion. Petitioner was diagnosed with right elbow lateral epicondylitis and a strain to the right forearm. He was referred for 2 weeks of physical therapy (RX 3, p 121-122). Petitioner testified he did not complain about his hands at this initial visit. Although he testified he has not worked since the date of accident, on July 12, 2021, Concentra notes Petitioner has been working modified duty. He reported his symptoms are unchanged and stated he wanted an MRI to show inflammation. He was advised it was not clinically needed. Examination noted no wrist pain, no forearm numbness, no arm/hand numbness and no numbness in the fingers. Petitioner has missed his physical therapy appointments (RX 3, p 117). Petitioner testified he told them about his hands. Petitioner was released to return to modified work on July 12, 2021 (PX 2, p 82). At Petitioner’s first therapy session, he reported he is required to perform repetitive placing of lids in a machine and piling up lids. He reported a history of similar injury a few years ago. Left elbow and wrist are noted as normal. The right wrist notes painful grip and extension (RX 3, p 114-115). On July 19, 2021, Petitioner reported he was not working because no light duty was available. He also stated he quit his job because he did not feel he could work with this problem (RX 3, p 108). Petitioner was discharged from care by Concentra on July 28, 2021. He reported his right elbow pain is improving. He notes he has chosen not to return to work. Examination of the right elbow, forearm, and wrist were all normal. Petitioner was anticipated to regain function over the next few days (RX 3, p 101-102).

Petitioner testified he chose to seek additional treatment at Fox Valley Orthopedics. He was seen on August 13, 2021 (RX 2). He presented with pain in his right elbow and both hands. He reported he works with plastic

parts and was lifting and pulling objects with significant weight to them, over 40 pounds. He cannot guess how much the objects weigh. He started to feel pain in the outside of his right elbow. There is no numbness/tingling. He stated that when he was doing physical therapy, he noted some bumps on his hands located at the base of his ring fingers. They do not hurt him. There is no numbness/tingling, clicking, or locking. The assessment was right elbow lateral epicondylitis and palmar lumps. Since his hands are not giving him any pain whatsoever, they would focus on the elbow. Petitioner was given meloxicam and a tennis elbow strap. He was given a note to work with no use of the right arm (RX 2, p 88-92). Petitioner testified that he told them about his numbness and tingling in his hands. Petitioner was seen on August 24, 2021, reporting no relief of his elbow pain. He also notes that his hands are starting to be mildly painful, he feels bumps in the palm of his hands, and he is having some tingling in the 1st, 2nd, and 3rd finger of both hands. He states this started when the injury occurred. The assessment was right elbow lateral epicondylitis and mild medial epicondylitis, palmar lumps, not visible with mild pain. The plan was to get an MRI of the right elbow because he is not having any relief of his pain. Regarding the palmer lumps, he was explained that they could not see them on exam. However, he could consider physical therapy, anti-inflammatory medication, or even EMG for the tingling. He was given a work note of no use of the right upper extremity and was to be seen after the MRI is complete (RX 2, p 93-94).

Petitioner began treatment with Dr. Gerber at Fullerton Drake Medical Center on August 28, 2021 (PX 7). Petitioner reported doing a lot of pushing, pulling, and lifting at work when he developed severe right elbow pain and pain radiating into the right hand. The history states it is negative for diabetes. He also developed severe left hand pain. Dr. Gerber diagnosed an unspecified sprain of the right elbow and bilateral wrist sprains. He ordered multiple medications, physical therapy 3 times per week for 4 weeks, and an orthopedic evaluation with Dr. Fink. Petitioner was released to work with no use of the hands (PX 7). Petitioner saw Dr. Fink at Gold Coast Orthopaedics (PX 6). He complained of tingling, numbness of all his fingers on both hands with 8/10 pain. He states this all started at works and he reported this on July 6, 2021. He does repetitive lifting of lids, 25 at once. He also is complaining of knots in his hands. He has a medical history of diabetes and 20 years of smoking. Dr. Fink's impression was Dupuytren's contractures of the palms and rule out carpal tunnel syndrome. He ordered an EMG/NCV. He took Petitioner off work (PX 6).

PX 3 is a bill for an MRI performed August 31, 2021, but the test is not included in the medical records. Petitioner testified he did not know who ordered the MRI or if he had it. Dr. Kiang notes the right elbow MRI showed mild soft tissue swelling but is otherwise unremarkable. He performed an EMG/NCV which noted moderately severe bilateral carpal tunnel syndrome (PX 4). Dr. Fink saw Petitioner on October 22, 2021. Based on the EMG, he proposed surgery to each hand for a carpal tunnel release as well as removal of the Dupuytren's contracture (PX 6). He saw Petitioner on November 24, 2021 and February 10, 2022 with the same recommendations (PX 6). Petitioner continued with physical therapy and periodic follow up visits with Dr. Gerber through April 4, 2022. Petitioner testified that Dr. Gerber was present at each visit, but did not always examine him. The records of each visit from September 7, 2021 though April 4, 2022 are virtually identical (PX 7).

Petitioner was examined by Dr. Michael Vender at Respondent's request on May 9, 2022. He testified by evidence deposition taken September 2, 2022 (RX 1). Dr. Vender testified that Petitioner provided a history of developing symptoms in both upper extremities without specific injury. He state he did warehouse work. Physical examination noted full range of motion in the elbows with no definite tenderness of the ulnar nerves. There was tenderness of the extensor origin adjacent to the lateral epicondyle. There were also flexion contractures of the middle and ring fingers. Dr. Vender diagnosed lateral epicondylitis and trigger fingers. There also was the possibility of compression neuropathy such as carpal tunnel syndrome. Treatment would

be therapy or a steroid injection for the elbow and an injection for the trigger finger. Dr. Vender opined that Petitioner could work. For the trigger fingers, he should wear palm-padded gloves. It would be reasonable for him to limit heavy lifting (RX 1).

Thereafter Dr. Vender was provided treating medical records including the EMG. He was also given a letter providing certain details of Petitioner's job as a machine handler/operator in the plastic production line. Dr. Vender opined that the lateral epicondylitis was not caused or aggravated by Petitioner's employment because it did not require forceful activities with the elbow extended away from the body. He opined that the trigger fingers were not caused or aggravated by his employment because it did not require repeated forceful gripping, like someone using a hammer. He opined that the diagnosis of carpal tunnel syndrome was not caused or aggravated by the employment because it lacked the necessary forceful activities. He also noted the diabetes is a significant risk factor for carpal tunnel syndrome (RX 1).

Dr. Vender testified that if it turned out that Petitioner's job was more forceful and that he did work with his elbow extended, or did lift and twist with considerable force, then he would not have Petitioner doing that job. If the job was forceful and repetitive and fit his criteria, it could change his opinion (RX 1).

Petitioner testified that has not been gainfully employed since July 6, 2021. He has not tried to work or applied for any jobs. He cannot do anything with his hands until he has the surgery. He can barely lift anything. If he lifts something his had starts shaking. He testified he forces himself to do housework. It takes longer. He has been taking pain pills and Tylenol. Petitioner last saw Dr. Fink in February 2022. He has not seen Dr. Gerber for a while. He is not receiving any bills at home. He never got bills while he was treating.

Conclusions of Law

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

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

Petitioner has alleged that as a result of his job duties as a machine operator for Respondent, he developed the condition of ill-being in his hands and right elbow. He testified to the job duties he performed and the development of his symptoms which resulted in his seeking medical attention. In determining the weight to be given to this evidence, the Arbitrator must assess the credibility of the witness. 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).

The Arbitrator finds that Petitioner's testimony was contradicted by the medical records and all other documentation as to the extent and onset of his complaints in his hands. Contrary to Petitioner's testimony, his accident report lists only the right elbow as the body part injured. His Application for Adjustment of Claim filed only days after his July 6, 2021 accident lists only the right elbow. This limited allegation is documented in the medical records. The diagnosis from Concentra or Fox Valley Orthopedics is a right elbow lateral epicondylitis. There are multiple specific examinations of the hands that do not include positive findings or complaints. The records specifically include denial of numbness and tingling. While Petitioner presented the palmar bumps to Fox Valley Orthopedics, he denied any pain. Based upon this overwhelming contradictory evidence, the Arbitrator finds the Petitioner's claim of hand complaints beginning at the time of the accident not credible.

Petitioner did advance right elbow complaints corroborated by the accident report and medical records. Petitioner did not present any specific medical opinion of causal connection. He is relying on his reporting a history in the medical records of his repetitive heavy work and a chain of causation. Based upon the lack of credible evidence that his hand conditions occurred immediately following an accident, the Arbitrator finds that Petitioner failed to prove a chain of causation for his hands.

With respect to the right elbow lateral epicondylitis, Petitioner testified that he did not have any prior condition of ill-being in the right elbow before July 6, 2021. He reported the injury and sought immediate treatment. He consistently reported the condition was the result of his work activities. The Arbitrator notes the various versions of his job duties described in the medical histories. Petitioner testified to various job duties. It appears that the only task discussed uniformly in his testimony and his medical histories is the placing of lids on the machine and the need to unstick them from each other. By his testimony, this activity could result in weights of 20 to 50 pounds. He described both pulling the lids apart and dropping or striking them to separate them, including his hand positions.

The Arbitrator notes that Accident was stipulated to and not in dispute. Respondent argues that Petitioner did not offer a medical causation opinion. An employee who alleges injury based on repetitive trauma must "show that the injury is work related and not the result of a normal degenerative aging process." *Peoria County Belwood Nursing Home v. Industrial Comm'n*, 115 Ill. 2d 524, 530, 505 N.E.2d 1026, 106 Ill. Dec. 235 (1987); *Edward Hines Precision Components v. Industrial Comm'n*, 356 Ill. App. 3d 186, 194, 825 N.E.2d 773, 292 Ill. Dec. 185 (2005). In repetitive trauma cases, the claimant "generally relies on medical testimony establishing a causal connection between the work performed and claimant's disability." *Nunn v. Illinois Industrial Comm'n*, 157 Ill. App. 3d 470, 477, 510 N.E.2d 502, 109 Ill. Dec. 634 (1987); see also *Johnson v. Industrial Comm'n*, 89 Ill. 2d 438, 442-43, 433 N.E.2d 649, 60 Ill. Dec. 607 (1982) (reversing Commission's award of benefits where claimant failed to present any expert medical evidence supporting claim that her injuries were caused by repetitive work activities). Although medical testimony as to causation is not required in every workers' compensation case, where the question is one within the knowledge of experts only and not within the common knowledge of laypersons, "expert testimony is necessary to show that claimant's work activities caused the condition complained of." *Nunn*, 157 Ill. App. 3d at 478; see also *Johnson*, 89 Ill. 2d at 442-43.

Respondent further offered the testimony of Dr. Vender who opined that he did not find that the employment caused or aggravated the Petitioner's various conditions, including the lateral epicondylitis.

Expert testimony shall be weighed like other evidence with its weight determined by the character, capacity, skill and opportunities for observation, as well as the state of mind of the expert and the nature of the case and its facts. *Madison Mining Company v. Industrial Commission*, 309 Ill. 91, 138 N.E. 211 (1923). The proponent of expert testimony must lay a foundation sufficient to establish the reliability of the bases for the expert's opinion. *Gross v. Illinois Workers' Compensation Comm'n*, 2011 IL App (4th) 100615WC, 960 N.E.2d 587, 355 Ill. Dec. 705. If the basis of an expert's opinion is grounded in guess or surmise, it is too speculative to be reliable. Expert opinions must be supported by facts and are only as valid as the facts underlying them. *In re Joseph S.*, 339 Ill. App. 3d 599, 607, 791 N.E.2d 80, 87, 274 Ill. Dec. 284 (2003). A finder of fact is not bound by an expert opinion on an ultimate issue, but may look 'behind' the opinion to examine the underlying facts.

The Arbitrator finds that Dr. Vender's causation opinions with respect to the hands are persuasive. No contrary medical opinion was presented. The delay in symptoms for over a month coupled with the recognized risk factor of diabetes provide a strong correlation with a non-occupational condition.

With respect to the right elbow, he admitted to limited understanding of Petitioner's job duties. He testified that Petitioner gave him very little information other than that he was a warehouse worker. He was asked to address additional job descriptions based upon information provided to him for the opinion as to the nature of the job. The Arbitrator notes that no evidence of the job duties other that Petitioner's testimony was offered at trial. Based upon this incomplete information, Dr. Vender opined the job was not sufficiently forceful. He described in detail the elements that would be required in his opinion to create a work related causation. Dr. Vender testified that if it turned out that Petitioner's job was more forceful and that he did work with his elbow extended, or did lift and twist with considerable force, then he would not have Petitioner doing that job. If the job was forceful and repetitive and fit his criteria, it could change his opinion. Petitioner's testimony of separating the stuck lids fits Dr. Vender's requirements of repetitive forceful activity. This coupled with the timeline for a chain of events theory provides sufficient evidence of causal connection of the right elbow lateral epicondylitis.

Based upon the record as a whole, the Arbitrator finds that Petitioner has proven by a preponderance of the evidence that his right elbow lateral epicondylitis is causally connected to his employment with Respondent on July 6, 2021. No other condition of ill-being is causally connected to the accident.

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

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

Petitioner has offered unpaid medical bills related to the treatment of Dr. Gerber at Fullerton Drake Medical Center and Dr. Fink at Gold Coast Orthopaedic, including ancillary bills for prescriptions, medical equipment

and diagnostic testing. The Arbitrator finds that none of the claimed treatment was reasonable, necessary or causally related to the July 6, 2021 accident.

Dr. Fink treated only the hands, ordering an EMG by Dr. Kiang. None of this treatment was causally related. Dr. Gerber noted complaints in the hands and right elbow, diagnosing a sprain. He conducted physical therapy for over 7 months, and prescribed a TENS unit and multiple medications. The records note no delineation of what if any care was directed to the elbow as opposed to the hands. The Arbitrator notes that the medical notes of Dr. Gerber's examinations and the multiple therapy notes of his office do not demonstrate the slightest improvement in Petitioner's condition. In determining the reasonableness and necessity of treatment, the Commission also has considered whether the records demonstrate subjective or objective improvement or whether the treatment failed to provide demonstrable benefit. *Hugo Alvarez v AMI Bearings, 16 IWCC 0408; Nelson Centeno v. Minute Men, 13 IWCC 0914, affirmed Centeno v. Illinois Workers' Compensation Commission, 2016 IL App (2d) 150575WC-U; 2016 Ill. App. Unpub. LEXIS 1261.* Based on Petitioner's testimony and upon his own medical records, Dr. Gerber provided absolutely no benefit to Petitioner.

Petitioner also admitted PX 3, a bill for an MRI. Dr. Kiang noted that this was of the elbow and was normal other than for some soft tissue swelling. The Arbitrator notes that this was suggested by Fox Valley Orthopedics as a possible treatment given Petitioner ongoing subjective complaints. The MRI report itself is not in evidence and Petitioner did not remember who scheduled it. He did not even remember undergoing it. The Arbitrator notes that no medical provider relies on this MRI or, other than its mention by Dr. Kiang, even notes that it was done. Given that the MRI was not considered if any treatment recommendation or evaluation of Petitioner, the Arbitrator finds that this test was unnecessary.

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 any unpaid medical expenses.

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

Petitioner is seeking an award of prospective medical care. The Arbitrator has addressed the weight to be given to Petitioner's testimony above with respect to Causal Connection. The Arbitrator also considers this lack of credibility in addressing the weight to be given to Petitioner's subjective complaints in determining whether he is entitled to any prospective medical treatment.

Based upon the Arbitrator's finding with respect to Causal Connection, treatment to address Petitioner's complaints in the hands would not be causally related to the accident. Dr. Fink's recommendations for carpal tunnel release and release of the contractures in his hands would not be causally related to the accident and are therefore denied.

Dr. Gerber's records commingle treatment for the elbow and the hands. The only notation is for continued therapy. The Arbitrator has already addressed the reasonableness of Dr. Gerber's therapy above with respect to Medical. This recommended treatment which has not resulted in the slightest improvement in over 7 months is not reasonable and necessary and further therapy by Dr. Gerber is therefore denied.

Dr. Vender did testify that Petitioner may be a candidate for additional conservative treatment for his right elbow lateral epicondylitis. This recommendation was made in light of Petitioner's continued complaints, with

findings consistent with lateral epicondylitis. As noted above, the Arbitrator has reservations as to the weight to be given to Petitioner's subjective presentation. The Arbitrator notes that Petitioner has already had extensive conservative treatment with Dr. Gerber without improvement in those subjective complaints. Whether this is commentary on the validity of the presentation, or the ineptitude of the care is difficult evaluate.

Given that there is not a currently reasonable, necessary or causally related recommended course of care presented to the Arbitrator to address, Petitioner's claim for prospective medical care is denied.

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

Temporary compensation is provided for in Section 8(b) of the Workers' Compensation Act, which provides, weekly compensation shall be paid as long as the total temporary incapacity lasts, which has interpreted to mean that an employee is temporarily totally incapacitated from the time an injury incapacitates him for work until such time as he is as far recovered or restored as the permanent character of his injury will permit. 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).

Petitioner's claim to have been off since the date of accident is contradicted by his own medical records which note he was working modified duty until he quit his job. Benefits under the Act may be suspended or terminated if an employee refuses work falling within the physical restrictions prescribed by his doctor. *Interstate Scaffolding, Inc. v. Illinois Workers' Compensation Comm'n*, 236 Ill. 2d 132, 146, 923 N.E.2d 266, 337 Ill. Dec. 707 (2010). The medical records of Concentra note that he was discharged from care in late July 2021 with the expectation he would recover function within the next few days. He then went to Fox Valley Orthopedics where he was placed on restrictions pending testing that he never completed. Thereafter he fell under the care of Dr. Gerber and Dr. Fink for unrelated hand conditions and was placed on a no use of the hands restriction by Dr. Gerber and totally off work by Dr. Fink. The Arbitrator finds that these restrictions were not persuasive and not reasonable, necessary or causally related to the accident. In making this finding, the Arbitrator considers not only the medical providers making these decisions, but also the lack of weight to be given to Petitioner's subjective presentation in light of the numerous inconsistencies between his testimony and the other objective evidence. The Arbitrator finds the opinion of Dr. Vender that Petitioner is capable of working persuasive.

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 any period of temporary total disability.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC032810
Case Name	Edgar Jones v. State of Illinois - Pontiac Correctional Center
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b) Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	23IWCC0400
Number of Pages of Decision	12
Decision Issued By	Marc Parker, Commissioner

Petitioner Attorney	Thomas C Rich
Respondent Attorney	Bradley Defreitas

DATE FILED: 9/6/2023

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Edgar Jones,

Petitioner,

vs. No. 21 WC 032810

State of Illinois/Pontiac Correctional Center,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) and §8(a) having been filed by Respondent herein and notice given to all parties, the Commission, after considering the issues of accident, causal connection, medical expenses, temporary total disability, prospective medical care, and causation of permanent disability, and being advised of the facts and law, affirms and adopts, except as noted below, 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 corrects a clerical error in the Arbitrator's decision. The Arbitrator awarded Petitioner 6-6/7 weeks of temporary total disability, for the period of November 5, 2021 through December 23, 2021. The Commission finds the correct period of TTD should be from November 5, 2021 through *December 22, 2021*. Petitioner testified he returned to work on December 23, 2021, and he would not be entitled to TTD for that date. The period of November 5, 2021 through December 22, 2021 does, however, total 6-6/7 weeks, which was the period of time awarded by the Arbitrator for TTD.

The Commission also clarifies the prospective medical care award in this case. The Arbitrator ordered Respondent to, "authorize and pay for the treatment recommended to treat Petitioner's injuries," without specifying all of the recommended treatment. We find that Respondent shall authorize and pay for Petitioner's physical therapy and behavioral health therapy, recommended by Dr. Kenney and Kathleen Backus; and the MRI and follow-up office visit, recommended by Dr. Rutz.

IT IS THEREFORE ORDERED BY THE COMMISSION that, other than as noted above, the Decision of the Arbitrator filed August 23, 2022, is hereby affirmed and adopted.

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

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

IT IS FURTHER ORDERED BY THE COMMISSION that this case be remanded to the Arbitrator for further proceedings consistent with this Decision.

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.

September 6, 2023

MP/mcp
o-08/10/23
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	21WC032810
Case Name	Edgar Jones v. State of Illinois - Pontiac Correctional Center
Consolidated Cases	
Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	9
Decision Issued By	Bradley Gillespie, Arbitrator

Petitioner Attorney	Thomas Rich
Respondent Attorney	Bradley Defreitas

DATE FILED: 8/23/2022

/s/ Bradley Gillespie, Arbitrator
Signature

INTEREST RATE WEEK OF AUGUST 23, 2022 3.11%

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

August 23, 2022

/s/ Michele Kowalski

Michele Kowalski, Secretary
Illinois Workers' Compensation Commission

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
19(b)

EDGAR JONES
Employee/Petitioner

v.

SOI/PONTIAC CORR. CTR.
Employer/Respondent

Case # **21** WC **032810**

Consolidated cases:

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Bradley Gillespie**, Arbitrator of the Commission, in the city of **Rock Island,** on **February 9, 2022**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On the date of accident, **November 4, 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 $**64,836.04**; the average weekly wage was $**1,246.85**.

On the date of accident, Petitioner was **22** years of age, ***single*** with **0** dependent children.

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

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

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 group exhibit, as provided in § 8(a) and § 8.2 of the Act.

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

Respondent shall pay Petitioner temporary total disability benefits of $**831.23**/week for **6 6/7** weeks for Petitioner's period of disability from November 5, 2021, through December 23, 2021, as provided in Section 8(b) of the Act.

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

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

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

Bradley D. Gillespie

Signature of Arbitrator

August 23, 2022

ICArbDec19(b)

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

EDGAR JONES,	)	
	)	
Petitioner,	)	
vs.	)	**No. 21 WC 032810**
	)	
STATE OF ILLINOIS DEPARTMENT OF CORRECTIONS, PONTIAC C.C.,	)	
	)	
Respondent.	)	

19(b) DECISION OF ARBITRATOR

FINDINGS OF FACT

Petitioner serves as a Correctional Officer for Respondent in the maximum security unit at Pontiac Correctional Center. (T.11) He filed his Application for Adjustment of Claim for injuries sustained to his head, lip, neck, back, right hand, right arm, body, and mental well-being on November 4, 2021, when he was assaulted by a coworker against whom he had an Order of Protection. (AX2; T.13-20) Petitioner described at the hearing that he "backpedaled as much as [he] could" before he was grabbed and assaulted. (T.16) Respondent disputes accident, causal connection, and liability for medical expenses, prospective treatment, and temporary total disability benefits. (AX1)

Petitioner testified without rebuttal that he advised Respondent of the Court Order the day it was obtained on November 3, 2021, and Respondent undertook enforcement and assured Petitioner that he and the subject would have no contact at work. (T.12-14) During the assault the following day, the assailant punched Petitioner's face, grabbed his genitalia, and pulled out several of his dreadlocks. (T.16-17) One of the officers who responded to the disturbance weighed approximately 250 pounds, and he took action by tackling Petitioner and the offender to the ground and forcefully separating the two. (T.16-20) Petitioner testified that during the separation he was initially placed in a headlock and afterward placed on the ground, with the officer's knees being on placed on his neck and back as a restraint. (T.31) Petitioner testified the responding officer who injured his neck and back was just fulfilling his duty to keep peace at the facility and break up any fight that occurred. (T.17-20, 32) Petitioner testified that he had no history of neck symptoms, back complaints, or anxiety/PTSD-like symptoms prior to this incident. (T.23)

Petitioner testified that Respondent's facility is protected by a series of five (5) security checkpoints, and he is required to keep his identification visible at all times. (T.15-16) He testified that it was after he made it through all these security checkpoints and reported for roll call that he was assaulted. (T.16) He also testified that the assailant was required to go through the same security checkpoints. (T.26-27) Petitioner testified that when he provided Respondent

with the Order, he was assured the assailant would be "redirected to the medium security unit that's in the back of Pontiac's maximum security prison", also referred to as the farm, in order to comply with the Order. (T.13) Petitioner testified that if the assailant was so redirected, he would have no interaction with him. (T.13-14)

On further direct examination, Petitioner also testified that the assailant should not have even been on site the day of the assault, as he was on scheduled leave of absence. (T.20. 25-26) He further testified that if he had a restraining Order against him, he would have been locked from entering the facility. (T.27) When asked how he believed the assailant was allowed to enter, he stated, "To my knowledge, I was informed that my shift commanders didn't properly process the paperwork of informing, I want to say, the gatehouse security staff that he's locked out because they wasn't expecting him to come back until a later date." (T.27) Respondent has since managed to keep them separated. (T.25)

Petitioner acknowledged on cross-examination that the reason for the Protective Order was non-work-related, specifically an attack outside the workplace spurred by Petitioner dating the assailant's ex-girlfriend. (T.28) Petitioner reaffirmed on cross that he gave the Order to his supervisor the same day he obtained the Order. (T.28-29)

Following the incident, Petitioner presented to OSF Healthcare, where the history of the assault was taken, and he was given Toradol and Norflex for pain. (PX3) He was initially assessed with neck and hand contusions and discharged, but returned on November 5, 2021, when the following history was taken:

> [Sic] Patient reports that yesterday morning at his workplace he was in some sort of altercation and was struck in the back and was also placed in a head lock. He was seen in this emergency department yesterday for hand pain but since that time has had persistent, throbbing neck pain as well as aching back pain in his paraspinal tissues. He describes some intermittent numbness and tingling running down his right arm throughout today . . . (PX3)

Due to concern for acute traumatic injury, including vascular/neurologic trauma in the setting of a neck injury, Petitioner was admitted and kept on-site for several days. (PX3) X-rays of Petitioner's chest and CT imaging of his neck were normal. *Id.* The MRI and MRA of Petitioner's brain were negative for acute infarct or intracranial hemorrhage, and the MRA of Petitioner's neck showed no evidence of cervical arterial vasculature injury. *Id.* Petitioner was also treated with anxiety medication during his stay. *Id* Petitioner was discharged on November 8, 2021. *Id.*

Petitioner followed up with his family physician, Dr. Tom Kenney at OSF Medical Group. (PX4) Dr. Kenney took a consistent history of the accident and noted Petitioner's persistent complaints of neck and back pain. (PX4, 11/15/21, 11/30/21). He also noted that Petitioner was attempting to transfer to a different facility, and Dr. Kenney encouraged him to

continue his efforts, as Dr. Kenney felt returning to Pontiac was ill-advised. *Id.* He recommended that Petitioner continue to take medication every 8 hours for his anxiety, and on follow-up, ordered x-rays of the cervical, thoracic, and lumbar spine, which were negative for fractures or subluxations. *Id.* In December, he began counseling for Petitioner's anxiety, as Petitioner began expressing deep concerns:

> Patient reports that he is struggling to advocate for himself with his work. The trauma he experienced was significant and he believes they are going to have him resume work in the same location and shift. He is working with many entities, but having little success in getting a transfer. He has few stress reduction tools here, but he spends time in his home community where he feels more supported. (PX4, 12/9/21)

Dr. Kenney also recommended physical therapy; however, Petitioner was unable to begin physical therapy due to lack of authorization from Respondent's workers' compensation carrier. (PX4, 11/15/21; T.24)

Petitioner returned to work on December 23, 2021. (T.24) Petitioner testified that at present, his current complaints are constant pain in his neck and intermittent pain in his back with loss of sensation in his right upper extremity. (T.24-25) Petitioner testified that he did not currently feel he could adequately perform his job to protect fellow officers and inmates or protect himself at work. (T.30) Petitioner testified that he recently came under the care of an orthopedic specialist, Dr. Kevin Rutz, who has recommended additional diagnostic testing and a follow up appointment to address his continued low back and neck symptoms. (T.24)

CONCLUSIONS OF LAW

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

"To obtain compensation under the Act, a claimant bears the burden of showing, by a preponderance of the evidence, that he has suffered a disabling injury which arose out of and in the course of his employment." *Sisbro, Inc. v. Industrial Comm'n,* 797 N.E.2d 665, 671 (2003). If the injury coincides with these definitions and is traceable to a definite time, place, and cause, then said injury is accidental within the meaning of the Act. *Laclede Steel Co. v. Indus. Comm'n*, 128 N.E.2d 718, 720 (Ill. 1955).

"In the course of employment" refers to the time, place and circumstances surrounding the injury. *Lee v. Industrial Comm'n,* 656 N.E.2d 1084 (1995); *Scheffler Greenhouses, Inc. v. Industrial Comm'n,* 362 N.E.2d 325 (1977). That is to say, for an injury to be compensable, it generally must occur within the time and space boundaries of the employment. *Sisbro supra.* An injury arises out of one's employment if its origin is in a risk connected with or incidental to the employment so that there is a causal relationship between the employment and the accidental

injury. *Orsini v. Indus. Comm'n*, 509 N.E.2d 1005 (1987). In order to meet this burden, a claimant must prove that the risk of injury is peculiar to the work ***or*** that he or she is exposed to the risk of injury to a greater degree than the general public. *Id.*

Risks to which a claimant may be exposed fall within one of three categories: (1) risks distinctly associated with the employment; (2) risks personal to the employee; and (3) neutral risks which have no particular employment or personal characteristics. *McAllister v. Illinois Workers' Comp. Comm'n*, 2020 IL 124848, ¶ 38. The second category of risks involves risks personal to the employee, which generally are not compensable. *Id.* at ¶42. An exception exists, however, "when the work place conditions significantly contribute to the injury or expose the employee to an added or increased risk of injury." *Id.; see also Vill. of Villa Park v. Illinois Workers' Comp. Comm'n,* 2013 IL App (2d) 130038WC, ¶ 21, 3 N.E.3d 885, 891 (holding that a quantitative increased risk was sufficient to convert a personal risk to a work-related risk).

There is no dispute that Petitioner was in the course of his employment while on-site and presenting for roll call. (T.16) The principal dispute is whether the accident arose out of Petitioner's employment.

The Arbitrator notes that the parties agree that Petitioner was injured as a result of a personal risk; however, Petitioner maintains that Respondent created the hazard and significantly increased and exposed him to risk of injury. The Arbitrator finds Petitioner's position persuasive. The Arbitrator notes that this is not merely a case of employer acquiescence to an unsafe practice or a misguided attempt by Petitioner to assert the positional risk doctrine. Rather, this is an instance where Respondent, by its assurance to Petitioner that it would keep Petitioner safe and enforce the Court's Protective Order, engaged in a voluntary undertaking to perform a safety service, but failed to do so. It is a well-known theory of tort law that where a person or entity voluntarily agrees to perform a service necessary for the protection of another person or their property, that party must perform the service in such a manner as not to increase the risk of harm to the other person who relies on the undertaking. *Claimsone v. Pro. Prop. Mgmt., LLC*, 2011 IL App (2d) 101115, ¶ 21, 956 N.E.2d 1065, 1071; *Vaughn v. Granite City Steel Div. of Nat. Steel Corp.,* 217 Ill. App. 3d 46, 52, 576 N.E.2d 874, 878 (1991). Here, Respondent clearly failed to keep the parties separate after being informed of the Order of Protection and created the hazardous condition by allowing the assailant into the facility which led to Petitioner's injury. Given the special relationship between Petitioner and Respondent, Respondent's failure was far more injurious.

In *Vaughn v. Granity City Steel Div. of Nat. Steel Corp*., the Appellate Court determined that the employer had a duty to protect employees from harm where it voluntarily undertook the task of doing so. *Vaughn v. Granite City Steel Div. of Nat. Steel Corp.*, 217 Ill. App. 3d 46, 576 N.E.2d 874 (1991). Similarly, in Petitioner's case, Respondent assured Petitioner that his Order of Protection would be enforced; however, Respondent's negligence in fulfilling its voluntary

undertaking to provide such security created a significant hazard that increased Petitioner's risk of injury. To his detriment, Petitioner reasonably relied on Respondent's assurances given the significant security measures. Petitioner passed through no less than five security checkpoints before he was assaulted, just as the assailant passed through those same five security checkpoints before assaulting Petitioner. Thus, it is evident that Respondent failed to advise the appropriate security of the Court's Protective Order as promised. No reasonable person would believe that a maximum security facility would allow any person or employee in a secure area without a scheduled business purpose, much less a person against whom a Protective Order was entered.

In addition, given the unique nature of Respondent's facility, Petitioner also had nowhere to flee once the assault began. Consequently, the Arbitrator finds that Petitioner sustained his burden of proof in establishing that he suffered an increased risk of injury from hazardous conditions created by Respondent to such an extent that his accident arose out of his employment pursuant to *McAllister v. Illinois Workers' Comp. Comm'n*, 2020 IL 124848, ¶ 38 and *Villa Park v. Illinois Workers' Comp. Comm'n,* 2013 IL App (2d) 130038WC, ¶ 21, 3 N.E.3d 885, 891.

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

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

Petitioner testified without rebuttal that he had no history of neck symptoms, back complaints, or anxiety/PTSD-like symptoms prior to this incident. (T.23) Likewise, Petitioner's medical records noted no history of preexisting complaints and only noted Petitioner's complaints in association with the traumatic work accident. Consequently, based upon the unrebutted chain of events, the Arbitrator finds that Petitioner's current condition of ill-being is causally related to the workplace assault.

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

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

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

of claimant's injury. *F & B Mfg. Co. v. Indus. Comm'n*, 325 Ill. App. 3d 527, 758 N.E.2d 18 (2001).

Petitioner testified that he continues to have symptoms as a result of the assault and has no confidence that he can adequately perform his job duties. (T.30) He described that he currently experiences constant pain in his neck and intermittent pain in his back with loss of sensation in his right upper extremity. (T.24-25) Based upon the foregoing findings as to accident and causal connection, the Arbitrator finds the medical treatment rendered and recommended for Petitioner to be reasonable and necessary. Respondent shall pay the expenses contained in Petitioner's group exhibit and shall further authorize and pay for the treatment recommended to treat the effects of Petitioner's injuries, including evaluation by his orthopedic specialist, Dr. Rutz.

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

Respondent shall pay Petitioner temporary total disability benefits of $**831.23**/week for **6 6/7** weeks for Petitioner's period of disability from November 5, 2021, through December 23, 2021, as provided in Section 8(b) of the Act.

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.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	16WC032323
Case Name	Cassandra Wedell v. SAP America Inc
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	23IWCC0401
Number of Pages of Decision	32
Decision Issued By	Christopher Harris, Commissioner

Petitioner Attorney	Kurt Niermann
Respondent Attorney	John Sturgeon

DATE FILED: 9/7/2023

/s/Christopher Harris, Commissioner
Signature

DISSENT: /s/Christopher Harris, 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

CASSANDRA WEDELL,

Petitioner,

vs. NO: 16 WC 32323

SAP AMERICA, INC.,

Respondent.

DECISION AND OPINION ON REVIEW

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

The Commission first modifies the Arbitrator's TTD award. The Arbitrator awarded Petitioner TTD benefits from April 19, 2016 through March 6, 2019 – the date of Petitioner's functional capacity evaluation (FCE). However, the Commission finds that Petitioner's condition stabilized and that she reached maximum medical improvement (MMI) on August 20, 2020. The Commission awards Petitioner TTD benefits through this date.

In *Freeman United Coal Mining Co. v. Indus. Comm'n*, 318 Ill. App. 3d 170 (2000), the Appellate Court determined that:

> TTD is awarded for the period from the date on which the employee is incapacitated by injury to the date that his condition stabilizes or he has recovered as far as the character of the injury will permit. (Citation omitted). To be entitled to TTD benefits, the claimant must prove not only that he did not work but that he was unable to work. (Citation omitted). It does not matter whether he could have looked for work. Even though a claimant may be entitled to permanent disability compensation under the Workers' Compensation Act (Act), once the injured employee's physical

> condition has stabilized, he is no longer eligible for TTD benefits because the disabling condition has reached a permanent condition. *Id.* at 177.

The Appellate Court further emphasized:

> Among the factors to be considered in determining whether a claimant has reached maximum medical improvement include a release to return to work, with restrictions or otherwise, and medical testimony or evidence concerning claimant's injury, the extent thereof, the prognosis, and whether the injury has stabilized. (Citation omitted). Once an injured claimant has reached maximum medical improvement, the condition is no longer temporary and entitlement to TTD benefits ceases even though the claimant may thereafter be entitled to receive permanent total or partial disability benefits. When a court determines the duration of TTD, the only questions that need to be asked and answered are whether the claimant has yet reached maximum medical improvement and, if so, when. *Id.* at 178.

The Court also addressed the fact that a claimant may occasionally earn wages or perform useful services which does not necessarily preclude an award of TTD and noted that "compliance with a 'prescribed' rehabilitation program may be evidence of whether the claimant's condition had reached maximum medical improvement. (Citation omitted). This is not to say that evidence relating to the availability of vocational rehabilitation or that respondent failed to offer vocational rehabilitation is determinative of the duration of TTD." *Id.* at 179.

Following the April 18, 2016 work accident, Petitioner herein sought treatment with Dr. Chen at Top Pain Center on April 21, 2016, underwent an MRI of the lumbar spine on April 26, 2016 and consulted with Dr. Laich, a neurological surgeon, who took Petitioner off work on April 28, 2016. Petitioner testified that she had not worked in any capacity since the April 18, 2016 work accident except for one day on November 14, 2016 when she attempted to return to work for Respondent but was sent home by her supervisor due to pain. Thereafter, Petitioner continued to treat with Dr. Laich and Dr. Khan, her pain management physician.

Dr. Laich testified on June 24, 2019 that Petitioner remained off work but he believed she could someday return to work if she had the right opportunity. He was seeing Petitioner on an as-needed basis. The last office visit note from Dr. Laich was dated January 16, 2019. Petitioner was still having SI joint issues and was still treating with Dr. Khan. Dr. Laich recommended that Petitioner remain off work, continue physical therapy and follow-up in six weeks.

Petitioner completed an FCE on March 6, 2019 at Momentum Physical Therapy. In summary, the FCE results indicated that Petitioner could work at the sedentary physical demand level for a maximum of two hours per day. Dr. Khan reviewed the FCE results on December 2, 2019 and noted that Petitioner's functional capacity was very minimal to perform any of her work duties and he recommended that Petitioner remain on long-term disability. He added that Petitioner

had had extensive interventional treatment with good but not lasting pain relief. Dr. Khan ordered another MRI of the lumbar spine to evaluate the adjacent levels for spinal stenosis and stated that a spinal cord stimulator trial could be considered.

Petitioner proceeded with spinal cord stimulator implantation in July 2020 with Dr. Schueler and followed-up with his office on July 16, 2020. The nurse practitioner noted that Petitioner was eight days post insertion of the spinal cord stimulator and reported feeling well from a surgical standpoint. Petitioner returned for another follow-up visit on August 20, 2020 and reported feeling well overall. The nurse practitioner allowed Petitioner to increase activity as tolerated with no restrictions. Petitioner could follow-up as needed.

The Commission finds that although none of Petitioner's treating physicians specifically placed Petitioner at MMI, the evidence demonstrated that her condition had stabilized or she had recovered as far as the nature of her injury would permit on August 20, 2020. Petitioner's appointments thereafter that related to her lumbar spine and SI joint involved pain management by way of injections and adjustments to her spinal cord stimulator.

The Commission further finds that Petitioner proved by a preponderance of the evidence that from April 19, 2016 through August 20, 2020 she did not work, was unable to work and she continued to treat for her work-related lumbar spine and SI joint conditions. The Commission finds speculative the inference that Petitioner worked during the claimed TTD period. Petitioner's unrebutted testimony was that she tried to start a side business but could not work because she was in a lot of pain and it took her days to recover. Petitioner also testified that any tax returns related to the family business did not represent any work she had performed. Respondent's Exhibit 9 – the tax forms for the family business neither corroborates nor contradicts Petitioner's testimony. The vocational rehabilitation counselor, Ms. Stafseth, also testified that Petitioner did not report that she was actively involved with the business but indicated that her husband managed it. Petitioner was also not in any formal vocational rehabilitation that would help determine any TTD cutoff date. The Commission finds that the evidence herein does not preclude an award of TTD.

Therefore, the Commission finds that Petitioner is entitled to TTD benefits from April 19, 2016 through August 20, 2020 pursuant to Section 8(b) of the Act and modifies the Arbitrator's Decision accordingly.

The Commission next strikes the Arbitrator's award of 40% loss of use of the person as a whole under Section 8(d)2 of the Act and finds instead that Petitioner is entitled to odd-lot permanent total disability (PTD) benefits pursuant to Section 8(f) of the Act.

It is well-settled that an employee is considered permanently and totally disabled when he or she is unable to make some contribution to industry sufficient to justify the payment of wages. *Interlake Steel Corp. v. Indus. Comm'n*, 60 Ill. 2d 255, 259 (1975). However, an employee is not required to be reduced to complete physical incapacity to obtain PTD benefits under the Act. *Ceco Corp. v. Indus. Comm'n*, 95 Ill. 2d 278, 286 (1983).

> If the claimant's disability is limited in nature so that he is not obviously unemployable, or if there is no medical evidence to

> support a claim of total disability, the burden is upon the claimant to prove by a preponderance of the evidence that he fits into the 'odd-lot' category—one who, though not altogether incapacitated to work, is so handicapped that he will not be employed regularly in any well-known branch of the labor market. (Citation omitted). The claimant ordinarily satisfies his burden of proving that he falls into the odd-lot category in one of two ways: (1) by showing diligent but unsuccessful attempts to find work, or (2) by showing that because of his age, skills, training, and work history, he will not be regularly employed in a well-known branch of the labor market. (Citation omitted) . . .
>
> Once the claimant establishes that he falls into the 'odd-lot' category, the burden shifts to the employer to prove that the claimant is employable in a stable labor market and that such a market exists. *Westin Hotel v. Indus. Comm'n*, 372 Ill. App. 3d 527, 544 (2007).

The Appellate Court in *Westin Hotel v. Indus. Comm'n* further stated that in most recent cases making an odd-lot determination based on the second prong, evidence from a rehabilitation services provider or a vocational counselor was required. 372 Ill. App. 3d 527, 545 (2007).

In finding Petitioner permanently and totally disabled under the odd-lot theory, the Commission initially notes that neither Dr. Laich nor Dr. Khan released Petitioner with restrictions per the March 6, 2019 FCE. Dr. Khan had reviewed the FCE and indicated in his December 2, 2019 office visit note that Petitioner's functional capacity was very minimal to perform any kind of her work duties and he recommended that Petitioner remain on long-term disability. However, Dr. Khan admitted at his deposition that he did not know what Petitioner did for a living and testified that it was up to the patient to decide whether he or she wanted to return to work. Dr. Laich did not testify regarding the FCE results but believed Petitioner had "a shot" at returning to work someday and recommended finding a job directing someone and not involved in labor. Dr. Laich also believed it was possible for Petitioner to work in an office but he did not recommend that Petitioner push tables or chairs up-hill. As of Petitioner's MMI date on August 20, 2020, the office visit noted stated: "May increase activity as tolerated. No restrictions." (PX16). This activity status did not clarify whether it pertained to work activities or activities of daily living.

Kari Stafseth, a certified rehabilitation counselor with Vocamotive, interviewed Petitioner on April 23, 2021. Ms. Stafseth assessed Petitioner's employability, her placement potential as well as her earning potential. She noted that Petitioner was 47 years old at the time of her evaluation. She had a GED and had attended junior college for a year but did not complete any type of degree or certification. Petitioner had attended decorative finishing school as well and earned a certificate. She reported that she was able to type with two hands but was not familiar with Microsoft Office programs. Ms. Stafseth also noted that Petitioner worked for Respondent as an office/facilities manager/event planner for about a year-and-a-half prior to the work accident and she also owned and operated a family business that specialized in high-end painting. Ms. Stafseth testified that Petitioner did not report that she was actively involved with the business but

indicated that her husband managed it. Petitioner had also previously operated an in-home daycare service.

Ms. Stafseth reviewed the March 6, 2019 FCE and noted that Petitioner lacked the ability to work a full eight-hour day. Petitioner instead demonstrated the ability to work at a sedentary level at a maximum of two hours per day with the ability to lift a maximum of 10 pounds and carry 10 pounds for 15 feet. Petitioner could also push and pull a maximum of 10 pounds for 10 feet. She was unable to frequently lift, carry, push or pull, but she could walk, crouch, squat, kneel, climb and crawl on an occasional basis. It was also noted that Petitioner could stoop and twist on an occasional/modified basis. The FCE report additionally stated that Petitioner required occasional rest breaks during prolonged standing and sitting activities. Petitioner demonstrated fair body mechanics, fair posture during the evaluation and she required moderate cueing to maintain proper body mechanics with fair follow-through. She also exhibited fair pacing, poor endurance and presented with moderate limitations in functional flexibility.

Based on her interview and review of the FCE, Ms. Stafseth opined that Petitioner had lost access to her pre-injury job as an office/facilities manager/event planner with Respondent which was at the light level of physical demand and exceeded the restrictions outlined in the FCE. Ms. Stafseth testified that she did not review a job description for Petitioner's job title but relied on the Dictionary of Occupational Titles for the position. Ms. Stafseth also opined that the two-hour limit impaired Petitioner's ability to return to a viable and stable labor market because even typical part-time shifts, which were between four and six hours, exceeded Petitioner's workday tolerance.

Ms. Stafseth added that Petitioner's restrictions per the FCE would not even satisfy the requirements for gainful employment under Social Security guidelines. "For an individual who doesn't have any visible disability, they need to make at least [$1,310.00 a month] in order for that work to be classified as being substantial gainful activity." (PX3, pg. 19). Ms. Stafseth testified that based on her calculations and Petitioner's two-hour per day work restriction, Petitioner would have to earn approximately $30.00 per hour. Ms. Stafseth opined that Petitioner would not find a job earning that amount per hour working only two hours a day.

Respondent offered the evidence deposition testimony of Jacqueline Bethell, its vocational rehabilitation expert with MedVoc Rehabilitation. Ms. Bethell performed a records review and did not interview Petitioner. She opined that Petitioner was capable of returning to her previous job, and if not, she could find work as a receptionist with no impairment of earnings. Ms. Bethell critiqued Ms. Stafseth stating that Ms. Stafseth had concluded that Petitioner was unable to work only based on the FCE and no other factors. Ms. Bethell had reviewed a job description and noted that Petitioner's job duties also included ordering supplies, greeting customers or visitors and she worked with human resources to onboard and offboard new as well as terminated employees. Petitioner's job duties additionally involved coordinating meetings, conference calls and planning company events.

The Commission notes some discrepancy as to what Ms. Bethell actually reviewed and relied on in preparation of her report. Her report indicated that she reviewed Dr. Singh's and Dr. Candido's Section 12 reports on behalf of Respondent, various medical records, a job description, the FCE, Ms. Stafseth's vocational evaluation report and the FCE critique by Joseph Castronovo.

However, Ms. Bethell testified that her opinions were primarily based upon Dr. Candido's opinions as indicated in his Section 12 report and the FCE critique.

Respondent's second witness was Mr. Castronovo, a physical therapist at Illinois Bone and Joint Institute. He was not a certified rehabilitation counselor and he did not have vocational training. His sole purpose was to critique the FCE. Mr. Castronovo testified that there was no objective or validity criteria noted on the FCE report, two hours was not sufficient time to evaluate Petitioner, and that some of Petitioner's abilities were labeled as occasional, indicating that she could work more than two hours. Mr. Castronovo also reviewed Petitioner's medical records, including Dr. Laich's and the physical therapy records, and Petitioner's job description. He concluded that Petitioner could work, at minimum, the sedentary demand level which he believed was consistent with Petitioner's previous job demands. He also noted that Petitioner could lift up to 10 pounds. During cross-examination, Mr. Castronovo acknowledged that he was not present during the actual FCE, he did not speak with the person who conducted the FCE and he did not speak with Petitioner regarding her performance during the FCE.

The Commission finds the opinions of Ms. Stafseth more persuasive than the opinions of Ms. Bethell and Mr. Castronovo. Ms. Stafseth interviewed Petitioner, considered her age, skills, training, and work history and reviewed the FCE. Ms. Stafseth found the restrictions per the FCE significant and opined that the two-hour limit impaired Petitioner's ability to return to a viable and stable labor market. Ms. Stafseth additionally considered that Petitioner's restrictions per the FCE would not even satisfy the requirements for gainful employment under Social Security guidelines.

Conversely, the testimonies of Ms. Bethell and Mr. Castronovo were contradictory and confusing. Ms. Bethell and Mr. Castronovo had issues relying on the FCE in their determination of Petitioner's employability but also adopted the FCE's ultimate conclusion that Petitioner could return to work in a sedentary physical demand level. Moreover, Ms. Bethell conceded that her opinions were based on Mr. Castronovo's FCE critique even though she could not verify its validity. With respect to the validity of the FCE itself, the Commission acknowledges that the report did not specifically state that it had been a valid evaluation nor did it specifically state that it had been an invalid evaluation. The report did state, however, that Petitioner demonstrated fair body mechanics, fair posture during the evaluation, fair pacing and poor endurance. Petitioner also required moderate cueing to maintain proper body mechanics with fair follow-through. The Commission finds no indication that Petitioner demonstrated a lack of effort during the FCE.

The Commission finds that the medical records, the FCE and Ms. Stafseth's opinions were consistent with Petitioner's testimony regarding her continued complaints of pain and her inability to return to work. The medical records following the July 2020 spinal cord stimulator implantation documented that Petitioner had difficulty doing anything for any length of time. Her pain worsened with walking, standing, sitting and with activities and nothing made the pain better. Dr. Khan's September 24, 2020 office visit note stated that although the spinal cord stimulator was helping Petitioner significantly, Petitioner remained symptomatic. Her complaints included pain near the spinal cord stimulator generator and the right lumber paravertebral muscle. Petitioner's pain level could reach an eight out of 10 at its worst. Dr. Khan testified that the spinal cord stimulator addressed most but not all of Petitioner's pain. He predicted that Petitioner would require additional trigger point injections as well as adjustments and a new generator for the stimulator.

Petitioner in fact underwent additional treatment by way of a trigger point injection in the lumbar spine on September 28, 2020 and a lumbar medial branch block on February 3, 2021.

Based on the foregoing, the Commission finds that Petitioner proved by a preponderance of the evidence that she fits into the odd-lot category and that Respondent failed to meet its burden of proof that Petitioner is employable in a stable labor market and that such a market exists. As such, the Commission finds that Petitioner is entitled to PTD benefits commencing August 21, 2020.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed August 25, 2022 is hereby modified as stated and otherwise affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay to Petitioner temporary total disability benefits of $775.32 per week for 226 3/7 weeks, from April 19, 2016 through August 20, 2020, 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 the Arbitrator's award of 40% loss of use of the person as a whole, as provided in Section 8(d)2 of the Act, is stricken.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay to Petitioner the sum of $775.32 per week for life, effective August 21, 2020, because the injuries sustained resulted in a permanent total disability pursuant to Section 8(f) of the Act.

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

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

IT IS FURTHER ORDERED BY THE COMMISSION that commencing on the second July 15th after the entry of this award, Petitioner may become eligible for cost-of-living adjustments, paid by the ***Rate Adjustment Fund***, as provided in Section 8(g) of the Act.

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

September 7, 2023

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

CAH/pm
O: 8/24/23
052

/s/ *Marc Parker*
Marc Parker

DISSENT

While I agree with the Majority's decision to modify the TTD period, I respectfully dissent from the Majority's finding that Petitioner proved entitlement to odd-lot permanent total disability benefits.

Petitioner's vocational expert, Ms. Stafseth, relied on the March 6, 2019 FCE findings to conclude that no stable labor market exists for Petitioner. Petitioner thereafter continued with pain management with Dr. Khan and eventually underwent a spinal cord stimulator implantation in July 2020 with Dr. Schueler. In several follow-up appointments after the procedure, Petitioner reported improvement, feeling well and on August 20, 2020, the nurse practitioner allowed Petitioner to increase activity as tolerated with no restrictions. There was no subsequent, updated FCE performed to evaluate Petitioner's functional capacity and ability to work and no updated vocational rehabilitation assessment.

I find that Petitioner's condition changed following the July 2020 spinal cord stimulator implantation – a procedure that improved and stabilized her lower back condition. This rendered the March 6, 2019 FCE findings as well as Ms. Stafseth's opinions stale. Given that both of Petitioner's primary treaters believed she could return to work at some level and that the FCE and Ms. Stafseth's opinions cannot be relied upon, I would have affirmed the Arbitrator's award.

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	16WC032323
Case Name	Cassandra Wedell v. SAP America Inc
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	23
Decision Issued By	Frank Soto, Arbitrator

Petitioner Attorney	Kurt Niermann
Respondent Attorney	John Sturgeon

DATE FILED: 8/25/2022

THE INTEREST RATE FOR THE WEEK OF AUGUST 23, 2022 3.11%

/s/Frank Soto, Arbitrator

Signature

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Cassandra Wedell
Employee/Petitioner

v.

SAP America Inc
Employer/Respondent

Case # **16** WC 32323

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 **4/12/22**. 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. ☒ 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 **permanent total disability benefits**

FINDINGS

On **4/18/16**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $60,474.96; the average weekly wage was $1,162.98.

On the date of accident, Petitioner was 42 years of age, ***married*** 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 $11,333.22 for TTD, $**0** for TPD, $**0** for maintenance, and $24,077.32 for other benefits, for a total credit of $35,410.54.

ORDER

Respondent shall pay Petitioner the medical expenses related to Petitioner's lumbar spine and SI joint conditions, as identified in Px #18, pursuant to Sections 8 and 8.2 of the Act and subject to the fee schedule. Respondent is not liable for medical treatment involving the cervical or thoracic spine nor medical treatment provided to any other body part other than the treatment involving the lumbar spine and SI joint. Respondent shall hold Petitioner harmless for any of the medical bills Respondent paid and claims a credit pursuant to Section 8(j) of the Act.

Respondent shall Petitioner TTD benefits from April 19, 2016 through March 6, 2019, pursuant to Section 8(b) of the Act. Respondent is entitled to a credit of $11,333.22 for TTD benefits previously paid.

Respondent shall pay Petitioner permanent partial disability benefits of 200 weeks because the injuries sustained caused a 40% loss of the person as a whole, as provided in Section 8(d)2 of the Act.

Respondent shall pay Petitioner penalties pursuant to Section 19(l) of the Act in the amount of $10,000.00. Petitioner's claim for penalties pursuant to Sections 16 and 19(k) is denied.

Respondent shall pay Petitioner compensation that has accrued from April 18, 2016 through May 25, 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.

AUGUST 25, 2022

By: /o/ Frank J. Soto
Arbitrator

Procedural History

This case tried on May 25, 2022. The issues in dispute were whether Petitioner's current conditions is causally connected to her work injury of April 18, 2016, whether Respondent is liable for unpaid medical bills, whether Petitioner is entitled to TTD benefits and the nature and extent of Petitioner's injuries. Petitioner is seeking a finding of permanent and total disability. Petitioner also seeking penalties pursuant to Sections 19(k), 19(l) and 16. (Arb. Ex. # 1).

The conditions which Petitioner is seeking to be found causally related to her April 18. 2016 accident involves her lumbar spine and SI joint. Petitioner was also receiving medical treatment for a cervical spine and shoulder conditions which Petitioner acknowledges is not related to her work accident of April 18, 2016.

Petitioner objected to the admission of the testimony of Joe Castronova, who provided a critique of a functional capacity evaluation, and Jackie Bethell, who provided vocational opinions based upon critique of the functional capacity evaluation and opinions of the Section 12 examiners without interviewing Petitioner. The objections are addressed in below decision.

Findings of Fact

Testimony of Cassandra Wedell

Cassy Wedell (hereinafter referred to as "Petitioner") worked at SAP America, Inc., (hereinafter referred to as "Respondent") as an office manager and events manager. (Px 17 p.5).[1]

Petitioner testified that prior to April 18, 2018 she was receiving medical treatment for a neck and midback condition by Dr. Khan. (Px. 17, p. 7). Petitioner also testified she underwent surgery for her low back in 2001 or 2002 but, after the surgery, her low back was fine and did not hurt. (Px. 17, p. 8). Petitioner testified prior to April 18, 2018 she was not prevented from performing her work duties due to her neck, midback or prior low back conditions. (Px. 17, p. 7).

Petitioner testified on April 18, 2016 she was setting up chairs and tables for a lunch and while pushing them up an incline she felt something pop in her lower back. (Px. 17, p. 6, 7). Petitioner testified she pushed 4-5 tables along a wall and another one or two tables in a different room. (Px. 17, p. 7). Petitioner testified she was bent over while pushing the tables. (Px 17, p. 7). Petitioner testified after the incident she couldn't drive so she called her husband who pick

[1] Petitioner's testimony was taken via evidentiary deposition by agreement because Petitioner moved to Kentucky. (Px. 17).

her up. (Px. 17, p. 6). Petitioner also testified that she reported the incident to her boss, Grace. (Px. 17, p. 9).

Petitioner testified she started treating and received workers compensation payments through November 11, 2016. (Px 17 p.10, 11). Petitioner testified she underwent surgery in January of 2018 which helped. Petitioner testified after the surgery the pain going down to her feet stopped. (Px. 17, p. 12). Petitioner underwent a two-level fusion at L4-5 and L5-S1. Thereafter, Petitioner began experiencing pain in her ribs, hips, and legs. (Px 17, p. 11). Petitioner testified a spinal cord stimulator was implanted which also helped. (Px. 17, p. 13).

Petitioner testified she returned to work for Respondent but could only work for a few hours because it was uncomfortable to stand or set for any length of time. (Px. 17, p. 14). Petitioner testified she a meeting with Grace who said she was allow her to work from home. (Px. 17, p. 15).

Petitioner testified she continues to experience pain across her ribs, down the back of her legs to the knees that wraps around her hips. (Px. 17, p.15). Petitioner testified her low back pain and SI joint pain started when she hurt herself at work. (Px. 17, p. 22). Petitioner testified she can only stand, stand, and walk for about 2 minutes and that she tried to work but she can't do it for a length of time long enough to make any substantial income. (Px. 17, p. 15, 16). Petitioner also testified she can't work because it is painful after standing, sitting, and walking for more than 30-45 minutes. (Px. 17, p. 23).

Petitioner testified she has sleep issues and only sleeps about four hours a night. (Px. 17, p. 16. 17). Petitioner testified she continues to receive ablations treatments every six months which reduces her pain by 70%. (Px. 17, p. 21). Petitioner testified that she continues to take Tizanidine, Gabapentin, Viibryd, an anti-depressant, and Tylenol. (Px. 17, p. 18, 19).

Petitioner testified she did not suffer any subsequent injuries. (Px. 17, p. 17). Petitioner testified she was in a motor vehicle accident in October of 2020 but that accident did not change her baseline pain level. (Px. 17, p. 27). Petitioner testified since her work accident, she has been unable to work, pick up her grandson, and go for walks. (Px. 17, p. 22, 24-25). Petitioner testified if she drives, she needs to laydown afterwards. (Px. 17, p. 25).

Petitioner testified she owns a company with her husband and son which involves painting and restoration. (Px. 17, p. 27). On cross examination, Petitioner testified she owns a company or companies called Extraordinary Wall Designs and Revamped by Cassie Wedell

which are still in operations. (Px. 17, p. 37). Petitioner testified she has not work in any capacity since April 18, 2016 besides returning to work for Respondent one day. (Px 17, p. 36). Petitioner denied preforming any work for Extraordinary Wall Design. (Px. 17, p. 40). Petitioner testified her businesses earned $22,662.00 in 2016, $22,923.00 in 2017, $17,231.00 in 2018, $56,260.00 in 2019 and $28.800.00 in 2020. (Px. 17, p. 37-40).

Petitioner testified she last saw Dr. Laich in 2018 or 2019 but that she did see Dr. Khan in September of 2021. (Px. 17, p. 35, 40). Petitioner admitted being involved in a motor vehicle accident in 2010 which involved a rear end collision. (Px. 17, p. 32). Petitioner testified the motor vehicle accident caused an injury to her neck and left shoulder she received physical therapy and trigger point injections. (Px. 17, p. 32). Petitioner acknowledged undergoing trigger point injections on February 4, 2016 and cervical epidural injections on March 10, 2016. (Px 17, p. 32). Petitioner also admitted to undergoing a lumbar MRI on October 13, 2011 but she doesn't know why. (Px. 17, p. 31).

Petitioner testified she was sliding the chairs on the floor up a little incline when she felt the pop in her back. (Px. 17, p. 34). Petitioner also testified that her last day of employment with Respondent was April 15, 2017. (Px. 17, p. 33).

Testimony of Grace Buzzard

Grace Buzzard testified she works for Respondent as the vice president of strategic operations and she was Petitioner's supervisor. Ms. Buzzard testified Petitioner was hired in 2014 and continued to work for Respondent until being injured on April 18, 2016. Ms. Buzzard testified Petitioner was employed as the facility manager. Ms. Buzzard testified that she was not present when Petitioner was injured but that Petitioner reported being injured after setting up chairs preparing for an event.

Ms. Buzzard testified Petitioner returned to work on November 14, 2016. Ms. Buzzard testified, on that date, Petitioner was visibly in pain. Ms. Buzzard also testified, prior to that date, she never saw Petitioner in pain. Ms. Buzzard testified Petitioner's employment ended after her short-term disability ended around April 25, 2017.

Ms. Buzzard testified she prepared Petitioner's job description. (See Rx. 6). Ms. Buzzard testified Petitioner would seldom lift anything between 21-51 pounds and an assistance would be provided for lifting over 21 pounds. Ms. Buzzard testified Petitioner would lift between 1-10 pounds and would rarely lift anything greater than 50 pounds.

Physical Therapy Final Treatment Notes

Petitioner attended physical therapy at ATI from March 14, 2018 through January 15, 2019. The progress note dated January 15, 2019 shows Petitioner underwent 78 minutes of treatment. The progress notes states "[*Petitioner] reports feeling that pain in the lumbar region has completely subsided and demonstrates good spinal mobility in segments superior to site of the fusion*.". The note further states Petitioner reports feeling that SIJ condition has deteriorated over past few months with inability to maintain correct SIJ alignment for more than an hour post treatment. At that visit, Petitioner reported 0 out of 10 pain at rest and 0 out of 10 during activity but that her SIJ pain was 6 out of 10 at its most severe. The note also states Petitioner's overall lumbar condition improved 90% but that her hip and SIJ condition has gotten worse over time. (Px 7). The discharge summary dated February 8, 2019 states *"[Petitioner] with overall improvement of lumbar stabilization and thoracic mobility to all for full activity without limitations in the lumbar and thoracic regions. Continued SIJ instability is primary residual restrictions that cause pain at activity limitations. [Petitioner] to follow-up for condition with MD and surgeon for additional treatment options. [Petitioner] has not returned phone communications from therapist regarding results MD follow up, and it to be d/c at this time* ". (Px 7).

Momentum Physical Therapy Functional Capacity Evaluation

On March 6, 2019 Petitioner underwent a functional capacity evaluation with Momentum Physical Therapy. The report states Petitioner did not demonstrate the ability to work a full 8-hour day recommends but Petitioner could work 2 hours a day at a sedentary level.

The report does not state whether the test was valid or which, if any, validity testing methods were used. The report further states "*She required moderate cueing to maintain proper body mechanics with fair follow through. The patient exhibited fair pacing and poor endurance. She also presented with moderate limitations in functional flexibility. Throughout the one day evaluation, the patient had complaints of discomfort to her neck, bac, ribs, shoulders, hands and right leg."* While at the functional capacity evaluation Petitioner completed a pain diagram listing her pain levels as 9 out of 10 and she identified the location of her pain as the lumbar spine, cervical spine, thoracic spine, left leg, neck, shoulders, upper extremities and fingertips of both hands. (Px 15).

Testimony of Dr. Daniel Laich, D.O.

Dr. Laich is a neurological surgeon specializing in the spine. (Px 1, p. 5). Dr. Laich testified he first saw Petitioner on April 28, 2016 and, at that time, Petitioner reported an onset of low back symptoms as of April 18, 2016 while moving tables and chairs as well as pushing a cart on an incline. Dr. Laich noted Petitioner's low back pain radiated into the lower extremities right greater than the left. The motor, neurological and sensory findings were normal. Dr. Laich noted a decrease range of motion in the lumbar spine. Dr. Laich reviewed the lumbar MRI dated April 26, 2016 and compared it to the lumbar MRI dated October 13, 2011. Dr. Laich testified the only differences between the MRIs involved the progression of disease with an increased signal hyperintensities at L4-5. Dr. Laich opined the change noted in the MRI was an indication of a tear or inflammation or a tear into the disc annulus. Dr. Laich testified it was just a process of degeneration continuing. (Px. 1, p. 8).

Dr. Laich diagnosed herniated nucleus pulposus in the lumbar spine and lumbar radicular syndrome. (Px. 1, p. 8). Dr. Laich opined there was a causal relationship between Petitioner's work activities on April 18, 2016 her diagnosis. (Px. 1, p. 9). Regarding the basis of his opinion Dr. Laich said "*I think history is the most important thing. And when people all of a sudden are fine, meaning clinically fine, you know, as a physician all I can do is listen to what the patient says to really figure it out because our bodies do wear out, or bodies do change, but they're designed so beautifully we don't care; we continue to move on, then all of a sudden something happens, and to her clinically it happened with that activity. When I can then relate that to imaging that I see, it all fits together for me."* (Px 1, p. 9).

Dr. Laich performed a discogram which helped identify Petitioner's situation and he performed a two-level fusion. Dr. Laich testified Petitioner did well after the surgery but developed a SI condition. Dr. Laich testified this condition is more common in females due to their anatomy.

Dr. Laich opined the need for surgery was related to Petitioner's work accident because her spine was aging and the activity of pushing and pulling the cart up the incline triggered it. Dr. Laich further opined Petitioner's SI condition was related to the surgery and/or Petitioner's work accident. (Px. 1, p. 13-15).

Dr. Laich testified he sent Petitioner to Dr. Kahn and all treatment provided by Dr. Kahn was causally related to Petitioner's work accident. (Px. 1, p. 17). Petitioner was sent to Dr. Kahn for pain injections and to decrease inflammation around the sacroiliac joint. (Px. 1, p. 15).

On cross examination, Dr. Laich testified the mechanism of Petitioner's injury caused the need for the fusion surgery and her activities at work caused Petitioner's problems which did not resolve. (Px. 1, p. 19). Dr. Laich testified he disagrees with Dr. Singh regarding that Petitioner's symptomology not correlating with any L4-5 or L5-S1 pathology. Dr. Laich testified Dr. Singh is wrong because after he took out Petitioner's discs her pain went away. Dr. Laich testified the pain Petitioner experienced post-surgery was a very different pain involving the sacroiliac. (Px. 1, p. 26).

Regarding Petitioner's ability to work, Dr. Laich testified could work if she had the opportunity to have a position where she's more directing somebody and not truly laboring. Dr. Laich further testified if Petitioner had a position directing and not laboring, she could absolutely work. (Px. 1 p. 27). Dr. Laich opined Petitioner should not return to work in her prior occupation because of the requirements to push tables or chairs. (Px. 1, p. 28).

Testimony of Dr. Mahammad Khan

Dr. Khan testified he is board certified in pain management and anesthesia. Dr. Khan testified Petitioner was treated at his office beginning in 2015 for neck pain radiating down her left arm. Dr. Khan testified when he previously treated Petitioner, she never complained of low back pain. (Px. 2, p. 4-8). Dr. Khan testified that prior to Petitioner's work accident, she received trigger point injections for the neck on January 28, 2016 and neck and left trapezius muscle on February 4, 2016 and cervical epidural injections on March 10, 2016. (Px 2, p.12).

Dr. Khan testified Petitioner was referred by a chiropractor for an SI joint injection on June 3, 2016. At that time, Petitioner reported experiencing low back pain at work on April 25, 2016 after moving a lunch table. (Px. 2, p. 11). At that time, Dr. Khan diagnosed lumbar radiculitis, lumbar facet arthropathy and myofascial pain syndrome. (Px. 2, p. 15). Dr. Khan recommended transforaminal lumbar epidural injections at L4-5 and L5-S1 and he administered a right SI joint injection on March 7, 2017.

Dr. Khan testified Petitioner received a spinal cord stimulator on May 28, 2020 and lumbar trigger point injections on September 28, 2000. (Px 1, p. 17). Dr. Khan testified the spinal cord stimulator was implanted to take care of Petitioner's low back pain. (Px. 1, p. 17).

Dr. Khan testified Petitioner will continue to need radio frequency ablations every 6 months to a year for life or until a curative treatment is found. (Px. 1, p. 19-20). Dr. Khan testified Petitioner will also require future adjustments of the spinal cord stimulator and a stimulator generator change every 10 years. (Px. 2, p. 20-21).

Dr. Khan testified he last saw Petitioner on January 18, 2021 and, at that time, Petitioner was experiencing low back pain in the left side lumbar facet area. (Px. 2, p. 18). Dr. Khan testified Petitioner was moving around good, has pain but is functioning at her last visit. (Px. 2, p. 21).

Dr. Khan opined Petitioner's work accident caused her low back pain because she was not experiencing low back pain until her work accident. (Px. 1, p. 22). Dr. Khan testified that had been treating Petitioner since 2015 and during that time, Petitioner never complained of low back pain. Dr. Khan testified the first time Petitioner mentioned low back pain was after her work accident. Dr. Khan further opined Petitioner's cervical and thoracic pain was not related to her low back pain which are different independent segments of the spine. (Px. 2, p. 23-25).

On cross examination, Dr. Khan testified he administered the left lumbar facet injections because the spinal cord stimulator doesn't take away pain at that location. (Px. 2, p. 25).

Regarding being able to return to work, Dr. Khan testified returning to work depends upon Petitioner and he always leaves that decision to the patient. (Px. 2, p. 26).

Dr. Khan testified he sent Petitioner for a functional capacity examination in December of 2019 but that he didn't recall seeing it. (Px 2, p. 27). The Arbitrator notes Dr. Khan did not testify that he adopted or agreed with the restrictions identified in the functional capacity examination.

Testimony of Dr. Kern Singh Section 12 Examiner

Dr. Kern Singh examined Petitioner pursuant to Section 12 of the Act. Dr. Singh participated in two evidence depositions which occurred on March 7, 2018 and December 6, 2018. At the first evidence deposition, Dr. Sigh testified Petitioner reported developing back pain while moving and pushing tables and chairs. (Rx 3, p. 8). Dr. Singh's examination noted normal reflexes, normal sensation, and full leg strength. Dr. Singh reviewed the MRI dated April 26, 2016 which, he said, showed slight loss of disc signal intensity at L4-5 and L5-S1 with mild facet hypertrophy at L4-5 and mild central stenosis at L4-5. (Rx. 3, p. 12).

Dr. Singh diagnosed degenerative disc disease at L4-5 with a lumbar muscular strain. (Rx. 3, p. 13). Dr. Sigh testified Petitioner had mild degenerative changes in the lumbar spine which was preexisting. Dr. Singh testified he was unable to determine any correlating radiculopathy in the L5 distribution. Dr. Singh further testified because Petitioner had a normal examination with no leg pain complaints her degenerative disc disease was just an incidental radiographic finding. (Rx. 3, p. 13).

Dr. Singh opined Petitioner sustained a soft tissue strain as a result of her work-related injury. (Rx. 3, p. 14). Dr. Singh further opined Petitioner was at MMI within 4-6 weeks after the accident and that she could return to work full duty without restrictions. (Rx. 3, p. 14). Dr. Singh also opined Petitioner's AMA impairment rating was zero. (Rx 3, p. 15-19).

On cross examination, Dr. Singh testified he was not familiar with the term lumbar radicular syndrome used by Dr. Laich. Dr. Singh acknowledged Petitioner did not report the existence of low back pain prior to her April 18, 2016 work accident. (Rx. 3, p.20).

Dr. Singh testified, again, on December 6, 2018 after reexamining Petitioner on September 27, 2018. At that visit, Petitioner reported improved back pain but that her pain was now located primarily in the hip and right ribs. (Rx. 4, p. 4).

Dr. Singh reviewed the CT scan taken on March 8, 2018 which, he said, showed a fusion cage at L4-5 and L5-S1 with lucencies around the S1 screw. (Rx. 4, p. 8). Dr. Snigh assessed a lumbar muscular strain, degenerative disc disease at L4-5 and L5-S1, status post anterior lumbar interbody fusion at L4-5 and L5-S1. (Rx. 4, p. 9).

Dr. Singh opined Petitioner sustained a soft tissue strain which resolved and no further medical treatment was warranted after his October 2016 because Petitioner reached maximum medical improvement. (Rx. 4, p. 10-11). Dr. Singh testified Petitioner's soft tissue strain resolved and did not aggravate her disc degeneration which was pre-existing. (Rx. 4, p. 11). However, Dr. Singh also opined Petitioner sustained a soft tissue strain that aggravated her disc degeneration which was pre-existing. (Rx. 4, p. 9).

Regarding the fusion, Dr. Singh testified there was a pseudoarthrosis or a non-union with the S1 screws being loose which could potentially explain Petitioner's current symptomology. (Rx. 4, p. 10). Dr. Singh testified Petitioner's current intermittent buttock and low back pain is explained by the loosened or non-fused L5-S1 segment. Dr. Singh testified Petitioner's hip or

joint pain involves the L5 nerve root associated with the loosening of the S1 pedicle screw. (Rx. 4, p. 13).

On cross-examination, Dr. Singh testified he found no evidence of symptom magnification and he acknowledged after the fusion surgery Petitioner stopped taking narcotics. (Rx. 4, p. 16). Dr. Singh also acknowledged the purpose of the fusion surgery was to improve Petitioner's pain symptoms, improve her quality of life and eliminate the use of medications which occurred after the surgery but, he said, that doesn't make sense anatomically or objectively. (Rx. 4, p. 16).

Testimony of Dr. Kenneth Candido Section 12 Examiner

Dr. Kenneth Candido testified he is board-certified in both anesthesiologist and pain medicine. (Rx. 5, p. 5). Dr. Candido examined Petitioner on August 20, 2019. Dr. Candido testified Petitioner reported a history of low back pain and that she underwent a microdiscectomy prior to her April 18, 2018 accident. Dr. Candido testified Petitioner reported her April 18, 2016 injury was new and at a different level than before. Petitioner said she injured her low back while moving tables which on an incline. At that time, Petitioner said because of the onset of pain her husband picked her up from work and, after a few days, her chiropractor recommended an MRI. (Rx. 5, p. 10-12).

Dr. Candido testified his examination noted a positive straight leg test on the right, no radiation of pain, tenderness to palpation over the right sacroiliac joint, positive Faber Test on the right, decreased lumbar flexion and right quadriceps strength. (Rx. 5, p. 14-15). Dr. Candido testified Petitioner had a pre-existing condition of spondylosis but she sustained a lumbar sprain as a result of her work accident. (Rx. 5, p. 17).

Dr. Candido opined Petitioner's SI joint injections could be considered related to managing pain of the lumbar sprain and, therefore, procedures involving the sacroiliac joint could be considered related to Petitioner's work injury lifting tables. (Rx. 5, p. 18).

Dr. Candido testified Petitioner reached maximum medical improvement and no additional treatment was causally related to her April 18, 2016 work accident. (Rx. 5, p. 19). Dr. Candido opined Petitioner reached maximum medical improvement on the date of the April 24, 2017 MRI because the MRI showed no central or foraminal stenosis related to Petitioner's herniated discs which were pre-existing. (Rx. 5, p. 20). Dr. Candido testified Petitioner could

return to work full duty without any restrictions since his examination noted no sensory or motor deficits or overt weakness or range of motion limitations. (Rx. 5, p. 20).

Dr. Candido opined Petitioner does not need any further injection treatment because her conditions are preexisting and involve chronic spondylosis conditions. Dr. Candido agreed that radiofrequency oblations have benefits for facet joint pain, degenerative capsule and facet joint pain along the medical branch nerves but those conditions are not related to Petitioner' work accident. (Rx. 5, p. 21).

On cross-examination, Dr. Candido acknowledged Petitioner had no lumbar back pain following her prior surgery with Dr. Mather and he did not find any medical records showing Petitioner had continuing low back pain or SI joint pain for the five years prior to her work accident. Dr. Candido agreed Petitioner's low back complaints started after her work accident and the onset of her symptoms was her 2016 work accident. (Rx. 5, p. 26). Dr. Candido also agreed the absence of radicular pain could be due to fusion surgery Petitioner underwent. (Rx. 5, p. 35). Dr. Candido further testified the positive Faber test shows stress applied to the sacroiliac joint and is consistent with Petitioner's sacroiliac joint pain. (Rx. 5, p. 37).

Testimony of Joseph Castronova Physical Therapist Retained by Respondent

Joseph Castronova testified he was retained to provide a functional capacity evaluation analysis.[2] Mr. Castronova did not examine or interview Petitioner. (Rx.8, p. 39).

Mr. Castronova testified he reviewed the functional capacity evaluation (FCE) prepared by Momentum Physical Therapy and, he believes, the report lacks any validity criteria, such as a heart rate response to determine maximum effort, and a physical examination. (Rx. 8, p. 15-16). Mr. Castronova testified the FCE was not based upon any evidence and appeared to be based upon what Petitioner felt like performing that day. (Rx. 8, p. 24).

Mr. Castronova opined the FCE had no objective or scientific basis for determining Petitioner was only capable to work two hours a day. (Rx. 8, p. 26). Mr. Castronova also opined the FCE report did not conform to industry standards, was based upon subjective reports of pain,

[2] Petitioner moved to strike the entire testimony of Mr. Castronova based upon the Workers' Compensation system not allowing common law expert witness practices and because Mr. Castronova was not a doctor who could be eligible to testify pursuant to Section 12 of the Act or providing vocational services pursuant to Section 8 of the Act. (Rx 8m p.6). The Arbitrator notes the Act doesn't specifically permit nor prohibit a party from retaining the services of an experts to critique functional capacity examinations. The Arbitrator overruled Petitioner's objection and finds the issue involves the weight of the opinions rather than the admissibility of the opinions.

had no objective testing, lacked a specific and detailed physiological report nor contained sufficient functional testing to determine Petitioner's work abilities. (Rx. 8, p. 27).

Mr. Castronova opined Petitioner could work at the sedentary demand level. (Px. 8, p. 26). However, Mr. Castronova admitted he hadn't performed any type of evaluation or interview or site survey or made any personal observations of Petitioner's performance during her FCE to make valid conclusions of her work capacities.

Testimony of Jacqueline Bethell, Vocational Consultant Retained by Respondent

Ms. Bethell is a rehabilitation consultant hired by Respondent to provide vocational rehabilitation opinions in this case.[3] (Rx 7, p.8). Ms. Bethell did not interview Petitioner because she was not providing Petitioner any vocational services. (Rx. 7, p. 38). Ms. Bethell opined Petitioner could return to her prior position or as an office manager and suffered no wage loss. (Rx. 7, p. 15).

Ms. Bethell testified she based her opinions upon the FCE critique and Dr. Candido's opinion that Petitioner could return to work in her prior position. (Rx. 7, p. 15, 25). Ms. Bethell acknowledged she did not use any treating physicians' records to develop her opinions. (Rx. 7, p. 28-29). Ms. Bethell testified she relied upon the opinions of Mr. Castronova who she acknowledged never tested Petitioner's physical capabilities and that his report was contradictory. (Rx. 7, p. 31-32). Ms. Bethell admitted when she performs vocational services, she reviews the entire record but, in this case, she relied upon primarily upon the FCE critique and the Section 12 examiners. (Rx. 7, p. 25, 26).

Testimony of Kari Stafseth, Rehabilitation Counsel Retained by Petitioner

Ms. Stafseth is a rehabilitation counselor retained by Petitioner. Ms. Stafseth testified Petitioner was 47 years old with a GED who attended one year of junior college and obtained a degree from a decorative finishing school. Ms. Stafseth noted that Petitioner also performed in-home day care services and owned and operated her own painting business. (Px. 3, p. 11-13).

Ms. Stafseth noted that Petitioner was capable of working at a sedentary level at a maximum of two hours a day. (Px. 3, p. 14). Ms. Stafseth opined Petitioner lost access to her preinjury job as an office facilities manager and event planner because her job's physical

[3] Petitioner moved to strike the testimony of Ms. Bethell because she never provided rehabilitation services to Petitioner and she was hired to prepare forensic vocational opinions not contemplated under the Act. (Px. 7, p. 5-7). The Arbitrator overruled Petitioner's objection finding the issue involves the weight of the opinions rather than the admissibility of the opinions.

capabilities exceeded the FCE restrictions. (Px. 3, p. 16). Ms. Stafseth further opined Petitioner faces complicating factors having the ability to return to a viable and stable labor market with a two hour a day work limitation. Ms. Stafseth testified the FCE work restrictions of working not more than two hours a day was a huge limitation upon finding someone to a viable job. (Px. 3, p. 17-18).

On cross examination, Ms. Stafseth acknowledged the only treatment record she relied upon was the FCE and that she did not review Petitioner's formal job description. (Px. 3, p. 22).

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)

With respect to "F" Is Petitioner's current condition of ill-being causally related to the injury, the Arbitrator finds as follows:

In pre-existing condition cases, recovery will depend on the employee's ability to show that a work-related accidental injury aggravated or accelerated the pre-existing disease such that the employee's current condition of ill-being can be said to have been causally-connected to the work-related injury and not simply the result of a normal degenerative process of a pre-existing condition. *Caterpillar Tractor Co. v. Industrial Comm'n,* 92 Ill.2d 30, 36-37. When a worker's physical structures, diseased or not, give way under the stress of their usual tasks, the law views it as an accident arising out of and in the course of employment. *General Electric Co. v. Industrial Comm'n,* 89 Ill.2d 432, 60 Ill.Dec. 629, 433 N.E.2d 671 (1982). 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). Employers are to take their employees as they find them *A.C.&S. v. Industrial Commission,* 710 N.E.2d 8347 (Ill. App. 1st Dist. 1999) citing *General Electric Co. v. Industrial Commission,* 433 N.E.2d 671, 672 (1982). Causal connection between work duties and an injured condition may be established by a claim of events including claimant's ability to perform duties before the date of an accident and inability to perform same duties following date of accident. *Darling v. Industrial Commission*, 176 Ill.App.3d 186, 530 N.E.2d 1135 (1st Dist. 1988) "When the claimant's version of the accident is uncontradicted and

his testimony is unimpeached, his recital of the facts surrounding the accident may be sufficient to sustain an award. *International Harvester v. Industrial Comm'n*, 93 Ill.2d 59, 63-64 (1982).

The Arbitrator carefully reviewed and considered all medical evidence along with all the testimony. The Arbitrator finds Petitioner proved by the preponderance of the credible evidence that her lumbar spine and SI joint condition are causally related to her April 18, 2016 work accident.

Petitioner underwent a lumbar microdiscectomy in 2001 which resolved her lumbar-related complaints she had at that time. There is no evidence that Petitioner was experiencing any lumbar spine or SI joint symptoms prior to her April 18, 2016 work accident. Prior to her work accident, Petitioner received cervical spine injections with Dr. Khan who testified that Petitioner never reported any lumbar spine complaints until her April 18, 2016 work accident. Petitioner was able to perform her full work duties prior to her April 18, 2016 work accident.

Dr. Laich saw Petitioner within a few days of her work accident and he opined Petitioner's lumbar spine and SI joint conditions were related to Petitioner's April 18, 2016 work accident. Dr. Laich testified the fusion surgery significantly resolved Petitioner's lumbar complaints but her SI joint continued to be symptomatic. The spinal cord stimulator was ultimately installed which provided significant relief of Petitioner's residual low back complaints but the stimulator doesn't resolve all the pain areas necessitating the pain management treatment provided by Dr. Khan.

Dr. Laich causally related Petitioner's April 18, 2016 work accident to the need for treatment at the L4-5 and SI levels as well as to the SI joint. (Px 1 p.9, 14-15). Dr. Laich diagnosed the condition as a herniated nucleus pulposus of the lumbar spine and lumbar radicular syndrome. (Px 1 p.8). Dr. Laich believed there was a causal relationship between the diagnoses and Petitioner's April 18, 2016 work accident based, in part, upon the appearance of the symptoms after Petitioner's work accident. (Px 1, p.9). Dr. Laich testified the imaging supported causal connection. (Px 1, p.9).

Petitioner responded well to the surgery even though she continued to experience problems with the SI joint. (Px 1, p.13). Dr. Laich related the symptomatic SI joint issue to Petitioner's work injury. (Px 1, p.14-15). Dr. Laich released Petitioner to Dr. Khan for chronic pain management. Dr. Khan also related Petitioner's lumbar spine and SI joint conditions to her April 18, 2016 work accident. (Px 2, p.22). The Arbitrator also notes that Dr. Candido, who

performed a Section 12 examination testified the SI injections could be considered related to managing pain of the lumbar sprain and the sacroiliac joint treatment could also be considered related to Petitioner's work accident of lifting tables. (Rx. 5, p. 18).

The Arbitrator find the opinions of Drs. Laich and Kahn more persuasive than the opinions of Dr. Singh regarding causation. The Arbitrator notes Dr. Singh acknowledged the onset of Petitioner's lumbar spine and SI symptoms was her April 18, 2016 accident but he failed to sufficiently identify when the lumbar sprain resolved and Petitioner returned to her pre-accident condition. Petitioner continued to experience lumbar spine symptoms from her April 18, 2016 work accident until undergoing the fusion surgery. Rather than identifying any medical records demonstrating Petitioner returned to her pre-accident condition, Dr. Singh surmised that Petitioner's lumbar spine condition resolved within 4-6 weeks of the accident. The Arbitrator finds Dr. Singh's causation opinion 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. Retirement Board*, 318 Ill.App.3d 507, 514-15 (First. Dist. 2000).

With respect to issue "J" whether the medical services reasonable and necessary and has Respondent paid all appropriate charges, 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 treatment based upon causation and not that the treatment was unnecessary or reasonable. Given the Arbitrator's finding on causation, the Arbitrator further finds Petitioner proved by the preponderance of the evidence the medical treatment involving Petitioner's lumbar spine and SI joint is causally related to her work accident and necessary to diagnose, relieve or cure Petitioner from the effects of her injury. As such, Respondent shall pay Petitioner the medical expenses related to Petitioner's lumbar spine and SI joint conditions, as identified in Px #18, pursuant to Sections 8 and 8.2 of the Act and subject to the fee schedule. Respondent is not liable for medical treatment involving the cervical or thoracic spine nor medical treatment provided to any other body part other than the

treatment involving the lumbar spine and SI joint. Respondent shall hold Petitioner harmless for any of the medical bills Respondent paid and claims a credit pursuant to Section 8(j) of the Act.

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 claims to be entitled to TTD benefits from April 19, 2016 through April 23, 2021 and entitled to PTD benefits after April 24, 2021. The Arbitrator finds Petitioner proved by the preponderance of the evidence that she was entitled to TTD benefits from April 19, 2016 through Mach 6, 2019 pursuant to Section 8(b) of the Act. As such, Respondent shall Petitioner TTD benefits from April 19, 2016 through March 6, 2019, pursuant to Section 8(b) of the Act.

The Arbitrator finds the Petitioner's condition stabilized as of March 6, 2019, the date of Petitioner's FCE. The Arbitrator also finds the opinion of Dr. Singh regarding Petitioner's work restrictions persuasive. Dr. Singh originally opined Petitioner could work light duty with no lifting, pushing, and pulling more than 20 pounds. (Rx 3, Dep. Ex. 2). Dr. Singh later opined Petitioner could return to work full duty based upon Petitioner's condition not being work related. The Arbitrator finds Dr. Singh's light duty restrictions consistent with the final ATI report and Drs. Kahn and Laich who believe Petitioner could return to work.

The Arbitrator notes although Dr. Khan sent Petitioner for the FCE, he did not adapt the work restrictions identified in the FCE. Neither Drs. Khan nor Laich adopted the work restrictions in the Momentum FCE. The Arbitrator does not find the work limitations contained in the FCE persuasive. The Arbitrator notes Momentum Physical Therapy fails to indicate whether Petitioner

set forth a valid effort or that any validity testing occurred. The Report only states Petitioner exhibited fair pacing and poor endurance and complained of pain in her back, ribs, shoulders, hands, and right leg throughout the evaluation. (Px. 15). At the FCE, Petitioner reported pain levels of 9 out of 10 and that she was experiencing burning pain in the lumbar spine, cervical spine, thoracic spine, left leg, shoulders and down both upper extremities. (Px. 15).

The Arbitrator finds Petitioner's complaints and effort during the FCE were inconsistent with the final ATI physical therapy records. On January 8, 2019 Petitioner returned to ATI reporting her lumbar pain completely subsided. On that date, Petitioner rated her lumbar pain as 0 out of 10 at rest and as 0 out of 10 during activity. (Px 7). The physical therapist indicated Petitioner demonstrated good spine mobility. On January 18, 2018, Petitioner returned to Dr. Khan who noted that Petitioner was moving around good was experiencing some pain but was functioning. (Px 2, p. 21).

Dr. Khan testified Petitioner could work depending upon whether Petitioner wanted to work. (Px 2, p. 21). Dr. Khan testified he didn't recall ever seeing the FCE but that he always leaves it up to the patient regarding whether to return to work. (Px. 2, p. 26-27). Dr. Laich testified could work if she had the opportunity to have a position where she's more directing somebody and not truly laboring. Dr. Laich further testified if Petitioner had a position directing and not laboring, she could absolutely work. (Px. 1 p. 27). Dr. Laich opined Petitioner should not return to work in her prior occupation because of the requirements to push tables or chairs. (Px. 1, p. 28).

Petitioner testified she owns two companies (*i.e*. Extraordinary wall Designs and Revamped by Cassie Wedell) which are still operating. (Px 1 p. 37). Petitioner testified her business reported income in each year from 2016 through 2020. (Px. 1, p. 38). Petitioner testified she has not worked since 2016 and she denied providing any services for the businesses she owned. The Arbitrator does not afford much weight to Petitioner's testimony regarding not performing any services for the design business she owns given that she attended design school and her name is incorporated into the business name. It is widely known that customers retain the services of designers based upon the designer's unique work product and representation. The Arbitrator finds it reasonable to infer that Petitioner continues to perform services for her design businesses because those businesses continue exist and earn income.

With Respect to Issue "L" the nature and extent of Petitioner's Injury the Arbitrator finds as follows:

Section 8.lb of the Illinois Workers' Compensation Act ("Act") addresses the factors that must be considered in determining the extent of permanent partial disability for accidents occurring on or after September 1, 2011. 820 ILCS 305/8.1b (LEXIS 2011). Specifically, Section 8.1b states:

> For accidental injuries that occur on or after September 1, 2011, permanent partial disability shall be established using the following criteria:
>
> (a) A physician licensed to practice medicine in all of its branches preparing a permanent partial disability impairment report shall report the level of impairment in writing. The report shall include an evaluation of medically defined and professionally appropriate measurements of impairment that include but are not limited to: loss of range of motion; loss of strength; measured atrophy of tissue mass consistent with the injury; and any other measurements that establish the nature and extent of the impairment. The most current edition of the American Medical Association's "Guides to the Evaluation of Permanent Impairment" shall be used by the physician in determining the level of impairment.
> (b) In determining the level of permanent partial disability, the Commission shall base its determination on the following factors:
>
> (i) the reported level of impairment pursuant to subsection (a);
> (ii) the occupation of the injured employee;
> (iii) the age of the employee at the time of the injury;
> (iv) the employee's future earning capacity; and
> (v) evidence of disability corroborated by the treating medical records.
>
> No single enumerated factor shall be the sole determinant of disability. In determining the level of disability, the relevance and weight of any factors used in addition to the level of impairment as reported by the physician must be explained in a written order.

Id.

Considering these factors in light of the evidence submitted at trial, the Arbitrator addresses the factors delineated in the Act for determining permanent partial disability.

With regard to subsection (i) of §8.1b(b), the Arbitrator notes Dr. Singh opined Petitioner's AMA rating was zero. As such, the Arbitrator gives this factor some weight in evaluating permanent partial disability.

With regard to subsection (ii) of §8.1b(b), Petitioner's occupation. Petitioner was employed as an office manager and events manager. The position does not involve significant

physical labor but Petitioner was unable to return to her prior position. As such, the Arbitrator gives this factor some weight in evaluation permanent partial disability.

With regard to subsection (iii) of §8.1b(b), Petitioner's age at the time of his injury. Petitioner was 42 years of age at the time of her April 18, 2016 injury. Petitioner is a younger individual who must live and work with her disability for the remainder of her work life. As such, the Arbitrator gives this factor greater weight in evaluating permanent partial disability. See *Jones v. Southwest Airlines*, 16 I.W.C.C. 0137 (2016) (wherein the Commission concluded that greater weight should have been given to the fact Petitioner was younger [46 years of age] and would have to work with his disability for an extended period of time).

With regard to subsection (iv) of §8.1b(b), the future earnings capacity. Petitioner testified she has not worked since her injury. The Arbitrator notes that Petitioner owned businesses that earned income but the income earned is less than what she earned while working for Respondent. Given Petitioner's light duty restrictions, her employment opportunities are limited. As such, the Arbitrator gives this factor some weight in evaluating permanent partial disability.

With regard to subsection (v) of §8.1b(b), evidence of disability corroborated by the medical records. The Arbitrator finds evidence of disability is corroborated by the medical records. The medical records indicate Petitioner continues to experience pain and she continues to return for radiofrequency ablations treatments. Petitioner underwent a spinal fusion surgery and had a spinal cord stimulator implanted. As such, the Arbitrator gives this factor greater weight in evaluating permeant partial disability.

Based upon the foregoing evidence and factors, the Arbitrator finds that Petitioner sustained serious and permanent injuries that resulted in the 40% loss of Petitioner's body resulting in a loss of occupation or trade, pursuant to Section 8(d)(2) of the Act.

With regards to Issue "M", Penalties the Arbitrator finds as follows:

Petitioner seeks penalties pursuant to Sections 19(k), 19(l) and 16 of the Act. Petitioner claims Respondent underpaid TTD benefits paying the sum of $666.66 per week rather than the correct amount of $775.32. The parties stipulated Petitioner average weekly wage was $1,162.98. As such, the correct TTD rate was $775.32 per week. Petitioner was underpaid during the period TTD benefits were paid. Under 820 ILCS 305/19(l) penalties are awarded when the employer cannot show that its delay in payment was objectively reasonable. See *R.D. Masonry v IC*, 215 Ill.2d 397, 409 (2005). Respondent offers no objectively reasonable

explanation as to why they underpaid TTD benefits. As such, Petitioner is awarded penalties pursuant to Section 19(l) of the Act in the amount of $10,000.00.

Petitioner also seeks penalties pursuant to Sections 19(k) and 16 of the Act claiming purchasing an IME report does not insulate an employer from penalties and fees. An IME might provide an objectively sound basis to justify withholding of benefits. *Miller v IC*, 255 Ill.App.3d 974, 979 (1993). However, the test is whether the employer's conduct in relying on the medical opinion to contest liability is reasonable under the circumstances. *Id.* 820 ILCS 305/19(k) penalties demand a higher standard of misconduct, an "unreasonable or vexatious" delay or an "intentional underpayment of compensation." *Id*. 19(k) penalties are "intended to address the situation where there is not only a delay, but the delay is deliberate or the result of bad faith or improper purpose." *McMahan v. IC*, 183 Ill.2d 499, 515 (1998). Respondent relied upon the opinions of qualified medical physicians and vocational consultants in its denial of benefits after November 13, 2016. As such, penalties pursuant to Sections 16 and 16(K) are denied.

With regards to Issue "N" whether Respondent is due any credit, the Arbitrator finds as follows:

Respondent seeks a credit of $11,333.22 for TTD benefits paid and $24,077.32 for medical bills paid by Aetna paid pursuant to Section 8(j) of the Act. Aetna was Respondent's group insurance company. The Arbitrator finds Respondent is entitled to a credit of $11,333.22 for TTD benefits paid and a credit of $24,077.32 for medical bills by Aetna pursuant to Section 8(j) of the Act.

With Regard to Issue "O", Whether Petitioner is Permanently Totally Disabled and Whether Petitioner is entitled to prospective medical care, the Arbitrator finds as follows:

As stated above the Arbitrator found Petitioner sustained a loss of trade and she was not permanently and totally disabled as a result of her work injury.

As stated above, the Arbitrator does not find the work restrictions contained in the Momentum Physical Therapy functional capacity examination persuasive. The Arbitrator also does not find the opinions of Ms. Stafseth, Petitioner's rehabilitation counselor persuasive because she relied upon the two-hour day sedentary work restrictions issued by Momentum Physical Therapy.

The Arbitrator gives no weight to the opinions of Ms. Bethell, who was retained by Respondent to rebut the opinions of Petitioner's rehabilitation counselor. Ms. Bethell testified she based her opinions upon the FCE critique, authored by Mr. Castronova, and the Section 12 examiners. (Rx. 7, p. 15, 25). Ms. Bethell testified when she performs vocational rehabilitation services, she reviews the whole record. (Rx. 7, 26). But in this case, Ms. Bethell relied only upon selective records favorable to Respondent and failed to provide a review of records as she would when performing vocational rehabilitation services. In addition, Ms. Bethell relied upon the opinions of Mr. Castronova whose opinions she acknowledged were contradictory. As such, the Arbitrator affords no weight to her opinions in this case.

Likewise, the Arbitrator affords no wight to the opinions of Mr. Castronova, who was retained to critique the FCE conducted by Momentum Physical Therapy. Mr. Castronova opined the work restrictions outlined in the Momentum FCE was not reliable due to the lack of standardized validity testing, lack of an examination, lack of observations supporting Petitioner's lifting abilities and lack of validity testing. Despite not having any of the information he claims was missing in the Momentum FCE, Ms. Castronova opined could work at a sedentary demand level. After criticizing the Momentum FCE, Mr. Castronova provided opinions regarding Petitioner's work capabilities with far less information than the therapist from Momentum.

Regarding Petitioner's request for ongoing pain management, the Arbitrator finds Petitioner is seeking prospective medical care which is beyond the scope of this hearing. Petitioner was not found to be totally and permanently disabled nor did this case proceed pursuant to Section 19(b) and 8(a) of the Act. The Arbitrator notes Dr. Khan did not opine that any current treatment was recommended at this time. Dr. Khan testified only to future medical treatment Petitioner may need such as injections or maintaining or replacing the spinal cord stimulator. Those are issues can be decided at a later time after those treatments are prescribed and Act provides the means for Petitioner to seek approval for future prescribed treatments.

By: /s/ *Frank J. Soto* August 25, 2022
Arbitrator Date

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	20WC025226
Case Name	Kevin Thien v. Hamilton County Coal
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b) Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	23IWCC0402
Number of Pages of Decision	24
Decision Issued By	Kathryn Doerries, Commissioner

Petitioner Attorney	James Keefe Jr., Ron Coffel
Respondent Attorney	Kevin L Mechler, D Brian Smith

DATE FILED: 9/11/2023

/s/ Kathryn Doerries, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF)
JEFFERSON

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

KEVIN THIEN,

Petitioner,

vs. NO: 20 WC 25226

HAMILTON COUNTY COAL,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b)/§8(a) having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of accident, causal connection, temporary total disability, 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 Comm'n*, 78 Ill.2d 327, 399 N.E.2d 1322, 35 Ill.Dec. 794 (1980).

The Commission affirms the findings of accident, causal connection, temporary total disability, and medical expenses, however, finds the award of a three-level cervical disc replacement surgery is premature at this time in light of the fact that Petitioner is working full-duty, and he has not exhausted conservative care. Further, Petitioner's treating doctor, Dr. Gornet, opined that another cervical MRI is warranted. Therefore, the Commission vacates the award of prospective medical in the form of a three-level cervical disc replacement, instead, awarding prospective treatment including a new cervical MRI recommended by Dr. Gornet (PX7, 15) and additional conservative medical treatment at this time as recommended by Dr.

Gornet. Therefore, the Commission strikes the last paragraph under the combined sections "Issues (J) and (K)" in the Arbitrator's Decision, and substitutes the following.

With respect to prospective medical treatment, the Commission notes that Dr. Gornet began treating Petitioner for his cervical issue on November 19, 2020. Petitioner underwent a same day MRI, and the Impression, authored by radiologist Dr. Matthew Ruyle, showed bilateral C5-6, right sided C3-4, and C4-5 lateral recess-foraminal protrusions with mild facet arthropathy; mild to moderate foraminal stenosis present at all three levels, but no central canal stenosis. (PX 9, T. 291-292). Dr. Gornet testified that, in his opinion, the MRI showed a low level herniation, C3-4 right, and some pathology at C3-4, 4-5 and 5-6 and some foraminal narrowing C5-6 right and "that was where he would start, with an injection there." (PX7, 9-10) Dr. Gornet testified that Dr. Ruyle contacted him, and advised he felt there was a "potentially extruded fragment, C6-7" that Dr. Gornet did not mention or see and that was not in the radiologist's report. (PX7, 10-11, 30) Dr. Gornet testified that based upon Dr. Ruyle's advice, he set Petitioner up for injections not only at C5-6 but also at C6-7. He also placed Petitioner off work on November 19, 2020. (PX7, 11) A right-sided epidural was performed at C5-6 on December 8, 2020. *Id.* Petitioner had a second injection at C6-7 on December 22, 2020, after reported benefit from the first injection. (PX7 11-12)

At deposition, Dr. Gornet testified that at the time, "My hope is that with the improvement, we may be able to cure and relieve the effects of his injury without doing surgery, but only time would tell." (PX 7, 11-12). Dr. Gornet further testified that the reported benefit from the first injection gave him some confidence they were on the right track of the problem. (PX7, 12) A CT scan was also performed at the December 21, 2020, office visit. Dr. Gornet testified he thought that Petitioner's MRI showed some foraminal stenosis and some facet encroachment as well as disc pathology and the purpose of the CT was to "further clarify that, how much was bony related from the facet joint versus a disc."

Petitioner contacted Dr. Gornet's office on January 7, 2021, and reported that he had found a job he felt he could perform as a heavy equipment operator. Dr. Gornet released Petitioner to work full duty, no restrictions, beginning January 11, 2021. (TPX7, 13)

Dr. Gornet testified he did not see Petitioner again until May 24, 2021. Dr Gornet testified that there was a typographical error in his office note and that he was still discussing the possibility of an extruded fragment at C6-7. From his standpoint, if Petitioner's symptoms continued, surgery would be recommended. At that time Dr. Gornet recommended a repeat MRI to look critically at those areas. (PX7, 14-15) Based upon the first MRI, Dr. Gornet opined that Petitioner needed treatment at C3-4, C4-5, and C5-6 for his predominant right-sided symptoms, and "there was this discussion of a free fragment C6-7." (PX 7, 14-15) Petitioner was allowed to continue full duty at his new position. (PX7, 15)

Dr. Gornet saw Petitioner on August 26, 2021, and Petitioner's symptoms were again primarily neck pain. Dr. Gornet testified that was critically important as he believed Petitioner's

neck pain was coming from several levels. (PX7, 15-16) Dr. Gornet further testified "his right-sided trapezius pain is probably more C3-4, but shoulder and arm are probably 4-5 and 5-6." (PX 7, 16). Dr. Gornet noted that Petitioner still had some objective weakness on the biceps, wrist dorsiflexion, and volar flexion, which had not really changed since the first visit. *Id.* Dr. Gornet again recommended treatment to the 3 levels (C3-4, C4-5, C5-6), but he wanted a new MRI scan to clarify pathology at the C6-7 level. Dr. Gornet noted Petitioner had bicep weakness on the right noted as 4 out of 5 that correlated to the C5-6 level finding on the first MRI. *Id.*

Dr. Gornet testified that Petitioner had a temporary response from the injections, which had been enough to get him back to employment. (PX7, 17) Dr. Gornet further testified that future treatment was cervical disc replacement surgery, however, before moving forward with the surgery he wanted a repeat MRI scan of the cervical spine to further clarify any progression of the disease process and pathology. He noted that logically the C6-7 level would have to be incorporated if that was an issue. (PX 7, 17-18)

Dr. Gornet opined within a reasonable degree of medical and surgical certainty, the proposed treatment to the cervical spine would allow Petitioner to have the best possible result and get back to full duty work with no restrictions. (PX7, 19) The Commission notes, however, that at the time of hearing, Petitioner was already working full-duty with no restrictions. Dr. Gornet further testified when asked about symptom magnification, that "Petitioner responded to the injections by his own statements. He went back to work." (PX7, 20)

On cross-examination, Dr. Gornet testified that, "in large part" the decision to release Petitioner to full duty work on January 11, 2021, was based on his response to the two epidural steroid injections that he had. (PX7, 26) Dr. Gornet opined that Petitioner did not need physical therapy for his neck before going to surgery, characterizing it from a "cost benefit analysis" "probably not worthwhile." Asked again if he saw no need to refer Petitioner to physical therapy, Dr. Gornet responded that he did not think it would provide significant benefit versus the cost, and he did not believe it would provide long term benefit, and "from a medical standpoint, I think it's a waste of time and money."(PX7, 33-34) Dr. Gornet conceded that he did not have any other information in his notes of May 2021 or August 2021 describing the specifics of what Petitioner was doing in his job other than "returning to a heavy equipment operator" that was referenced in the January note. (PX7, 37-38)

Dr. Zelby testified at deposition regarding his Section 12 examination of Petitioner on June 6, 2021. (RX2) Dr. Zelby testified that there is no reasonable expectation that a three-level cervical disc replacement surgery would improve Petitioner's spinal condition. He further testified that there "are no devices currently available in this county that have three-level approval because they have no proven benefit." (RX2, 7)

As part of his examination, Dr. Zelby testified that he reviewed records and took a verbal history from Petitioner. (Rx2, 8) Petitioner reported he had been sent to a neck specialist and had undergone two ESI injections to his neck. (RX2, 9) Petitioner reported the injections had helped

for a couple of weeks and then the symptoms returned. Dr. Zelby noted that Petitioner reported he was unsure what exacerbated the headaches or arm symptoms and indicated the symptoms were pretty much the same; nothing had provided relief. (RX 2, 10)

Dr. Zelby examined Petitioner and found the cranial exam and speech exam to be normal. Dr. Zelby found Waddell's signs positive for report of non-anatomic sensory findings and diminished sensation in the entire right upper extremity. Dr. Zelby stated that there was no condition in the brain or spine that can cause that reported finding in the sensory exam. (RX 2, 13)

Dr. Zelby had reviewed the diagnostic studies and opined that the cervical x-ray showed some mild degenerative changes and no evidence of instability. (RX2, 13-14) Dr. Zelby testified that the cervical CT scan from December 21, 2020, showed mild degenerative changes, but no high-grade bony stenosis. He explained that the degree of stenosis is better assessed on MRI and his review of the November 19, 2020, MRI scan showed mild degenerative changes throughout. Dr. Zelby opined there was no significant canal compromise and no neural impingement. At most there was mild to moderate foraminal stenosis. He found no meaningful narrowing of the spinal canal and no impingement on the spinal cord. (RX 2, 14)

Based upon his review of the treating medical records, Dr. Zelby noted that Dr. Gornet had recommended a cervical epidural injection and CT scan of the cervical spine. Petitioner had reported some improvement following the epidural injection and Dr. Gornet recommended a second injection. (RX 2, 20)

Dr. Zelby's diagnosis of Petitioner's condition was mild cervical spondylosis without myelopathy or radiculopathy. (RX2, 24) Dr. Zelby further opined that based on obvious disparity, the subjective findings seemed like an exaggeration based on the objective spinal condition. Dr. Zelby stated that, "there was no reason to pursue spinal injections since Mr. Thien had no condition in his spine taken in context of his symptoms, findings on exam and findings on EMG that would be treated with injections." (RX 2, 25-26) Dr. Zelby's recommendation for treatment was "a diligent self-directed home exercise program on a daily basis both as a mainstay for long-term control of his symptoms and for the general health of his spine." (RX2, 26) Dr. Zelby also suggested that Petitioner "be advised of the deleterious effect that smoking has on the spine and the nervous system and that he should be encouraged to stop smoking as well." *Id.*

The Commission finds that the evidence shows that Petitioner received some short-term benefit from the cervical injections supporting Dr. Gornet's opinions of the objective findings on the initial MRI. However, the ESIs were only provided at the C5-6 and C6-7 levels. There was no injection performed at the C3-4 levels and C4-5 levels to confirm if those levels were contributory pain generators or if Petitioner might get additional relief from his symptoms. Further, the Commission finds that Dr. Zelby's opinion regarding a home exercise program and smoking cessation have merit. Petitioner had no physical therapy to address his cervical

condition. Dr. Gornet's opinion that physical therapy would be a "waste of money" is speculative. "A medical expert witness may not base his opinion on guess, conjecture, or speculation. [Citation omitted]." *Soto v. Gaytan*, 313 Ill. App. 3d 137, 146, 728 N.E.2d 1126 (1999). The Commission finds that physical therapy could be potentially cost and medically effective especially in light of Dr. Zelby's observation that a home exercise program would be beneficial to Petitioner.

The Commission, in relying on Dr. Gornet's opinions, finds that Petitioner had not yet reached MMI. However, the Commission finds it is significant that Petitioner was released to return to work as a heavy equipment operator and has been working full duty with no restrictions for over a year at the time of the arbitration hearing. Petitioner had obtained a job at FCS Lewis & Clark starting as a heavy equipment operator. Petitioner applied for that labor position on December 11, 2020, and he indicated on an "Applicant's Statement and Agreement" that he was able to lift 75-pounds without accommodations. (RX5) The Commission acknowledges that Petitioner testified in that position he did no heavy lifting or overhead work and that Petitioner obtained a supervisory position at Lewis & Clark. However, the Commission further notes Petitioner viewed Respondent's RX 8 photos showing Petitioner doing heavy lifting activities. Petitioner testified the weights of the items he lifted in the photos weighed between 20 to 55 pounds.

The Commission finds that Petitioner has not sustained his burden of proof showing that a three-level disc replacement is reasonable and necessary at this time as Petitioner is working full unrestricted duty. Dr. Gornet's testimony and records establish that conservative treatment has not yet been exhausted and obtaining an updated MRI would also allow for Dr. Gornet to make further treatment recommendations. Thus, an order awarding a prospective surgery is premature at best.

Therefore, the Commission vacates the award of prospective medical for the three-level cervical disc replacement surgery. The Commission modifies the decision to award prospective medical expenses to include an MRI and appropriate conservative treatment i.e. physical therapy and potentially injections to the cervical levels that Petitioner may need depending upon the MRI findings.

All else is affirmed and adopted.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Arbitrator's Decision filed on May 4, 2022, is hereby modified for the reasons stated herein, and otherwise affirmed and adopted.

IT IS FURTHERE ORDERED BY THE COMMISSION that the Arbitrator's award of prospective medical treatment in the form of a three-level cervical disc replacement is hereby vacated.

IT IS FURTHERE ORDERED BY THE COMMISSION that Respondent shall pay to the Petitioner the sum of $1,054.73 per week for a period of 16-3/7 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 pay the medical expenses outlined in PX12, as provided in §8(a) and §8.2 of the Act, pursuant to the medical fee schedule. Respondent shall be given credit for any amounts previously paid under §8(a) of the Act for medical benefits. The parties stipulate that Respondent shall receive credit for all medical expenses paid through Respondent's group medical plan under §8(j) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent provide and pay for medical treatment including, but not limited to, the cervical MRI as recommended by Dr. Gornet, physical therapy and epidural steroid injections as needed as provided in §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 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.

September 11, 2023

o- 7/11/23
KAD/bsd
42

/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	20WC025226
Case Name	THIEN, KEVIN v. HAMILTON COUNTY COAL
Consolidated Cases	
Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	17
Decision Issued By	Linda Cantrell, Arbitrator

Petitioner Attorney	James Keefe, Jr., Ron Coffel
Respondent Attorney	D. Brian Smith, Kevin L. Mechler

DATE FILED: 5/4/2022

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

/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
19(b)

KEVIN THIEN
Employee/Petitioner

Case # **20-WC-025226**

v.

Consolidated cases:

HAMILTON COUNTY COAL
Employer/Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Linda J. Cantrell**, Arbitrator of the Commission, in the city of **Mt. Vernon**, on **2/17/22**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On the date of accident, **8/31/20**, 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 $**82,269.20**; the average weekly wage was $**1,582.10**.

On the date of accident, Petitioner was **39** years of age, **single** with **1** dependent children.

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

Respondent shall be given a credit of $**0** for TTD, $**0** for TPD, $**0** for maintenance, and $**3,270.00 in advanced PPD benefits**, for a total credit of $**3,270.00.**

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

ORDER

Respondent shall pay the medical expenses outlined in Petitioner's Exhibit 12, as provided in Section 8(a) and Section 8.2 of the Act, pursuant to the medical fee schedule. Respondent shall be given a credit for any amounts previously paid under Section 8(a) of the Act for medical benefits. The parties stipulate that Respondent shall receive credit for all medical expenses paid through Respondent's group medical plan under Section 8(j) of the Act.

Respondent shall authorize and pay for prospective medical treatment, including, but not limited to, a three-level disc replacement at C3-4, C4-5, and C5-6 as recommended by Dr. Gornet, including any preoperative and postoperative treatment until Petitioner reaches maximum medical improvement.

Respondent shall pay Petitioner temporary total disability benefits of $**1,054.73**/week for **16-3/7th** weeks, representing the period **9/18/20 through 1/10/21**, as provided in Section 8(b) of the Act. Respondent shall receive credit of $**3,270.00** for an advance of permanent partial disability benefits.

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

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

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

MAY 4, 2022

Arbitrator Linda J. Cantrell

ICArbDec19(b)

STATE OF ILLINOIS)
) SS
COUNTY OF JEFFERSON)

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

KEVIN THIEN,	)	
	)	
Employee/Petitioner,	)	
	)	
v.	)	Case No.: 20-WC-025226
	)	
HAMILTON COUNTY COAL,	)	
	)	
Employer/Respondent.	)	

FINDINGS OF FACT

This claim came before Arbitrator Linda J. Cantrell for trial in Mt. Vernon on February 17, 2022, pursuant to Section 19(b) of the Act. Petitioner moved to amend the Application for Adjustment of Claim at arbitration to include his cervical spine. The motion was granted without objection. The issues in dispute are accident, causal connection, medical bills, temporary total disability benefits, and prospective medical care. All other issues have been stipulated.

TESTIMONY

Petitioner was 39 years old, single, with one dependent child at the time of the accident. He was employed by Respondent as a Belt Mechanic for six to seven years with a one-year layoff where he worked for Gateway North Coal Mine. Petitioner worked 12-hour days. His job duties required moving structure, putting in belts, using come-alongs, running equipment, and shoveling coal. He stated his job involved heavy labor and estimated 75% of his duties were shoulder level or above.

On 8/31/20, Petitioner was unstacking and restacking 60-inch rusted, steel structures overhead that weighed 150 to 200 pounds. He testified that the trailer was two feet off the ground, and he stacked the structures approximately six feet high on the trailer. Petitioner testified that he forced a structure that was stuck in an upward motion and felt a pop in his right shoulder. He felt immediate numbness, tingling, and pain down his right arm. Petitioner reported the accident to the safety coordinator Mike Hathaway, assistant coordinator EJ Foster, and the coordinator Phillip Fox that morning and went to the emergency room. Petitioner testified that his co-worker Jeremy Johnson witnessed his accident and told him he heard the pop in his shoulder.

Petitioner testified he had right shoulder pain, constant headaches, and neck pain five to six months prior to 8/31/20 that he related to his job activities. He did not recall a specific incident that caused his symptoms. Petitioner testified he reported the prior symptoms to safety coordinator Mike Hathaway. He went to the on-site nursing station with severe headaches that radiated to the center of his neck and down his arm. He denied left-sided symptoms. He took Ibuprofen to alleviate his symptoms. Petitioner testified that Respondent laughed it off and told him to take Ibuprofen. Petitioner stated he suffered a right rotator cuff tear in 2012 and was able to return to full duty work. In 2017, Petitioner underwent surgery for a right distal biceps injury that was work-related, and he returned to full duty work. He reported some numbness and tingling in his right hand around 2017 that resolved a few months following surgery.

Petitioner testified that the 8/31/20 accident made his symptoms worse, and he could not lift with his right arm. The symptoms were worse with headaches, neck, and shoulder pain radiating down his right arm. Petitioner testified he told all of his treating physicians following his 8/31/20 accident about his prior history of headaches, neck pain, and radiculopathy in his right arm.

Respondent sent him to Dr. James Goris who ordered an MRI and placed him on light duty which Respondent accommodated. Petitioner stated that his light duties of cleaning, hosing, sweeping, and greasing aggravated his symptoms because they required the use of both hands. Petitioner treated with Dr. Morgan who ordered an EMG and placed Petitioner off work. Petitioner was referred to Dr. Beyer who performed a right shoulder surgery on 11/3/20.

Petitioner testified he resigned from employment with Respondent on 12/28/20 because he was not receiving benefits and he cashed out his 401k benefits to pay his bills. Petitioner testified he sold all of his assets and could not continue post-operative physical therapy because he could not afford transportation. Petitioner stated the shoulder surgery did not improve the numbness and tingling in his right arm. He consulted with Dr. Gornet on 11/19/20 who kept him off work and ordered cervical injections that provided temporary relief. Dr. Gornet recommends disc replacements at C3-4, C4-5, and C5-6. Petitioner has severe headaches and numbness, tingling, and pain down his right arm that affects his sleep. He was taking four Ibuprofen every four hours to dull the pain but the medication upsets his stomach. Petitioner testified he could not currently perform his job duties for Respondent. Petitioner testified he had no cervical spine injuries or treatment prior to 8/31/20. He agreed that all of his treatment up until he treated with Dr. Gornet was solely directed at his right shoulder.

Petitioner requested Dr. Gornet to release him to return to full duty work on 1/11/21 because he had to find employment to support his child. Petitioner began working for SCF Lewis & Clark on 1/11/21 as a heavy equipment operator. He applied for the laborer position on 12/11/20. He agreed he did not disclose a neck or shoulder injury, headaches, or that he was off work per Dr. Gornet's orders when he filled out the Applicant's Statement and Agreement when applying for the laborer position. (RX5) He agreed that on 12/11/20 he represented to SCF he was able to perform the job duties without restriction. He attested on the Applicant's Statement and Agreement that he would not withhold any information that would affect his application unfavorably. Petitioner represented he could lift 75 pounds without accommodation. Petitioner

agreed that the essential job functions at SCF was to assist in all areas of unloading, loading, and transferring grain, fertilizer products, and general cargo on and off barges. He agreed that the physical requirements at SCF included lifting up to 50 pounds unassisted and swinging and lifting heavy impact and vibratory tools. Petitioner agreed he would have been able to perform these job duties without restriction as of 12/11/20 if he performed those jobs. He stated he would be capable of lifting those weights, but he does not for fear of further injury. Petitioner testified that he disclosed his restrictions to SCF during his initial job interview on 12/11/20, while he was simultaneously filling out the paperwork, including the Applicant's Statement and Agreement.

Petitioner testified that his job duties for SCF involved resting his arms on armrests and operating machinery with controls and gas pedals. He was transferred to a supervisory position doing paperwork and daily inspections. He does not perform heavy lifting or overhead work in his current position. His current hourly wage is $26.25, and he works 40 hours per week in the off season and 60 to 65 hours per week during peak season, which is significantly less than he worked for Respondent.

Petitioner was shown photographs taken on 12/9/20. (RX8) He agreed he had been off work at that time per Dr. Gornet's orders. Petitioner identified himself on Exhibit 8A and 8C as the person wearing a green shirt. Petitioner testified he is depicted in the photo lifting a cork board cabinet that weighed 30 pounds. He stated that photos 8B, 8E, 8F, and 8G depict him lifting and positioning a plastic double door that weighed 55 pounds. In photo 8D, Petitioner stated he was stepping off a trailer. In photo 8H, Petitioner was closing the trailer gate. Petitioner testified he was assisting his friend that owned two businesses move the items shown in the photographs. He stated he felt obligated to assist his friend because he loaned him money when he was unable to work.

An Employer's First Report of Injury was prepared on 8/31/20 that reflects Petitioner was loading structure on a supply trailer when he felt a pop in his right shoulder. (RX7) On 9/1/20, Safety Coordinator, Mike Hathaway, prepared a statement that he spoke to witness Jeremy Johnson. Mr. Hathaway stated that Mr. Johnson told him that while he and Petitioner were loading, Petitioner stated, "Fuckit, I can't do this shit no more. I think my shoulder is blown out." Mr. Hathaway reported that Mr. Johnson did not hear a pop in Petitioner's shoulder. Petitioner requested Mr. Johnson to accompany him to the phone while he made a report. (RX7). Neither Mr. Hathaway nor Mr. Johnson testified at arbitration.

MEDICAL HISTORY

Petitioner was seen at Hamilton County Emergency Room on the day of the accident. He reported lifting a belt structure that was stuck when his right shoulder popped causing severe pain, with tingling and numbness down his right arm. He stated he thought his shoulder dislocated and popped back in. Petitioner reported a prior injury to his right shoulder that resolved. He denied cervical pain. X-rays of the right shoulder were normal. Petitioner received a right shoulder injection that provided some immediate relief. He was provided a sling and placed off work for three days in order to establish an orthopedic evaluation. He was prescribed Toradol and Norflex upon discharge. (PX1)

On 9/1/20, Petitioner was examined by Dr. James Goris at Respondent's referral. (PX2) Petitioner reported right shoulder pain radiating down his arm with numbness and tingling. He reported moving a structure that did not budge but his arm did, and he felt sharp and instant pain. Petitioner acknowledged a rotator cuff repair in 2012 and that he was having shoulder pain for at least six weeks leading up to the accident and "let people know". He had a pop in his shoulder that his co-worker could hear. Physical examination revealed good strength, but Dr. Goris suspected a rotator cuff injury. He ordered an MRI and placed Petitioner on light duty restrictions.

On 9/18/20, Petitioner was examined by Dr. Richard Morgan. (PX3) Petitioner acknowledged a rotator cuff repair in 2012. He reported feeling a pop in his right shoulder while lifting at work on 8/31/20 that caused shoulder pain and numbness in his right hand. Dr. Morgan took Petitioner off work and ordered an MRI and EMG.

On 9/28/20, Petitioner underwent a right shoulder MRI arthrogram that revealed no labral tear, a tiny full thickness defect in the anterior supraspinatus, and mild degenerative changes of the AC joint. (PX9)

On 10/6/20, Petitioner underwent a nerve conduction study with Dr. Lori Guyton. Petitioner reported numbness and tingling on the right side, including pain in his neck and shoulder. The study was within normal limits. (PX5)

Dr. Morgan referred Petitioner to his partner, Dr. Craig Beyer, who recounted Petitioner's history of a rotator cuff repair in 2012 and that six weeks ago he was lifting a heavy object and felt a tearing sensation. Petitioner reported intense pain primarily in the subacromial and upper arm, and pain with overhead activities. Dr. Beyer noted the MRI showed a small full thickness tear of the rotator cuff. He assessed residual impingement that became symptomatic. He explained the tendon was likely weakened and the very forceful event resulted in a small tear. Dr. Beyer recommended surgery and kept Petitioner off work. (PX3)

On 11/3/20, Dr. Beyer performed a right shoulder arthroscopy consisting of debridement of partial thickness rotator cuff tear, curettage of a boney cyst likely from the prior surgery, bursectomy, and revision acromioplasty. (PX4) The preoperative diagnosis was right shoulder failed previous surgery with possible full-thickness tear with residual impingement. (PX4, p. 14). The postoperative diagnosis was right shoulder failed previous surgery with residual impingement, extensive bursitis, and partial-thickness undersurface tear. Petitioner was referred to Jerseyville Community Hospital for physical therapy. (PX6) He complained of constant stabbing in the right shoulder, with pain in the anterior portion of the shoulder and up into his neck. Petitioner described intermittent numbness and tingling down his right arm into his fingers.

On 11/17/20, Petitioner returned to Dr. Beyer for staple removal. (PX3) The report did not mention Petitioner's symptoms at that time.

On 11/19/20, Petitioner was examined by Dr. Matthew Gornet. (PX8) Petitioner reported headaches, neck pain at the base of his neck, right trapezius and shoulder pain, and numbness

and tingling down his right arm. Petitioner acknowledged a history of treatment for his right shoulder and a right bicep tendon repair in 2017. Dr. Gornet reviewed the pre-accident records. He noted Petitioner's right shoulder surgery performed two weeks ago provided zero relief and his neck pain and headaches affect all aspects of his life and his quality of life. Dr. Gornet noted weakness in dorsiflexion and volar flexion on the right at 4/5, and decreased sensation in a fingertip distribution on the right side, possibly in the C6 distribution. (PX8, p.4) Dr. Gornet ordered a cervical MRI that revealed a disc protrusion at C4-5 on the right and some foraminal narrowing at C5-6 on the right. (PX9) He recommended epidural steroid injections and took Petitioner off work until 12/21/20. Dr. Gornet added an addendum that the radiologist Dr. Ruyle contacted him and felt there was an extruded disc fragment potentially at C6-7 that already seemed to be resorbing. (PX8) Dr. Gornet believed an injection was appropriate at C6-7, and possibly a disc replacement at C5-6 and C6-7 if Petitioner's symptoms did not improve with injections. (PX5, p.5)

Radiologist Dr. Ruyle authored an addendum after speaking with Dr. Gornet. He believed there was a right lateral recess-foraminal protrusion at C6-7 and possible annular tear. (PX9, p.4)

Petitioner underwent an injection at C5-6 on 12/8/20 and his post procedure pain score was 5/10. He followed up with Dr. Gornet on 12/21/20 and reported relief from the injection. Dr. Gornet considered a release to return to work if Petitioner's condition continued to improve, despite his belief that Petitioner suffered a structural spine injury. He continued Petitioner off work. A cervical CT scan taken that day showed minimal facet arthropathy at C4-5 through C6-7, and a probable central protrusion at C4-5.

On 12/22/20, Petitioner underwent an injection at C6-7 and his post-procedure pain score was 2/10.

On 1/11/21, Petitioner called Dr. Gornet's office and reported he found a new job working as a heavy equipment operator that he felt he could perform. Dr. Gornet released Petitioner to full duty work without restrictions as of 1/11/21.

On 5/24/21, Petitioner returned to Dr. Gornet with continued neck pain into his right trapezius, shoulder, and arm. Dr. Gornet recommended a disc replacement surgy and allowed Petitioner to continue working full duty. (PX8)

On 6/16/21, Petitioner was examined by Dr. Andrew Zelby pursuant to Section 12 of the Act. Dr. Zelby recorded that Petitioner related his neck problem to his repetitive overhead work activities over six years for Respondent. Dr. Zelby opined that Petitioner's cervical and neurologic exams were normal. He believed the cervical MRI showed mild degenerative changes without herniated disc or neural impingement. Dr. Zelby opined there was no evidence Petitioner sustained a disc injury and his neck pain and headaches were not explained by the mild cervical degenerative changes. He opined that no further treatment was necessary, and Petitioner did not require restrictions. (RX1).

On 8/2/21, Dr. George Paletta performed a record and film review at the request of Respondent. (RX3) Dr. Paletta opined that Petitioner did not suffer a right shoulder injury as a

result of the work accident. He felt the findings at the time of surgery were post-surgical changes from the prior rotator cuff repair. Dr. Paletta deferred to Dr. Gornet with regard to opinions of the diagnosis, treatment, and causation for the cervical spine. He noted it is well recognized that the cervical spine pathology can create and cause shoulder problems. He agreed that given the overlap between cervical issues and shoulder pathology it was not unreasonable to assume a shoulder injury and treat it non-surgically.

On 8/26/21, Petitioner returned to Dr. Gornet with mild weakness on the right side at 4/5 in the biceps, wrist dorsiflexion, and volar flexion. Dr. Gornet recommended disc replacement surgery at levels C3-4, C4-5, and C5-6. He explained there was a typo in his prior record in which he recommended disc replacement at C5-6 and C6-7. He allowed Petitioner to continue to work full duty because it was a supervisory role. (PX8)

Dr. Gornet testified by way of evidence deposition on 9/27/21. (PX7). Dr. Gornet testified that the MRI scan revealed low level herniation at C3-4 on the right and disc pathology at C4-5 and C5-6 on the right. Dr. Gornet testified that the improvement Petitioner experienced, albeit temporary, from the injections gave further confidence that he was on the right track of the levels that were problematic. He recommended a repeat MRI to further assess C6-7, but he opined the reasonable, necessary, and causally related surgery would be disc replacements at C3-4, C4-5, and C5-6. He causally connected the cervical condition to Petitioner's work accident based on Petitioner's history of accident which he found consistent with a mechanism of injury that could cause a disc injury. Dr. Gornet explained that he has published articles and studies showing that treatment of axial neck pain with disc replacement is effective and accepted.

Dr. Gornet testified that when he released Petitioner at full duty on 1/11/21, he did not believe Petitioner was at MMI. He agreed to release Petitioner based on the positive results of the injections. Although he believed Petitioner could perform his new job as a heavy equipment operator, he felt there was a jarring aspect to the position.

On cross examination, Dr. Gornet testified it was his understanding that Petitioner's neck pain developed a little later after the accident, but the delay did not change his opinion because Petitioner's shoulder pain and right arm symptoms were consistent with the neck injury. Dr. Gornet testified that performing frequent overhead work and lifting produces a significant mechanical load and irritates structures of the cervical spine. Dr. Gornet testified that if Petitioner had tremendous headaches and severe neck pain for six weeks prior to the date of accident, and they were regular and ongoing, then it could change his causation opinion.

Dr. Zelby testified by way of evidence deposition on 10/4/21. (RX2) Dr. Zelby is a board-certified neurosurgeon. He testified that Petitioner gave a history of injuring himself at work on 8/31/20 when he jerked up on a structure and felt a pop and pain in his right shoulder. Dr. Zelby testified that Petitioner had a normal cervical spine exam, except for a little diminution in lateral rotation to the right. He testified that Petitioner reported diminished sensation in the entire circumference of his right upper extremity on both pin and vibration testing representing Waddell findings.

Dr. Zelby testified that Petitioner's flexion/extension cervical x-rays of 11/19/20 showed mild degenerative changes with no evidence of instability or impingement, with mild to moderate foraminal stenosis. The cervical CT scan of 12/21/20 showed mild degenerative changes. Dr. Zelby found no evidence of radiculopathy on exam or on MRI, and it was no surprise the EMG study was normal.

Dr. Zelby disagreed with the surgery recommended by Dr. Gornet and testified there is no data to suggest a three-level disc replacement has any value for any patient. The only meaningful data from prospective studies through Level 1, and possibly Level 2, that indicate neck surgery for neck pain and headaches has any value is where a patient has spinal cord compression, which Petitioner clearly does not have. He testified there was nothing about Petitioner's condition that would engender the types of symptoms he subjectively reported to make any type of surgery a reasonable consideration for him.

Dr. Zelby believed Petitioner had mild cervical spondylosis without myelopathy or radiculopathy. He opined that the accident of 8/31/20 had nothing to do with Petitioner's cervical spine and he had age-appropriate cervical degeneration, which could cause some aching and occasional neck stiffness. Dr. Zelby believed that Petitioner's reported severity and persistence of symptoms was inconsistent with the objective findings and an exaggeration.

Dr. Zelby testified the cervical injections were not reasonable. He did not believe Petitioner required restrictions related to his cervical spine and he was not at risk for injury with the pursuit of full-duty work.

On cross-examination, Dr. Zelby agreed that the degenerative changes in Petitioner's neck could cause neck pain and stiffness. He agreed that a disc herniation at C4-5 could cause weakness in the bicep. Dr. Zelby is not published in disc replacement.

Dr. George Paletta testified by way of evidence deposition on 12/22/21. Dr. Paletta testified that the Hamilton Memorial records documented good rotator cuff strength and negative impingement signs, but some limited range of motion. He noted that Dr. Morgan documented a history of several months of increasing shoulder pain that increased on 8/31/20. He noted that Dr. Morgan recorded a history of Petitioner constructing a belt line and had a painful episode when lifting a piece of steel that did not move as expected and he injured his shoulder. Dr. Paletta noted that Dr. Morgan did not document Petitioner's arm position or how he was lifting when the accident occurred.

Dr. Paletta testified the MRI arthrogram of 9/28/20 showed no evidence of a rotator cuff tear or labrum defect, but some contrast that extended from the joint into the subacromial space which related to a defect in the front of the shoulder from his prior surgery. He stated Petitioner had some AC joint arthritis.

Dr. Paletta testified that Dr. Beyer's records documented Petitioner's right shoulder symptoms developed in approximately July 2020 with overhead activities and at night. Dr. Beyer documented a history of lifting a heavy object and feeling a tearing sensation that caused increased pain. Dr. Paletta testified that Dr. Beyer's operative note did not document any active

inflammation or bursitis, the significance of which being that such changes suggest a more recent or ongoing problem, as opposed to just thickened hypertrophic tissue, which suggests chronic changes or scar tissue formation. Dr. Paletta testified that Petitioner only did fair following surgery, and it was possible the neck was a source of pain. Dr. Paletta opined that the lack of resolution of Petitioner's symptoms following surgery called into question the reasonableness of the surgery.

Dr. Paletta testified that Petitioner's records up to the time he saw Dr. Gornet documented complaints of right shoulder pain, but no radiating neck pain, frequent headaches, or right trapezius pain, as documented by Dr. Gornet. He noted that Dr. Gornet's notation of significant neck pain and headaches affecting all aspects of Petitioner's life was not consistent with Petitioner's records prior to his examination.

Dr. Paletta opined that Petitioner's right shoulder condition was not causally related to Petitioner's alleged work accident. He did not believe there was evidence of any injury to Petitioner's right shoulder based on the purported mechanism of injury, the physical exam findings documented by his treaters, and the MRI findings that showed only chronic changes. Is opinion regarding whether Petitioner's mechanism of injury could have aggravated a partial thickness rotator cuff tear depended on exactly what position Petitioner was in at the time of the occurrence and stated there were no details in Petitioner's records whether his arm was above or below shoulder level. He testified that doing an activity at or above shoulder level increases the risk of a rotator cuff tear.

Dr. Paletta opined that the surgery performed by Dr. Beyer was not reasonable and necessary, irrespective of cause. Dr. Paletta believed Petitioner's initial right shoulder treatment, including the MRI, anti-inflammatories, physical therapy, a single injection were reasonable and necessary irrespective of cause.

On cross-examination, Dr. Paletta agreed there could be differences of opinion regarding the necessity of Dr. Beyer's shoulder surgery. He agreed the operative photos matched what was described in Dr. Beyer's operative report, including a partial thickness rotator cuff tear. He agreed that if the mechanism of injury was overhead it could aggravate a partial thickness rotator cuff tear. Dr. Paletta agreed that if Petitioner was performing regular overhead lifting at work that correlated with shoulder symptoms, those activities could contribute to the right shoulder condition.

CONCLUSIONS OF LAW

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

The Act is a remedial statute, which should be liberally construed to effectuate its main purpose of providing financial protection for injured workers. *Interstate Scaffolding, Inc. v. Illinois Workers' Compensation Comm'n*, 236 Ill. 2d 132, 149, 337 Ill.Dec. 707, 923 N.E.2d 266 (2010). According to the Act, in order for a claimant to be entitled to workers' compensation benefits, the injury must "aris[e] out of" and occur "in the course of" the claimant's

employment. 820 ILCS 305/1(d) (West 2014). Case law interpreting the Act makes it clear that both elements must be present at the time of the accidental injury in order to justify compensation. *Orsini*, 117 Ill. 2d at 44-45, 109 Ill.Dec. 166, 509 N.E.2d 1005; *Illinois Bell Telephone Co. v. Industrial Comm'n*, 131 Ill. 2d 478, 483, 137 Ill.Dec. 658, 546 N.E.2d 603 (1989); *Fire King Oil Co. v. Industrial Comm'n*, 62 Ill. 2d 293, 294, 342 N.E.2d 1 (1976); *Wise v. Industrial Comm'n*, 54 Ill. 2d 138, 142, 295 N.E.2d 459 (1973). Therefore, in order to obtain compensation under the Act, a claimant bears the burden of proving by a preponderance of the evidence two elements: (1) that the injury occurred in the course of claimant's employment and (2) that the injury arose out of claimant's employment. *Sisbro, Inc. v. Industrial Comm'n*, 207 Ill. 2d 193, 203, 278 Ill.Dec. 70, 797 N.E.2d 665 (2003) (collecting cases).

The phrase "in the course of employment" refers to the time, place, and circumstances of the injury. *Scheffler Greenhouses, Inc. v. Industrial Comm'n*, 66 Ill. 2d 361, 366-67, 5 Ill.Dec. 854, 362 N.E.2d 325 (1977). "A compensable injury occurs 'in the course of' employment when it is sustained while a claimant is at work or while he performs reasonable activities in conjunction with his employment." *Wise*, 54 Ill. 2d at 142, 295 N.E.2d 459. The record supports a finding that Petitioner was at work loading structure when he sustained accidental injuries. Moreover, he was performing activities in conjunction with his employment when he attempted to pull a structure that was stuck. The Arbitrator finds that Petitioner's accident occurred in the course of his employment with Respondent.

An injury arises out of one's employment if its origin is in a risk connected with or incidental to the employment so that there is a causal relationship between the employment and the accidental injury. *Orsini v. Indus. Comm'n*, 509 N.E.2d 1005 (1987). In order to meet this burden, a claimant must prove that the risk of injury is peculiar to the work ***or*** that he or she is exposed to the risk of injury to a greater degree than the general public. *Id.* Specifically, the Court has acknowledged the existence of three categories of risk: (1) risks distinctly associated with his employment; (2) personal risks; and (3) neutral risks which have no particular employment or personal characteristics. *Springfield Urban League v. Illinois Workers' Comp. Comm'n*, 2013 IL App (4th) 120219WC, 990 N.E.2d 284, 290 (4th Dist. 2013). Injuries resulting from a neutral risk generally do not arise out of the employment and are compensable under the Act only where the employee was exposed to the risk to a greater degree than the general public. *Id.* This increased risk may be qualitative, such as some aspect of employment that contributes to risk, or quantitative, such as the number of times they are required to encounter the risk. *Id.*

The first step in risk analysis is to determine whether the claimant's injuries arose out of an employment-related risk—a risk distinctly associated with the claimant's employment. *Mytnik*, 2016 IL App (1st) 152116WC, ¶ 39, 409 Ill.Dec. 491, 67 N.E.3d 946; *Steak 'n Shake*, 2016 IL App (3d) 150500WC, ¶ 38, 409 Ill.Dec. 359, 67 N.E.3d 571. 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. *Caterpillar Tractor*, 129 Ill. 2d 52, 58, 133 Ill.Dec. 454, 541 N.E.2d 665; see also *The Venture—Newberg-Perini, Stone & Webster v. Illinois Workers' Compensation Comm'n*, 2013 IL 115728, ¶ 18, 376 Ill.Dec. 823, 1 N.E.3d 535; *Sisbro*, 207 Ill. 2d at 204, 278 Ill.Dec. 70, 797 N.E.2d 665.

The Arbitrator finds that Petitioner's injuries arose out of an employment-related risk. It is undisputed that at the time of the occurrence Petitioner was performing an act distinctly associated with his employment as a belt mechanic. The act of moving structure is a risk incidental to Petitioner's employment and one that Respondent would reasonably expect him to perform.

Petitioner testified credibly that on 8/31/20 he was reaching overhead when he pushed a steel structure that was stuck. It is undisputed the steel structures were 60-inches long, weighed 150 to 200 pounds, and were stacked on a trailer approximately eight feet high from ground level. No evidence was presented to rebut Petitioner's testimony that he was reaching overhead when the accident occurred. The Arbitrator finds Petitioner's testimony credible as the steel was stacked up to eight feet high. Respondent's employee and witness to Petitioner's accident, Jeremy Johnson, did not fill out a witness statement or testify at arbitration to rebut Petitioner's testimony. Petitioner's accident report and medical records are consistent with his testimony that he felt a pop and immediate pain in his right shoulder, with numbness, tingling, and pain down his right arm following the accident. Petitioner immediately reported the accident to his supervisor and sought medical treatment.

While it is undisputed Petitioner had symptoms pre-dating 8/31/20, he related the symptoms to his work activities that involved frequent heavy overhead work for Respondent. Dr. Gornet testified that frequent overhead work places a mechanical load on the cervical spine. Dr. Paletta testified that performing an activity at or above shoulder level increases the risk of a rotator cuff tear.

Therefore, the Arbitrator finds that Petitioner sustained accidental injuries that arose out of and in the course of his employment with Respondent.

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

In addition to or aside from expert medical testimony, circumstantial evidence may also be used to prove a causal nexus between an accident and the resulting injury. *Gano Electric Contracting v. Indus. Comm'n*, 260 Ill.App.3d 92, 631 N.E.2d 724 (1994); *International Harvester v. Indus. Comm'n*, 93 Ill.2d 59, 442 N.E.2d 908 (1982). A chain of events showing a claimant's ability to perform manual duties before accident but decreased ability to still perform immediately after accident is sufficient to satisfy the claimant's burden. *Pulliam Masonry v. Indus. Comm'n*, 77 Ill. 2d 469, 397 N.E.2d 834 (1979); *Gano Electric Contracting v. Indus. Comm'n*, 260 Ill.App.3d 92, 96–97, 631 N.E.2d 724 (1994); *International Harvester v. Indus. Comm'n*, 93 Ill.2d 59, 442 N.E.2d 908 (1982).

Petitioner was working full duty without restrictions prior to 8/31/20. It is undisputed his job duties involved heavy labor. Petitioner worked 12-hour days moving structure that weighed 150 to 200 pounds, putting in belts, using come-alongs, running equipment, and shoveling coal. He estimated that 75% of his duties were performed at or above shoulder level. The testimony, accident report, and medical records are consistent with Petitioner's report of feeling a pop in his

right shoulder while lifting steel structures on 8/31/20. Petitioner immediately reported his accident and sought medical treatment.

Respondent initially referred Petitioner to Dr. Goris who suspected Petitioner sustained a rotator cuff injury. Following an MRI scan, Dr. Beyer opined the accident likely caused the small rotator cuff tear in Petitioner's right shoulder. Respondent's Section 12 examiner, Dr. Paletta, agreed that if the mechanism of injury was overhead it could contribute to the partial thickness rotator cuff tear. Dr. Paletta testified that his opinion as to whether Petitioner's mechanism of injury could have aggravated a partial thickness rotator cuff tear depended on exactly what position Petitioner was in at the time of the occurrence. Dr. Paletta did not perform a physical examination of Petitioner, but only a records review, therefore he did not have an opportunity to obtain a history from Petitioner as to what position his shoulder/arm was in when the accident occurred. Dr. Paletta testified that there were no details in Petitioner's records whether his arm was above or below shoulder level. He testified that doing an activity at or above shoulder level increases the risk of a rotator cuff tear. Dr. Paletta agreed that if Petitioner was performing regular overhead lifting at work that correlated with shoulder symptoms, those activities could contribute to the right shoulder condition.

While Petitioner had right shoulder pain in the months leading up to the accident, he related it to his frequent overhead work. There is no evidence that Petitioner missed work due to his prior right shoulder symptoms or received treated for his right shoulder for over seven years prior to his work accident. In fact, Dr. Paletta's records review notes the last date of treatment for Petitioner's right shoulder dated back to 2013. (RX3) Petitioner underwent a right rotator cuff and posterior labral repair in July 2012. On 9/18/12, Petitioner underwent a non-arthrogram MRI of the right shoulder that revealed minimal AC joint arthritis with some impingement findings, supraspinatus and subscapularis tendinopathy without evidence of tear, benign humeral head cysts consistent with impingement, and minimal glenoid cartilage chondrosis. On 9/24/12, Petitioner underwent a right shoulder MRI that Dr. Paletta reviewed and found mild rotator cuff tendinopathy but no evidence of a rotator cuff tear. The subscapularis was intact, and the labrum and biceps anchor were normal with appropriate positioning. There was no evidence of a SLAP tear and some hypertrophic degenerative changes in the AC joint. At his last visit on 4/24/13, Petitioner reported pain with forward flexion and internal rotation, and an ultrasound showed complete healing of the rotator cuff. Dr. Brown recommended a home exercise program and released Petitioner to full duty work without restrictions.

Dr. Paletta reviewed records from 2017 that noted a right distal biceps tendon rupture that required surgical repair at the elbow. Postoperatively, Petitioner complained of numbness involving the right arm. Petitioner's last visit on 9/27/17 documented he still had a numb spot around his thumb that was not present prior to surgery, but it was not "slowing him down". He was released to regular duty.

Despite the above surgeries, Petitioner was able to perform his full heavy labor job duties for Respondent for six to seven years prior to 8/31/20. The Commission has held a condition can be caused or aggravated by the claimant's repetitive work activities, combined with a traumatic event to produce the claimant's current condition of ill-being. *Cont'l Tire the Americas, L.L.C. v. Illinois Workers' Comp. Comm'n*, 2012 IL App (5th) 110092WC-U, ¶ 42.

The Arbitrator also notes that the Commission has acknowledged there is overlap between shoulder injuries and cervical spine conditions. *See Tiffany Molton v. Red Bud Reg'l Care*, 18 I.W.C.C. 0381. The Arbitrator notes that Petitioner's neck pain and radiculopathy did not improve following right shoulder surgery, suggesting his cervical spine may be the cause of his continued symptoms.

The Arbitrator finds the opinions of Dr. Gornet more persuasive than those of Dr. Zelby. Dr. Gornet diagnosed disc injuries at C3-4, C4-5, and C5-6 which he opined correlates with Petitioner's neck pain, headaches, and right arm symptoms. While Petitioner had a history of right arm numbness and underwent a rotator cuff and posterior labral repair in July 2012 and a distal biceps tendon repair in 2017, he returned to full duty work without restrictions. Petitioner testified that the 8/31/20 accident made his symptoms worse to the point he could not lift with his right arm. Furthermore, there was never a referral to a cervical spine specialist, MRI scan, or injections for the cervical spine prior to 8/31/20.

Dr. Gornet and Dr. Paletta testified that the right shoulder pain and numbness down the right arm is consistent with a neck injury and there are many times overlap between shoulder and neck injuries. Dr. Zelby agreed the MRI finding could cause neck pain and a disc injury at C4-5 could cause the bicep weakness documented by Dr. Gornet on exam. Dr. Gornet testified that frequent overhead work places a mechanical load on the cervical spine and can irritate structures in the cervical spine.

Based on the above evidence, the Arbitrator finds Petitioner's current condition of ill-being in his cervical spine and right shoulder are causally connected to his accident that occurred on 8/31/20.

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

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

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).

Petitioner reported temporary improvement from the cervical injections that have allowed him to return to work in a supervisor role. Dr. Gornet recommends disc replacement at C3-4, C4-5, and C5-6 which are reasonable and necessary to cure the effects of Petitioner's injuries. Dr. Paletta opined the conservative measures for the right shoulder were reasonable and necessary. While Dr. Paletta opined the shoulder surgery was unreasonable and unnecessary, he agreed physicians could differ as to whether surgery was appropriate. He agreed the operative photos matched the operative report. While Petitioner did not experience significant relief from the

surgery, he had some improvement as it related to his shoulder, with persistent radiculopathy and neck pain.

Based upon the above findings as to accident and causal connection, the Arbitrator finds that the care and treatment Petitioner received has been reasonable and necessary. Respondent shall therefore pay the medical expenses outlined in Petitioner's Exhibit 12, as provided in Section 8(a) and Section 8.2 of the Act, pursuant to the medical fee schedule. Respondent shall be given a credit for any amounts previously paid under Section 8(a) of the Act for medical benefits. The parties stipulate that Respondent shall receive credit for any medical bills paid through Respondent's group plan under Section 8(j) of the Act.

The Arbitrator further finds Petitioner is entitled to receive the additional care recommended by Dr. Gornet. Therefore, Respondent shall authorize and pay for prospective medical treatment, including, but not limited to, a three-level disc replacement at C3-4, C4-5, and C5-6, including any preoperative and postoperative treatment until Petitioner reaches maximum medical improvement.

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

In order to be eligible for temporary total disability benefits, a claimant must prove not only that he did not work, but also that he was unable to work. *City of Granite City v. Industrial Comm'n*, 279 Ill.App.3d 1087, 1090 (1996).

Petitioner was placed off work on 9/18/20 by Dr. Morgan and continued off work by Dr. Beyer and Dr. Gornet through 1/10/21. The Arbitrator finds Petitioner is entitled to temporary total disability benefits for the period 9/18/20 through 1/10/21, representing 16-3/7th weeks, at the TTD rate of $1,054.73/week. Respondent shall receive a credit of $3,270.00 for an advance of permanent partial disability benefits.

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.

Linda J. Cantrell

Arbitrator Linda J. Cantrell DATE

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	18WC037855
Case Name	Brett Hanson v. Intelex USA LLC
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b) Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	23IWCC0403
Number of Pages of Decision	12
Decision Issued By	Maria Portela, Commissioner

Petitioner Attorney	Leandro A. Alhambra
Respondent Attorney	Monica Dembny

DATE FILED: 9/12/2023

/s/Maria Portela, Commissioner

Signature

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

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

BRETT HANSON,

Petitioner,

vs. NO: 18 WC 37855

INTELEX USA LLC,

Respondent.

DECISION AND OPINION ON REVIEW

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

The Commission affirms the Decision of the Arbitrator as to causation and medical expenses, however, modifies the award of temporary total disability benefits as outlined below.

Petitioner sustained a work-related accident on October 11, 2018, wherein he sustained injuries to his left hip and left knee. At the Hearing on Arbitration, the evidence supported that Petitioner has undergone extensive and consistent treatment for both his left hip and his left knee and met his burden of proof regarding causation as to these injuries.

Following the October 11, 2018, work injury, Petitioner began treating with Dr. Obermeyer for his left hip. Due to the extent of the injuries, Dr. Obermeyer took Petitioner off work on October 24, 2018, and kept Petitioner off work until December 3, 2018. At that time, Petitioner was given sedentary work restrictions pertaining to his left hip condition. Respondent offered Petitioner sedentary duty via e-mail correspondence on December 17, 2018. Petitioner did not report to work.

Accordingly, the Commission modifies the Arbitrator's award of temporary total disability benefits to include the period from October 24, 2018, through December 17, 2018.

Petitioner also treated with Dr. Nho for his left knee and left hip conditions. Dr. Nho was also deposed in this matter on August 3, 2020, and opined that from the date of Petitioner's left hip surgery on May 16, 2019, until the last time he saw Petitioner on November 25, 2019, Petitioner was to remain off work – initially for the left hip surgery and attendant care, and later as it related to the left knee and the need for left knee surgery. Dr. Nho completed an addendum report on April 28, 2020, causally connecting Petitioner's left knee condition to the October 2018 work accident and reiterating that Petitioner needed to be off work for his left knee condition.

The parties stipulated to temporary total disability benefits from the time of Petitioner's left hip surgery on May 16, 2019, through the date Petitioner underwent a Section 12 examination on February 7, 2020. However, Petitioner's entitlement to temporary total disability benefits from February 8, 2020, through the hearing date of February 9, 2022, remains in dispute. The Commission relies on Dr. Nho's opinion and finds Petitioner was unable to return to work due to his left knee condition which is causally related to the October 2018 work accident. Therefore, the Commission finds that Petitioner is entitled to additional temporary total disability benefits from the period of February 8, 2020, through February 9, 2022.

All else is affirmed and adopted.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent shall pay to the Petitioner the sum of $306.67 per week for a period of 150 6/7 weeks, from October 24, 2018, through December 17, 2018, and May 16, 2019, through February 9, 2022, that being the period of temporary total incapacity for work under §8(b), and as provided in §19(b) of the Act. Respondent is entitled to credit of $22,605.96 for temporary total benefits paid. This award in no instance shall be a bar to a further hearing and determination of a further amount of temporary total compensation or of compensation for permanent disability, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner reasonable and necessary medical expenses to Dr. Thomas Obermeyer of Barrington Orthopedics as outlined in Px6 and Dr. Shane Nho of Midwest Orthopaedics as outlined in Px5, under §8(a) of the Act subject to the fee schedule in §8.2 of the Act.

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

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

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

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $47,391.00. 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.

September 12, 2023

/s/ *Maria E. Portela*

/s/ *Amylee H. Simonovich*

/s/ *Kathryn A. Doerries*

MEP/dmm
O: 72523
49

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	18WC037855
Case Name	HANSON, BRETT v. INTELEX USA, LLC
Consolidated Cases	
Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	9
Decision Issued By	Gerald Granada, Arbitrator

Petitioner Attorney	Leandro Alhambra
Respondent Attorney	Monica Dembny

DATE FILED: 4/13/2022

THE INTEREST RATE FOR THE WEEK OF APRIL 13, 2022 1.22%

/s/Gerald Granada, 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)

Brett Hanson
Employee/Petitioner

v.

Intelex USA, LLC
Employer/Respondent

Case # **18** WC **37855**

Consolidated cases: **N/A**

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Gerald Granada**, Arbitrator of the Commission, in the city of **Wheaton, IL**, on **2/9/2022**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below and attaches those findings to this document.

DISPUTED ISSUES

A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
B. ☐ Was there an employee-employer relationship?
C. ☒ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
D. ☐ What was the date of the accident?
E. ☐ Was timely notice of the accident given to Respondent?
F. ☒ Is Petitioner's current condition of ill-being causally related to the injury?
G. ☐ What were Petitioner's earnings?
H. ☐ What was Petitioner's age at the time of the accident?
I. ☐ What was Petitioner's marital status at the time of the accident?
J. ☒ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
K. ☒ 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, **10/11/2018**, 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 $**460.00**; the average weekly wage was $**460.00**.

On the date of accident, Petitioner was **29** 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 $**22,605.96** for TTD, $ for TPD, $**0** for maintenance, and $**0** for other benefits, for a total credit of $**22,605.96**.

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 $**306.67**/week for **38-1/7** weeks, for the periods of **5/16/19** through **2/7/20**, as provided in Section 8(b) of the Act. Respondent is entitled to credit of **$22,605.96.** Petitioner's claim for TTD for the disputed time periods of October 23, 2018 through May 15, 2019 and from February 8, 2020 through February 9, 2022 is denied.

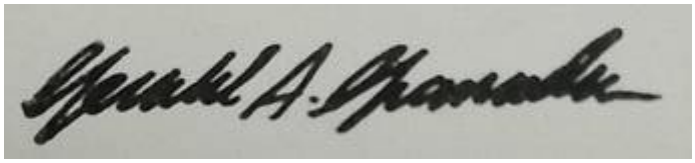
Respondent shall pay reasonable and necessary medical services, pursuant to the medical fee schedule, to 1) Dr. Thomas Obermeyer of Barrington Orthopedics (see PX 6); and 2) Dr. Shane Nho of Midwest Orthopedics (see PX 5), as provided in Sections 8(a) and 8.2 of the Act.

Respondent shall approve and pay pursuant to the Fee Schedule for prospective medical care recommended by Petitioner's treating physician, including the proposed left knee surgery, as recommended by Dr. Nho.

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

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

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



APRIL 13, 2022

Signature of **Arbitrator Gerald Granada**

FINDINGS OF FACTS

This case involves Petitioner Brett Hanson, who alleges to have sustained injuries while working for the Respondent Intelex USA on October 11, 2018. Respondent disputes Petitioner's claims with the issues being: 1) accident; 2) causation; 3) medical expenses; 4) TTD and 5) prospective medical care.

Petitioner worked as a warehouse associate for Respondent. Petitioner's duties included filling orders, packing boxes, loading/unloading trucks, and bringing garbage to the docks. On October 11, 2018, Petitioner was pulling a dumpster to the loading dock. The dumpster began to roll toward Petitioner, who was at the edge of the loading dock. Petitioner lost his balance and fell of the loading dock, which approximately 5 feet high. Petitioner's feet struck the concrete first, his knees buckled, and his hands struck the ground. Immediately after this fall petitioner noticed bilateral groin pain, bilateral knee pain and bilateral hip pain. Petitioner testified that his manager came to his aid. Petitioner refused immediate medical treatment and continued to work.

Petitioner was seen at Centegra Occupational Health on October 23, 2018. At that time Petitioner complained of left hip pain with pain radiating to the groin, since jumping off loading dock on October 11, 2018. Examination revealed decreased range of motion and tenderness to palpation of the left hip joint. He was diagnosed with left hip strain and an MRI was ordered. Petitioner was placed on crutches and given work restrictions of sit-down work, use of crutches and alternate sit/stand.

On October 24, 2018, Petitioner saw Dr. Thomas Obermeyer. At that time, he had complaints of right shoulder pain after using crutches for a hip injury. Petitioner also complained of bilateral knee pain. Dr. Obermeyer recommended physical therapy for the hip. Dr Obermeyer also ordered x-rays of the bilateral knees and back. When Petitioner followed up with Dr. Obermeyer on November 14, 2018, Dr. Obermeyer ordered and MRI of the left knee and left hip and Petitioner was taken off work completely. The November 20, 2018 MRI revealed: 1) no evidence of meniscal tear, 2) edema of the ACL consistent with mild ACL injury/sprain, 3) chondral fissuring of the lateral tibial plateau, 4) chondromalacia of the patella, and 5) fluid in the knee joint. On December 3, 2018, Dr. Obermeyer reviewed the result of the left knee MRI, placed petitioner on sedentary duty work and ordered PT for the hip. On January 2, 2019, Dr. Obermeyer referred Petitioner to Dr. Shane Nho for the left hip and left knee pain.

On February 5, 2019, Petitioner saw Dr. Nho with complaints of left knee pain, buckling, intermittent swelling, left groin pain and left tibial pain. Dr. Nho's diagnosed Petitioner with acetabular impingement and recommended surgery for left hip revision arthroscopy, labral repair and possible labral reconstruction.

On April 19, 2019, Petitioner saw Dr. William Hopkinson for a Section 12 exam at Respondent's request. Dr Hopkinson diagnosed labral tear of the left hip. He opined that the work injury precipitated, aggravated and/or accelerated labral degeneration of the left hip. Hopkinson opined that the left knee issue was referred pain involving the left hip. Hopkinson concurred with Dr. Nho's recommendation of surgery for revision labral repair.

On May 16, 2019, Dr. Nho performed surgery for left hip arthroscopy, labral reconstruction with ITB allograft, acetabular rim trimming, debridement, synovectomy, femoral osteochondroplasty and capsular reconstruction. Following surgery Petitioner underwent a course of physical therapy for the left hip starting on May 20, 2019. The June 28, 2019 physical therapy records noted that Petitioner "complained of severe left knee pain and felt like his patella was going to dislocate when standing on L leg during hip AROM. He asked to end the session." (PX 2)

On July 10, 2019, Petitioner followed up with Dr. Nho. At that time petitioner was doing well with progression from crutches and light strengthening PT. Petitioner had been limited by pain and popping left knee. Dr. Nho administered a cortisone injection to the left knee. On August 12, 2019, Dr. Nho noted that Petitioner had reached a plateau with what he can do with physical therapy due to the left knee pain. Petitioner complained of feeling his patella subluxing. Exam revealed tenderness over patella, patella tendon and over medial joint line. There was positive patella grind, and the patella is mobile but not more than 2 quadrants. Dr. Nho ordered an MRI of the left knee. The September 11, 2019 MRI revealed a progressive delaminating fissure over medial patellar facet. (PX 7 & 8) On November 25, 2019, Dr. Nho noted Petitioner reporting several incidents of the knee giving out and complained of kneecap instability. Dr. Nho reviewed the MRI and recommended left knee arthroscopy.

On February 7, 2020, Dr. Hopkinson performed a repeat Section 12 exam at Respondent's request. His examination revealed pain on medial and lateral patetellar mobility on the left knee. Dr. Hopkinson diagnosed left patellofemoral pain syndrome. He opined that the left knee diagnosis pre-exists the injury of October 11, 2018. Hopkinson also opined that surgical intervention to the left knee was neither necessary nor work related. Hopkinson recommended physical, therapy, bracing, and injections for the left knee, but opined that the treatment is not related to the work accident. Hopkinson recommended work restrictions of no lifting heavy loads, no squatting, no kneeling, no climbing. (RX 4) Dr. Hopkinson prepared an addendum report dated March 3, 2020 clarifying the lifting restriction to no lifting more than 50 pounds. Dr. Hopkinson stated that the need for restrictions was causally related to the October, 2018 work accident.

As of the trial date, Petitioner has not had the left knee arthroscopy that Dr. Nho has recommended. Petitioner testified that he continues to have dull, sharp, stabbing left knee pain. He experiences this knee pain daily. Petitioner takes Hydrocodone for the pain.

Rosa Acevedo (Acevedo) testified on behalf of the Respondent. Acevedo works for Respondent as a customer service representative. At the time of the accident Acevedo worked for Respondent as a picker. Acevedo testified that she did not witness the accident but heard a scream. After hearing the scream, she walked to the edge of the loading dock and observed Petitioner on the ground. According to Acevedo the height of the loading dock to the ground was approximately 5 feet. Acevedo testified that she noticed that Hanson had a wound on his leg. Acevedo testified that first aid was given to Hanson. She also testified that the manager, Peter, offered medical treatment to Hanson, which he refused. Acevedo did not see Hanson again after October 17, 2018.

Kelly Hopkins (Hopkins) testified on behalf of the Respondent. At the time of the accident Hopkins was Director of Operations for Respondent. Hopkins testified that Petitioner's first day of work was October 5, 2018. Hopkins did not witness the accident. Hopkins was notified of Hanson's accident immediately after it occurred on October 11, 2018. Hopkins testified that she observed both that both of Hanson's knees were skinned and had cuts on them. Hopkins offered Hanson medical attention, which was refused. Hopkins testified that Hanson did not return to work on October 12, 2018. Hopkins admitted that Hanson reported he was sick that day and would not be coming in to work. On October 16, 2018, Hanson emailed Hopkins, indicating that he took new medication, and it had a side effect. Hopkins further testified that even though she was notified of the accident the same day, a Form 45 report was not completed until October 22, 2018. Hopkins did not feel a report needed to be completed because she did not believe that the injury was serious. Hopkins testified that it was her responsibility to determine whether Respondent can accommodate light duty work. Hopkins testified that Respondent offered light duty work but could not recall when the light duty work was

offered. Hopkins testified that she did not know whether Hanson was offered modified work consistent with Dr. Hopkinson's recommended work restrictions of no lifting more than 50 pounds, no bending, kneeling or squatting.

Scott Wehrs (Wehrs) testified on behalf of Respondent. Wehrs is Respondent's President. Wehrs admitted that at the time of Hanson's accident there was no written policy regarding the completion of Form 45s after a work accident. Wehrs later testified that he was instructed by the insurance provider to only complete a Form 45 when an injured worker was sent to the clinic. Wehrs testified that he received a doctor's note dated October 18, 2018, indicating Hanson is not able to work until October 22, 2018. Wehrs testified that when Petitioner did not report to work on October 22, 2018 he terminated Petitioner via email. Petitioner replied via email the same day and notified Wehrs of the October 11, 2018 work injury. This was the first notice that Wehrs heard of the October 11, 2018 work injury. Upon learning of the work accident Wehrs rescinded the termination and requested that Hanson come to work to fill out an accident report. Hanson reported to work on October 22, 2018 and completed a Form 45. Wehrs testified that he sent Hanson to Centegra on October 23, 2018. Wehrs testified that he offered Hanson a sit-down job that doesn't require more than 5 pounds lifting. Wehrs testified that Hanson did not return to work. Wehrs testified that Vice President, Angie Belenger, offered Petitioner sedentary duty work via email on December 17, 2018 to which Petitioner did not respond.

Dr. Shane Nho testified via evidence deposition on August 3, 2020. Dr. Nho is a board-certified orthopedic surgeon. Dr. Nho diagnosed Petitioner with left knee patellofemoral chondromalacia. Dr. Nho testified that Petitioner continues to be off work for the left knee. Dr. Nho opined that the need for left knee surgery was aggravated and accelerated by the October 2018 work injury. On cross-examination Dr Nho reiterated that more likely than not the October 2018 incident aggravated his underlying chondromalacia. He further stated that the October 2018 incident "worsened, became more symptomatic, accelerated the normal progression of it." (PX 1, p. 31).

Dr. William J. Hopkinson testified via evidence deposition on October 8, 2020. Dr. Hopkinson conducted Petitioner's first Section 12 exam was on April 19, 2019 in which he diagnosed Petitioner with a recurrent labral tear of the left hip that was caused or aggravated by the October 11, 2018 incident. Hopkinson opined that the left knee issue was referred pain involving the left hip. Hopkinson concurred with Dr. Nho's recommendations for repeat and revision arthroscopic surgery of the left hip. Dr. Hopkins performed a second IME on February 7, 2020 in which he diagnosed Petitioner with left patellofemoral syndrome and mild patellar instability. Hopkinson opined that the left knee condition preexisted the injury of October 11, 2018. Hopkinson opined that surgical intervention for the left knee was not necessary and recommended injections, knee conditioning and a knee sleeve. Hopkinson opined that Petitioner had reached MMI as to the left hip. Hopkinson recommended restrictions of no squatting, no kneeling, no climbing and no lifting more than 50 pounds. Hopkinson opined that these restrictions were related to Petitioner's left hip condition.

On direct exam Hopkinson was asked and answered the following:

> Q: Is your – do you have an opinion as to whether or not the need for conservative treatment for the left knee is causally related to the work injury he described or if that's preexisting.
> A: My mind it was preexistent. He had an MRI in the past. ***I think he had a real hip problem and probably caused him to underuse his left leg and that some of the weakness in his left leg could have contributed to worsening his kneecap problems.*** So that is why I felt that non-operative treatment is the best road for him as far as the knee goes. (RX 1, p.21)

On cross-examination, Hopkinson admitted that he did not review the films nor the report of the November 16, 2018 left knee MRI. Hopkinson testified that for the November 2016 and November 2018 left knee MRIs, he was deferring to the radiologists' readings. During the February 7, 2020 examination, Hopkinson found parapatellar crepitus and grinding. Hopkinson agreed that this was not appreciated in his first exam from April 19, 2019 and was a new finding. Hopkinson conceded that when comparing the November 20, 2018 and September 19, 2019 left knee MRIs, it showed a progression of chondral fissuring. Hopkinson testified that chondral fissuring could cause an increase of crepitus and pain in the knee. Hopkinson conceded that Dr. Nho's recommendation for left knee arthroscopy is not unreasonable (Resp. Ex. 1 43, lines 4-7).

On redirect Hopkinson testified that the types of injuries that can aggravate or accelerate a degenerative knee condition are: 1) fracture in the knee, 2) ligament injury, 3) meniscus tear or 4) bone bruise.
On re-cross examination Hopkinson testified to the following:

Q: Doctor, you indicated on redirect of the four factors that you think would aggravate a degenerative knee condition. One of them was a ligament injury. Can you be a little more specific on what you mean by ligament injury?
A: An injury to the anterior cruciate, the posterior cruciate, the medial and lateral collateral ligaments. The extension mechanism.
Q: Okay. Like an ACL tear?
A: That would be one.
Q: Okay. Or like an ACL sprain would that enough to aggravate and accelerate the preexisting condition?
A: It would indicate an injury that would be significant enough to aggravate it. Yes. (RX 1, pp.54-55, emphasis added)

Following this exchange, it was pointed out to the Hopkinson that one of the impressions of the November 20, 2018 MRI revealed ACL injury/sprain. (PX 7). Hopkinson again conceded that he deferred to the radiologist's the reading of the November 2018 MRI. (RX 1, p. 55)

CONCLUSIONS OF LAW

1. With regard to the issue of accident, the Arbitrator finds that the Petitioner has met his burden of proof. In support of this finding the Arbitrator relies on the Petitioner's testimony and the medical evidence. Petitioner credibly testified that he was pulling a dumpster to the loading docks with a coworker and as the dumpster began rolling towards him, he had to jump off the loading dock to avoid the dumpster. After jumping from the dock, he landed on his feet, both knees buckled and both his hands hit the ground. Respondent's witness, Rosa Acevedo, testified that she did not witness the accident but heard Petitioner scream, walked over to the edge of the loading dock where she observed Petitioner on the ground below with a wound on his leg. Respondent's witness, Kelly Hopkins testified that she was notified of the accident immediately, and that she saw there were scrapes to both of Petitioner's knees and his wounds were treated. There was no evidence offered to rebut Petitioner on his testimony regarding this issue. As such, the Arbitrator concludes that Petitioner sustained an accident arising out of and in the course of his employment with Respondent on October 11, 2018.

2. With regard to the issue of causation, the Arbitrator finds that the Petitioner has met his burden of proof. In support of this finding, the Arbitrator relies on the opinions of the treating physician, Dr. Shane Nho, and Respondent's Section 12 examiner, Dr. William Hopkinson. Both Dr. Nho and Dr. Hopkinson opined that Petitioner's left hip labral was causally aggravated and accelerated by the work accident.

Both Dr. Nho and Dr. Hopkinson agreed that the left hip surgery was necessitated by the work accident. Dr. Hopkinson recommended permanent restrictions for the left hip of no lifting more than 50 pounds, no bending, no kneeling, no climbing. The Arbitrator further finds that Petitioner's left knee condition is causally related to his October 11, 2018 work accident. This finding is also supported by the medical evidence. The Arbitrator finds persuasive the opinions of Petitioner's treating physician, Dr. Nho, who testified that the October 2018 work accident aggravated and accelerated Petitioner degenerative knee condition. Although Respondent's IME Dr. Hopkinson believed Petitioner's left knee condition pre-existed his October 11, 2018 work injury, he testified that Petitioner's left hip condition could have contributed to the worsening condition in Petitioner's knee. Additionally, Petitioner's November 20, 2018 MRI revealed Petitioner sustained an ACL sprain and Dr. Hopkinson testified that an ACL strain could also aggravate a degenerative knee condition. Based on the foregoing, the Arbitrator finds that both Petitioner's left hip and left knee condition are causally related to his October 11, 2018 work accident.

3. Regarding the issue of medical expenses, the Arbitrator finds that treatment received for Petitioner's left hip and left knee has been reasonable and necessary to address his work-related conditions. This is based on the opinions of Dr. Nho and Dr. Hopkinson. Accordingly, the Arbitrator finds that Respondent shall pay Petitioner the reasonable and necessary medical expenses incurred in the care and treatment of his causally related left hip injury and left knee injury pursuant to Sections 8 and 8.2 of the Act, subject to the Fee Schedule, including expenses from the following providers: 1) Dr. Thomas Obermeyer (Barrington Orthopedics) for dates of services from 10/24/18, 11/14/18, 12/3/18 and 1/2/19 (see PX 6); and 2) Dr. Shane Nho (Midwest Orthopedics) for dates of services from 2/5/19, 5/16/19, 6/3/19, 7/11/219, 8/12/19, 9/11/19,10/14/19, 10/28/19, 11/4/19, and 11/25/19. (PX 5)

4. Consistent with the findings above, the Arbitrator further finds that the Petitioner's request for prospective medical treatment is both reasonable and necessary in addressing his work-related left knee condition stemming from his October 11, 2019 work accident. In support of this finding, the Arbitrator relies on the medical evidence, and finds persuasive the opinions of Petitioner's treating physician Dr. Nho. Dr. Nho recommended arthroscopy of the left knee. Although Respondent's IME Dr. Hopkinson opined that Petitioner is not a surgical candidate for the left knee and recommended non-operative treatment (i.e. injection, bracing, and physical therapy) - Dr. Hopkinson conceded that Dr. Nho's surgical recommendation is not unreasonable. Based on all these factors, the Arbitrator awards Petitioner his request for prospective medical care and the Respondent shall authorize and pay pursuant to the Fee Schedule for the prospective medical care recommended by Petitioner's treating physician, including the proposed surgery by Dr. Nho involving an arthroscopy to the left knee, and any ancillary reasonable and necessary services in connection with the surgery.

5. Regarding the issue of TTD, the parties agree that Petitioner is entitled to TTD form May 16, 2019 through February 7, 2020. The periods of TTD that are in dispute are October 23, 2018 through May 15, 2019 and February 8, 2020 through February 9, 2022. Petitioner was seen at Centegra on October 23, 2018 and given restrictions of sit-down work only, use of crutches and alternate sit stand. (PX 4) Petitioner communicated these restrictions to Scott Wehrs via email on October 24, 2018. (RX 13) In response to Petitioner's email, Wehrs confirmed that a sit-down position with no more then 5 pounds lifting was available as of October 24, 2018. Wehrs further testified Petitioner did not respond to his offer of light duty work and there was no evidence that Petitioner attempted to return to work for Respondent following the offer of light duty, nor did Petitioner provide any medical documentation to Respondent indicating he was taken completely off work for the time periods in question. Based on these facts, the Petitioner's claim for TTD for the disputed time periods of October 23, 2018 through May 15, 2019 and from February 8, 2020 through February 9, 2022 is denied.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	20WC010009
Case Name	Rebecca Fitzjarrald v. Wexford Health Sources
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	23IWCC0404
Number of Pages of Decision	21
Decision Issued By	Marc Parker, Commissioner, Stephen Mathis, Commissioner

Petitioner Attorney	David Olivero
Respondent Attorney	Chase Rich

DATE FILED: 9/13/2023

/s/Stephen Mathis, Commissioner

Signature

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

REBECCA FITZJARRALD,

Petitioner,

vs. NO: 20 WC 10009

WEXFORD HEALTH SOURCES, 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 whether Petitioner's current low back condition is causally related to the stipulated November 16, 2018 work injury, entitlement to incurred medical expenses as well as prospective medical care, entitlement to temporary disability benefits, entitlement to permanent disability benefits, and temporary total disability overpayment, and being advised of the facts and law, reverses in-part the Corrected Decision of the Arbitrator as stated below, and otherwise affirms and adopts the Corrected Decision of the Arbitrator, which is attached hereto and made a part hereof. The Commission finds Petitioner's current low back condition is causally related to the November 16, 2018 accident.

FINDINGS OF FACT

The Commission adopts the Findings of Fact in the Corrected Decision of the Arbitrator and incorporates such facts herein.

CONCLUSIONS OF LAW

In finding only that Petitioner's now-resolved lumbar strain was causally related to the undisputed November 16, 2018 work accident, the Arbitrator first made what amounts to an adverse credibility determination. The Arbitrator further found the opinions of Respondent's §12 physician, Dr. Donald DeGrange, more credible than the opinions of Petitioner's treating physician, Dr. Rahul Basho. The Commission views the evidence differently.

I. Credibility

The Commission disagrees with the Arbitrator's credibility assessment. We begin with Petitioner's initial post-accident complaints. The Commission finds nothing contradictory in Petitioner's testimony of instant and ongoing low back pain beginning at the time of injury. The Culbertson Memorial Hospital emergency room records on November 16, 2018 reveal Petitioner presented with a chief complaint of abdominal pain, but also complained of low back pain after the accident. Petitioner indicated that her back pain had decreased but abdominal pain was still present. Petitioner having a chief complaint of abdominal pain does not invalidate the fact that she also was suffering from simultaneous low back pain. Further, while Petitioner informed the emergency room that her back pain *decreased*, she did not say it *resolved*, thus implicitly indicating an ebb and flow of her symptoms, which continued to varying degrees during subsequent medical visits. *See Krantz v. Industrial Commission*, 289 Ill. App. 3d 447, 450-51 (5th Dist. 1997) (The Commission is an administrative tribunal that hears only workers' compensation cases and deals extensively with medical issues); and *Long v. Industrial Commission*, 76 Ill. 2d 561, 566 (1979) (The Commission possesses inherent expertise regarding medical issues). We find that the evidence corroborates Petitioner's testimony of immediate and ongoing back pain after the accident.

The Commission acknowledges Petitioner's low back complaints were localized and lacked a radiating component in the emergency room initially after the November 16, 2018 accident, but that by her June 4, 2019 §12 examination with Dr. DeGrange she had complaints of radiating symptoms down both legs. We do not find anything unscrupulous with this advancement of symptoms. It is important to reiterate that the emergency room treatment occurred on the accident date of November 16, 2018, while the §12 examination was nearly seven months later on June 4, 2019. We find that having additional complaints seven months after an accident does not indicate deception, but rather a natural progression of symptomatology. This was corroborated by Dr. DeGrange himself, who opined in his §12 report that his interpretation of the MRI results corresponded to Petitioner's symptoms, which by that time included radiating pain.

Lastly, the Arbitrator found Petitioner to be a poor historian, noting her testimony that she was examined twice by §12 examiner Dr. DeGrange, initially on June 4, 2019, and again on January 10, 2020. Petitioner reiterated this testimony on cross examination, indicating she did receive mileage reimbursement for the initial examination, but did not for the second examination. She testified that both examinations were three hours away. We acknowledge this testimony is in contradiction to Dr. DeGrange's January 10, 2020 report, which indicates that this was a records review. The first paragraph from Dr. DeGrange reads:

> "I have received your correspondence dated December 11, 2019, regarding Rebecca Fitzjerrald [*sic*] vs. Wexford Health Sources, Inc. with a date of accident of November 16, 2018, wherein you have included further medical records for me to review and offer comment." RX 2.

Dr. DeGrange confirmed this during his deposition as well. RX 3 at 16. The Arbitrator found Petitioner's testimony to be at odds with the evidence. While the Commission acknowledges the inconsistencies surrounding Petitioner's testimony about her travel to the second "examination" with Dr. DeGrange, we find this inconsistency does not override the consistent and objectively supported new symptomatology Petitioner suffered after the work accident. Petitioner's symptomatology was corroborated by her diagnosis, and supports a finding that Petitioner's ongoing post-accident complaints and diagnosis are causally related to the instant accident.

II. Causal Connection

The Arbitrator concluded Petitioner suffered a lumbar strain that was superimposed on her preexisting degenerative condition, which resolved by December 4, 2019 after a series of lumbar injections. The Arbitrator concluded Petitioner's treatment through December 4, 2019 was reasonable, necessary, and related to the work accident. However, the Arbitrator also concluded that the surgery performed by Dr. Basho on March 20, 2020 was unrelated based on Dr. DeGrange's opinions. The Commission disagrees.

This issue hinges on whether the stipulated November 16, 2018 accident aggravated—and continues to aggravate—Petitioner's preexisting degenerative lumbar condition. The applicable legal standard in such a case is as follows: It is well established that an accident need not be the sole or primary cause—as long as employment is a cause—of a claimant's condition. *Sisbro, Inc., v. Industrial Commission*, 207 Ill. 2d 193, 205 (2003). Furthermore, an employer takes its employees as it finds them (*St. Elizabeth's Hospital v. Illinois Workers' Compensation Commission*, 371 Ill. App. 3d 882, 888 (5th Dist. 2007)), and a claimant with a preexisting 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 P 26.

Here, the record indicates Petitioner worked as a CNA for 31 years, the last five with Respondent, with no evidence of prior back issues, medical treatment, symptoms, or complaints in her lumbar region. It was not until the instant accident that Petitioner sought treatment for complaints of lumbar pain, which eventually included radiating pain as well. After the accident, Petitioner was taken off work and had her activities restricted. She underwent conservative care,

including pain medication, physical therapy, and injections, and was diagnosed with lumbar radiculopathy and foraminal stenosis. The Commission finds there was a significant deterioration in Petitioner's condition after the work accident. There is no indication in the record that Petitioner had been recommended for an L4-5 laminotomy, foraminotomy and decompression prior to the work accident. However, after the failure of conservative care, including lumbar injections performed on August 13, 2019 and November 5, 2019, Dr. Basho recommended and performed such a surgery on March 20, 2020, an act agreed upon by Dr. DeGrange during his §12 examination. Petitioner's ongoing treatment and complaints after the accident, in addition to the surgical recommendation by more than one physician, suggest a significant deterioration of her condition after the accident.

Although Dr. DeGrange agreed with the Dr. Basho's surgical recommendation, Dr. DeGrange testified it was unrelated to the work accident, but was related to the progression of Petitioner's preexisting condition. He opined that since Petitioner's condition had returned to baseline after the second injection,[1] and she rebuffed his surgical recommendation, she had reached maximum medical improvement 12 weeks after the accident, which would be mid-February of 2019. The Commission finds the opinion of Dr. DeGrange unpersuasive. We first note that upon examining Petitioner on June 4, 2019, Dr. DeGrange noted the mechanism of injury and Petitioner's pain complaints. He examined Petitioner, reviewed diagnostic studies and medical records, and diagnosed a lumbar strain and L4-5 spinal stenosis. He opined the accident aggravated Petitioner's preexisting and degenerative condition, noting no evidence of any prior low back complaints. He also noted the MRI results corresponded to Petitioner's symptoms. He found Petitioner's subjective complaints to be consistent with her pathology, and believed Petitioner gave full effort. He recommended a decompression surgery.

Nearly seven months later, Dr. DeGrange performed a records review of additional medical records. The interim records indicate nothing but ongoing symptomatology that was only *temporarily* relieved by the administration of two injections. Despite their being no quantifiable change in Petitioner's condition, Dr. DeGrange's opinion had now shifted, leading him to opine that, as of December 4, 2019, Petitioner's condition had returned to baseline after her second injection. Dr. DeGrange reasoned that since Petitioner condition had returned to baseline, and she had shunned his surgical recommendation, she had reached maximum medical improvement at the 12-week timeframe offered by Dr. Anthony Biggs, and her current condition was no longer causally related to the instant accident. Dr. DeGrange opined that the surgery recommended by Dr. Basho was causally related to the normal degeneration of Petitioner's preexisting condition, and not the instant accident. During his deposition, Dr. DeGrange added that a work-related injury does not persist for the rest of a patient's life, and that there is a time frame for any aggravation to wear off on its own accord. He added that any symptoms persisting beyond the normal healing timeframe are typically due to a preexisting condition.

In disagreeing with Dr. DeGrange, the Commission finds that his opinions do not comport with the evidence. Initially, we must address his interpretation of "returned to baseline" in the December 4, 2019 medical record of Dr. Basho. While Dr. DeGrange interpreted this to mean

[1] The December 4, 2019 record of Dr. Basho indicates Petitioner received relief from the second injection for about three weeks, but was now back to baseline. Petitioner's Exhibit 3.

Petitioner's back pain had resolved, or returned to its' pre-accident condition, a closer analysis of the record supports an alternative conclusion. On December 4, 2019, Dr. Basho noted Petitioner had experienced three weeks of relief after a November 5, 2019 injection, but that "She is now essentially back to her baseline." *Petitioner's Exhibit 3*. The Commission construes this record to mean that after three weeks of relief, Petitioner's condition had reverted back to her *post-accident* baseline, which was highly symptomatic. This is evidenced by the fact that during this visit, Dr. Basho discussed surgery vs. work conditioning with Petitioner. If Respondent's interpretation were correct, there would be no need for Dr. Basho to entertain this discussion, as—theoretically—Petitioner's condition would be the same *asymptomatic* condition it was prior to the accident. Thus, there would have been no need to discuss any further treatment. Dr. DeGrange's interpretation is contradicted by the evidence. Moreover, regarding Dr. DeGrange's assertion that Petitioner rebuffed his surgical recommendation, we find this is refuted by the evidence as well. It is clear from Dr. Basho's December 4, 2019 record that Petitioner had not decided against surgery, which had also been recommended by Dr. DeGrange. After Petitioner discussed surgery and work conditioning with Dr. Basho, it was noted that "At this time, she wishes to consider her options." *Petitioner's Exhibit 3*. Petitioner had not rebuffed any surgical recommendation. Additional evidence refuting Dr. DeGrange's opinion is the fact that Petitioner ultimately *did* decide to undergo surgery.

Next, we find that Dr. DeGrange's opinion during his January 10, 2020 records review that Petitioner had reached maximum medical improvement as of the 12-week injury mark is in direct contradiction to his prior June 4, 2019 opinion. During his June 4, 2019 examination, Dr. DeGrange opined Petitioner's condition *was* causally related to the accident. We find no evidence of any intervening accident, or any other act that could have broken this chain of causation, thus there is no evidence supporting a change in his opinion. Further, the 12-week maximum medical improvement designation was offered by Dr. Anthony Biggs, who subsequently referred Petitioner to Dr. Basho for a surgical consult. The Commission finds that this consult referral implicitly acts as a submission by Dr. Biggs to the opinions of Dr. Basho. Since Dr. Basho ultimately recommended surgery, and opined that the work accident was the prevailing factor in the development of Petitioner's symptoms, we find his opinion overrides that of Dr. Biggs, and by definition, that of Dr. DeGrange as well. Based on the foregoing, we find the opinions of Dr. DeGrange to be unpersuasive, as they cannot be reconciled with the evidence.

Turning to the opinions of Dr. Basho, we focus on our disagreement with the Arbitrator's reiteration of his testimony. In the Corrected Decision of the Arbitrator, the Arbitrator noted Dr. Basho's testimony that activities of daily living could irritate a degenerative condition in a patient's back, and that Dr. Basho saw nothing during surgery that indicated an acute injury. The Arbitrator found that this testimony contradicted Dr. Basho's opinion that Petitioner's need for surgery was causally related to the instant accident. Accordingly, the Arbitrator found Dr. Basho's opinion to be unpersuasive. To the contrary, the Commission finds that a *complete* recitation of Dr. Basho's testimony supports a finding that a lack of evidence of an acute injury during surgery is not necessarily an indication that there *was* no acute injury. We note that Dr. Basho went on to testify that—save for a traumatic fracture—you can't really see anything during surgery that would reveal an acute injury. *Dr. Basho Deposition*, p.32-33. The Commission does not find this testimony to be contradictory to Dr. Basho's causation opinion. In fact, while Dr. Basho agreed that normal everyday activities could cause Petitioner's complaints, he also highlighted the fact that when a

patient describes an acute event and has had no pain prior to this acute event, Dr. Basho usually draws the conclusion that the acute event is the cause of their current medical predicament. We find that Dr. Basho's testimony does not contradict itself, and can be reconciled with his opinion, and supports a finding that Petitioner's complaints were more likely than not related to her instant acute injury.

Accordingly, the Commission finds that the work accident aggravated and accelerated Petitioner's condition, which deteriorated to the point where surgery became necessary. The Commission reverses the Arbitrator's causal connection ruling and finds Petitioner's current lumbar condition to be causally related to the instant accident.

III. Medical Expenses

Consistent with our finding of causal connection to Petitioner's current lumbar condition, the Commission finds that all expenses incurred in relation to Petitioner's low back were reasonable, necessary, and causally related to the accidental work injury. As such, the Commission finds Respondent liable for all incurred medical expenses within Petitioner's Exhibit's #6 through 10 which are related to Petitioner's lumbar condition, including those expenses related to Petitioner's March 20, 2020 surgery.

IV. Temporary Total Disability

Based on his causation ruling, the Arbitrator awarded temporary disability benefits only from November 20, 2018 through February 11, 2020. Having reversed the causation ruling with respect to Petitioner's current lumbar condition, the Commission finds Petitioner is entitled to additional temporary disability benefits. Petitioner provided testimony that she never returned to work for Respondent after the instant accident. Accordingly, the Commission awards additional temporary disability benefits from February 12, 2020 through May 31, 2020—the date of termination claimed by Petitioner on the Request for Hearing form. Petitioner is bound by that claim. *Walker v. Industrial Commission*, 345 Ill. App. 3d 1084, 1088 (4th Dist. 2004). In total, the Commission awards temporary disability benefits from November 20, 2018 through May 31, 2020. We also affirm that Respondent shall receive a credit for temporary disability benefits paid in the amount of $14,400.30. Lastly, the Commission vacates the language in the "Order" section of the Corrected Decision of the Arbitrator which reads: "Respondent is awarded credit for TTD overpayment of $651.18." *Corrected Decision of the Arbitrator, p.2*. We also vacate any and all other references of this award as a temporary total disability overpayment in the Corrected Decision of the Arbitrator. Having awarded additional temporary total disability benefits herein, we find that this amount no longer qualifies as an overpayment. However, we also note that this amount still remains as a part of the $14,400.30 credit granted to Respondent.

V. Permanent Disability

The Arbitrator concluded that the injuries sustained caused a 10% loss of use of Petitioner's person as a whole. While the Commission generally agrees with the Arbitrator's analysis of the five factors enumerated in §8.1b(b) of the Act, we modify the award so that it reconciles with our reversal of the finding of causal connection.

Regarding factor (iii) of §8.1b(b), we find that Petitioner suffered from symptomatic lumbar radiculopathy and foraminal stenosis as a result of the accident, which did not resolve with conservative care and eventually required surgical intervention. Petitioner was 49 years of age at the time of accident, and will potentially have to cope with the residual effects of her injury for the remainder of her life. We give moderate weight to this factor.

Regarding factor (v) of §8.1b(b), we find that Petitioner's condition was not resolved as of December 4, 2019, and that after the failure of extended conservative care, surgery was necessary in the form of a laminotomy, foraminotomy and decompression. After surgery, Petitioner recovered productively, but still suffered from residual back soreness. She testified that she now cares for her grandchildren, but does so carefully. She also testified she still has one day per month where she wakes up with pain, but the pain is nothing like it used to be. On that day she takes extra-strength Tylenol. We allocate great weight to this factor as a means to increase the nature and extent award.

Based on the above, the Commission modifies the Arbitrator's permanent disability award up to a 17.5% loss of use of a person as a whole to account for the surgery, recovery, and residual complaints Petitioner endured and continues to experience.

All else is affirmed.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Corrected Decision of the Arbitrator filed December 6, 2022 is hereby modified as stated herein.

IT IS THEREFORE FOUND BY THE COMMISSION that Petitioner's current lumbar condition is causally related to the undisputed November 16, 2018 accident.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay the outstanding, reasonable, and necessary medical expenses incurred in the care and treatment of Petitioner's lumbar injury in Petitioner's Exhibit #6 through Exhibit #10, including those expenses related to Petitioner's March 20, 2020 surgery, pursuant to §8(a) and subject to §8.2 of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $214.83 per week for a period of 79 & 6/7ths weeks, representing November 20, 2018 through May 31, 2020, that being the period of temporary total incapacity for work under §8(b) of the Act. Respondent shall have a credit of $14,400.30 for temporary total disability benefits already paid.

IT IS FURTHER ORDERED BY THE COMMISSION that any language in the Corrected Decision of the Arbitrator which awards $651.18 as a temporary total disability overpayment is hereby vacated.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $214.83 per week for a period of 87.5 weeks, as provided in §8(d)(2) of the Act, for the reason that the injuries sustained caused the 17.5% loss of use of the person as a whole.

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

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

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $22,000.00. 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.

/s/ *Stephen J. Mathis*

/s/ *Deborah L. Simpson*

SPECIAL CONCURRING OPINION

This case was scheduled for Oral Arguments on July 26, 2023, before a three member panel of the Commission including members Deborah J. Baker, Stephen J. Mathis, and Deborah L. Simpson, at which time Oral Arguments were either heard, waived or denied. Subsequent to Oral Arguments and prior to the departure of Commissioner Baker, the panel members had reached agreement as to the results set forth in this decision and opinion, as evidenced by the internal Decision worksheet initialed by the entire three member panel, but no formal written decision was signed and issued.

Although I was not a member of the panel in question at the time Oral Arguments were heard, waived or denied, and I did not participate in the agreement reached by the panel members in this case, I have reviewed the Decision worksheet showing how Commissioner Baker voted in this case, as well as the provisions of the Supreme Court in *Zeigler v. Industrial Commission*, 51 Ill. 2d 342 (1972), which authorizes signature of a Decision by a member of the Commission who did not participate in the Decision. Accordingly, I am signing this Decision in order that it may issue.

September 13, 2023 /s/ *Marc Parker*

wde

O: 7/26/23

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ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	20WC010009
Case Name	Rebecca Fitzjarrald v. Wexford Health Sources
Consolidated Cases	
Proceeding Type	
Decision Type	Corrected Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	12
Decision Issued By	Edward Lee, Arbitrator

Petitioner Attorney	David Olivero
Respondent Attorney	Terry Schroeder

DATE FILED: 12/6/2022

THE INTEREST RATE FOR THE WEEK OF DECEMBER 6, 2022 4.57%

/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 (§(e)18)
☒ None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
CORRECTED ARBITRATION DECISION

Rebecca Fitzjarrald
Employee/Petitioner

Case # 20 WC 010009

v.
Wexford Health Sources
Employer/Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Arbitrator Edward Lee**, Arbitrator of the Commission, in the city of Springfield**,** on **9/28/22**. 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 TTD overpayment $651.18

FINDINGS

On 11/16/2018, Respondent **was** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned **$11,171.67**; the average weekly wage was **$214.83**.

On the date of accident, Petitioner was 49 years of age, married, with no children under 18.

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

Respondent shall be given a credit of **$14,400.30** for TTD, **$0.00** for TPD, **$0.00** for maintenance, and **$0.00** for other benefits, for a total credit of **$14,400.30**.

ORDER

Respondent shall pay reasonable and necessary medical services as identified in Petitioner's Exhibits 6,7,8,9 & 10 as provided in Sections 8(a) and 8.2 of the act subject to the fee schedule, for all related treatment received through 12/4/2019, but none thereafter.

Respondent shall pay TTD benefits in the amount of $214.83 for a period of 64 weeks covering dates 11/20/18-2/11/20. Respondent is awarded credit for TTD overpayment of $651.18.

The Arbitrator concludes that Petitioner has sustained permanent partial disability to the extent of 10% loss of use of her person as a whole.

Respondent shall pay Petitioner PPD benefits of $214.83 per week for 50 weeks because the injury sustained caused 10% loss of use of a 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 of at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

DECEMBER 6, 2022

Edward Lee
Signature of Arbitrator

ICArbDec p. 2

FINDINGS OF FACT

The Petitioner filed an Application for Adjustment of Claim alleging that she sustained injuries on 11/16/2018 while employed for Wexford Health Sources Inc. (Arbitrator's Exhibit 2) The Petitioner testified at trial that she began working for Wexford Health Sources in April however could not remember what year. She testified that she had worked for Wexford for 5 years.

She testified that on 11/16/2018 she sustain an injury at work. She testified that she was a CNA in the employee of Wexford and her duties included feeding, providing bed baths, showers and assisting with daily care of the inmates at the TDF Facility in Rushville, Illinois. She testified that it was a treatment detention center. The Petitioner testified that she worked a total of 4 days over 2 weeks. Her schedule consisted of working a Friday and a Monday in one week and then a Saturday in the following week. She testified that she was part time help.

She testified that when she was required to lift patients she would not always an have assistance. She testified that on 11/16/2018 she was working at the facility in the capacity of a CNA. She testified that she had never had any injuries to her low back before 11/16/2018.

She testified that on that date she was transferring a patient from his wheelchair back into his bed. She testified that he patient would not stand, so he had to be physically lifted to keep him from falling on the floor. She testified that the patient was estimated to be approximately 200 pounds and approximately 6 feet tall. She testified that she hurt herself because all of his weight went to her. She testified that the part of her body that hurt was the low part of her back. She testified that it was right below her belt line. She testified that she had no radiated pain to any other parts of her body. Simply right in the central part of the back. She testified she filled out an accident report and was sent to the emergency room in Rushville on the same day. She testified that she was not able to complete her shift on that date because she was in too much pain.

Petitioner went on to testify that when she was sent to the emergency room they performed blood work, x-rays, CAT scan and then found the problem. She testified that they gave her a shot however she had no idea what the shot contained. She testified that it helped to relieve some of the pain. She went on to testify that in addition to giving her a shot she was prescribed medication and discharged. She testified that she never returned to her employment at Wexford after the 11/16/2018 date.

She went on to testify that on a Monday, within days of the accident, she treated with Quincy Medical Group. However, she did not provide any testimony as to the specific treatment but simply referred to the medical records of Quincy Medical Group. She was asked by the Arbitrator if she knew the first date and the Petitioner's attorney advised that she was first seen on 11/27/2018. The Petitioner testified that she was treated conservatively at Quincy Medical Group. The Petitioner was of the opinion that Quincy Medical Group tried everything they could to avoid surgery. She indicated that she was given a TENS unit which she used an indicated that it did not provide her any help. She testified that she was still experiencing low back pain when she was treating with the Quincy Medical Group. She testified that they provided more prescription medication and physical therapy. She went on to testify that she underwent an EMG test and an MRI of the low back.

She testified that she was then referred to Dr. Basho on 6/18/2019and that prior to seeing Dr. Basho the employer sent her to see Dr. deGrange. She testified that she saw Dr. deGrange on

6/4/2019. She testified that Dr. deGrange made a recommendation for surgery. She was unable to testify as to what type of surgery she had recommended.

She was asked by her attorney if she saw Dr. deGrange again on 1/10/2020 to which she replied that she had. She testified that she did not recall what Dr. deGrange's recommendations to her on 1/10/2020 were. She further testified that Dr. Basho examined her and talked to her about getting a shot to see if it would reduce the pain. She indicated that she received a shot and it helped for less than 24 hours.

She went on to testify that Dr. Basho gave her different kinds of pain to pills to see if they would help but nothing really helped the pain. She testified that after the reported back to Dr. Basho that he recommended surgery, which she ultimately underwent. She was unable to identify what type of surgery she had. She testified only that she had back surgery at Hannibal Hospital in Missouri. She testified that her surgery was on or about 3/20/2020, and was performed as an outpatient procedure. She testified that when she healed after the surgery she was able to walk without pain and she could bend down. She testified that after the surgery she could put her socks on which was a big accomplishment. She testified that her pain was gone and that the last time she saw Dr. Basho was 4/2/2020. Her attorney then corrected her and advised that he last office visit with Dr. Basho was 4/5/2020.

According to the Petitioner she was released without restrictions and that she did not attempt to return to Wexford Health for employment. She indicated that she was scared that she might injure herself again because the line of work that CNAs do was too physical of a job. She testified that as of that date she has been taking care of her grandbabies. She testified that she has days where she does have pain when she gets up but nothing like it was. She indicates she takes extra strength Tylenol, which helps. She indicates that she used to garden, but she no longer does, because bending over and pulling weeds causes back pain. She testified that she has not seen any other medical providers since being released by Dr. Basho.

On cross-examination she testified that she was a certified CNA and that before she went to work for Wexford, she had been a CNA since 1987. She testified that on the date of the accident she was using a gait belt to assist and that at that particular time she did have an assistant but she stated "I don't know what happened" (Tx 31) She testified that she told them at the Emergency Room at Culbertson Memorial Hospital that her pain was localized in the center of her low back. She was asked where she received the shot that she was given at Culbertson and she testified she couldn't remember if it was in the arm or the hip. She testified that she believed the shot was for pain.

She testified that when she saw Dr. deGrange the first time on 6/4/2019 she was paid travel expenses to attend that examination. She testified that was sent a check. She went on to testify that the drive from her house is approximately 3 hours. She went on to testify that she saw Dr. deGrange on 1/10/2020 however she was not paid for that trip yet she testified that she did go. She was asked on 1/10/2020 how much time Dr. deGrange spent with her if she could remember and she indicated that she did not remember.

DR. BASHO:

The deposition of Dr. Raul Basho took place on place on 11/21/2020 at 2:00 p.m. Dr. Basho is the orthopedic surgeon who treated the Petitioner and performed the surgical procedure on her L4-5 spine. Dr. Basho had been asked by the Petitioner's attorney to provide an opinion with regard to several questions. His report was entered as an Exhibit to his deposition testimony

which was entered as Petitioner's Exhibit number 5. Dr. Basho provided an opinion that the need for the Petitioner's surgical management was in his opinion reasonable, necessary and work related. He indicated in his report that he disagrees with the fact that the Petitioner's condition was generative in nature. He goes on to state "if this was indeed a degenerative condition it is unlikely to be caused by an acute and distinct event which is what she described." (

Dr. Basho indicates in the course of his deposition that the Petitioner described her mechanism of injury and he believed her mechanism of injury was the cause of her significant pain. He indicates in his deposition testimony she described the pain in her lower back that radiated into her left buttock and back. (Px 5 at 10)

He also indicated that while he was not aware of whether she ever received the physical therapy that he had recommended, he still believed to a reasonable degree of medical and surgical certainty that her injury is consistent with the mechanism of trauma that she described. (Px 5 at 12-13)

He goes on to describe the first and second injections and indicates in his testimony that after the second injection the Petitioner said she had significant relief, but this time it lasted for about 3 weeks. (Px 5 at 13) He goes on to detail the additional treatment as well as the surgery performed.

DR. DONALD deGRANGE:

Dr. Donald deGrange also testified via deposition. Dr. deGrange is a board certified orthopedic surgeon and produced two separate reports.

The first report is dated 6/4/2019. That report is entered as Respondent's Exhibit 1. Dr. deGrange examined the Petitioner on 6/4/2019. At that time based on his examination of Petitioner and the same diagnostic studies reviewed by Dr. Basho, Dr. deGrange indicated that Petitioner's work related activities in which she was involved on or about 11/16/2018 appear to have aggravated a preexisting degenerative condition in the Petitioner's spine. He indicated that his review of the medical records would seem to indicate that she did not present in the recent several years to any medical provider complaining of or seeking evaluation or treatment for back complaints. He indicated that she did disclose later in the history that she was working at Heritage Health about 10 years ago and did recall hurting her back at that time. She referred to it as a "pulled muscle" underwent physical therapy in Jacksonville Illinois with resolution of her symptoms and never needed any injections or surgery.

The doctor indicates that as of his examination date since it has been more than 6 months now since the incident without any significant relief with the passage of time, the physical therapy or medications and the first injection, surgery would be appropriate. He indicated that she does not have any surgical indications for fusion and a simple laminectomy at L4-L5 would suffice.

The doctor offered a second report is dated 1/10/2020 which was entered into evidence as Respondent's Exhibit 2.

The letter indicates clearly that the doctor had received correspondence from the Petitioner's attorney dated 12/11/2019 regarding the Petitioner containing additional further medical records for him to review and offer comment. (Rx 2)

The doctor states in his supplemental report of 1/10/2020 that he had evaluated the patient at the request of the insurance company on 6/4/2019 in his office. At that time he diagnosed her with a lumbar sprain at the L4-L5 level, with spinal stenosis and concluded that at that time that surgery was appropriate due to the fact that her symptoms persisted for more than 6 months and she had no significant relief with the passage of time, physical therapy, medications, injections and that surgery would be the definitive treatment. He indicates that he further opined that the patient had not reached MMI as of his 6/4/2019 evaluation and recommendation for surgery.

The doctor goes on to state "apparently she has, in fact, decided to eschew the recommendations for the L4-L5 laminectomy deciding instead for further injections. Medical records received for my review include a progress note of 6/18/2019 signed and electronically approved by Raul Basho MD who recommended a left L4-L5 transformaninal injection as well as continued physical therapy. Dr. Basho then composed a letter that is dated 7/9/2019 indicating that the patient's injection was denied because the physical examination did not correlate with the left L4-5 nerve roots. The next note from Dr. Basho is dated 12/4/2019 and indicates the patient "presents today for a follow up in regard to her L4-5 transforaminal injection." He notes that the patient had significant relief of her symptoms for 3 weeks after the second injection but was essentially back to her baseline. Under the plan, surgery was discussed in the terms of an L4-5 decompression and he noted that she wished to consider other options.

Dr. deGrange after reviewing all of the actual medical records indicates that in his opinion due to the fact that the patient has reduced to her baseline condition according to her treating physician, she may now be considered as MMI with regards to the 11/16/2018 back strain that was super imposed upon her preexisting degenerative condition. He goes on to state that the patients ongoing complaints are medically causally not related back to the 11/16/2018 back strain due to the fact that she has returned to her previous baseline as indicated in the progress notes.

He indicates that the he can state with a reasonable degree of medical certainty that recommendation for the L4-5 decompression and foraminatomy was offered by Dr. Basho is directly related to the normal progression of the patient's degenerative condition and not to the 11/16/2018 strain.

The doctor's deposition testimony was entered into evidence as Respondent's Exhibit 3.

CONCLUSIONS OF LAW

As to *E: Petitioner claims that her current condition to her ill-being is causally connected to this injury or exposure.* The Arbitrator finds as follows*:*

The Arbitrator concludes, and the parties stipulate that the Petitioner suffered a back strain accident on 11/16/2018 while in the course of her employment by the Respondent.

Unfortunately, there was very little testimony at trial as to actual treatment; however the medical records were entered into evidence.

The medical records of Culbertson Hospital entered into evidence as Petitioner's Exhibit 1 contain the records of the emergency room visit of 11/16/2018. The records indicate that the Petitioner arrived at 15:41 (3:41 p.m.) on the date of the accident. It indicates that patient complains of lower back pain starting today while at work lifting a patient from their wheelchair to bed, then notes sharp abdominal pain starting around 14:30, "back pain has decreased, abdominal pain still present." The Arbitrator notes that the "chief complaint" indicates in the treatment note was for "abdominal pain" on examination the office note indicates "additional examination findings: back pain noted." Acuity is listed "less urgent."

The note says that the Petitioner was given Prednisone 20 milligram tablets and released. She was told to return on 11/23/2018 and not to bend or lift more than 5 pounds. The records show that the Petitioner followed up the Dr. Schroeder at Culbertson Memorial Hospital on 11/23/2018 for back strain. She eventually found her way to Quincy Medical Group on 11/27/2018. She is treating conservatively at Quincy Medical Group including physical therapy and ongoing medications.

She is finally referred to Dr. Basho at Midwest Orthopedic Specialist who she sees the first time on 6/18/2019. Dr. Basho reinterprets the studies and indicates that he believes that the MRI shows left foraminal stenosis secondary to a bilateral disc herniation which causes mild foraminal stenosis at the left L4-5 segment per his interpretation of the images.

He places Petitioner on work limitations and provides a lumbar injection on 7/9/2019. She follows up with Dr. Basho on 9/12/2019 and indicates that she had a L4 or L5 transforaminal injection on the left side and she had significant relief of her symptoms for a week. At that time the doctor's note indicates "the pain has returned by not back to the level it was prior to the injection." The doctor indicates at this time that he will send her for a second injection and again allow her to perform deskwork only. He recommends they see her back in a month and to monitor her progress.

On 9/12/2019 she follows up with the doctor and tells him that she received significant relief of her symptoms for a week however the pain has returned, but not back to the level it was prior to the injection.

At that time the doctor recommends her for a second injection and keeps her on restrictions.

On 12/4/2019 the Petitioner returns for a follow up after the second injection. At that time she told the doctor that she had significant relief of her symptoms about three weeks after the second injection. As of that time she tells the doctor that "she is essentially back to her baseline." (PX 3)

At that time the doctor indicates that they did discuss surgical intervention in the form of an L4-5 decompression and foraminotomy verses a work conditioning program. The Petitioner at that time indicated at that time she wanted to "consider her options."

The Petitioner eventually underwent surgical procedure with Dr. Basho on 3/20/2020. That procedure included a left L4-5 laminotomy, foraminotomy, decompression lateral recess. The Petitioner underwent an uneventful post-surgical course and was released to return to Dr. Basho on a "as needed basis" on 5/5/2020.

The Arbitrator notes that the record at trial contains very little in the way of actual testimony on the part of the Petitioner regarding her treatment, except to detail that she was first seen at Culbertson Memorial, treated conservatively by Quincy Medical Group, then eventually by Dr. Basho at Midwest Orthopedics who provided multiple injections, and eventually performed surgery. The issue at bar is whether her current condition of ill being, specifically, the need for the surgical intervention performed by Dr. Basho is related to the 11/16/2018 accident.

A review of the testimony, and the evidence entered at trial, the Arbitrator notes that the Petitioner is a poor historian. In the course of her direct, she testified that she was examined on two separate occasions by Dr. deGrange on behalf of the Respondent. (TX 20 – 22) She confirmed this belief yet again on cross-examination, confirming that she was paid travel for the first examination on 6/4/19, but was not paid for the second trip on 1/10/20. Yet she stated that she did attend the second appointment, which was a three hour drive each way. She was unable to tell counsel how much time the doctor spent with her at the January appointment. (TX 32-34)

However, review of the supplemental report authored by Dr. deGrange dated 1/10/20 (RX 2) clearly show there was no second examination in January of 2020. The first paragraph of the report clearly states:

"I have received your correspondence dated December 11, 2019, regarding Rebecca Fitzjerrald vs. Wexford Health Sources, Inc. with a date of accident of November 16, 2018, wherein you have included further medical records for me to review and offer comment." (RX 2 at 1)

The second report of Dr. deGrange is clearly nothing more than a review of additional medical records sent to him, of treatment that had occurred subsequent to his 6/4/19 IME examination. This was confirmed in the deposition testimony of Dr. deGrange taken 4/19/22.

"Q. And now we had—you read some more medical records, look at some additional information in Januare of 2020 at our request. During the interim Ms. Fitzgarrald had initially, apparently, decided not to have surgery and then subsequently did decide she wanted surgery and you produced another report on our behalf on January 10th of 2020, is that correct?

a. Yes, sir, I did. " (RX 3 at 16).

Clearly the Petitioner did not attend a second appointment with Dr. deGrange, but was simply responding at trial to the questions asked by her attorney in a way she thought appropriate.

Further, the Petitioner testified at trial that she had "instant pain" in her low back, that did not radiate to any other part of her body. She confirmed the location as the center of the back, at the belt line, with no radiation (TX 13 - -14) Yet the ER notes from Culbertson Memorial hospital, speak to the Chief complaint as "abdominal pain," and "Additional examination findings: back pain noted" The "Current Visit" section states "Patient c/o/ lower back pain starting today while lifting a patient from their wheelchair to bed, then notes sharp abdominal pain starting around 1430, *back pain has decreased*, abdominal pain still present" (PX 1, emphasis added)

Testimony of the Petitioner's treating physician indicates that he was of the opinion the Petitioner's need for surgical intervention was related to the November 16, 2018 accident. However, his testimony is conflicting on that issue. He testified that he saw nothing in the course of his surgery that would indicate an acute injury to the Petitioner's spine ((PX 5 at 32) and that the activities of daily living could cause an irritation in the degenerative condition of a person's back (PX 5 at 33) Further, the doctor testified that "when patients describe an acute event and don't have demonstrated treatments for a particular pain pattern prior to this acute event, that's when we usually draw the conclusion that the event itself was the reason that they are in their current medical predicament." (PX 5 at 33)

Finally, Dr. Basho testified that some activity outside of work could have caused the condition, but stated that he had no knowledge of any outside activities (PX 5 at 36).

The testimony of Dr. Donald deGrange was taken on 4/19/2022, and was entered into evidence at Respondent's exhibit 3. Dr. deGrange opines that the petitioner suffered a temporary aggravation of the Petitioner's pre-existing degenerative condition, that was resolved after the second injection received as indicted in Dr. Basho's treatment note of 12/4/2019. He testified that as of his review of those records he found that she was at MMI as of 1/10/2020, and that as of that date, there was no need for any further treatment related to the November 2018 accident. (RX 3 at 19)

Dr. deGrange did testify that the Petitioner's degenerative condition would continue to deteriorate, and that surgery would still be a reasonable option to help prevent further aggravations of the condition moving forward (Rx 3 at 20).

Additionally, the Petitioner further testified at trial that she had no radiation of symptoms and had pain only in the low back, just below the belt line, yet when she was seen by Dr deGrange, she complained of pain symptoms that would radiate into both legs, including the thighs, the shins, and the feet. (Rx at 11) Clearly different than her testimony at trial, and reports of localized, but improving pain reported in the emergency room at Culbertson memorial hospital.

Dr deGrange clearly identifies the Petitioner's degenerative condition, and found that while the need for surgery was reasonable to prevent further occurrences of aggravation of her degenerative condition, the surgery was not made necessary by the work incident.

Based on the inconsistent history provided by the Petitioner at trial, and finding that the opinions of Dr. deGrange are more persuasive than those of Dr. Basho with regard to causation for the need for surgery.

This is supported by the fact the Petitioner reported to Dr. Basho on 9/12/19, that while the pain had returned after the first injection, it was "not back to the level it was prior to the injection." (Px 3) Clearly the first injection provided relief, and the second injection resulted in the strain resolving by the time of the 12/4/19 follow up appointment where Dr. Basho notes "She states that she had significant relief of her symptoms about 3 weeks after the second injection. She is

now essentially back to her baseline." (Px 3) Had that been inaccurate the Petitioner could easily have questioned it in her testimony at trial, however no testimony was entered to rebut that finding.

Accordingly, the Arbitrator finds that the Petitioner suffered a strain superimposed on her pre-existing degenerative condition, that was resolved after a series of lumbar injections. The surgical intervention performed by Dr. Basho on 3/20/20 was not causally related to the 11/16/18 accident., as such the Petitioner's current state of ill being is not causally connected to the work accident.

As to *J: Were medical services that were provided to the Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary services?* The Arbitrator finds as follows:

The Arbitrator restates and adopts the findings set for in F above, and further finds that the Petitioner's back strain of 11/16/18 had resolved after the second injection and the Petitioner had returned to her baseline as evidenced by Dr. Basho's 12/4/19 treatment note. Accordingly, the Respondent is ordered to pay for necessary and related medical treatment under Sections 8(a) and 8.2, subject to the fee schedule for all treatment received through 12/4/19, but not thereafter. Respondent is awarded credit for amounts previously paid.

As to *K: What temporary benefits are in dispute? TTD?* The Arbitrator finds as follows:

The Arbitrator restates and adopts the findings set for in F above, and further finds Petitioner is awarded TTD benefits for the period of 11/20/18 – 2/11/20 a period of 64 weeks, at a rate of $214.83.

As to *L: What is the nature and extent of the injury?*

The Arbitrator concludes that the Petitioner has sustained permanent partial disability to the extent of 10% Loss of use of her person as a whole. In support of this conclusion notes the following:

With regard to Subsection (i) of §8.1b(b) Neither Petitioner, nor Respondent tendered into evidence an AMA Impairment rating. The Arbitrator therefore gives no weight to this factor.

With regard to Subsection (ii) of §8.1b(b) The occupation of the employee. The Arbitrator notes that the record reveals that Petitioner was employed as a CNA at the time of the accident and she is able to return to full performance of her prior occupation, although she has chosen not to. The Arbitrator therefore gives no weight to this factor.

With regard to Subsection (iii) of §8.1b(b) the Arbitrator notes that the Petitioner was 49 years old at the time of the accident. Because the Petitioner's strain was successfully resolved, the arbitrator gives lesser weight to this factor.

With regard to Subsection (iv) of §8.1b(b) Petitioner's future earnings capacity, the Arbitrator notes that Petitioner has no limitations on her ability that effect her future earning capacity. Therefore the Arbitrator gives lesser weight to this factor.

With regard to Subsection (v) of §8.1b(b) Evidence of disability corroborated by the treating medical records. The Arbitrator notes that the Petitioner's back strain was resolved to the point

where she had returned to her baseline on 12/4/19, with no indication for need for future treatment as related to the 11/16/19 back strain, the Arbitrator gives lesser weight to this factor.

Based on the findings addressed above, the Petitioner sustained a compensable low back strain superimposed on a pre-existing degenerative condition. The strain resolved to its baseline state as of 12/4/19, with no need for further treatment indicated in the medical records, as a result of the work related injury Therefore the Arbitrator gives greater weight to this factor.

As to *O:TTD over payment $651.18.*

Based on the findings set for in F. above, the Respondent is granted credit in the amount of $651.18 due to overpayment of TTD.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC031859
Case Name	Crystal Beggs v. Memorial Hospital of Carbondale
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b) Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	23IWCC0405
Number of Pages of Decision	29
Decision Issued By	Marc Parker, Commissioner

Petitioner Attorney	Thomas C Rich
Respondent Attorney	D Brian Smith

DATE FILED: 9/13/2023

/s/Marc Parker, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF)
WILLIAMSON

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Crystal Beggs,

Petitioner,

vs. NO: 21 WC 31859

Memorial Hospital of
Carbondale,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of temporary total disability, causal connection, medical expenses, 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 21, 2022, is hereby affirmed and adopted.

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

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

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

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

September 13, 2023

MP:yl
o 9/6/23
68

/s/ *Marc Parker*
Marc Parker

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC031859
Case Name	Crystal Beggs v. Memorial Hospital of Carbondale
Consolidated Cases	
Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	26
Decision Issued By	Linda Cantrell, Arbitrator

Petitioner Attorney	Thomas Rich
Respondent Attorney	Brian Smith

DATE FILED: 11/21/2022

THE INTEREST RATE FOR THE WEEK OF NOVEMBER 15, 2022 4.44%

/s/ Linda Cantrell, Arbitrator

Signature

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

Crystal Beggs
Employee/Petitioner

v.

Memorial Hospital of Carbondale
Employer/Respondent

Case # **21** WC **031859**

Consolidated cases: _____

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Linda J. Cantrell**, Arbitrator of the Commission, in the city of **Herrin**, on **September 26, 2022**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On the date of accident, **8/23/21**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $**31,023.20**; the average weekly wage was $**596.60**.

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

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

Respondent shall be given a credit of $**0** for TTD, $**0** for TPD, $**0** for maintenance, and $**6,514.79 in nonoccupational indemnity benefits paid and an advance of permanent partial disability benefits paid in the amount of $7,159.20,** for other benefits, for a total credit of $**13,673.99, as stipulated by the parties**.

Respondent is entitled to a credit of $**TBD and any paid** under Section 8(j) of the Act, pursuant to the stipulation of the parties.

ORDER

Respondent shall pay the reasonable and necessary medical expenses outlined in Petitioner's Group Exhibit 1, pursuant to the Illinois medical fee schedule, as provided in Sections 8(a) and 8.2 of the Act. Respondent shall be entitled to a credit for any and all medical bills paid through its group medical plan, pursuant to the stipulation of the parties.

The evidence supports that Petitioner has not been cured or relieved from the effects of her work-related injuries. The Arbitrator finds that Petitioner is entitled to receive, and Respondent shall authorize and pay for, the additional care recommended by Dr. Rethorst, including, but not limited to monitoring, EEG, EKG, chest x-rays, medications, and a neuropsychological evaluation, until Petitioner has reached maximum medical improvement.

Respondent shall pay Petitioner temporary total disability benefits of $**397.73**/week for **55-6/7th** weeks, commencing **9/1/21** through **9/26/22**, as provided in Section 8(b) of the Act. Pursuant to the stipulation of the parties, Respondent shall receive credit for nonoccupational indemnity disability benefits paid in the amount of $6,514.79, and a credit for an advance of permanent partial disability benefits in the amount of $7,159.20.

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 21, 2022

_____

Arbitrator Linda J. Cantrell

ICArbDec19(b)

STATE OF ILLINOIS)
) SS
COUNTY OF WILLIAMSON)

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

CRYSTAL BEGGS,	)	
	)	
Employee/Petitioner,	)	
	)	
v.	)	**Case No.: 21-WC-031859**
	)	
MEMORIAL HOSPITAL OF CARBONDALE,	)	
	)	
	)	
Employer/Respondent.	)	

FINDINGS OF FACT

This claim came before Arbitrator Linda J. Cantrell for trial in Herrin on September 26, 2022, pursuant to Section 19(b) of the Act. The parties stipulate that on August 23, 2021 Petitioner sustained accidental injuries that arose out of and in the course of her employment with Respondent. The parties stipulate Respondent is entitled to a credit for any and all medical bills paid through its group medical plan pursuant to Section 8(j) of the Act. Petitioner claims entitlement to temporary total disability benefits for the period 8/24/21 through 9/26/22, representing 57 weeks. Respondent disputes liability for TTD benefits based on causal connection, that Petitioner's work restrictions were not reasonable and necessary, and that Respondent would have accommodated Petitioner's light duty restrictions. The parties stipulate that Respondent is entitled to a credit of $6,514.79 in nonoccupational indemnity disability benefits paid, and a credit for an advance of permanent partial disability benefits in the amount of $7,159.20.

The issues in dispute are causal connection, medical expenses, temporary total disability benefits, and prospective medical care.

TESTIMONY

Petitioner was 44 years old, single, with two dependent children at the time of accident. Petitioner was employed by Respondent as a Surgical Tech and was mandated to receive a COVID-19 vaccination. Petitioner received a Moderna vaccination on 8/23/21 and immediately experienced rapid heart rate. The next day she had swollen lymph nodes, severe body aches, shortness of breath, and chest pain and went to Memorial Hospital of Carbondale for treatment. She did not receive the second Moderna vaccine.

Petitioner admitted that on 8/11/21 she received treatment at a walk-in clinic for shingles. She testified she experienced burning in the skin on her neck and a small amount of swelling in her lymph nodes. She stated that her symptoms from shingles were different than the symptoms she experienced following the Moderna vaccination.

Petitioner testified that her primary care physician Dr. Rethorst has ordered numerous labs, physical therapy, and prescribed medications. Petitioner takes two blood pressure medications, Topamax for headaches, anxiety medication, and Lyrica for muscle and joint pain. She was hospitalized at Barnes Hospital by a pulmonologist for extreme bone and joint pain, shortness of breath, chest pain, pain behind her eyes, and numbness/tingling in her hands and feet.

Petitioner continues to treat with Dr. Rethorst and described her symptoms as slowly improving. She has developed an autoimmune disease and her doctor is working with a rheumatologist to figure out why her tests are still positive and why she continues to have inflammation.

She testified that Respondent did not offer light duty work and Dr. Rethorst has not released her to return to work. Petitioner testified she feels like "crap". She has bone and joint pain but is no longer on oxygen. She testified that Dr. Selby's Section 12 examination took a maximum of ten minutes.

On cross-examination, Petitioner testified she read Dr. Rethorst's deposition and agreed he testified she has been able to return to light duty work for some time. Petitioner testified she spoke to Respondent several times about returning to work and stated she would accept light duty work if offered. She testified she is not aware of any light duty work she could perform currently because of her joint problems that cause her knees and ankles to lock up or give out. Petitioner testified that her job duties as a surgical tech require 12 hours of standing. She agrees she could perform a desk job.

Petitioner admitted to a history of anxiety and depression prior to 8/23/21. She could not recall if she underwent an echocardiogram prior to 8/23/21.

MEDICAL HISTORY

On 8/23/21, Petitioner received a Moderna vaccination for COVID-19. (PX13)

On 8/30/21, Petitioner presented to the Emergency Department of SIH Memorial Hospital of Carbondale. (PX3, p.4) She was admitted at 12:45 p.m. for work up. Petitioner complained of worsening chest pain that started a few days prior. She felt that her heart was racing and reported pain with deep breaths since receiving a COVID-19 vaccination. A past history of angina pectoris (chest pain), history of transfusion, shortness of breath, and sleep apnea were noted all with an onset date of 3/8/19. The record indicates that on 3/8/19 Petitioner underwent a laparoscopy cholecystectomy. (PX3, p.5)

Emergency personnel noted Petitioner had left-sided chest pain with aching pain radiating to her left shoulder and upper back. Her blood pressure was 146/96, heart rate was 98, respiration rate was 20, and pulse oximetry was 98%. It was noted Petitioner had not recently travelled, had no hormone therapy, never smoker, and had no prior history of her current complaints. She was given Troponin. A series of tests were ordered including an EKG, chest x-ray, CT angiogram pulmonary embolism with contrast, and labs. The CT scan revealed inflammation within the left axilla with borderline enlarged left axillary lymph nodes and anterior pericardial effusion. EKG and chest x-rays were normal. Petitioner was diagnosed with lymphadenopathy, chest pain, and pericardial effusion. She was instructed to take Ibuprofen three times per day and to follow up with her primary care physician and cardiology. She was discharged in stable condition the same day at approximately 7:30 p.m. No work slip was provided.

On 9/1/21, Petitioner presented to her primary care physician Dr. Richard Rethorst and reported the hospitalization for chest pain, shortness of breath, and tachycardia. (PX4) Dr. Rethorst noted Petitioner's symptoms began after receiving a COVID-19 vaccine on 8/23/21. Petitioner reported continued chest pain rated 6/10, left-sided pain with deep breathing, elevated heart rate with activity, and body aches. Dr. Rethorst noted Petitioner had been seen in the walk-in clinic on 8/11/21 for shingles that caused swollen lymph glands on the right-sided neck. Dr. Rethorst reviewed the chest CT scan and noted inflammation within the left axillary and an anterior pericardial effusion. Past medical history was positive for obesity, dystonia ("left face and tremor right arm and neck"), chest pain, anxiety, and depression. (PX4, p.2) Listed under "Other Problems" included fatigue, nausea, depressive disorder, and shingles. It was also noted that a CT scan of Petitioner's chest was performed in June 2018.

Dr. Rethorst's examination revealed swollen glands, dyspnea, chest pain, rapid heart rate, and myalgia. Examination of Petitioner's chest and lungs revealed quiet, even, and easy respiratory effort with no use of accessory muscles and on auscultation, normal breath sounds, and no adventitious sounds and normal voice resonance. Lymphatic exam showed generalized lymphadenopathy, with matted nodes, and mild tenderness in her neck, supraclavicular, and left axillary. Dr. Rethorst diagnosed Petitioner with acute pericarditis following a Moderna COVID-19 vaccination. He recommended Motrin and Tylenol three times per day and referral to a cardiac specialist.

On 9/3/21, Petitioner returned to Dr. Rethorst with complaints of increased shortness of breath and pain under her left ribs and chest. She was scheduled to see the cardiac specialist the following week. It was noted Petitioner was taking short, shallow breaths due to chest pain with deep breathing and she rated her pain 6/10. She reported her self-administered O2 saturation test was 78% with activity. Physical examination revealed cough, dyspnea, shortness of breath, chest pain, elevated blood pressure, and rapid heart rate. She had swollen glands and a feeling of fullness in her throat. Petitioner's pulse was initially 90, and her O2 saturation at rest was 97%. Upon walking one minute, her pulse increased to 105 and her saturation decreased to 95%. By three minutes walking, Petitioner complained of chest pain and her O2 saturation dropped intermittently for one second to the mid-80s but returned to over 90%. Her respirations were noted to be very short and fast. She was noted to be tachycardic after walking for three minutes. She was given a D-Dimer test and diagnosed with pericarditis following a Moderna COVID-19

vaccination. Dr. Rethorst ordered Petitioner to continue taking Motrin, Tylenol, and start taking Dexamethasone.

On 9/4/21, Petitioner returned to the emergency room at SIH Memorial Hospital of Carbondale with chest pain, shortness of breath, lightheadedness, near-syncope palpitations, and feeling extremely anxious. It was noted she had been diagnosed with post-COVID vaccination pericarditis and had an appointment with a cardiologist on 9/7/21. She reported she was doing well prior to the COVID vaccination. Physical examination revealed a rapid respiratory rate and slightly diminished lungs to auscultation bilaterally. (PX3, p.22) Chest x-rays revealed slightly more prominent cardiomediastinal silhouette when compared to her prior study of 8/30/21. Labs, an IV, and an EKG were ordered. Petitioner's O2 saturation remained stable. The EKG showed normal sinus rhythm, consider limb lead reversal, right axis deviation, and nonspecific t wage abnormality. (PX3, p.30) She was recommended to follow up with Dr. Rethorst and to return to the hospital immediately if any change or worsening symptoms occurred.

On 9/7/21, Petitioner presented to SIH Prairie Heart Institute at the Memorial Hospital of Carbondale. (PX5) APNP Ella Edwards noted Petitioner had chest pain, worse with inspiration and expiration and lying flat, left upper and lower extremity heaviness, shortness of breath, and dizziness with associated bradycardia and periods of tachycardia. She reported no significant past medical history. Petitioner reported she received her first COVID vaccination and within 24 to 36 hours she developed flulike symptoms and stabbing chest pain that worsened with inspiration of expiration. She also developed left-sided heaviness of both upper and lower extremities, palpitations, and shortness of breath. It was noted her chest CT scan of 8/20/21 showed a small pericardial effusion.

Examination revealed normal heart rate, regular rhythm, and heart sounds, with abnormally rapid breathing (tachypnea). She was assessed with chest pain and symptoms consistent with pericarditis. Her blood pressure was mildly elevated due to anxiety and pain. Musculoskeletal and neurological exams were normal. She was ordered to continue taking Ibuprofen and Dexamethasone and they would try to obtain a CRP from Franklin County Hospital. APNP Edwards recommended an EKG to assess any diffuse ST abnormalities. Petitioner was also diagnosed with dizziness and a one-week MCT was recommended to assess for arrhythmias and shortness of breath. Petitioner was ordered to obtain oxygen through her primary care physician if needed and to follow up in two to three weeks.

On 9/8/21, Petitioner underwent a transthoracic EKG at SIH Prairie Heart Institute that was normal. (PX5) No pericardial effusion was seen on the study.

On 9/9/21, Petitioner reported weakness in her left face and hand that morning and Dr. Rethorst told her to go to the emergency room. Dr. Rethorst received a call from Franklin Hospital's Respiratory Department indicating Petitioner's oxygen dropped to 88, then to 69 after five minutes of walking, and remained low. (PX4) Petitioner received six liters of oxygen and her saturation returned to 100%. A CT of the head and cardiac testing were negative for acute intracranial and cardiopulmonary processes. The CT scan of her head was compared to a brain MRI performed on 5/11/20. She was assessed to have possible left atrial enlargement.

On 9/10/21, Petitioner presented to SIH Prairie Heart Institute to begin cardiac testing. She wore a heart monitor from 9/10/21 through 9/16/21.

On 9/13/21, Petitioner called Dr. Rethorst's office and reported tingling on the right side of her face the prior night and woke with numbness, tingling, and right-sided face drooping to both eyes and mouth. He noted her heart doctor stopped the steroids, started Colchicine, and she was wearing a Holter monitor for one week. Petitioner reported persistent chest pain. She made an appointment for the next day.

On 9/14/21, Dr. Rethorst noted Petitioner's symptoms of heaviness in the left side of her body and her right side was becoming symptomatic. Petitioner reported that her lungs hurt with deep breathing and her O2 saturation dropped with activity. She was wearing continuous supplemental oxygen at four liters. She complained of lip numbness and weakness. Physical examination revealed weakness, swollen glands, cough, dyspnea, shortness of breath, bradycardia, chest pain, dizziness, rapid heart rate, myalgia, and a feeling of fullness in her throat. Examination of her chest and lungs revealed short, frequent breaths with inspiration due to pain with deep breathing. She had mild tenderness in her neck, supraclavicular, and left axillary. Dr. Rethorst noted Petitioner's EKG of 9/8/21 was normal with regular rhythm and 79 beats per minute. He noted the head CT scan was normal. Petitioner was assessed to have acute pericarditis, Bell's palsy, elevated liver enzymes, carditis, lymphadenopathy, and adverse effect of the COVID-19 vaccine.

Petitioner returned to Dr. Rethorst on 9/15/21 with continued symptoms. She continued to use four liters of supplemental oxygen. Upon walking 400 feet, her heart rate increased from 60 to 99 beats per minute, her O2 saturation was 98% on three liters, and her respirations increased to over 25. Physical exam remained unchanged with some improvement in her chest pain with deep breathing. She was instructed to follow up in one day or as needed for acute pericarditis.

On 9/16/21, Petitioner returned to Dr. Rethorst with chest and rib pain, difficulty breathing, matting of her eyes in the morning, joint pain, left arm weakness, and worsening left hand symptoms and numbness. Petitioner reported she could not use her left hand for daily activities. She continued to wear a heart monitor and supplemental oxygen at three liters, which she had to increase to four liters one day prior. Physical exam showed continued short, frequent breaths with inspiration due to pain with deep breathing. She had reduced muscle strength in her left upper extremity and thoracic spasms on the left. Dr. Rethorst recommended occupational therapy for left hand weakness and ordered an MRI of her brain.

On 9/17/21, Petitioner returned to Dr. Rethorst with continued symptoms. She was taking Colchicine two times per day. Petitioner reported that after taking a shower that morning her heart rate increased to 221 beats per minute and her pulse oxygen rate decreased to 87%. Her heart rate decreased to 112 beats per minute after resting and putting her oxygen back on. Dr. Rethorst noted she was scheduled for a brain MRI the next day, pulmonology the following week, and cardiology in two weeks. She was instructed to return to his office in three days.

On 9/18/21, Petitioner underwent a brain MRI at SIH Herrin Hospital that was normal.

On 9/20/21, Petitioner reported to Dr. Rethorst that her entire body itched, and she had difficulty breathing and sleeping. She experienced chest pain and coughing when lying on her back. She felt she was "hanging on by a thread". Petitioner continued to report facial numbness and arm weakness, and her heart rate fluctuated to the 200s-240s. Dr. Rethorst instructed her to take Klonopin for acute pericarditis and to follow up in one day or as needed.

On 9/21/21, Petitioner reported to Dr. Rethorst she was not able to decrease her supplemental oxygen below four liters. She complained of exhaustion. Physical exam remained unchanged. She was instructed to follow up in two days or as needed.

On 9/22/21, Petitioner presented to Dr. Sumeet Soni at SIH Medical Group Pulmonology. (PX7) Dr. Soni noted Petitioner was referred for acute hypoxic respiratory failure. He noted she received a Moderna vaccine on 8/23/21 and developed palpitations later that day which she initially attributed to anxiety. The next day she developed sharp, stabbing pains in the center of her chest with shortness of breath. She reported she continued to work despite her symptoms as she thought they would eventually subside; however, over the course of the week her symptoms worsened, and she developed left arm pain. Dr. Soni noted Petitioner presented to the ER and was diagnosed with pericarditis. He noted she had been given Dexamethasone, Colchicine, and eventually started on supplemental oxygen. Petitioner complained of shortness of breath with minimal daily activity despite wearing oxygen. She continued to have sharp chest pain worse when lying flat. She reported a cough with blood-streaked sputum, nausea, and sleep disturbance.

Physical examination revealed fatigue, congestion, cough, shortness of breath, chest pain, palpitations, diarrhea, and nausea. Petitioner had arthralgias and facial asymmetry and numbness. Dr. Soni reviewed her prior studies and diagnosed acute hypoxic respiratory failure, pericarditis, and Bell's palsy. Dr. Soni believed the cause of her symptoms was unclear, but noted she had multi system involvement, including cardiac, neuro, and respiratory which all occurred after the COVID-19 vaccination. He noted that review of the medical literature indicated pericarditis was a known possible side effect of the vaccine. He ordered labs that were essentially normal. Dr. Soni ordered a pulmonary function test, a repeat walking test, and chest x-rays. Petitioner was to continue using supplemental oxygen and monitor her oxygen saturation at home.

On 9/23/21, Petitioner returned to Dr. Rethorst and reported she felt her body was breaking down and she was becoming weaker. Physical examination revealed patterns of palsy/paralysis on the left and decreased left upper extremity strength. Dr. Rethorst noted Petitioner avoided using her left hand. He instructed her to follow up in two weeks or as needed.

On 9/28/21, Petitioner presented to SIH Herrin Hospital for a pulmonary stress test. (PX6) The test was conducted during a six-minute walk. It was noted Petitioner ambulated in the hallway on room air and had to stop to rest twice due to dizziness, lightheadedness, and shortness of breath associated with chest pain and tightness. She was able to ambulate for a total of six minutes without significant decline in saturation. It was assessed she did not qualify for supplemental oxygen.

Petitioner also underwent a pulmonary function test. She was unable to complete spirometry and diffusion capacity maneuvers due to pain on inspiration. She was able to complete the body plethysmography portion of the test. It was found to be an incomplete study.

Petitioner called Dr. Soni's office on 9/28/21 and reported her lungs were not improving and she was not sure what to do. Petitioner was informed her walking test showed improvement compared to the previous study, but they were unable to complete the pulmonary function testing due to her pain. Petitioner stated that her job needed a letter stating that her symptoms were from the Moderna vaccine.

On 9/29/21, Petitioner returned to SIH Prairie Heart Institute for follow up. (PX5) Dr. Malasana noted she had been placed on Colchicine which did not significantly help. Petitioner had chest pain, palpitations, and dizziness. It was noted that the most recent EKG showed no effusion and the Holter monitor showed no sustained atrial or ventricular arrhythmias. Physical examination was normal with the exception of tachypnea with no accessory muscle use. Dr. Malasana found her symptoms to be consistent with serositis and pericardial inflammation. He recommended she continue Colchicine and Ibuprofen. He believed she may benefit from a referral to rheumatology and pulmonology at Barnes Hospital. She was to return in two months.

On 9/30/21, Petitioner presented to Franklin Hospital for occupational therapy. (PX4) She presented with left shoulder, arm, and wrist pain. She reported she had the Moderna COVID-19 vaccination on 8/23/21 and the following day had increased pain at the injection site with pain radiating down her left arm, which had continued. She rated her current left arm pain at 6/10, which significantly increased with movement. She had decreased range of motion and strength in her left shoulder, elbow, and wrist. She was guarded and her reported effort on exam was fair. Petitioner was prescribed occupational therapy 2-3 times per week for 4-6 weeks.

On 10/1/21, Petitioner called Dr. Soni's office and wanted to know if she needed to continue wearing the supplemental oxygen. She reported current usage of 3-4 liters. (PX7, p.21) Dr. Soni advised that her walk test indicated she no longer required the supplemental oxygen. Petitioner requested a follow up appointment and wanted to know what to do at this point as her symptoms persisted. Dr. Soni ordered a limited EKG and referred Petitioner to BJC Pulmonary Department.

On 10/7/21, Petitioner returned to Dr. Rethorst and reported she felt worse with a fluctuating hear rate between the 30s and 180s. She reported continued dizziness, lip tingling, and use of three liters of supplemental oxygen. Dr. Rethorst noted her symptoms included painful breathing, shortness of breath, and chest pain. Petitioner reported that yesterday she had problems with bradycardia and could not get her heart rate up with activity. Her O2 saturation dropped into the 70's on room air. She put on oxygen and went for a walk and her heart rate accelerated to 168, followed by nausea, lightheadedness, and tingling in her hands, feet, and lips. It was noted she was scheduled for an echocardiogram later that day. Dr. Rethorst instructed her to follow up in four weeks or as needed.

The echocardiogram was performed at SIH Memorial Hospital of Carbondale and revealed no paricardial effusion. (PX3)

Petitioner underwent occupational therapy at Franklin Hospital from 10/8/21 through 10/29/21. (PX4, p. 174-180)

On 10/27/21, Petitioner returned to Dr. Soni with unchanged symptoms and significant fatigue. She complained of significant shortness of breath with minimal activity, chest pain, coughing, thick, brown phlegm, brain fog, intermittent dizziness, and worsening joint pain. Petitioner continued to take three liters of supplemental oxygen. Dr. Soni found her autoimmune work up was mostly negative except for borderline high anti histone AB raising the concern for possible drug induced symptoms. He noted the walk test did not show any desaturation and the repeat chest x-ray and EKG were essentially unremarkable. Dr. Soni stated that the cause of Petitioner's symptoms remained unclear. He recommended repeat chest imaging due to ongoing symptoms, possible hypoxemia, and new productive cough. He advised he would await BJC's pulmonary clinic recommendations. He ordered a new chest CT and pulmonary rehab. Dr. Soni advised Petitioner she could continue using the supplemental oxygen and she would need a pulmonary function test in the future.

On 11/8/21, Petitioner returned to Dr. Rethorst with unchanged symptoms. She reported no improvement from occupational therapy and her left leg was going numb. It was noted she had gained weight and her blood pressure was elevated. Dr. Rethorst believed her symptoms were most likely pericarditis, myocarditis, and neurologic problems due to her immune reaction triggered by the vaccine. He noted there was a risk for cardiac problems known to be related to COVID-19 vaccines. Petitioner was referred to Barnes Neurology Group for evaluation of her left-sided symptoms.

On 11/16/21, Petitioner underwent a CT scan of her thorax. (PX6) The study was positive for low lung volumes and mild brochovascular crowding in the bases.

On 12/2/21, Petitioner presented to SIH Herrin Hospital for outpatient pulmonary rehab which she underwent through 12/30/21. (PX6)

On 12/20/21, Dr. Rethorst authored a work slip that placed Petitioner off work. (PX4, p.87) The note states Petitioner has been off work since 8/31/21 due to illness post covid-19 immunization. The expected return to work date was "could be March 2022", depending on expert consultation opinions scheduled in the near future. There is no corresponding office note dated 12/20/21.

On 1/6/22, Petitioner tested positive for COVID-19. (PX4, p.88-91) She subsequently tested negative on 1/13/22.

On 1/25/22, Petitioner returned to Dr. Rethorst and advised she was having trouble finding a neurologist who accepted worker's compensation. She continued to have asymmetric facial paralysis on the left, left peri oral facial weakness, left hand weakness, and left 5th digit weakness with flexion. Dr. Rethorst noted her pulmonary rehab was on hold for two weeks because Petitioner tested positive for COVID-19. He noted she continued to complain of side effects from the COVID-19 vaccine. She reported bilateral foot pain and pain with activity. She

continued to wear supplemental oxygen and attempted to do without it at times. She continued to have chest pain, hair loss, numbness in her entire left side, loss of vision in her left eye, and she drooled from the left side of her face. She was scheduled to see a pulmonologist that week. Dr. Rethorst ordered Petitioner to return in one month for follow up.

On 1/27/22, Petitioner was examined by Dr. Jeff Selby pursuant to Section 12 of the Act. (RX2) Dr. Selby is board-certified in pulmonology, internal medicine, and critical care. He noted Petitioner's chief complaints were shortness of breath and left-sided symptoms. Petitioner provided a history of receiving a Moderna COVID-19 vaccination on 8/23/21. After a few hours she noticed stabbing chest pain. Petitioner reported her symptoms increased with activity as deep breathing intensified it. She had increased chest pain and fullness lying flat. Petitioner stated she had enlarged lymph nodes under her left arm and arm pain the day after the injection. She reported she could not exhale enough to inflate a balloon. She denied headaches, memory loss, or visual disturbances. She was positive for chest pain, palpitations, shortness of breath, cough, wheezing, difficulty sleeping, daytime sleepiness, muscle aches and joint pain particularly on the left, numbness in her left arm and leg, and left hand tremors.

Petitioner reported she underwent an echocardiogram that showed a pericardial effusion that resolved on its own. She reported she experienced no heart trouble prior to the vaccine. Physical exam revealed Petitioner was breathing easy at rest. Her pulse was 106, regular respiration, and blood pressure was 149/95. Her pulse oximetry on 3 liters was 98%.

Chest exam revealed clear breath sounds bilaterally with equal excursion. Cardiac exam was normal. Her extremities showed no edema bilaterally. Petitioner did not raise her left arm above horizontal level per Dr. Selby's instructions. Petitioner refused labs, imaging, and pulmonary function testing in his office. Dr. Selby noted Petitioner's history of shingles with swollen lymph nodes on the right side of her neck.

Dr. Selby reviewed the chest CT scan performed on 8/30/21 that showed no paricardial effusion, the chest x-ray dated 9/9/21 that showed no acute cardiopulmonary process, and the EKG performed on 10/7/21 that showed no pericardial effusion. He stated the chest CT scan dated 11/16/21 showed normal appearing lung tissue without scar or infiltrate, and no gas exchange abnormality to support walking hypoxia or low levels of oxygen. Dr. Selby opined it was very unlikely Petitioner's symptoms were caused by the Moderna vaccine. He stated that while various reports were accruing about unusual symptoms and findings after the COVID-19 disease and vaccines, there was no good science to prove a causal relationship of the symptoms, physical findings, and laboratory results.

Dr. Selby found minimal, if any, objective findings to support a cause for Petitioner's numerous symptoms. He opined that oximetry was widely known to show falsely low values from many causes, including clammy skin, which especially occurs in anxious individuals, and which he believed was almost certainly what occurred with Petitioner. He noted that Petitioner's oximetry walk on 9/3/21 showed oximetry above 90% which excluded a clearly false low reading. He stated that the oximetry walk on 9/9/21 showed a saturation of 68% and was not credible and likely a false reading. He noted the final walk test on 9/28/21 resulted in a minimum saturation of 97%, which was a normal result.

Dr. Selby stated the only credible objective testing that correlated with any of Petitioner's subjective complaints were the imaging studies showing a small pericardial effusion and borderline left-sided lymphadenopathy. He stated that some rare reports associated such issues with Covid vaccines; however, he opined that such issues are usually the result of an inflammation from a virus, autoimmune inflammatory condition, congestive heart failure, malignancy, or low protein, only the latter two not being present in Petitioner. Dr. Selby stated there was less than a 25% chance that Petitioner's pericarditis was caused by the Moderna injection, and even assuming that condition was causally related to the injection, only the testing and treatment of that condition would be causally related.

Dr. Selby noted that Petitioner's seven-day Holter monitor showed her complaints correlated with sinus rhythm or tachycardia, and he believed that Petitioner's anxiety was the likely cause of her tachycardia. He noted that Petitioner's shingle diagnosis twelve days prior to the injection was the likely cause of her lymphadenopathy and pericardial effusion. He stated that Petitioner's history of shingles and Epstein Barr make her susceptible to viruses.

Dr. Selby opined that Petitioner's pericardial effusion was very unlikely to cause any longstanding effect that would impair her exercise or cause her months of chest pain and shortness of breath. Similarly reported pericardial effusions attributable to either COIVD-19 or a vaccine were shown in the literature to be very short lived, lasting approximately seven days. Petitioner's effusion was so small it had no effect on her gas exchange or exercise tolerance.

Dr. Selby has seen several hundred patients who have had Covid vaccines, and none of those patients have had persistent pain near the injection site, respiratory complaints, chest pain, or findings of pericarditis, pericardial effusion, or tachycardia. He believed Petitioner was over-dramatizing her situation when she claimed she was "hanging on by a thread" despite her normal vital signs and exams. He stated Petitioner's complaints of chest pain with inspiration appeared to correlate with her inflamed pericardium and subsequent pericardial effusion; however, those conditions resolved within a short time.

Dr. Selby noted that Petitioner's left axillary lymphadenopathy, observed on the 8/30/21 chest CT scan, possibly correlated with pain in her left arm; however, he noted the lymph node enlargement was barely abnormal on CT scan. He stated that from a cardiopulmonary standpoint, Petitioner had good gas exchange and exercise tolerance such that she was able to work full duty without restrictions since 11/16/21.

On 1/28/22, Petitioner presented to Dr. Maanasi Samant at the Center for Advanced Medicine Lung Center. (PX10) She complained of progressive weakness, chest pain, and shortness of breath. Dr. Samant noted Petitioner was previously healthy until she received the Moderna COVID-19 vaccine. Petitioner underwent a six-minute walk test that was terminated in four minutes due to chest pain, dizziness, and shortness of breath. Chest x-rays revealed small lung volumes. Pulmonary function testing was restrictive in clinic, but poor quality. Dr. Samant admitted Petitioner for expedited workup. He believed it was possible Petitioner developed a chronic demyelinating polyneuropathy or autoimmune or neuromuscular disorder. He noted

pulmonary would follow during hospitalization and he recommended imaging, TTE, a diaphragm evaluation, and neuromuscular consult.

On 1/30/22, Petitioner was admitted to Barnes Jewish Hospital for three days. (PX8) Petitioner reported difficulty performing daily activities, worsening fatigue, left-sided weakness, headaches, light sensitivity, blurry vision in her left eye, shortness of breath, substernal, sharp, and nonradiating chest pain, and pain with coughing and deep breathing. Physical examination revealed decreased visual field of the left side of the left eye in the upper and lower quadrants, decreased sensation to light palpitation on the left, and lower left face drooping with smiling. Her left lower extremity, left wrist and forearm, left shoulder, and left hand and fingers showed decreased strength. She had decreased sensation on the left compared to the right.

Chest x-rays revealed small lung volumes bilaterally. Dr. Andrew Alter suspected neuromuscular disease given Petitioner's concurrent left-sided weakness. It was noted her neuro exam was difficult to localize, suggesting multiple lesions versus a functional neurologic disease. She was recommended to have an EKG, pulmonary consult, and neuro consult with repeat MRI and EMG studies. It was found interstitial lung disease (ILD), heart failure, and neuromuscular disease were unlikely. Pulmonary was ruled out by intraparenchymal process. CT scan of the chest, MRI of the brain, and a 6-minute walk test were normal. Petitioner was advised that all of her testing was normal, and all departments cleared her without diagnosis. Petitioner was recommended to follow up with outpatient pulmonary rehab and physical therapy. She was also recommended to follow up in clinic for further review of her blurry vision.

On 2/9/22, Petitioner returned to Dr. Rethorst with unchanged symptoms. Petitioner reported using Icy Hot, hot showers, and BioFreeze to reduce her pain as well as tanning to help her vitamin D deficiency. Dr. Rethorst noted Petitioner's blood pressure was improving but was still elevated. Physical examination revealed left peripheral 7th nerve palsy and left first and second continued weakness. Her left upper extremity showed decreased muscle strength. Dr. Rethorst referred Petitioner to Mayo Clinic, recommended a liver elastography, and prescribed Ergocalciferol for vitamin D deficiency.

On 2/14/22, Petitioner underwent a liver elastography at Franklin Hospital. (PX4) The study was consistent with F1 fibrosis.

On 2/17/22, Petitioner underwent an echocardiography that was normal. (PX4)

On 2/22/22, Dr. Rethorst noted Petitioner was declined by Mayo Clinic and was told the demand for their services exceeded their capacity. Petitioner complained of bilateral leg and feet burning. She reported her left hand was stiff and she could not stretch out her fingers. Clothes hurt her skin and she had difficulty walking due to joint pain. She continued to have shortness of breath, chest pain, hair loss, and depression. Petitioner expressed a desire to return to work and avoid disability. Dr. Rethorst recommend Lyrica for her neurogenic pain and occupational therapy for her hand stiffness.

On 3/4/22, Petitioner presented to Washington University Ophthalmology for evaluation. (PX9) Dr. Cynthia Montana noted she was following up from her admission to the hospital on

1/31/22. Petitioner reported worsening peripheral and central vision in her left eye, with constant floaters, since being discharged. She had pain behind her eye, pressure when she closed it, and significant pressure on her lower eye when looking up. An anterior and posterior exam revealed no evidence of optic nerve or retinal disease or other intraocular pathology. Some features of the exam were suggestive of nonorganic vision loss, including tunneling of the visual field. Petitioner was informed that her vision would likely slowly recover. She was instructed to return in two to three months for further testing.

On 3/10/22, Petitioner returned to Franklin Hospital for occupational therapy for her left upper extremity. (PX4) Her effort and prognosis were listed as fair. She was discharged on 3/25/22 for lack of improvement.

On 3/22/22, Petitioner returned to Dr. Rethorst with worsening numbness in her feet and legs. Lyrica was not providing relief and she walked with a limp due to pain. Petitioner reported her left eye was crusted in the morning and she began experiencing muscle twitching around her mouth three weeks prior. Dr. Rethorst recommended a cardiac MRI and Lyrica every other day for a few weeks.

On 5/3/22, Petitioner returned to Dr. Rethorst with unchanged weakness and visual problems, headaches, joint pain and numbness, chest pain, palpitations, a burning pain from her back radiating around her ribs anteriorly, numbness and a "weird feeling" from her buttocks to her vagina, urine leakage, and right side and arm vibrating. Physical examination revealed decreased left knee flexion and extension and left plantar flexion and extension. Decreased range of motion was found in the left shoulder with abduction and decreased grip strength on the left. Decreased flexion and extension was found in the left wrist and forearm. Dr. Rethorst recommended an electromyography of her four extremities.

On 5/4/22, Petitioner returned to Washington University Ophthalmology for follow up. (PX9) Petitioner reported pain behind her left eye, extreme headaches behind her eyes, crustiness in her left eye in the morning, floaters that came and went, and difficulty with peripheral vision. Repeat anterior and posterior examinations showed no evidence of optic nerve or retinal disease. Petitioner was to return in six months for repeat tests.

On 5/23/22, Petitioner returned to Dr. Rethorst and reported continued headaches, nausea, joint pain, scalp itchiness, and heaviness on the left side of her face. She had been using Motrin and Tylenol. It was noted that recent EMG/NCV testing was normal. Petitioner continued to remain off work. Physical exam revealed stiffness in her fingers. Dr. Rethorst recommended she continue to follow up with neurology in Springfield and recommended a neuro psych consult regarding the normal objective findings from her tests and her subjective symptoms. He prescribed Hydroxyzine for itching and Losartan Potassium.

On 6/22/22, Petitioner returned to Dr. Rethorst with persistent headaches, stabbing pain with burning in her feet, a purple area on her lower legs when standing for long periods, and massive heartburn. For her mixed sensory motor polyneuropathy, Dr. Rethorst recommended a variety of neurologic medications. He believed Petitioner would recover given time and discussed returning her to light duty work since she could now drive.

On 6/30/22, Dr. Jeff Selby authored an addendum to his Section 12 Report. (RX3) Dr. Selby reviewed records from Barnes Jewish Hospital and stated his causation opinion remained unchanged. Dr. Selby stated that Petitioner's documented neurological exams showed that the findings were more likely functional or had no organic basis. He stated the pulmonary function testing from 1/31/22 indicated very poor cooperation on Petitioner's part and should not be used for any clinical purposes. He noted that Petitioner's total lung capacity testing was normal or very nearly so. He noted that Petitioner's arterial blood gas study performed at Barnes, which is a totally effort independent test, was normal.

Dr. Selby noted Petitioner's numerous 6-minute walk tests showed normal oxygenations, except for one that appeared to be showing less than accurate information. A few days later the test was normal on room air. Dr. Selby stated Petitioner reported no improvement using oxygen yet she continued using/carrying a portable O2 system.

On 7/29/22, Petitioner returned to Dr. Rethorst and reported her fingers and toes hurt and it was painful to touch anything. She was taking Lyrica twice daily. Her hands continued to shake, and she had a lump on her left dorsal arm. Petitioner complained of skin infections, sun sensitivity, a rash on her face and chest, and drooling while sleeping. She was concerned her forgetfulness was worsening. Dr. Rethorst documented normal attention span and ability to concentrate and name objects, as well as normal grip strength and tone in both hands. He recommended she increase Lyrica to 75 mg TID and to follow up in one month.

On 8/5/22, Petitioner returned to Dr. Rethorst with posterior headaches and sharp pains in her head. She called earlier that day and reported being up most of the night with excruciating headaches and pain all over, including her finger and toenails with feet and hand burning. She had a pulmonology appointment at Barnes that was cancelled because they did not accept her insurance. She reported crying most of the night because she did not know if she would wake up today. She stated, "there's something bad wrong, this is in my bones". Petitioner reported seeing flashes of light in her vision and a black circle at times. She had left leg twitching and felt her left arm was dead weight. She continued to experience sharp chest pains and her head felt like it would explode. Petitioner reported she was only taking Ibuprofen. Dr. Rethorst recommended Hydroxyzine for her headaches, ordered an EEG for her muscle abnormalities, ordered an EKG for her chest pain, and repeat chest x-rays for shortness of breath. With regard to anxiety and depression, Dr. Rethorst opined that, "clearly to a reasonable degree of medical certainty I believe the disease [anxiety and depression] have worsened due to adverse side effects of Covid vaccination and her prolonged recovery with complex neuro cardio and pulmonary systems involved including her inability to return to work".

Dr. Richard Rethorst testified by way of deposition on 6/6/22. (PX11) Dr. Rethorst is board-certified in family medicine. He has been Petitioner's primary care physician for a number of years, dating back to at least 2014. He testified that Petitioner had no history of left-sided pain or shortness of breath to his knowledge. He examined Petitioner on 9/1/21 for chest pain and shortness of breath and she had a normal exam with normal oxygen levels. He testified that the studies performed in the hospital were positive for fluid around Petitioner's heart caused by an insult irritating the heart muscle. Dr. Rethorst testified that pericarditis is a known side effect of

the Moderna vaccine and can cause chest pain and shortness of breath. He opined that Petitioner had an immune response to the vaccination.

Dr. Rethorst testified Petitioner has had slow improvement and required oxygen. She developed motor neuron illnesses where the nerves tracking muscles do not operate correctly. He testified that Petitioner has not been capable of work due to her limited level of energy to sustain activity, fatigue, shortness of breath, difficulty with hand coordination, and weakness and abnormal muscle movement in her face.

Dr. Rethorst testified that at the time of the COVID-19 pandemic he was the president of the medical staff at Franklin Hospital and is familiar with treating patients with COVID. He anticipates Petitioner's symptoms will resolve over time based on the case studies he has followed. Dr. Rethorst opined that Petitioner's condition of pericarditis, shortness of breath, and left-sided pain was caused by the Moderna vaccination. He based his opinion on Petitioner's onset of symptoms, literature review, objective findings, and his examination. He testified that an epidemiologist for the CDC has shown interest in Petitioner's case, and he has discussed her case with them. Dr. Rethorst testified he disagrees with Dr. Selby's causation opinion as this is a new illness or side effects from a preventative treatment.

On cross-examination, Dr. Rethorst testified that Petitioner presented with shingles on 8/11/21 that caused swollen lymph nodes, fatigue, nausea, and headache. He stated that Petitioner's symptoms were right-sided consistent with shingles outbreaks that affect one nerve branch. Dr. Rethorst explained that Petitioner's symptoms following the vaccine were all on her left side, including pain, weakness, and muscle abnormality. He testified that shingles do not produce the type of reaction Petitioner exhibited. Dr. Rethorst agreed shingles are painful and can sometimes be mistaken for symptoms of problems affecting the heart, lungs, or kidneys. He agreed that shingles can cause pericarditis, but it did not in Petitioner's case as that would mean the shingles were in her blood and she would have become septic. Dr. Rethorst testified he has never known a patient with shingles to be more susceptible to developing pericarditis due to obesity or high cholesterol. He agreed that Petitioner suffered from anxiety and depression prior to the COVID vaccination.

Dr. Rethorst testified that Petitioner had some positive exam findings of muscle contraction abnormalities and he diagnosed Petitioner with Bell's palsy on 9/14/21. He opined that Petitioner's neurological/muscle movement abnormalities are causally connected to the vaccination. He explained that the CDC has documented several dozen cases of Bell's palsy following the vaccination, which Petitioner demonstrated with face weakness. Dr. Rethorst referenced a "well-respected online review service that many medical providers utilize called 'Up to Date'". He testified that physicians have been monitoring whether Bell's palsy symptoms are related to the vaccine and there is no biopsy or imaging study available to prove the relationship.

Dr. Rethorst testified that Petitioner's imaging studies were normal at the end of September 2021 evidencing the pericarditis had resolved. He agreed that Petitioner's symptoms related to pericarditis should have resolved but it was a new illness they were dealing with. He testified that he saw Petitioner frequently in September 2021 to prevent hospitalization because it

was known that the COVID vaccine could cause blot clots which can produce the symptoms Petitioner exhibited. He agreed that Petitioner is a candidate for a neuropsychological evaluation due to anxiety.

Dr. Rethorst testified he placed Petitioner off work on 9/1/21 until she was examined by a cardiologist. He testified that on 12/20/21 he placed Petitioner off work until approximately March 2022 as recent literature showed patients' symptoms as a result of the COVID vaccine resolved within six months. He testified that Petitioner's symptom complex has not resolved. Dr. Rethorst opined that Petitioner could have performed sedentary work if Respondent would have allowed her to work in a hospital setting without being fully vaccinated for COVID.

Dr. Rethorst testified it is possible that Petitioner's ongoing symptoms are related to her anxiety and depression, which would require more complex testing than is available in Southern Illinois. He testified that Petitioner would have to go to Mayo Clinic or Chicago to obtain a heart scan and PET scan of the brain. He testified he does not have any specific treatment recommendations for Petitioner at this time other than continuing to monitor her.

Dr. Jeff Selby testified by way of deposition on 7/7/22. (RX1) Dr. Selby is board-certified in pulmonology and internal medicine. He testified that Petitioner complained of breathing difficulty, chest pain, and left-sided symptoms that she attributed to the Moderna vaccine. He noted a prior history of anxiety and she denied heart trouble prior to the vaccine. Petitioner reported a swollen lymph node under her left arm, and she could not walk more than 50 feet due to fatigue. She complained that she could not exhale enough to blow up a balloon, and she could not perform a pulmonary function test because it hurt her back down into her buttocks.

Dr. Selby testified that Petitioner never mentioned Bell's palsy or that she had shingles a couple of weeks prior to undergoing the Moderna injection. He learned of the shingles diagnosis after reviewing her medical records following his examination. Dr. Selby testified he documented no objective physical findings on exam that correlated to any of Petitioner's subjective complaints. He stated that Petitioner declined any labs as part of the exam and ordinarily he would obtain a complete blood count or chemical panel to confirm there were no issues affecting the respiratory system. He testified that Petitioner also refused imaging studies, a walk test, spirometry, and full pulmonary function testing, which he stated was necessary to diagnose Petitioner.

Dr. Selby testified that while it was possible the vaccine could have been a causative factor in Petitioner's subjective complaints, it was much more likely probably they were not causally related. He based his opinion on his 40 years of experience as a pulmonologist and internist, and experience with Covid and vaccinated patients over the previous two years. He testified that Petitioner's purported complaints were an extremely unusual set of symptoms to be related to a vaccine, and that the symptoms did not hang together as a unifying diagnosis.

Dr. Selby testified that Petitioner's shingles condition showed she was susceptible to viral infections which could have caused some of her symptoms, including pain, pericardial effusion, fatigue, shortness of breath, and swollen lymph nodes. He noted that Petitioner underwent a CT

scan of her chest in 2018 that showed a small anterior pericardial effusion, and possibly some mild inflammation in the left axilla with a borderline enlarged lymph node. He explained that a pericardial effusion is fluid around the sac of the heart going around the heart muscle and could be an indication of inflammation. There are usually no symptoms associated with a pericardial effusion. Depending on how large it is, a pericardial effusion could cause chest pain with deep breath and could inhibit blood flow and cause shortness of breath. He testified that Petitioner's pericardial effusion seen on her CTA of 8/30/21 was small enough it should not have caused symptoms. Dr. Selby testified there are many causes of pericardial effusion, including viral problems, rheumatoid arthritis, or other autoimmune diseases. The typical duration is between a few days and a few weeks.

Dr. Selby rejected the notion that since Petitioner's documented lymph node swelling prior to the injection was on the right that the swelling on her left side must be related to the injection. He testified it is possible the swollen lymph nodes were caused by shingles.

Dr. Selby testified that the only objective finding in Petitioner's medical records that potentially correlated to her subjective complaints was an EKG that showed some non-specific ST elevation, which he explained could be related to pericarditis. He testified that the echocardiogram dated 9/8/21 showed no pericardial effusion, meaning the effusion that was present on 8/30/21 resolved, which should have resolved Petitioner's subjective symptoms of heart racing, shortness of breath, and chest pain. He stated that only where a very inflammatory effusion causes the pericardium to scar tightly on the heart, which was not present in Petitioner, would shortness of breath continue after the effusion abated.

Dr. Selby testified that on or around 9/13/21 Petitioner reported new symptoms of tinging in the right side of her face and drooping of both eyes and mouth. He opined that these symptoms are not a typical presentation for Bell's palsy, and he was not aware of any link between the Moderna vaccination and Bell's palsy.

Dr. Selby reviewed Petitioner's 11/16/21 CT scan and stated it showed nothing to support gas exchange or abnormal oxygenation when Petitioner walked. He explained that oximetry is widely known to show false low values from many causes, which is relevant in this case because Petitioner had an incredible reading of percentages in the 60s. When a person has no objective reason to be short of breath or is not known to already have low oxygen, such a reading is a falsely low reading. He testified that based on Petitioner's other normal oximetry readings being basically normal, he did not believe the reading of 68-69% was accurate.

Dr. Selby testified that Petitioner's 7-day Holter test showed her complaints correlated with sinus rhythm or sinus tachycardia, and in her case anxiety was the likely cause. He testified that Petitioner's subjective complaints were out of proportion to any objective findings. He stated that Petitioner's admission and testing at Barnes showed that, more likely than not, her complaints had a functional component which confirmed his assessment. Dr. Selby testified that it was debatable whether Petitioner could be considered better if she was no longer on oxygen because it was not a certainty she had any condition requiring oxygen.

Dr. Selby testified that Petitioner was able to work full duty without restrictions no later than 11/16/21 at which time her gas exchange condition abated. He testified that any restrictions prior to 11/16/21 were not causally related to the Moderna injection.

On cross-examination, Dr. Selby agreed that one of the known side effects of the Moderna vaccine is pericarditis that affects the sac around the heart. He agreed that symptoms associated with pericarditis are frequently chest pain and shortness of breath which is treated with anti-inflammatory medications to subside an immune response.

CONCLUSIONS OF LAW

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

In addition to or aside from expert medical testimony, circumstantial evidence, especially when entirely in favor of the Petitioner, is sufficient to prove a causal nexus between an accident and the resulting injury, such as a chain of events showing a claimant's ability to perform manual duties before accident but decreased ability to still perform immediately after accident. *Pulliam Masonry v. Indus. Comm'n*, 77 Ill. 2d 469, 397 N.E.2d 834 (1979); *Gano Electric Contracting v. Indus. Comm'n*, 260 Ill.App.3d 92, 96-97, 631 N.E.2d 724 (1994); *International Harvester v. Indus. Comm'n*, 93 Ill.2d 59, 442 N.E.2d 908 (1982).

Causal connection between accident and claimant's condition may be established by chain of events including claimant's ability to perform manual duties before accident, decreased ability to still perform immediately after accident, and other circumstantial evidence. *Pulliam Masonry v. Indus. Comm'n*, 77 Ill. 2d 469, 397 N.E.2d 834 (1979). The law holds that accidental injury need not be the sole causative factor, nor even the primary causative factor, as long as it is a causative factor in the resulting condition of ill-being. *Sisbro, Inc. v. Indus. Comm'n*, 797 N.E.2d 665, 672 (2003). "Petitioner need only show that some act or phase of the employment was a causative factor of the resulting injury." *Fierke v. Industrial Commission*, 723 N.E.2d 846 (3d Dist. 2000). Allowing a claimant to recover under such circumstances is a corollary of the principle that employment need not be the sole or primary cause of a claimant's condition. *Land & Lakes Co. v. Indus. Comm'n*, 834 N.E.2d 583 (2d Dist. 2005). Employers are to take their employees as they find them. *A.C. & S. v. Industrial Comm'n*, 710 N.E.2d 837 (Ill. App. 1st Dist., 1999) citing *General Electric Co. v. Industrial Comm'n*, 433 N.E.2d 671, 672 (1982).

It is undisputed Petitioner underwent a COVID-19 vaccination on 8/23/21 as mandated by Respondent. Respondent admits that Petitioner sustained accidental injuries that arose out of and in the course of her employment on 8/23/21.

On 8/30/21, Petitioner presented to the emergency department with complaints of worsening chest pain that started a few days prior. She reported a history of her heart racing and pain with deep breaths since receiving a COVID-19 vaccination. A past history of angina pectoris (chest pain), transfusion, shortness of breath, and sleep apnea were noted all with an onset date of 3/8/19. The record indicates that on 3/8/19 Petitioner underwent a laparoscopy cholecystectomy.

A series of tests were performed and were positive for inflammation within the left axilla with borderline enlarged left axillary lymph nodes and anterior pericardial effusion. Petitioner was diagnosed with lymphadenopathy, chest pain, and a pericardial effusion.

On 9/1/21, Petitioner followed up with Dr. Rethorst and provided a history of chest pain, shortness of breath, elevated heart rate, left-sided pain with deep breathing, and body aches after receiving a COVID-19 vaccine on 8/23/21.Dr. Rethorst noted Petitioner had been seen in the walk-in clinic on 8/11/21 and was treated for shingles that caused swollen lymph glands on the right side of her neck. The Arbitrator notes that no pre-accident medical records were admitted into evidence, specifically the office visit of 8/11/21 where Petitioner was allegedly treated for shingles. However, Dr. Selby reviewed and summarized the office visit dated 8/11/21 in his Section 12 report. (RX2) Dr. Selby's report dated 1/27/22 was not tendered at his deposition and Petitioner had no objection to the admission of the report at arbitration.

Dr. Selby summarized the 8/11/21 office note as follows: Petitioner presents with complaints of skin problems which started last night. She has a painful rash on the right side of her neck with swollen glands on the right. She has a history of shingles with the same symptoms. A CT of her chest performed on 6/13/18 was within normal limits. Respiratory exam showed quiet, even, and easy respiratory effort with no use of accessory muscles and normal breath sounds. She was assessed with allergic sinusitis and shingles. The Arbitrator notes that Dr. Rethorst's medical records do not note any history of shingles prior to 8/11/21. Dr. Rethorst has been Petitioner's primary care physician for many years, but he could not testify as to how long because his medical records only went back to 2014. He did note in the office visit dated 9/1/21 under "Other problems" that Petitioner had shingles, which was not listed under "Past medical history".

There is no evidence Petitioner had chest pain or shortness of breath in over two years prior to receiving the Moderna vaccination. The only history of chest pain and shortness of breath prior to 8/23/21 was noted in the emergency room record dated 8/30/21, which provided an onset date of 3/8/19 when Petitioner underwent a laparoscopy cholecystectomy. There is no evidence that Dr. Rethorst ever treated Petitioner for chest pain or shortness of breath prior to 8/23/21 and he testified he did not recall Petitioner ever having these symptoms prior to the Moderna vaccine. On 9/1/21, Dr. Rethorst noted a medication history of Paroxetine for depression starting on 5/11/21, Clonazepam for anxiety starting on 4/8/21, and Vitamin D. Petitioner was not taking medication for chest pain or respiratory issues when she presented to Dr. Rethorst following the Moderna vaccine.

There is no evidence Petitioner suffered from elevated heart rate, left-sided pain with deep breathing, or heart problems prior to 8/23/21. Prior to receiving the Moderna vaccine, Petitioner was able to perform her full job duties as a Surgical Tech that required her to be on her feet for 12 hours per shift.

Dr. Rethorst reviewed the chest CT scan of 8/30/21 and noted inflammation within the left axillary and an anterior pericardial effusion. He noted the CT scan of Petitioner's chest performed in June 2018; however, he did not make a comparison. Dr. Selby also noted the 2018 chest CT scan that was summarized in the 8/11/21 walk-in clinic office note that showed it was

within normal limits; however, there is no evidence that Dr. Selby reviewed the film or radiology report. The 2018 chest CT scan was not admitted into evidence.

Dr. Rethorst's physical exam on 9/1/21 revealed swollen glands, dyspnea, chest pain, rapid heart rate, and myalgia. Examination of her chest and lungs were normal. Lymphatic exam revealed generalized lymphadenopathy, with matted nodes, and mild tenderness in her neck, supraclavicular, and left axillary. The history portion of Dr. Rethorst's office note states, "Lymphadenopathy diagnosis is new and requires work up per ER note". He diagnosed Petitioner with acute pericarditis following a Moderna COVID-19 vaccination and referred her to a cardiac specialist.

Dr. Rethorst opined that Petitioner's symptoms following 8/23/21 were causally related to the Moderna vaccination and not her prior shingles diagnosis. He testified that Petitioner's symptoms following the vaccination were predominately left-sided and her positive studies of fluid around her heart are known to be related side effects of the Moderna vaccine, which can cause chest pain and shortness of breath. He testified that her right-sided shingles would not have caused the symptoms she experienced following 8/23/21. He agreed that shingles can cause pericarditis but opined it did not in Petitioner's case as that would mean the shingles were in her blood and she would have become septic.

Dr. Rethorst testified that Petitioner had some positive exam findings of muscle contraction abnormalities and he diagnosed Petitioner with Bell's palsy on 9/14/21. He testified that Petitioner's neurological/muscle movement abnormalities are causally connected to the vaccination. He explained that the CDC has documented several dozen cases of Bell's palsy following the vaccination, which Petitioner demonstrated with face weakness.

Dr. Selby noted Petitioner related her symptoms to the Moderna vaccine and she reported no prior history of heart problems. He took issue with Petitioner declining to undergo testing during the Section 12 exam, including labs, imaging studies, a walk test, spirometry, and full pulmonary function testing, which he stated were necessary to diagnose Petitioner and confirm there were no issues affecting her respiratory system. Dr. Selby testified that while it was possible the vaccine could have been a causative factor in Petitioner's subjective complaints, it was much more likely they were not causally related because her symptoms were an extremely unusual set of symptoms to be related to a vaccine, and the symptoms did not hang together as a unifying diagnosis.

Dr. Selby testified that Petitioner underwent a chest CT scan in 2018 that showed a small anterior pericardial effusion, and possibly some mild inflammation in the left axilla with a borderline enlarged lymph node. As indicated above, there is no evidence Dr. Selby reviewed the actual film or radiology report but based his assessment on a summarization of the office note dated 8/11/21 when Petitioner treated for shingles. His assessment at that time was the CT scan was within normal limits.

He did acknowledge that the chest CT scan dated 8/30/21 showed pericardial effusion which he opined was small enough it should not have caused symptoms. Dr. Selby agreed that

one of the known side effects of the Moderna vaccine is pericarditis that frequently causes chest pain and shortness of breath.

Based on the objective and circumstantial evidence, the Arbitrator finds that Petitioner's current condition of ill-being is causally connected to the Moderna vaccination she received on 8/23/21.

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?

Respondent disputes liability for medical expenses based on causal connection and the reasonableness and necessity of Petitioner's medical treatment. Based on the Arbitrator's finding as to causal connection and that the Arbitrator finds the opinions of Dr. Rethorst more persuasive than those of Dr. Selby, medical benefits are awarded herein. Petitioner has treated with numerous medical providers/specialists in an attempt to relieve the symptoms of the Moderna vaccination, including her primary care physician of many years, emergency physicians, pulmonologists, cardiologists, and ophthalmologists. All of these physicians made recommendations for testing and treatment based on Petitioner's symptoms following the Moderna vaccination. The Arbitrator finds that Petitioner's treatment has been reasonable and necessary to cure and relieve her of the effects of her work injury.

Therefore, Respondent shall pay the reasonable and necessary medical expenses outlined in Petitioner's Group Exhibit 1, pursuant to the Illinois medical fee schedule, as provided in Sections 8(a) and 8.2 of the Act. Respondent shall be entitled to a credit for any and all medical bills paid through its group medical plan, pursuant to the stipulation of the parties.

Petitioner testified that while she is still symptomatic, her condition is slowly improving. Dr. Rethorst testified on 6/22/22 that Petitioner's symptom complex has not resolved. He testified at that time he did not have any specific treatment recommendations for Petitioner other than continuing to monitor her. However, following Dr. Rethorst's testimony, Petitioner continued to treatment with him on three occasions. On 6/22/22, she complained of headaches, stabbing pain with burning in her feet, a purple area on her lower legs when standing for long period, and massive heartburn. For her mixed sensory motor polyneuropathy, Dr. Rethorst recommended a variety of neurologic medications. On 7/29/22, Petitioner complained of pain in her toes and fingers, shaky hands, skin infections, a rash on her face and chest, and drooling while sleeping. He recommended she increase her Lyrica prescription. On 8/5/22, Dr. Rethorst noted Petitioner's complaints of posterior, excruciating headaches and sharp pains in her head and chest. Dr. Rethorst recommended Hydroxyzine for her headaches, ordered an EEG for her muscle abnormalities, ordered an EKG for her chest pain, and repeat chest x-rays for shortness of breath. With regard to anxiety and depression, Dr. Rethorst opined that, "clearly to a reasonable degree of medical certainty I believe the disease [anxiety and depression] have worsened due to adverse side effects of Covid vaccination and her prolonged recovery with complex neuro cardio and pulmonary systems involved including her inability to return to work".

The evidence supports that Petitioner has not been cured or relieved from the effects of her work-related injuries. The Arbitrator finds that Petitioner is entitled to receive, and Respondent shall authorize and pay for, the additional care recommended by Dr. Rethorst, including monitoring, EEG, EKG, chest x-rays, medications, and a neuropsychological evaluation, until Petitioner has reached maximum medical improvement.

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

Petitioner presented to the Emergency Department of SIH Memorial Hospital of Carbondale on 8/30/21 where she was admitted for testing. She was diagnosed with lymphadenopathy, chest pain, and a pericardial effusion. She was discharged the same day at approximately 7:30 p.m. and instructed to follow up with her primary care physician and cardiology. No work slip was provided.

Dr. Rethorst testified he placed Petitioner off work on 9/1/21 until she followed up with a cardiac specialist. In the interim, on 9/4/21, Petitioner was again admitted through the emergency room at SIH Memorial Hospital of Carbondale where she underwent additional testing. On 9/7/21, Petitioner was examined at SIH Prairie Heart Institute and a Holter monitor was ordered. Petitioner continued to treat with Dr. Rethorst on eleven occasions through 12/20/21, at which time he authored an off work slip stating Petitioner has been off work since 8/31/21 due to illness post Covid-19 immunization. He expected Petitioner could return to work in March 2022 pending expert consultation opinions. Dr. Rethorst testified that he placed Petitioner off work until approximately March 2022 as recent literature showed patients' symptoms as a result of the COVID vaccine resolved within six months. However, he testified that Petitioner's symptoms have not resolved.

Dr. Rethorst testified that Petitioner has not been capable of work due to her limited level of energy to sustain activity, fatigue, shortness of breath, difficulty with hand coordination, and weakness and abnormal muscle movement in her face. Dr. Rethorst testified on 6/6/22 that Petitioner could have performed sedentary work if Respondent would have allowed her to work in a hospital setting without being fully vaccinated for COVID.

Respondent disputes liability for temporary total disability benefits based on causal connection, the work restrictions were not reasonable and necessary, and it would have accommodated light duty work. There is no evidence Respondent offered light duty work or that Petitioner refused a sedentary position. Although Dr. Rethorst testified in retrospect Petitioner could have performed a sedentary position, he never released Petitioner to return to work with light duty restrictions.

Therefore, the Arbitrator awards total temporary total disability benefits for the period 9/1/21, when Dr. Rethorst placed Petitioner off work, through 9/26/22, for a period of 55-6/7ths weeks. Pursuant to the stipulation of the parties, Respondent shall receive credit for nonoccupational indemnity disability benefits paid in the amount of $6,514.79, and a credit for a permanent partial disability advance of $7,159.20.

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

Arbitrator Linda J. Cantrell DATE

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	19WC022265
Case Name	Sandra Amezquita v. Acme Alliance LLC
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	23IWCC0406
Number of Pages of Decision	24
Decision Issued By	Carolyn Doherty, Commissioner

Petitioner Attorney	David Barish
Respondent Attorney	Brad Antonacci

DATE FILED: 9/14/2023

/s/Carolyn Doherty, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

SANDRA AMEZQUITA,

Petitioner,

vs. NO: 19 WC 22265

ACME ALLIANCE, LLC.,

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, and nature and extent of the injury, being advised of the facts and law, reverses the Decision of the Arbitrator as stated below.

I. FINDINGS OF FACT

At trial, Petitioner, Sandra Amezquita testified via Spanish interpreter she was employed by ACME Alliance as a machine operator in 2019 and had worked there for three and half years. She also testified she did not have any injuries or treatment to the lower back prior to the alleged work accident on June 14, 2019.

Petitioner testified she worked as a machine operator and on June 14, 2019 she was packing two-pound pieces into a box. She placed 15 pieces in each box, with each box then weighing 20 to 30 pounds. Petitioner testified that after packing the pieces she placed the boxes on a pallet. On June 14, 2019, while carrying a packed box to the pallet, she hurt her back. At the time of the injury, her work shift was ending so Petitioner decided to try and clean her area and then went home. Petitioner testified at home she took medication to calm the pain.

Petitioner testified the injury happened on a Friday, and she was off work on Saturday and Sunday. Petitioner further explained she returned to work on Monday as scheduled and worked a physically lighter job. The next day, Tuesday the 18th, Petitioner received a phone call before the start of her shift from Ms. Maria Chavez who advised Petitioner, she was being laid her off due to a slowdown in work.

Mr. Alejandro Molina testified via Spanish interpreter that he is currently employed by ACME Alliance as a machine operator and set up man and has worked for Respondent for the last five years. He testified Petitioner used to work the same shift as him, but she worked as a CNC Machine operator. Mr. Molina stated he supervised the machines during that shift, but he was not Petitioner's supervisor. Mr. Molina also testified he was in the same area as Petitioner on June 14, 2019, but he was "at casting and she was in CNC." Mr. Molina clarified on cross-examination that the room where he and Petitioner worked was a big area with machines and he would not have been able to hear Petitioner talking because the machines are noisy. During the work shift, Mr. Molina only spoke to Petitioner to give instructions regarding the machine she worked on. He also testified the full boxes weighed less than 30 thirty pounds but more than 20 pounds.

Ms. Maria Chavez testified she has been employed by ACME Alliance for 31 years and has been the human resources manager for approximately 20 years. She also worked as a machine operator for Respondent. Ms. Chavez testified Petitioner worked for ACME Alliance as a full-time CNC machine operator from October 2018 until June 17, 2019. On June 14, 2019, Petitioner was making parts for water pumps and the parts weighed about one to one and half pounds. Petitioner packed 20 pieces in each box. Ms. Chavez testified the packed box weighed 20 to 21 pounds. Ms. Chavez explained Petitioner would carry the packed box two to three steps from the table to the pallet, which was located behind or next to the table where Petitioner was packing parts. When asked if Petitioner was lifting 25 pounds on June 14, 2019, Ms. Chavez responded not 25 pounds, but if she was doing the "Parker parts" she could be lifting 20 pounds every hour and 45 minutes to two hours. Ms. Chavez confirmed Petitioner's job description, Respondent's Exhibit 4, was accurate.

Respondent's Exhibit 4 is the ACME job description for Petitioner. Of note, there is a letter dated August 29, 2019 from Maria E. Chavez attached to the job description. The subsequent pages detailing job requirements are dated September 9, 2019. The job description indicates lifting requirements up to 25 pounds from floor to waist.

Petitioner, Ms. Amezquita testified she told a co-worker working not too far away from her about her injury on the day it happened. Petitioner did not tell anyone in management because she thought the pain would go away. Petitioner testified she planned on communicating about her back on Tuesday the 18th, but "they called me and said that the work had slowed down and they were going to lay me off for a few days." As a result, Petitioner did not report to work on Tuesday June 18, and did not return to work for ACME Alliance. When asked if she ever communicated to ACME management about the June 14th accident, Petitioner testified she called in June to ask about work and spoke with Maria from human resources. It was Petitioner's testimony that the call to Maria was before she started her new job on July 20th. Petitioner testified that during the phone call, she told Maria she had injured her back at the company and Maria told her that she was not able to do anything because Petitioner was fired from work.

Mr. Molina testified Petitioner did not tell him on June 14, 2019, or at any point that she had injured herself at work. He did not witness Petitioner injure herself or notice that Petitioner appeared to be injured. Petitioner did not tell Mr. Molina she was experiencing pain in her back

or that she needed to go to the doctor. Mr. Molina testified if Petitioner had reported to him that she injured herself at work, he would have called his supervisor, who would have advised what clinic to take Petitioner to. Regarding the alleged work injury, Mr. Molina explained, "I found out through other people, because I think she told other people."

Ms. Chavez testified Petitioner did not report the June 14, 2019 work accident to her. Petitioner did appear to be injured and she did not make pain complaints to Ms. Chavez. However, Ms. Chavez testified her work shift ended at 4:30 p.m. and Petitioner's work shift was from about 2:30 or 3 p.m. until 11:00 p.m. at night. Ms. Chavez explained that if Petitioner was injured at the end of her shirt on June 14th, that Ms. Chavez would have been already gone by that time and that is why she didn't see Petitioner injured.

Ms. Chavez also testified Petitioner did not report an injury during the June 18th phone call, during which Petitioner was laid off from work. Ms. Chavez identified Respondent's Exhibit 3 as the letter she sent to Petitioner after speaking with her on June 18th. The letter is dated June 27, 2019 and is written in English only. The letter indicates that on Tuesday, June 18, 2019, Petitioner received a call from Respondent, advising her that she was laid off effective June 18, 2019. The letter also provides information regarding vacation payout and COBRA coverage. Ms. Chavez testified she never heard from Petitioner after she sent that letter. She stated the layoff did not have anything to do with the claimed injury because at no time was, she advised of the injury. Ms. Chavez subsequently testified she did not recall any conservations with Petitioner after sending the letter and did not have any conversations with Petitioner after the phone call on June 18th.

Ms. Chavez testified she first became aware that Petitioner was claiming an injury at work was when she received a letter from worker's compensation and an attorney indicating that there was a claim in process. She received that letter the last week of July or first week of August, around August 2, 2019. Ms. Chavez also testified the ACME policy for reporting work accidents is to report any injury as soon as it happens, or else disciplinary action may result. Ms. Chavez explained the policy to Petitioner in Spanish when she was hired on October 3, 2018. Ms. Chavez identified Respondent's Exhibit 5 as part of the handbook or policy given to Petitioner, regarding reporting work accidents. Respondent's Exhibit 5 is titled ACME Safety Competency Requirements and Accident Reporting Procedures. The initials "S.A." appear on page 1 of 1 of the "Required Competencies." However, there are no initials or signatures on the page titled, "Accident Reporting Procedures."

On July 25, 2019**,** Petitioner presented to Dr. Pontinen at Midwest Anesthesia and Pain (hereinafter "MAPS") and provided a history of low back pain radiating down her legs since lifting/carrying boxes at work on June 14, 2019, when she felt a sharp pain in her low back. Exam findings included bilateral lumbar paraspinal tenderness with muscle rigidity, positive bilateral straight leg raise, reduced ROM and negative Waddell's. Dr. Pontinen diagnosed low back pain, strains of muscle fascia and tendons of the low back, low back pain, radiculopathy in the lumbosacral region, and unspecified inflammatory spondylopathy in the lumbar region. Petitioner was given work restriction of lifting no more than 15 pounds and physical therapy and an MRI were ordered. Muscle relaxers, pain medications and cream were prescribed.

On July 30, 2019, MRI of the lumbar spine showed 1. mild multilevel spondylosis, worst from L3 to L5, 2. posterior herniation at L4-5 impinging the ventral thecal sac causing mild neuroforaminal stenosis, 3. posterior herniation at L5-S1 flattening the ventral thecal sac causing mild neuroforaminal stenosis and 4. nonspecific cystic lesions in the left adnexa.

On July 30, 2019, Petitioner started physical therapy and chiropractic treatment at New Life Medical Center. She treated through March 25, 2021 for a total of 84 sessions.

In August of 2019, Petitioner reported continued low back pain with bilateral radicular pain unchanged to Dr. Rakic at MAPS. Dr. Rakic reviewed the MRI report and opined the MRI findings correlated with Petitioner's subjective and objective findings. The treatment plan included an epidural steroid injection, continued physical therapy and medications.

On October 18, 2019, Petitioner underwent a lumbar epidural steroid injection at L5-S1. Petitioner continued to follow-up at MAPS through November and December of 2019.

On January 13, 2020, Dr. Rakic at MAPS noted continuing low back pain, which radiates on and off. A surgical consultation was recommended because Petitioner did not respond positively to the ESI. Petitioner advised she was working with restrictions.

On January 31, 2020, Petitioner was seen by Dr. Erickson at Micro Neuro Spine for surgical consultation. She provided a history of her problems originating from lifting a 30-pound load at the time of the onset of pain while at work. Dr. Erickson noted severe back pain, made worse with flexion in the midline of the lumbosacral area. She reported no relief after on epidural steroid injection. He noted the MRI scan from June 2019 showed broad disc herniation at L5-S1 worse on the right side with a right-sided annular tear and suspected the injured segment is L5-S1. Dr. Erickson opined she was a candidate for further facet procedures, including a medical branch blockade and diagnostic diskogram-CT scan. Petitioner was to follow up after testing completion.

On February 17, 2020, Petitioner returned to MAPS, reporting little improvement in pain. Dr. Rakic's assessment was resolved radicular symptoms, but persistent low back pain with positive facet loading signs. The bilateral L4-S1 medial branch block was scheduled per Dr. Erickson's request. Flexeril and Meloxicam medications were refilled.

From March through June of 2020, Petitioner treated at MAPS with consistent complaints of low back pain. Medications were refilled while she waited approval of the medial branch blocks. Petitioner was advised to continue physical therapy and work restrictions.

On August 8, 2020, Petitioner started treatment at Pinnacle Pain Management. She reported a work-related injury on June 14, 2019 when picking up heavy boxes weighing about 20 pounds. Complaints included bilateral low back pain with intermittent pain going into the posterior thighs. PA-C Memon assessed Petitioner with a cervical strain, lumbar strain, bilateral knee derangement, bilateral elbow derangement, lumbar facet syndrome and lumbar discogenic pain. He prescribed a bilateral L3, L4 and L5 medial branch block and continued physical therapy.

On August 19, 2020, Petitioner underwent bilateral L3, L4, and L5 medial branch nerve blocks.

On September 19, 2020, Petitioner followed up at Pinnacle and reported 100% relief of her symptoms for eight hours following the injection but had continued back pain described as 6/10. She denied radicular symptoms. The assessment was lumbar facet syndrome and lumbar discogenic pain. The record noted the MRI showed L4-L5 and L5-S1 disc protrusions. Recommendations included continued light duty work, a radiofrequency ablation, continued physical therapy and medications.

On October 7, 2020, Dr. Jain at Pinnacle performed bilateral L3, L4, and L5 medical branch radiofrequency ablation.

On October 24, 2020, PA-C Memon at Pinnacle noted Petitioner received 25% improvement following the radiofrequency ablation and rated her pain 4 out of 10. It was also noted that prolonged standing and sitting exacerbated her symptoms. The treatment plan included continued light duty, physical therapy, and medication refills.

On December 19, 2020, Petitioner followed up at Pinnacle, reporting her symptoms had significantly improved and she was undergoing physical therapy. She requested to return to full duty work. She was released to full duty work and continued physical therapy was recommended.

During January and February 2021, Petitioner continued to treat at Pinnacle, reporting her low back was better since the treatment, but pain recurred after a long day's work. The records indicate the medications, specifically the muscle relaxer helped Petitioner's pain and that Petitioner was working full duty.

On March 13, 2021, Petitioner returned to Pinnacle and reported she was tolerating full duty work. She reported zero pain with rest, but pain can reach 3/10 and subsides with medicine. PA-C Memon instructed Petitioner to continue home exercises and to continue to work full duty. Petitioner was released from care and deemed to be at maximum medical improvement.

Dr. Potinen, a board-certified anesthesiologist and interventional pain management physician testified Petitioner first presented to his practice (MAPS) on July 25, 2019 and provided a history of lifting and carrying some heavy boxes at work when she felt a sharp pain in her back. Positive exam findings included positive straight leg raise on both sides, limited range of motion, tenderness to palpation. Dr. Pontinen's diagnosis was strain of muscle, fascial tendon in the low back, low back pain, and radiculopathy. He provided work restrictions, ordered physical therapy, an MRI, and a low back brace. He also prescribed cyclobenzaprine, meloxicam, tramadol and pantoprazole and anti-inflammatory cream and numbing patch.

Dr. Pontinen testified that he did not recall if her reviewed the MRI report or the films, but that the MRI showed L4-L5 and L5-S1 had disc protrusions. Dr. Pontinen testified consistent with his treating records, including that he recommended Petitioner consult with a spine surgeon because her symptoms did not improve significantly after the lumbar epidural steroid injection. Regarding the medial branch block recommended by spine surgeon, Dr.

Erickson, Dr. Pontinen explained the block is a "diagnostic test that surgeons often ask for because it can help delineate the amount of pain that's coming from say like the discs versus the ligaments versus the facet joints. So that can help guide the type of surgery you're going to do." A bilateral L4 to S1 medial branch block was prescribed but was not performed.

Dr. Pontinen testified the last time his office saw Petitioner was on August 17, 2020 and on that date, she still had back pain, but numbness and tingling in her legs had improved. Dr. Pontinen testified that the medial branch block was still indicated at that time because she was still having significant pain requiring medication.

Dr. Pontinen testified he reviewed Dr. Butler's Section 12 evaluation and drafted a letter dated April 23, 2021, stating I "felt that a lot of his assessments were accurate, but there was a few inaccuracies in his report . . . one being that she did not get relief from the medial branch block, which they did not actually perform . . . because we did not perform that injection, you cannot rule out facet pathology." Dr. Pontinen clarified that his office had only performed one epidural steroid injection.

Dr. Pontinen testified his diagnoses from the initial visit are correct assuming "[Petitioner] will testify she was picking up boxes from work, and a box weighed about 30 pounds and she twisted and felt a sharp pain in her low back." Based on that history, Dr. Pontinen testified everything his office did and prescribed was related entirely to that diagnosis. Dr. Pontinen testified the work injury on June 14, 2019 caused, aggravated, or accelerated Petitioner's condition.

Dr. Pontinen testified on cross examination his opinions might change if the history obtained was incomplete. He did not recall if he reviewed Petitioner's job description, or any medical records dated prior to the first visit on July 25, 2019. Dr Pontinen testified it was Dr. Rakic who last saw Petitioner on August 17, 2020 and thus, it was Dr. Rakic's care plan he discussed in the April 23rd letter. Dr. Pontinen testified that his opinions in the letter he drafted are based on a review of the treatment records and not his own examination, explaining "in our practice it's really necessary for us to have developed a system of planned coordination and . . . I can say with absolute confidence that this plan, for instance, in this note would have been the same plan and same suggestions that I would have made had I seen her myself that day."

Dr. Butler testified he is board certified and specializes in orthopedic spine surgery. At Respondent's request, Dr. Butler performed a Section 12 Examination of Petitioner on September 19, 2020 and authored a report with the same date. Dr. Butler testified he obtained a history from Petitioner through a translator, and she reported an injury on June 14, 2019. Petitioner placed parts that weighted 3 to 5 pounds into a machine and then the part would go into a box with about 15 other pieces. She would then place a loaded box on the pallet. She described pain in her back when she lifted the box to take to pallet area. Dr. Butler testified that he noted a specific trauma and Petitioner denied any prior back injury.

Dr. Butler testified his physical examination was normal except for moderate tenderness to palpation to the lower back. He also stated that placing Petitioner in a figure four position with the right ankle on top of the left knee would recreate her back pain complaints. Dr. Butler

testified the June 30, 2019 lumbar spine MRI imaging demonstrated a small annular fissure at L5-S1 on the right and very minimal degeneration. There were no disk herniations in his opinion.

Dr. Butler testified his diagnosis for Petitioner was a lumbar strain and sacroiliac pain based on the MRI findings, the physical exam and history. Relating to the work accident on June 14, 2019, Dr. Butler opined Petitioner did sustain an injury during her work activity and the mechanism described was a reasonable mechanism which on could sustain a lumbar strain. He also opined that at the time of his examination, Petitioner had reached maximum medical improvement because she would have reached said status about six months after the injury. He also opined Petitioner was capable of full duty work after six months of treatment.

Dr. Butler opined that the medial branch blocks were not reasonable because Petitioner's facets were normal on the MRI scan. Dr. Butler opined Petitioner did not sustain any permanent impairment or disability as a result of the work accident because an annular fissure is a structural abnormality that exists in many patients in her age group with no symptoms, so it was not certain if the fissure pre-existed or if there was any actual structural damage to the lumbar spine as a result of this injury.

Dr. Butler testified on cross examination that he reviewed the MRI images and disagreed with the MRI report finding herniated disks at L4-L5 and L5-S1. He explained annular fissures are signs of degeneration of the disk and common and a radiographic signal change that is observed in the annulus. Dr. Butler also testified that without prior diagnostics, "you don't know" if the annular fissure had been present a long time, short time or was a new finding post injury. He agreed a patient with an annular fissure can have an exacerbation of pain or symptoms even if diagnostically the fissure does not change. Dr. Butler testified it was his opinion that Petitioner's continued pain related more to her truncal obesity and poor flexibility and not the work accident. Dr. Butler testified Petitioner may or may not need medical care, but the treatment is not related to the work injury.

II. CONCLUSIONS OF LAW

A. Accident

The Illinois Workers' Compensation Act states that "to 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 employment." 820 ILCS305/1(d). "In the course of" employment refers to the time, place, and circumstances of the accident. Illinois Bell Telephone Co. v. Industrial Comm'n, 131 Ill. 2d 478, 483 (1989). An injury "arises out of" one's employment if, at the time of the occurrence, the employee was performing acts she was instructed to perform by her employer, acts which she had a common law or statutory duty to perform, or acts which the employee might reasonably be expected to perform incident to her assigned duties. *See* Sisbro, Inc. v. Industrial Comm'n, 207 Ill. 2d 193, 204 (2003) (quoting Caterpillar Tractor Co. v. Industrial Comm'n, 129 Ill. 2d 52, 58 (1989)). Both elements must be present at the time of the claimant's injury to justify compensation under the Act. Illinois Bell Telephone Co. v. Industrial Comm'n, 131 Ill. 2d 478 at 483.

The Arbitrator found Petitioner failed to prove by a preponderance of evidence that she sustained an accident that arose out of and in the course of her employment which resulted in a disabling injury. The Commission after reviewing the entirety of the evidence reaches a different conclusion.

The Commission finds the testimony of Petitioner, Mr. Molina, and Ms. Chavez to be consistent regarding Petitioner's job duties on June 14, 2019. Each testified that Petitioner's job duties included packing boxes with parts weighing one to one and half pounds and that packed boxes weighed somewhere between 20 and 30 pounds. Ms. Chavez also explained Petitioner would carry the packed box two to three steps from the table to the pallet, which was located behind or next to the table where Petitioner was packing parts. The job description, Respondent's Exhibit 4, indicates up to 25 pounds of required lifting. Petitioner reported a consistent history of a work injury to all the medical providers and the Section 12 Examiner. The Commission finds Petitioner's testimony that she was at work on June 14, 2019, lifted a box weighing 20 to 30 pounds as part of her job duties, and felt the onset of pain to be unrefuted.

In addition, the Commission notes that Mr. Molina did not testify to any evidence which supports the Arbitrator's conclusion that he was the only possible witness to the accident. There is no testimony from Mr. Molina that he could clearly see Petitioner from his work area and that he was observing her at the time the accident occurred. Rather, Mr. Molina's testimony as whole makes it easy to understand why he didn't witness Petitioner's accident due to the size of the work area and why he wouldn't have heard Petitioner tell another co-worker about the accident due to the noisy environment. Further, Mr. Molina testified he was not Petitioner's supervisor, which supports why Petitioner did report an accident to him.

Further, the Commission concludes that the fact that Petitioner did not seek treatment until July 25, 2019 is not dispositive as to whether a compensable accident occurred in this matter. Petitioner testified credibly that she did not immediately report the pain because she thought it would go away. Here, the injury occurred near the end of Petitioner's shift on a Friday night before 11 p.m. and the accident was one which did not require emergency assistance. Petitioner returned to work as scheduled on Monday, June 17th and was able to work a lighter job. As such, it cannot be said Petitioner was unreasonable in waiting to see if the pain would go away before reporting an accident.

Also complicating Petitioner's ability to obtain medical treatment, is the fact Respondent laid off Petitioner via telephone on Tuesday, 18th before the start of her shift. Petitioner testified she never received Respondent's Exhibit 3, the June 27, 20119 letter from Ms. Chavez confirming the layoff and providing information on COBRA benefits. The Commission notes the letter is written only in English and there is no indication the letter was sent certified mail. Petitioner also credibly testified that she was unable to seek immediate treatment because she did not have the financial ability to pay for medical treatment. Petitioner credibly testified she had planned to seek treatment once she found a new job. After obtaining a new job, Petitioner in fact sought treatment for her low back. Thereafter, the medical records support the fact Petitioner reported a consistent history of injury to every provider, including Respondent's Section 12 Examiner.

Based on the totality of the evidence presented by the record, the Commission concludes that on Friday, June 14, 2019, while working for Respondent, Petitioner felt the onset of low back pain when she lifted a box of parts weighing between 20 and 30 pounds. As such, Petitioner has proven by a preponderance of the evidence that she sustained a work injury arising out of and in the course of employment on June 14, 2019.

B. Notice

Having determined that Petitioner suffered an accident on June 14, 2019, the Commission addresses the issue of notice.

Section 6**(c)** of the Illinois Workers' Compensation Act states, "[n]otice of the accident shall be given to the employer as soon as practicable, but not later than 45 days after the accident . . . 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. Case law further explains "the purpose of the notice requirement of the Act is to enable an employer to investigate an alleged accident." Gano Electric Contracting v. Industrial Comm'n (Moore), 260 Ill. App. 3d 92, 95-96, 631 N.E.2d 724, 727 (4th Dist. 1994) (citations omitted). A claim is barred only if no notice whatsoever has been given. *See* Silica Sand Transport, Inc. v. Industrial Comm'n, 197 Ill. App. 3d 640, 651, 554 N.E.2d 734, 742 (1990). Because the legislature has mandated a liberal construction on the issue of notice, if some notice has been given, although inaccurate or defective, then the employer must show that he has been unduly prejudiced. Gano Electric Contracting v. Industrial Comm'n (Moore), 260 Ill. App. 3d 92 at 96.

The Arbitrator concluded based on the testimony of Ms. Chavez that Respondent did not receive notice until August 2, 2019, which was five days past the 45-day notice requirement and concluded that Petitioner's claim was barred by late notice. However, late notice does not bar Petitioner's claim. Rather, the notice received by Ms. Chavez is defective and it becomes the burden of the employer to show they have been unduly prejudiced. The issue of prejudice was not address by the Arbitrator. The Commission finds nothing in the record which demonstrates the employer was prejudiced as a result of being notified five days late. As such, the Commissions concludes the late notice in this case did not unduly prejudice the employer and is not a bar to Petitioner's claim.

Further, regarding the issue of notice, the Commission finds Ms. Chavez's testimony to be less credible than Petitioner's testimony. First, the evidence establishes that Ms. Chavez was not working at the time the injury occurred and she was not present to witness the injury or receive notice that day. In addition, Petitioner testified that she did not report her injury when Ms. Chavez called to lay her off on June 18, 2019. Rather, it is Petitioner's testimony she called and reported her back injury to Ms. Chavez before she started her new job on July 20, 2019. Petitioner testified Ms. Chavez told her she was not able to do anything about the injury because Petitioner was "fired from work." The Commission also finds Petitioner's testimony that she did not recall receiving Respondent's reporting policy to be credible. Petitioner's signature and/or initials do not appear on the page titled, "Accident Reporting Procedures" of Respondent's

Exhibit 5. Therefore, it is unclear to the Commission if Petitioner in fact received and acknowledged said procedures at the time of hire.

Based on the totality of evidence, the Commission finds, Petitioner's testimony regarding notice to be more persuasive than Ms. Chavez's testimony, thus Respondent received timely notice of injury. Even if the Commission were to rely on the testimony of Ms. Chavez, Petitioner's claim is not barred because Respondent failed to show it was unduly prejudiced when it received notice of injury 50 days after the accident.

C. Causal Connection

Having determined that Petitioner provided sufficient notice of the compensable work accident, the Commission addresses whether Petitioner proved causal connection between the accident and her condition of ill-being.

The Arbitrator concluded that Petitioner's current low back condition is unrelated to the work accident because she failed to prove accident. In addition, the Arbitrator did not find Dr. Pontinen credible and instead, relied on Dr. Butler's opinion that while she may have suffered a lumbar strain as a result of the work accident, Petitioner's ongoing symptoms are related to her truncal obesity and poor flexibility.

The Illinois Supreme Court has held that a "chain of events" which demonstrates a previous condition of good health, an accident, and a subsequent injury resulting in disability may be sufficient circumstantial evidence to prove a causal nexus between the accident and the employee's injury. When the claimant's version of the accident is uncontradicted and his testimony unimpeached, his recital of the facts surrounding the accident may be sufficient to sustain an award. International Harvester v. Indus. Comm'n, 93 Ill.2d 59, 63-64 (1982) (*citations omitted*). In addition, a claimant may obtain compensation under the Workers' Compensation Act, even when she suffers from a preexisting condition of ill-being. Recovery in such cases depends upon the claimant's ability to establish that her work-related accident aggravated or accelerated his preexisting condition. Further, causation in preexisting injury cases may be established without medical opinion evidence and through circumstantial evidence, i.e., a chain of events. Corn Belt Energy Corp. v. Ill. Workers' Comp. Comm'n, 56 N.E.3d 1101, 1103, 404 Ill. Dec. 688, 690 (2016). Moreover, when the Commission is faced with the question of which of two conflicting views of medical testimony should be adopted, it is for the Commission to ascertain the testimony which is to be accepted. McIntire v. Indus. Comm'n., 49 Ill. 2d 239 (1971).

Here, there is no evidence, testimony, or medical record, which shows Petitioner had back complaints due to "truncal obesity and poor flexibility" nor previous back injuries which required treatment prior to June 14, 2019. The evidence is unrefuted that while working on June 14, 2019, Petitioner felt the onset of back pain while lifting a box weighing 20 to 30 pounds. She provided a consistent history of injury to the treating doctors and the Section 12 Examiner. As such, the Commission concludes that Petitioner has established a causal nexus between her low back condition and the work accident on June 14, 2019 through a chain of events analysis.

Turning to the medical testimony in this case, the Commission finds it significant that the Section 12 Exam by Dr. Butler did not take place until September 29, 2020—15 months after the injury, however he opines Petitioner would have been at maximum medical improvement six months after the injury. Dr. Butler's opinion that Petitioner only suffered a lumbar sprain as a result of the work accident is contradicted by Petitioner's consistent and persistent low back pain as well as by his own testimony that that without prior diagnostics, "you don't know" if the annular fissure had been present a long time, short time or was a new finding post injury. Dr. Butler agreed that a patient with an annular fissure can have an exacerbation of pain or symptoms even if diagnostically the fissure does not change. The treaters at MAPS and Pinnacle agreed the MRI showed disc protrusions that were caused or aggravated by the work accident as well as lumbar facet syndrome and lumbar discogenic pain. As such, the Commission finds the treating physicians more credible than the Section 12 Examiner regarding causal connection.

Therefore, based on a chain of events analysis and the opinions of the treating physicians, the Commission concludes that Petitioner's current low back condition is causally related to the work accident on June 14, 2019.

D. Medical Expenses

The Commission next addresses Petitioner's claim for necessary and reasonable medical expenses. Section 8(a) of the Act requires employers to pay all necessary medical, surgical, and hospital services that are reasonably required to cure or relieve the effects of the work-related injury. 820 ILCS 305/8(a) (West 2014). An employer's liability under this section of the Act is continuous so long as the medical services are required to relieve the injured employee from the effects of the injury. Second Judicial District Elmhurst Memorial Hospital v. Industrial Comm'n, 323 Ill. App. 3d 758, 764 (2001) (citing Efengee Electrical Supply Co. v. Industrial Comm'n, 36 Ill. 2d 450, 453 (1967)). However, the employee is only entitled to recover for those medical expenses which are reasonable and causally related to his industrial accident. Second Judicial District Elmhurst Memorial Hospital, 323 Ill. App. 3d at 764 (citing Zarley v. Industrial Comm'n, 84 Ill. 2d 380, 389 (1981)). The claimant has the burden of proving that the medical services were necessary, and the expenses incurred were reasonable. City of Chicago v. Illinois Workers' Compensation Comm'n, 409 Ill. App. 3d 258, 267 (2011). If the employer fails to introduce any evidence to suggest that services rendered were not necessary or that the charges were not reasonable, an award to a claimant who presents some evidence in support of the award will be upheld. Max Shepard, Inc. v. Industrial Comm'n, 348 Ill. App. 3d 893, 903 (2004); Ingalls Memorial Hospital v. Industrial Comm'n, 241 Ill. App. 3d 710, 718 (1993).

Petitioner listed her claimed medical expenses in an attachment to the Request for Hearing and provided the unpaid medical bills in Petitioner's Exhibit 6. Respondent claimed on the Request for Hearing form that it was not liable for any alleged unpaid medical bills. At the time Petitioner's Exhibit 6 was offered into evidence, Respondent did not raise a hearsay objection, but specified that by not objecting, Respondent was not agreeing to liability nor that the bills were related, reasonable or necessary. Respondent also claimed on the Request for Hearing form that it paid $0.00 in medical bills through its group medical plan for which a credit may be allowed under Section 8(j) of the Act. On review, Respondent makes no specific arguments regarding reasonableness or necessity of medical expenses and argues only that

Petitioner did not prove causal connection; thus, benefits should be declined. Given the Commission's conclusions regarding causal connection, the Commission further concludes that Petitioner is entitled to an award of the medical expenses incurred through March 13, 2021, the date of maximum medical improvement, provided in Petitioner's Exhibit 6 and listed in the attachment to the Request for Hearing pursuant to sections 8(a) and 8.2 of the Act.

E. Permanent Partial Disability

Lastly, the Commission addresses Petitioner's claim for permanent partial disability (PPD) benefits. The Commission bases its determination of the level of PPD benefits upon factors set forth in the Act, including: (i) the level of impairment contained within a permanent partial disability impairment report; (ii) the claimant's occupation; (iii) the claimant's age at the time of injury; (iv) the claimant's future earning capacity; and (v) evidence of disability corroborated by the treating medical records. 820 ILCS 305/8.1b(b) (West 2014). However, "[n]o single enumerated factor shall be the sole determinant of disability." *Id*. § 305/8.1b(b)(v).

In this case, the Commission gives no weight to factor (i) because no impairment report was submitted by either party. The Commission gives some weight to factor (ii) occupation because after being laid off by Respondent, Petitioner was able to find a new job while she treated for her injury. Petitioner was eventually released full duty, but she testified that her new job is lighter in nature than her previous job with Respondent. Regarding factor (iii) age, the Commission places moderate weight on this factor noting Petitioner was 39 years old at the time of injury and therefore has a large portion of her working life ahead of her. The Commission places gives no weight to factor (iv) earning capacity because there is no evidence of any loss of earnings as a result of the work injury.

Regarding factor (v) disability, the Commission places great weight on this factor. As a result of the injury, Petitioner was diagnosed with low back strain, aggravation of disc protrusions at L4-5 and L5-S1, lumbar facet syndrome and lumbar discogenic pain. Petitioner's low back injury required physical therapy and interventional pain management consisting of an epidural steroid injection, medial branch block and radiofrequency ablation. After treatment, Petitioner returned to full duty work and was placed at MMI on March 13, 2021. The Commission notes Petitioner testified credibly that she is not the same as she was before the injury. While Petitioner was able to return to gainful employment, she testified she cannot work like she did before. Petitioner feels pain when she carries heavy things and items over 20 pounds. She relies on others to carry her groceries.

Accordingly, the Commission finds that Petitioner sustained permanent partial disability to the extent of 10% loss of use of the person as a whole pursuant to Section 8(d)2 of the Act.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator dated June 24, 2022 is reversed as stated herein.

IT IS THEREFORE FOUND BY THE COMMISSION that Petitioner sustained an accident on June 14, 2019 that arose out of and occurred in the course of employment.

IT IS THEREFORE FOUND BY THE COMMISSION that Petitioner provided sufficient notice of her work accident to Respondent as required by the Act.

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

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent shall pay reasonable and necessary medical services of $137,313.44 to the medical providers as stated in Petitioner's Exhibit 6, pursuant to §§8(a) and 8.2 of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $330.00 per week for a period of 50 weeks, as provided in §8(d)2 of the Act, for the reason that the injuries sustained caused a 10% loss of use of the person as a whole.

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 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.

September 14, 2023

o: 08/24/23
CMD/jjm
045

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

/s/ *Marc Parker*
Marc Parker

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	19WC022265
Case Name	AMEZQUITA, SANDRA v. ACME ALLIANCE, LLC
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	10
Decision Issued By	Charles Watts, Arbitrator

Petitioner Attorney	David Barish
Respondent Attorney	Brad Antonacci

DATE FILED: 6/24/2022

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

/s/Charles Watts, Arbitrator

Signature

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

SANDRA AMEZQUITA
Employee/Petitioner

v.

ACME ALLIANCE, LLC
Employer/Respondent

Case # **19** WC **022265**

Consolidated cases: _____

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Charles Watts**, Arbitrator of the Commission, in the city of **Chicago**, on **05/17/2022**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

A. [ ] Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
B. [ ] Was there an employee-employer relationship?
C. [x] Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
D. [x] What was the date of the accident?
E. [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. [ ] 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 **06/14/2019**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

On this date, Petitioner ***did 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 $**22,668.88**; the average weekly wage was $**$435.94**.

On the date of accident, Petitioner was **39** years of age, ***single*** with **4** dependent children.

Petitioner ***has*** received all reasonable and necessary medical services. CHANGE THIS AS NECESSARY

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

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

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

ORDER

Denial of benefits

Because Petitioner failed to prove she sustained an accident arising out of and in the course of her employment, failed to prove notice, and failed to prove her current condition of ill-being is causally connected to the alleged accident, all benefits are denied.

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

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

JUNE 24, 2022

Signature of Arbitrator

ARBITRATION DECISION ATTACHMENT

Sandra Amezquita v. Acme Alliance, LLC

19 WC 022265

FINDINGS OF FACT

Petitioner testified through a Spanish interpreter that on June 14, 2019, she worked for Respondent operating a CNC machine (T. 9, 25). Resp. Ex. No. 4. As part of her job duties, she would stand in front of the machine and place parts into the machine, one part at a time (T. 26). After the part was machined, she would remove it from the machine, she would place the part in a power washer machine where it would be washed, she would blow the part with air from an air gun, and then she would inspect the part (T. 28, 56-59). She would then place the part in a box on a table to her left (T. 28). She testified it would take approximately 40 minutes to fill a box with parts (T. 29). Maria Chavez, the human resources manager for Respondent, testified it would take approximately 45 minutes to two hours to fill a box with parts.

Petitioner testified she was working with two-pound parts on June 14, 2019, and she testified she packed 15 pieces per box. Alejandro Molina, a machine operator and set-up man for Respondent, testified the parts weighed less than a pound (T. 51) on that date, and Maria Chavez testified the parts weighed one to one-and-a-half pounds (T. 60-61). After packing a box with parts, petitioner would place the box on a pallet. (T. 10). Petitioner testified she was carrying a box and hurt her back on June 14, 2019, a Friday (T. 10). No one else was around, according to Petitioner, and Petitioner went home at the end of her shift (T. 12).

Petitioner then testified Alejandro Molina was working in the same room as her at the time of her injury, and she also testified he was one of her supervisors (T. 31-32). Alejandro Molina testified and confirmed he was working in the same room as Petitioner on June 14, 2019 (T. 48). He confirmed Petitioner never advised him of her alleged injury at any time (T. 48-49). He did not witness Petitioner injuring herself and never noted her to appear to be injured (T.49). Petitioner never advised him she was experiencing symptoms in her back (T. 49).

Petitioner testified she returned to work the following Monday, June 17, 2019, performing a lighter job (T. 12). She testified she told a co-worker on that date what happened the Friday before, but did not tell anyone in management (T. 13). Petitioner testified she received a call from Maria Chavez from Respondent the next day, June 18, 2019, and was told she was being laid off due to a work slow-down. Maria Chavez confirmed that orders had been cancelled and workload was diminished, and she advised Petitioner to stay home for the time being (T. 66-67). Petitioner did not advise Maria Chavez of her alleged work injury during this conversation (T. 37, 67). She did not return to work for Respondent (T. 13-14, 55), and was eventually laid off for reasons unrelated to the work injury (T. 67). Resp. Ex. No. 3. Petitioner began employment elsewhere (T. 14). Records from SureStaff document Petitioner earned wages working elsewhere beginning June 23, 2019 and continued to work for various companies through SureStaff. Resp. Ex. No. 7, 8.

Petitioner testified she called Maria from Respondent at some point before July 20, 2019 and advised she injured her back at the Respondent (T. 15-16). Maria Chavez testified that Petitioner never told her at any point that she sustained a work injury (T. 65-66, 68). She was not aware Petitioner was claiming a work injury until she received a letter from Petitioner's attorney on or about August 2, 2019 (T. 70).

Petitioner testified she was not aware of Respondent's policy of reporting all workplace injuries immediately to her supervisor (T. 30) and to human resources (T. 32). She testified she was not provided a copy of the Respondent's employee handbook when she started working for Respondent (T. 32) and did not remember being told of the Respondent's policy of reporting workplace injuries (T. 34). She later admitted her initials were on a copy of pages from the Respondent's employee handbook (T. 33). Resp. Ex. No. 5. The Arbitrator notes the handbook explains, in Spanish, the Respondent's policy of reporting workplace injuries. Maria Chavez testified that new hire employees are required to acknowledge receiving documentation of Respondent's policy of reporting work injuries as soon as they occur (T. 64). She confirmed Resp. Ex. No. 5 was part of the handbook that explained the policy of reporting workplace accidents, and Petitioner was provided a copy when she started for Respondent (T. 64). Further, Maria Chavez testified she explained the policy of reporting work accidents to Petitioner, in Spanish, when petitioner was hired (T. 65).

Petitioner did not seek medical treatment for over one month. Petitioner first presented for medical treatment on July 25, 2019 with Dr. Pontinen. Pet. Ex. No. 1, p. 27-29. Petitioner testified she did not seek medical treatment until July 25, 2019 because she had no money (T. 17-18). She continued to work what she described as a "lighter job" (T.20). Dr. Pontinen assessed Petitioner with back pain, strains of muscle fascia and tendons of the low back, low back pain, radiculopathy in the lumbosacral region, and unspecified inflammatory spondylopathy in the lumbar region. He provided Petitioner with a work restriction of lifting no more than 15 pounds, recommended physical therapy, ordered an MRI, and prescribed Petitioner medications.

Petitioner's MRI took place on July 30, 2019. Pet. Ex. No. 2, part 1, p. 22-23. The MRI reportedly revealed mild multilevel spondylosis, worst from L3 to L5, posterior herniation at L4-5 impinging the ventral thecal sac causing mild neuroforaminal stenosis, and posterior herniation at L5-S1 flattening the ventral thecal sac causing mild neuroforaminal stenosis. Petitioner also began either physical therapy or chiropractic treatment at New Life Medical Center on July 30, 2019. Pet. Ex. No. 2, part 3, p. 1-23. She was provided electrical muscle stimulation, ultrasound, and hot/cold packs. Petitioner underwent multiple treatments in the month of August.

Petitioner followed up with Dr. Pontinen on August 26, 2019. Pet. Ex. No. 1, p. 37-40. She reported continued symptoms in her low back with bilateral lower extremity radicular pain that was unchanged. Dr. Pontinen noted Petitioner received good relief of her symptoms with Tramadol, Flexeril, Meloxicam, a topical cream, and patches. Dr. Pontinen incorrectly noted that Petitioner remained off work at that time. Petitioner was, in fact, working. Resp. Ex. No. 7, 8. Dr. Pontinen recommended Petitioner proceed with an L5-S1 lumbar epidural steroid injection and continue physical therapy. Dr. Pontinen performed a lumbar epidural steroid injection at L5-S1 on October 18, 2019. Pet. Ex. No. 1, p. 41-43. Petitioner reported very little improvement of her symptoms

following the injection, according to Dr. Rakic's note from November 4, 2019. Pet. Ex. No. 1, p. 44-47. Dr. Rakic recommended Petitioner follow up with a spine surgeon and continued Petitioner's restrictions.

Before following up with a spine surgeon, Petitioner continued to follow up with Dr. Rakic in December of 2019 and January of 2020. Her physical therapy/chiropractic treatment continued at New Life Medical Center in September, October, November, and December of 2019. Pet. Ex. No. 2. It also appears an EMG was performed on December 30, 2019. Although the complete EMG report is not included in the records, the report noted mild right lumbar radiculitis involving the L5 and S1 dermatomal distributions. Pet. Ex. No. 2, part 1, p. 35-37.

Petitioner followed up with Dr. Erickson, a neurosurgeon, on January 31, 2020. Pet. Ex. No. 3. Dr. Erickson's examination appears to be normal. He noted Petitioner was a candidate for further injection treatment which might include facet procedures such as medial branch blocks. He also indicated a diagnostic discogram CT was reasonable. Petitioner was to follow up after testing.

In follow-up with Dr. Rakic on February 17, 2020, Petitioner was now denying radicular pains in her lower extremities. Pet. Ex. No. 1, p. 7-11. Dr. Rakic noted Petitioner's radicular symptoms seemed to have resolved. Petitioner was noting persistent lower back pain. Dr. Rakic recommended a bilateral L4-S1 medial branch block. In follow-up at Midwest Anesthesia & Pain Specialists in March, May, June and August, 2020, Petitioner's records remain much the same. She continued to deny any radicular pain or paresthesias to the bilateral lower extremities and continued to complain of low back pain. She continued to receive medication refills while she waited approval of the medial branch blocks. Petitioner's physical therapy/chiropractic care continued at New Life Medical Center in January, February and March of 2020. Pet. Ex. No. 2.

Petitioner then transferred her care to Pinnacle Pain Management, beginning with treatment with PA-C Memon on August 8, 2020. Pet. Ex. No. 4. PA-C Memon assessed Petitioner with a cervical strain, lumbar strain, bilateral knee derangement, bilateral elbow derangement, lumbar facet syndrome and lumbar discogenic pain. He recommended a bilateral L3, L4 and L5 medial branch block. He also recommended Petitioner continue with physical therapy. On August 19, 2020, PA-C Memon performed the recommended bilateral medial branch block.

In follow-up on September 19, 2020, Petitioner advised PA-C Memon that she experienced 100% relief of her symptoms for eight hours following the injection. Pet. Ex. No. 4, p. 32-36. Petitioner also continued to sporadically receive either physical therapy or chiropractic treatment from New Life Medical Center. Pet. Ex. No. 2. PA-C Memon recommended an L3, L4 and L5 radiofrequency ablation. Dr. Jain performed the radiofrequency ablation on October 7, 2020. Pet. Ex. No. 4, p. 43-44. In follow-up on October 24, 2020, PA-C Memon indicated Petitioner received 25% improvement following the radiofrequency ablation. Pet. Ex. No. 4, p. 28. By November 21, 2020, Petitioner was noting 80% improvement. *Id.* at 24. By December 19, 2020, Petitioner advised PA-C Memon that her symptoms had significantly improved. Petitioner also noted that she would like to return to full duty work. PA-C Memon allowed Petitioner to return to full duty work at that time.

In follow-up treatments in January, February and March of 2021, Petitioner was noting improvement in her low back symptoms. Pet. Ex. No. 4. Petitioner continued to note she was able

to tolerate working full duty. As of the last treatment on March 13, 2021, PA-C Memon assessed lumbar facet syndrome and lumbar discogenic pain. He continued to allow Petitioner to work and recommended a home exercise program. Petitioner reported experiencing zero pain. P.A. Memon noted Petitioner had reached MMI and discharged Petitioner from care at that time. *Id.* at p. 1-4.

Even after Petitioner was released, she continued to receive either physical therapy or chiropractic care from New Life Medical Center through March 25, 2021. Pet. Ex. No. 2, part 1, p. 21. At that time, Petitioner noted she was much better and greatly improved overall. It appears the chiropractor/physical therapist also placed her at MMI at that time.

Petitioner testified she cannot work now like before, feeling a "light" pain in her back while carrying heavier items (T. 21). She testified she feels better today compared to when she first sought treatment on July 25, 2019 (T. 24). She has not received any medical treatment directed to her low back since March 2021 and has no follow-up appointments scheduled (T. 42). She continues to work (T. 42-43) and currently has no work restrictions (T. 44).

Petitioner presented Dr. Pontinen for his deposition on July 26, 2021. Pet. Ex. No. 5. Dr. Pontinen testified that Petitioner's condition was causally related to the June 14, 2019 injury, assuming Petitioner picked up boxes weighing 30 pounds, twisted and felt a sharp pain in her lower back. *Id.* at 24-27. Dr. Pontinen did not place Petitioner at MMI because he claimed she had not undergone the medial branch block. *Id.* at 20-21, 23-24, 28. However, the Arbitrator notes Petitioner had in fact undergone the medial branch block, performed by a different provider. Dr. Pontinen claimed that in Dr. Butler's September 29, 2020 report (Resp. Ex. No. 2), he incorrectly noted Petitioner had undergone a medial branch block, which in fact was true. Dr. Pontinen claimed the MRI confirmed facet arthropathy and herniations at L4-L5 and L5-S1, to which Dr. Butler disagreed. However, Dr. Pontinen could not remember if he reviewed the MRI films or just the report. *Id.* at 15. The Arbitrator notes that Dr. Pontinen is board certified in anesthesiology and pain management. *Id.* at p. 6.

Dr. Butler, a board-certified orthopedic surgeon who specializes in treatment of the spine, examined Petitioner, obtained a history, reviewed her medical records, and prepared a report dated September 29, 2020, at Respondent's request. Resp. Ex. No. 2. Respondent also presented Dr. Butler for his deposition on August 10, 2021. Resp. Ex. No. 1. Dr. Butler reviewed the MRI imaging and noted it only demonstrated a small annular fissure at L5-S1 on the right side. There was very minimal degeneration, and the other levels of the spine were normal. *Id.* at 20. He did not find there were any herniations. He also confirmed that annular fissures are signs of degeneration of the disc and are common *Id.* at 26-27. Petitioner had a normal neurological examination and normal objective examination. *Id.* at 19, 24. Petitioner made subjective complaints that did not match with Dr. Butler's examination. He diagnosed Petitioner with a lumbar strain with sacroiliac pain, a diagnosis based on his exam, the MRI findings, and the history. *Id.* at 20-21. He did not find Petitioner's condition of ill-being to be causally connected to the work accident, although he noted she may have sustained an injury during the work activity involving a lumbar sprain (*Id.* at 21), assuming her history was accurate. He related her ongoing acute symptoms to her truncal obesity and poor flexibility, and at the point of his IME, the work injury would no longer be considered a causative factor in her symptoms. *Id.* at 30-31. Her

conditioning was what resulted in her ongoing subjective complaints. *Id.* at 31. Dr. Butler placed Petitioner at MMI at the end of 2019 (six months following the accident) (*Id.* at 21-22), and he noted Petitioner could return to regular work duties. His opinion was based on the natural history of a lumbar strain. He found Petitioner's treatment to be excessive but her prognosis to be excellent. Twenty physical therapy treatments were reasonable and necessary. *Id.* at 23. The epidural steroid injection would be considered reasonable. *Id.* at 21-22. The medial branch block was not reasonable or necessary because Petitioner's facets were normal on the MRI scan. *Id.* at 23.

Dr. Butler opined that Petitioner did not sustain any permanent impairment or long-term disability. *Id.* at 24. He based his opinion on the fact that an annular fissure is a nonspecific finding in someone in Petitioner's age group. Dr. Butler confirmed that he was assuming Petitioner had a medial branch block performed in offering his opinions. *Id.* at 32-33. Petitioner claimed to him that she received 12 hours of relief (even though the medical records from Pinnacle Pain Management document only eight hours of relief). According to Dr. Butler, this response would not be indicative of an issue with Petitioner's facets. The transient nature of Petitioner's relief of symptoms would be a common response to a medial branch block based on the nature of the anesthetic applied during the procedure. This is especially true since Petitioner had normal facets. *Id.* at 33-34.

CONCLUSIONS OF LAW

In support of the Arbitrator 's decision relating to (C), whether an accident occurred that arose out of and in the course of Petitioner's employment by Respondent, (E), whether timely notice of the accident was given to Respondent, and (F), whether Petitioner's current condition of ill-being is causally related to the injury, the Arbitrator finds the following:

Based on the following, the Arbitrator finds Petitioner failed to prove she sustained an accident that arose out of and in the course of her employment by Respondent, failed to provide timely notice of her accident to the Respondent, and also failed to prove that her current condition of ill-being is causally related to any alleged injury.

First, with respect to accident, Petitioner claimed she was carrying a box and hurt her back on June 14, 2019. At first, she claimed no one else was around in the area when she hurt her back. However, Petitioner then testified that Alejandro Molina was working in the same room as her at the time of the injury. According to Alejandro Molina's testimony, he did not witness Petitioner injuring herself and she never appeared to be injured. The only possible witness to the accident advised he saw no accident occur or evidence that an accident occurred.

It also is not plausible that Petitioner injured herself on June 14, 2019 based on her failure to seek medical treatment for over one month later. It would be unreasonable for Petitioner to sustain a work injury yet not seek medical treatment for that injury for over one month. The evidence does not support Petitioner's claim of an injury arising and in the course of employment.

Further, Petitioner failed to provide appropriate notice to the Respondent of her alleged work accident. According to Section 6(c) of the Act, notice of the accident shall be given to the employer as soon as practicable, but not later than 45 days after the accident. The evidence shows that

Petitioner did not make Respondent aware of her alleged work accident until August 2, 2019, greater than 45 days after the alleged accident. First, Petitioner had multiple opportunities to advise the Respondent of her alleged accident yet she never did. She offered no testimony to indicate she advised the Respondent of her alleged injury on the date of the accident. She never advised Alejandro Molina that she had sustained an injury, who was working in the same room as her on the date of injury and whom she understood to be her supervisor. Alejandro Molina confirmed Petitioner never advised him of her alleged injury at any time. Petitioner never even advised Alejandro Molina that she was experiencing any symptoms in her back.

Petitioner had another opportunity to advise the Respondent of her alleged work injury when she returned to work on Monday, June 17, 2019, but failed to do so. She admitted that she did not tell anyone in management for the Respondent on that date of her alleged work injury the Friday before. On June 18, 2019, when Petitioner spoke with Maria Chavez from the Respondent about her layoff, Petitioner again did not advise Maria Chavez of her alleged work injury during this conversation. As Maria Chavez testified, Petitioner never advised her at any point of her alleged work injury.

The Arbitrator does not find Petitioner's testimony credible when she claimed she called Maria Chavez at some point before July 20, 2019 and advised her of her back injury. Maria Chavez testified credibly that Petitioner never told her of any injury at any point. Petitioner's testimony lacks credibility when considered in conjunction with her testimony regarding a lack of knowledge of the Respondent's policies for reporting work injuries. Petitioner claimed she was not aware that the Respondent required all workplace injuries to be reported immediately to a supervisor and to human resources. She claimed she was not provided a copy of the Respondent's employee handbook which documented this policy. She claimed she was never told of the Respondent's policy reporting work injuries. However, Petitioner then later admitted that she initialed copies of the pages from the Respondent's employee handbook which explained the Respondent's policy report regarding reporting workplace injuries. Maria Chavez also testified that new hire employees were required to acknowledge receiving documentation of the Respondent's workplace injury reporting policy. She specifically testified that she explained this policy of reporting work accidents to the Petitioner, in Spanish, when the Petitioner was hired. Based on the totality of the evidence, the Arbitrator finds Petitioner's claim of providing the Respondent with notice of her accident at some point before July 20, 2019 lacks credibility.

Based on Maria Chavez's credible testimony, the Arbitrator finds that the Respondent did not receive notice of Petitioner's alleged work injury until August 2, 2019 which is greater than 45 days after the date of the alleged accident. The Arbitrator therefore finds that Petitioner failed to provide the Respondent with timely notice of her alleged work injury.

Finally, the Petitioner failed to prove that her current condition of ill-being is causally related to any alleged work injury. Again, as noted above, the Petitioner did not seek medical treatment for over one month despite allegedly experiencing a significant, acute injury. It stands to reason that if Petitioner had sustained an injury on June 14, 2019, she would have sought medical treatment well before July 25, 2019. Further, Petitioner continued to work for other companies, despite her

alleged injury. Petitioner would not have been able to continue working and not seek medical treatment had she sustained the work injury.

Third, the Arbitrator does not find the opinions of Dr. Pontinen to be credible. Dr. Pontinen based his causation opinion on a hypothetical mechanism of injury to which Petitioner never testified. Dr. Pontinen's causation opinion assumes Petitioner was picking up boxes weighing 30 pounds, twisted and felt a sharp pain in her lower back. Pet. Ex. No. 5, p. 24-27. Petitioner never testified to this mechanism of injury. Rather, Petitioner's testimony was that she was "carrying a box and hurt her back" on June 14, 2019. There is no mention of twisting or picking up the boxes. Rather, Petitioner only testified that she was carrying a box when she hurt her back. Therefore, Dr. Pontinen's causation opinion lacks foundation because it is based on facts not in evidence. Dr. Pontinen's opinions further lack credibility because he was not aware that Petitioner had undergone the medial branch block. It is clear from the medical records, as noted in the Findings of Fact above, the Petitioner had undergone the medial branch block at the time Dr. Pontinen testified. The Arbitrator does not find Dr. Pontinen's interpretation of the MRI to be credible. During his testimony, Dr. Pontinen could not remember if he reviewed the MRI films or just the report. Finally, the Arbitrator finds Dr. Pontinen is not qualified to offer causation opinions regarding this orthopedic injury. Dr. Pontinen is board certified in anesthesiology and pain management and is not qualified to offer orthopedic opinions.

On the other hand, Dr. Butler is qualified to offer his opinions being a board-certified orthopedic surgeon who specialized in the treatment of the spine. Dr. Butler credibly testified regarding his interpretation of the MRI imaging which only revealed a small annular fissure at L5-S1 on the right side. There was very minimal degeneration and the other levels of the spine were normal. There were no herniations. Annular fissures are signs of degeneration of the disc and are common. Dr. Butler also described an annular fissure as a nonspecific finding in someone of Petitioner's age group. While Dr. Butler testified the Petitioner may have sustained a lumbar sprain at the time of the accident, his opinion assumes a compensable accident occurred. Again, as noted above, Petitioner failed to prove she sustained an accident that arose out of and in the course of her employment. Any ongoing condition of ill-being is causally unrelated to the alleged work accident. Rather, assuming Petitioner has ongoing symptoms, they are related to her truncal obesity and poor flexibility, consistent with Dr. Butler's opinions.

The Petitioner failed to prove by a preponderance of the evidence that she sustained an accident that arose out of and in the course of employment. The overwhelming evidence supports the conclusion that Petitioner also failed to provide the Respondent with notice of any alleged work injury. Finally, Petitioner's current condition of ill-being is causally unrelated to any alleged work accident. Based on the totality of the evidence, the Arbitrator hereby denies all benefits.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC022541
Case Name	Anthony Runions v. Pontiac Correctional Center
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	23IWCC0407
Number of Pages of Decision	9
Decision Issued By	Christopher Harris, Commissioner

Petitioner Attorney	Alexis Ferracuti
Respondent Attorney	Bradley Defreitas

DATE FILED: 9/14/2023

/s/Christopher Harris,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 MCLEAN	)	☐ Reverse	☐ Second Injury Fund (§8(e)18)
			☐ PTD/Fatal denied
		☐ Modify	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

ANTHONY RUNIONS,

Petitioner,

vs. NO: 21 WC 22541

PONTIAC CORRECTIONAL CENTER,

Respondent.

DECISION AND OPINION ON REVIEW

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

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed March 21, 2023 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.

September 14, 2023

CAH/pm
d: 9/7/23
052

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

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

/s/ *Marc Parker*
Marc Parker

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC022541
Case Name	Anthony Runions v. Pontiac Correctional Center
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	7
Decision Issued By	Bradley Gillespie, Arbitrator

Petitioner Attorney	Alexis Ferracuti
Respondent Attorney	Bradley Defreitas

DATE FILED: 3/21/2023

THE INTEREST RATE FOR THE WEEK OF MARCH 21, 2023 4.62%

/s/ Bradley Gillespie, Arbitrator
Signature

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

March 21, 2023

/s/ Michele Kowalski

Michele Kowalski, Secretary
Illinois Workers' Compensation Commission

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
NATURE AND EXTENT ONLY

Anthony Runions
Employee/Petitioner

v.

Pontiac Correctional Center
Employer/Respondent

Case # **21** WC **022541**

Consolidated cases: _____

The only disputed issue is the nature and extent of the injury. An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Bradley Gillespie**, Arbitrator of the Commission, in the city of **Bloomington**, on **September 26, 2022**. By stipulation, the parties agree:

On the date of accident, **July 25, 2021**, 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 $**59,583.16**, and the average weekly wage was $**1,145.83**.

At the time of injury, Petitioner was **31** years of age, ***single*** with **0** dependent children.

Necessary medical services benefits have been provided by Respondent.

Respondent shall be given a credit of all amounts paid for TTD, TPD, maintenance, and for other benefits.

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

ORDER

Petitioner has suffered 10% Loss of use of a person as a whole, for a total loss of 50 weeks at rate of $687.50 per week, per §8(d)(2) of the Illinois Worker's Compensation Act

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.

Bradley D. Gillespie MARCH 21, 2023

Signature of Arbitrator

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

ANTHONY RUNIONS,	)	
	)	
Petitioner,	)	
	)	
v.	)	**Case No: 21 WC 022541**
	)	
PONTIAC CORRECTIONAL CENTER,	)	
	)	
Respondent.	)	
	)	

DECISION OF THE ARBITRATOR

This matter proceeded to hearing on September 26, 2022, in Bloomington, Illinois. (Arb. Ex. 1). The following issues were in dispute at arbitration:

- Medical Bills;
- Nature and Extent.

FINDINGS OF FACT

Petitioner was the only witness at arbitration, and he testified about his injury, treatment, and ongoing complaints. Petitioner was injured while working as a correctional officer on August 10, 2020, at Pontiac Correctional Center when an inmate head-butted him in the face.

Petitioner testified that he currently works at the Wal-Mart Distribution Center but that he had worked for Respondent prior to the accident in issue. (Tr p. 9) Petitioner was hired by Respondent on January 22, 2018. (Tr. p. 10) Petitioner testified that on July 25, 2021, he was releasing an inmate from a bench when the inmate immediately jumped up and head butted him. (Tr. pp. 11-12)

Petitioner immediately noticed his lip was busted open and his face was a little swollen following the incident. (Tr. p. 13) He testified that his head and neck hurt from head snapping back from the impact. *Id*. Petitioner stated that he filled out an accident report on the date of accident, but he had not seen it since that day. (Tr. p. 14)

Petitioner presented to the emergency department at OSF St. James in Pontiac. (PX #5) He testified that a CT scan was done at AMITA Health which showed no facial fractures. (Tr. p. 16) Petitioner then treated with his primary care provider who eventually referred him to Dr. Hersonskey who ordered physical therapy and x-rays. (Tr. p. 18) Petitioner sought care with Dr. Nair who is a neurosurgeon at AMITA Health. (Tr. p. 20)

Petitioner testified that his complaints to Dr. Nair included headaches, dizziness, nausea, vomiting and photophobia. (Tr. pp. 20-21) He testified that his focus was off, and his reaction time was off, so his father drove him to most of his appointments. (Tr. pp. 21-22)

Petitioner denied having issues with reliving the accident, but still complained of anxiety about the general situation. (Tr. p. 24) Petitioner underwent an MRI of the brain that was unremarkable. He also started vestibular therapy. Petitioner was also referred to ophthalmology for his eye twitching issues and vision issues that were bothering him. (Tr. p. 29) Petitioner also began speech therapy on September 15, 2021. Petitioner underwent a mental health assessment on September 21, 2021.

Petitioner testified that he saw Dr. Reams on September 30, 2021, who diagnosed him with concussion, cervical strain, referred cervicogenic headaches and tinnitus of the right ear. (Tr. p. 34) Petitioner started vision therapy in November of 2021 which consisted of convergence therapy. Petitioner underwent a CT of the head and neck on November 9, 2021, which came back as normal. (Tr. p. 38)

Petitioner testified that at the ophthalmology appointment he had an abnormal ocular motor study and recommended vision therapy. Petitioner was referred to a spine doctor in November of 2021 after complaining of pain between his shoulder blades. (Tr. p. 42) Petitioner was discharged by his mental health counselor on December 9, 2021, as they felt he was managing his anxiety appropriately. (Tr. p. 45)

Petitioner saw the spine doctor on December 23, 2021. (Tr. p. 45) He ordered x-rays and an MRI. X-rays of the cervical and thoracic spine both came back with no fractures. (Tr. p. 48) The MRIs of the cervical and thoracic spine both came back as normal with no abnormalities noted.

Petitioner testified that he never returned to work at Pontiac Correctional Center but speculated that his attention issues would have caused issues with his job duties. (Tr. p. 58) Petitioner noted that when he was fully released by his doctors that he just quit his job with Respondent. (Tr. p. 59)

At his last appointment with Dr. Reams, she noted that Petitioner was having psychologic contributors to his recovery and potential malingering. (Tr. p. 61). Petitioner testified that he was paid his full salary by Respondent for the whole time he was off work. (Tr. p. 66)

Petitioner testified that he still gets headaches but not every day like before. He also testified that he was still had numbness down his left arm every day. (Tr. p. 68) He agreed that he was fully released by his doctors and that he is currently working full duty at Wal-Mart. (Tr. p. 71) He testified that he makes more money now than he did with Respondent. (Tr. p. 72)

On cross-examination, Petitioner agreed that no doctor told him that he could not return to work at Pontiac Correctional Center. (Tr. p. 77) Petitioner said it was hard to say whether he had any blurriness in his left eye from this accident. *Id.*

Petitioner testified that he is a maintenance technician for a Wal-Mart distribution center. He agreed that he has to multi-task in his current position. (Tr. p. 77) He acknowledged that he is able to complete all of his job duties. (Tr. p. 78) He admitted that he plays video games and that he gets symptoms in his left hand while doing so. *Id.*

CONCLUSIONS OF LAW

As an initial matter the Arbitrator notes Petitioner has the burden of proving all of his case by a preponderance of the evidence. Chicago Rotoprint v. Industrial Comm'n, 157 Ill.App.3d 996, 1000, 509 N.E.2d 1330, 1331(1st Dist. 1987).

Issue (L): What is the Nature and Extent of the injury?

With respect to disputed issue (L), pertaining to the nature and extent of Petitioner's injury, and consistent with 820 ILCS 305/8.1b, permanent partial disability shall be established using the following criteria: (i) the reported level of impairment pursuant to subsection (a) of Section 8.1b of the Act; (ii) the occupation of the injured employee; (iii) the age of the employee at the time of injury; (iv) the employee's future earning capacity; and (v) evidence of disability corroborated by the treating medical records. 820 ILCS 305/8.1b. No single enumerated factor shall be the sole determinant of disability. Id.

With regard to subsection (i): The Arbitrator notes that no permanent partial disability impairment report and/or opinion was submitted into evidence. Therefore the Arbitrator gives no weight to this factor.

With regard to subsection (ii): the occupation of the employee: the Petitioner was employed as a correctional office by Respondent which required him to maintain the security of the correctional facility. Petitioner testified that he was required to monitor the inmates at rec time, during chow time and escort prisoners throughout the prison for various reasons. Therefore, the Arbitrator gives moderate weight to this factor.

With regard to subsection (iii): the Arbitrator notes that Petitioner was 31 years old at the time of the accident. Petitioner is young and able to develop transferable labor skills if he desires, Therefore, the Arbitrator gives moderate weight to this factor.

With regard to subsection (iv): Petitioner's future earnings capacity: Petitioner testified he has not returned to work because he did not want to. He did testify that he makes more money now with his current employer than he did with Respondent. Petitioner chose to leave his profession with Respondent and even agreed that his doctor released him to work full duty. Therefore, the Arbitrator places little weight on this factor.

With regard to subsection (v): evidence of disability corroborated by the treating medical records: the Arbitrator notes that the records show Petitioner was diagnosed with a concussion and vision issues in his right eye. He was examined for his cervical spine complaints but all of the imaging for his spine came back normal. Petitioner treated for potential PTSD as well. Dr. Reams noted that he was taking longer than usual to recover and that she believed there was some level of malingering on his part in regard to some of his symptoms. Petitioner complained of blurriness and floaters in his vision. Additionally, he underwent speech therapy which seems to have helped him. Therefore, the Arbitrator gives this factor greater weight.

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	18WC023016
Case Name	Kevin Patrick v. Statesville Correctional Center
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b) Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	23IWCC0408
Number of Pages of Decision	13
Decision Issued By	Christopher Harris, Commissioner

Petitioner Attorney	Leandro A. Alhambra
Respondent Attorney	Danielle Curtiss

DATE FILED: 9/14/2023

/s/Christopher Harris, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF WILL)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

KEVIN PATRICK,

Petitioner,

vs. NO: 18 WC 23016

STATEVILLE CORRECTIONAL CENTER,

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, medical expenses and permanent partial disability (PPD) benefits, and being advised of the facts and law, writes to correct the accident date 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 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 finds that the accident date was incorrectly noted as May 27, 2016 on page 8 of the Arbitrator's Decision. Petitioner sustained an accident that arose out of and in the course of his employment with Respondent on May 27, 2017.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator, filed December 19, 2022, is hereby corrected 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.

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.

September 14, 2023

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

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

/s/ *Marc Parker*
Marc Parker

CAH/pm
O: 9/7/23
052

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	18WC023016
Case Name	Kevin Patrick v. Statesville Correctional Center
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	10
Decision Issued By	Jessica Hegarty, Arbitrator

Petitioner Attorney	Leandro Alhambra
Respondent Attorney	Danielle Curtiss

DATE FILED: 12/19/2022

/s/ Jessica Hegarty, Arbitrator

Signature

INTEREST RATE WEEK OF DECEMBER 13, 2022 4.63%

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

December 19, 2022

/s/ Michele Kowalski

Michele Kowalski, Secretary
Illinois Workers' Compensation Commission

STATE OF ILLINOIS)
)SS.
COUNTY OF WILL)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Kevin Patrick
Employee/Petitioner

v.

Statesville Correctional Center
Employer/Respondent

Case # **18WC023016**

Consolidated cases:

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Jessica Hegarty**, Arbitrator of the Commission, in the city **Joliet**, on **10/18/2022**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On, **05/27/2017** Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $**50,0925**; the average weekly wage was $**963.37**.

On the date of accident, Petitioner was **35** years of age, ***married with*** **3** dependent children.

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

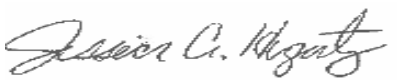
Respondent ***has not*** paid all appropriate charges for all reasonable and necessary medical services.

ORDER

- Respondent shall pay reasonable and necessary medical services incurred from 5/27/17 through 9/26/19, pursuant to the medical fee schedule, to Hines VA (see PX 7) for treatment

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

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



Signature of Arbitrator **December 19, 2022**

ADDENDUM TO THE DECISION OF THE ARBITRATOR
18 WC 023016

SUMMARY OF FACTS

Petitioner has two pending, consolidated claims, 18WC023016 and 18WC023017, which proceeded to hearing on October 18, 2022, in Joliet, Illinois. (Arb. 1 & 2). Separate decisions will be issued for each claim.

In the case at bar, the Petitioner filed an application for adjustment of claim pursuant to the Workers' Compensation Act (Act) (820 ILCS 305/1 et seq. (West 2010)) against his employer, Statesville Correctional Center, seeking workers' compensation benefits for post-traumatic stress disorder (PTSD) allegedly caused by a May 27, 2017, work-related accident. The Arbitrator notes that prior to the hearing, Petitioner's motion to amend the date of accident for 18WC023016 from 5/28/17 to 5/27/17 was granted.

On 5/27/17 Petitioner, Kevin Patrick, worked for Respondent as a correctional officer at Statesville Correctional Center. Petitioner had undergone special training to become a certified tactical officer which qualified him to carry out special assignments concerning the inmates at the prison including cell extractions and suicide.

On 5/27/17, Petitioner was stationed outside of a suicidal inmate's cell in the prison infirmary on continuous watch. The suicidal inmate, named Davilla, was a known self-mutilator who had ingested some plastic "sporks" and had undergone surgery to remove the eating utensils from his digestive system. The inmate had an incision in the center of his chest, from his breast plate down to his navel, which was covered by a bandage that needed to be changed by medical staff every hour. The inmate was restrained by a three-point harness which secured his arms and feet to the bed. At some point that day, the inmate maneuvered his hips in a manner that allowed his hand to reach his bandage. Petitioner, who was stationed outside of the inmate's infirmary cell, observed the inmate remove his chest bandage, rip apart his surgical incision, and pull part of his intestine outside of his body. Petitioner testified to the following observations upon entering the inmate's cell:

> *As soon as I opened the door, the smell hit you, you could smell feces, you could smell urine. At this point he had already taken the bandages off that were soiled with blood and feces and threw it on the ground next to him where I would have to stand when I attempted to re-secure him. There was a point where he had gotten his thumb into his incision and had his intestine wrapped around his thumb. And he was squeezing in between his hand and his thumb so hard and shaking that there was blood and feces coming out of the intestine itself. And then he passed out. He was no longer coherent. (Id. 12).*

Regarding his emotional/psychological state as this incident was occurring, Petitioner testified he experienced bursts of flashbacks from his time serving as a first respondent in the Coast Guard during Hurricane Katrina:

> *I can only explain it like a scene out of a movie, a horror movie. I started having flash backs to my time in service. I started seeing things or imagining things that were not there. I became very quiet, very pale. I believe I was in shock. I was scared, I was nervous because I hadn't felt something like this before and I knew something wasn't right. And that I didn't want to be in that situation anymore. (Id. 14).*

Once the inmate no longer presented a threat, Petitioner removed the intestine from the inmate's hand and restrained the inmate. Petitioner was now covered in the inmate's blood and feces. Petitioner testified the smell made him nauseous.
Petitioner called for help but was required to stay with the inmate for another 45 minutes until a doctor arrived.

Petitioner testified that he told his duty Commander, Major T. Davis, that he was feeling sick, upset, and wanted to go home. This request was denied, and Petitioner was ordered to accompany the inmate from the prison to the hospital where Petitioner continued his watch over the inmate until 12:30 am.

Petitioner reported to work the next day at 6:45 am. Petitioner testified that he was extremely tired and had not slept at all.

Petitioner testified that on 5/29, 2017, he called a suicide prevention hotline. Petitioner spoke to a counselor on the hotline who told him to follow up with a psychologist/psychiatrist.

With respect to notice, Petitioner testified he wrote a letter which he hand-delivered to his tactical commander, Sgt. Mike Evans on 5/31/17. In the letter, Petitioner wrote that he was upset and could no longer handle being assigned to guard the inmate Davila.

Petitioner also told his shift supervisor and duty commander, Major Sawyer, on 5/31/17, that the incident with the inmate caused Petitioner to have anxiety and racing thoughts and that Petitioner needed a change in his assignment. Petitioner testified that he was in tears during the conversation.

Petitioner testified that on 6/1/17, Major Sawyer called and left a voicemail regarding their 5/31/17 conversation. The voicemail was played off the record for the Arbitrator and was submitted into evidence as Petitioner's Ex. 10 In the voicemail Major Sawyer stated the following:

> *Mr. Patrick this is Major Sawyer. And I loved talking to you earlier before you left for work. You know, before you left grounds. But I want to talk to you. I'm not trying to interrupt your day off. Just please give me a call xxx-xxx-xxxx. Again, that number is xxx-xxx-xxxx. I want to talk to you. I have a tower position available for you and I do care about you bubba. You know I'm a 12-year military veteran, 8 years with special forces so…You brought to light to me today some things I didn't know about you. And I want to work with you so please give me a call and so I can make it happen. Love you brother. Ciao.* (Px 10).

Petitioner testified that following the conversation with Sgt. Evans and Maj. Sawyer, he continued being assigned to inmate Davilla 5 out of 7 days per week.

Following the incident, Petitioner began experiencing "a lot of issues". He testified that, "So many things were just in my head and my mind, they wouldn't stop. I was in pain, physical pain, mental pain. I just wanted it to stop, I didn't know how." (Tr. 34). Petitioner described a suicidal event where he sat on the edge of his bed, pulled out a gun and held it against his head. Petitioner's wife walked in and was able to stop him. Petitioner testified, "After she interrupted, it was like a light switch went on. I knew I had issues, but I also knew I had little kids, a wife and I had to find a way… So, I sought medical treatment." (Tr. 41).

On 12/21/17, Petitioner presented to Linden Oaks Medical Group for a psychiatric evaluation at the recommendation of his primary doctor. Petitioner reported a history of PTSD following military deployment to Iraq in 2008 for 11 months and serving as a first responder following Hurricane Katrina. Petitioner described several traumatic incidents associated with his military service. Petitioner then reported an incident while working at a max security prison where an inmate ripped open his incisions and squeezed his intestines until it

ruptured. This incident caused Petitioner to experience flashbacks to his time in the military. Petitioner reported that he felt like he was on speed, on alert, and was worried about something happening to him. He felt like he was in a boat "getting shrunken in" water coming in, like he was suffocating. He had increased anxiety and difficulty sleeping. He reported that a few weeks ago, after the incident at the prison, he came close to shooting himself when he was having an episode, but his wife intervened. Petitioner also reported that he is given a gun during his work shifts but has to return it before he leaves the prison. Petitioner was diagnosed with PTSD and prescribed Zoloft 50 mg and Xanax. Admission to an outpatient program was recommended due to severity of his symptoms. (Px 5).

Petitioner continued to treat at Linden Oaks. On 1/4/18, Petitioner reported a history of nightmares, anxiety, and being hypervigilant at work. Petitioner reportedly was unable to participate in the recommended outpatient program due to childcare issues. Petitioner was ordered to discontinue the use of Xanax and was given a prescription for Klonopin. (Id.).

On 3/1/18, Petitioner followed up at Linden Oaks reporting a panic attack in the tower while at work the evening before. He also reported daily panic attacks. Petitioner noted he still had to interact with inmate Davilla which caused him anxiety. (Id.).

On 3/15/18, Petitioner was last seen at Linden Oaks. He reported continued struggles with PTSD, depression, and multiple panic attacks per day. Petitioner was diagnosed with PTSD and depressive disorder (Id.).

On 4/18/18, Petitioner was evaluated by Dr. Wendy Yim at Hines VA Medical Center ("Hines VA"). Dr. Yim noted the Petitioner was seen in 2015 for a psychiatric evaluation but did not follow up. Consistent psychotherapy and medication management had yielded no improvement, according to Petitioner. (Px 6, p. 529-531).

On 5/10/18, Petitioner called the VA National Suicide Prevention Hotline for assistance. Petitioner reported working at a max security prison which presented personal triggers that he needs to overcome. (Px 6, p 638).

On 5/11/18, Petitioner received a call from VA Social worker, Danate Gordeuk. Petitioner reported to Gordeuk the incident involving inmate Davilla. Petitioner reportedly was having trouble sleeping with no interest in social activities along with a foggy memory. (Px 6, p. 639)

On 5/18/18, Petitioner began treating at Hines VA with clinical psychologist, Dr. Jonathan Beyer. Petitioner reported that approximately 6 months ago he was "close" to shooting himself and that his wife intervened removing his access to guns. Petitioner was diagnosed with PTSD. Dr. Beyer recommended treatment through Trauma Services Program (TSP). Petitioner continued psychotherapy with Dr. Beyer on a weekly basis. (Px 6)

Petitioner continued working full duty for Respondent until 7/20/18. The parties stipulated that Petitioner sustained an accident arising out of and in the course of his employment with Respondent on that day while Petitioner was escorting inmates to the showers when two inmates began fighting. Petitioner intervened and was attempting to restrain one of the inmates when Petitioner was punched in the left shoulder by another inmate. While attempting to restrain that inmate, Petitioner fell on his left side. That claim is the subject of the consolidated case, 18WC023017.

On 7/23/18, Petitioner again called the VA National Suicide prevention hotline. Petitioner reported that he had an incident at work requiring medical treatment. Petitioner further reported that the incident was causing him panic and anxiety. (Px 6)

On 7/24/18, Petitioner presented to Dr. Beyer who noted that Petitioner had many stressors in his life complicating his ability to focus on trauma-focused therapy. (Px 6)

Petitioner continued to treat for PTSD at Hines VA on a bi-weekly basis. He was last treated for PTSD on 9/26/19 by clinical psychologist, Dr. Vickie Bhatia. Petitioner was concerned about returning to work. Dr. Bhatia agreed that returning to that environment would likely exacerbate his PTSD and depression symptoms. The doctor was concerned Petitioner would lose all the gains he had made in treatment in the past year. Dr. Bhatia noted that Petitioner was at baseline. (Px 6)

On 8/6/18, Petitioner presented to the ER at Hines VA with complaints of chronic pain after injuries sustained while breaking up a fight between inmates on 7/20/18. Petitioner also reported that the injuries have triggered worsening PTSD symptoms. He reported nightmares (which blend together with most recent trauma and past trauma, irritability, and decreased sleep. It was noted that the events surrounding injury and ongoing pain have destabilized patients' PTSD recovery. Petitioner was examined by psychiatrist, Dr. Anthony Canon. Dr. Canon noted that Petitioner met criteria for PTSD following several vivid and intense combat and occupational traumatic incidents. Furthermore, it was noted that his base line risk of suicide was elevated. (Px 6)

Petitioner continued to receive regularly weekly treatment at Hines VA for his PTSD. The 8/7/18 therapy note from Dr. Rizawan Shefeequr noted that worsening PTSD symptoms after new trauma. (Px 6).

Pursuant to Respondent's Section 12 request, Petitioner submitted to a neuropsychological evaluation by Dr. David Hartman on 7/26/21. Dr. Hartman diagnosed Petitioner with bipolar disorder. Regarding causation, Dr. Hartman opined there are no credible work-related psychological conditions or diagnoses related to Petitioner's experiences as a correctional officer. The doctor opined that Petitioner's prognosis for returning to work is poor due to his pre-accident mood disorder and current malingering. Hartman opined that Petitioner should be able to work in occupation that doesn't involve police work or aggression. Hartman opined that Petitioner was at MMI. (Px 4).

Petitioner testified that he found work temporarily as a background actor for the TV show Chicago Med. Paystubs submitted by Petitioner indicate that he earned income starting 7/25/22 through 8/10/22. (Px 9). Furthermore, Petitioner was elected Village Trustee in Villa Park. Petitioner testified that he receives a stipend of $107.07 every 2 weeks for this position. He has served as village trustee since April 2019. He is up for re-election in April 2023 but does not intend on running.

On cross-examination, Petitioner agreed that if an employee sustained an injury at Statesville the employee was required to complete a form 434 incident report. Petitioner testified that he completed an incident report for the 5/27/17 Davilla incident. Petitioner testified that he tendered it to his shift commander, T. Davis.

Jacalyn Juricic testified on behalf of the Respondent. Juricic is the workers' compensation coordinator. Juricic processes workers compensation claims and maintains workers' comp files for the Illinois Department of Corrections. Juricic testified that she first learned of Petitioner's May 27, 2017, workers comp claim in August 2019, when the claim was filed with the Commission. Juricic testified that Petitioner's employment with Respondent ended on 1/18/2019.

On cross-examination, Juricic could not recall whether Petitioner's shift supervisor, T. Davis, turned an incident report authored by Petitioner. Juricic also testified that there were no incident reports regarding authored by Sgt. Evans and Maj. Sawyer regarding the 5/27/17 accident.

Michael Evans testified on behalf of the Respondent. On 5/27/17, Evans held the position of tactical commander. Ass tactical commander his duties included supervision of all assignments under tactical operations for the prisons and supervision of the tactical team. Evans testified that the protocol for when work injuries occur within the prison was to compete an incident report, notify the shift commander and that he and the employee fill out a workers' comp packet together. Evans was not aware of whether workers' comp paperwork was filed for Patr4ick regarding the 5/27/17 Davilla incident. Evans admitted that he was working the same shift as Petitioner on 5/27/17 but was not working with Petitioner directly. Evans did not recall the Davilla incident.

On cross-examination, Evans admitted that he was never notified of the 5/27/17 incident with Davilla. He did not have any memory of the incident. Evans conceded that as tactical commander, it is his duty to check in with officers involved in "unusual incidents" and investigate what happened. In this case however, Evans could not recall the details of the incident, nor did he recall checking in with Petitioner after the Davilla incident occurred. Evans also did not recall Petitioner hand delivering a letter to him on 5/31/17.

Dr. Cole provided a causation opinion regarding the left shoulder via a letter dated 3/9/2020. Dr. Cole opined that the altercation caused, aggravated, accelerated in whole Petitioner's left shoulder condition. Dr. Cole noted that Petitioner has had persistent and consistent pain and stiffness since the altercation and has exhausted all nonsurgical options. (Px 1).

CONCLUSIONS OF LAW

18WC023016

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:

With regard to the issue of accident, the Arbitrator finds that the Petitioner has met his burden of proof.

An employee who suffers a sudden, severe emotional shock traceable to a definite time and place which causes psychological injury or harm has suffered an accident within the meaning of the Act, though no physical trauma or injury was sustained. Pathfinder v. Industrial Comm'n 62 Ill. 2d 556, 563 (1976).

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.

In support of this finding, the Arbitrator places significant weight upon Petitioner's testimony which the Arbitrator found exceedingly credible. The Arbitrator found Petitioner presented at the hearing as a sincere, honest, and trustworthy individual.

The incident in this case clearly meets the requirement accident set forth in Pathfinder. Petitioner suffered from a severe emotional shock (i.e., flashbacks of prior trauma) traceable to a definite time and place (restraining the inmate). Moreover, there was no evidence offered to rebut Petitioner on his testimony regarding this issue. As

such, the Arbitrator concludes that Petitioner sustained an accident arising out of and in the course of his employment with Respondent on 5/27/16

With regard to issue "E", whether timely notice of the accident given to Respondent, the Arbitrator finds as follows:

The Arbitrator finds that timely notice was given to Respondent. This is based on Petitioner's credible testimony and the 5/31/17 voicemail from Petitioner's supervisor, Major Sawyer (Px10).

Based on the above, the Arbitrator finds that respondent received timely notice of the accident.

With regard to issue "F", whether Petitioner's current condition of ill-being is causally related to the injury, the Arbitrator finds as follows:

The Arbitrator finds Petitioner's current condition of ill-being is causally related to the injury. In evaluating the medical opinions, the Arbitrator puts greater weight on the opinions of the treating physicians from Linden Oaks Medical Group and Hines VA than that of Respondent's Section 12 examiner, Dr. David Hartman.

The records from Linden Oaks and Hines VA document that Petitioner's treating physicians relate his PTSD to the 5/27/17 incident at issue in this case. The medical records indicate that prior to the 5/27/17 accident, Petitioner was not actively treating for PTSD or any other psychological conditions. Petitioner's testimony that he experienced flashbacks when this incident occurred is corroborated in the medical records. Two days after the accident Petitioner called the suicide prevention hotline. The 10/19/18 medical note of Dr. Amrita Mankani indicates that Petitioner's trauma symptoms are related to extensive trauma from combat, Katrina and mostly his work as a corrections officer in a high security prison. (Px 6 p. 349-350).

Based on the above, the Arbitrator finds that Petitioner's condition of ill being is causally related to the injury.

With regard to issue "J", whether the medical services provided to Petitioner were reasonable and necessary and whether Respondent has paid all appropriate charges for 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. In reviewing the medical services provided to Petitioner, the Arbitrator finds Respondent has not paid all appropriate charges for all reasonable and necessary medical services. The Arbitrator finds the medical services provided to Petitioner for PTSD and other psychological conditions were reasonable and necessary.

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).

Given the Arbitrator's finding of causation between Petitioner's May 27, 2017 work accident and his condition of ill-being regarding the post-traumatic stress disorder, Respondent is liable for reasonable and necessary medical treatment of the causally related conditions from 5/27/17 through 9/26/19.

The Arbitrator orders Respondent to pay Petitioner all other reasonable and necessary medical expenses incurred in connection with the care and treatment of her causally related conditions pursuant to Sections 8 and 8.2 of the Act. Respondent shall receive credit for amounts paid.

With respect to Issue (K), what temporary benefits are in dispute, the Arbitrator finds as follows:

Following the 5/27/17 accident, Petitioner continued to work for Respondent as a correctional officer through 7/20/18. On 7/20/18, Petitioner sustained another accident while arising out of an in the course of his employment from Respondent. Petitioner was taken off work as of 7/20/18 due to the physical injuries he sustained from the 7/20/18 work accident.

Thus, the Arbitrator finds that Petitioner is not entitled to TTD for the 5/27/17 work accident.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	07WC023593
Case Name	Joanna Godlewska v. Northshore University Health System
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	23IWCC0409
Number of Pages of Decision	32
Decision Issued By	Marc Parker, Commissioner

Petitioner Attorney	Thomas Lichten
Respondent Attorney	Timothy O'Gorman

DATE FILED: 9/14/2023

/s/Marc Parker, Commissioner
Signature

DISSENT: /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

Joanna Godlewska,

Petitioner,

vs. No. 07 WC 23593

Northshore University Healthsystem,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by Respondent herein and notice given to all parties, the Commission, after considering the issues of accident, causal connection, medical expenses, admissibility of Ed Steffan's deposition, vocational rehabilitation, benefit rates/average weekly wage, temporary partial disability, 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.

In June 2005, Petitioner, a 31 year old cancer researcher, received a 2-year, post doctorate fellowship from Respondent, and began working there at an annual salary of $35,000.00. Prior to that, Petitioner worked as a cancer researcher in Poland, before which she earned two Bachelor's degrees in Biotechnology and Food Technology Nutrition; a Master's degree in Biotechnology; and a Ph.D. in Biology.

In her position at Respondent, Petitioner worked primarily under a "hood" – an enclosed area with a sterile air flow, where she would perform cell cultures. Her supervisor split the hood in half, so that the space could be shared with another worker. Petitioner worked most of her day

in this cramped, three foot wide area. Due to the restricted workspace, Petitioner was required to reach forward with her upper extremities in front of her without being able to rest them on any surface.

After Petitioner worked under those conditions for about three months, she began developing neck, shoulder and back pain, with occasional numbness and tingling to her forearm and fingers. Her pain progressed to the point that, on September 23, 2005, she could not move and had to seek medical treatment.

Petitioner first saw Dr. Stewart on September 23, 2005, complaining of a backache. Dr. Stewart diagnosed her with muscle spasms, tenderness, and a back sprain. He ordered physical therapy, but did not impose restrictions on her or take her off work. Petitioner requested ergonomic modifications of her work space, but Respondent made none. Petitioner continued working and performing her usual duties.

On December 15, 2006, Petitioner saw her primary care physician, Dr. Dowling, for persistent neck and shoulder symptoms. He reported that her pain appeared to be related to working in a sitting position with her arms elevated. Petitioner also saw Dr. Stewart on December 29, 2006, complaining of increased pain. Dr. Stewart authorized Petitioner off work and recommended physical therapy.

On January 31, 2007, Petitioner saw orthopedic physician, Dr. Shapiro. He reported that her cervical MRI confirmed a herniated C5-6 disc, which he believed was the source of her problems. Dr. Shapiro recommended Petitioner add cervical traction and neck conditioning to her physical therapy program.

When Petitioner saw Dr. Dowling on February 21, 2007, she told him that when she got up at home, she slipped and "caught" a disc in her thoracic spine. She also told Dr. Dowling that her grant was over and she no longer was working for Respondent. Dr. Dowling noted that Petitioner had a long history of thoracic problems, and reported that the etiology of her symptoms was unclear. He ordered MRIs of her spine.

At Dr. Shapiro's February 28, 2007 examination of Petitioner, he read her thoracic MRI as showing only a very tiny disc bulge at T4-5, not a herniated disc. He noted that she had quit her job and that her symptoms were improving. Given Petitioner's improvement, Dr. Shapiro recommended no further treatment. When he last saw her on March 28, 2007, Dr. Shapiro reported that except for some achiness in her neck, most of Petitioner's symptoms had resolved and she no longer needed to see him.

Petitioner testified that after she left her job at Respondent, she had hoped to continue her career as a cancer researcher, but could not find a job in that field. She applied, without success, for research positions at the University of Chicago, at Abbott, and at, "everything that was open out there." She ultimately accepted a part-time job unrelated to cancer research, which paid less

than her earnings at Respondent, but had flexibility, shorter working hours, and allowed her to change positions. After that, Petitioner continued working a variety of lower paying jobs. In 2007, she worked at Kafein as a server/barista, earning $3.90/hour plus tips, and at Leonidas Café doing similar work for $8-$12 per hour. From 2008 to 2010, Petitioner worked for a law firm as a secretary, doing billing and spreadsheets, earning $15 per hour.

After a few years, Petitioner decided to switch careers and began studying to become a medical doctor. In 2010, she enrolled in pre-med classes at Northwestern University and Oakton Community College. During that time, she also worked as a Patient Care Coordinator at Community Health Center, where she earned $14.35/hour and worked a 37½ hour workweek.

In 2014, Petitioner began a 2-year program of study at DePaul University to become a nurse. During that time, she worked as a teacher's assistant earning $15.31/hour. She graduated with honors, passed her boards and became a Registered Professional Nurse on December 31, 2015. She began working as an emergency room RN at Northwestern Memorial Hospital on June 5, 2016, earning $27.30 per hour. Petitioner testified that her nursing school education cost over $80,000.00.

After working as a registered nurse for almost two years, Petitioner decided to go back to school to become a nurse practitioner. In 2017, she began a 2-year program for that at Olivet Nazarene University. Petitioner testified that her nurse practitioner education cost almost $22,000.00. In April 2019, Petitioner began working full time as a certified family nurse practitioner earning $45 to $48/hour.

At arbitration, Petitioner presented the deposition of certified rehabilitation counselor, Susan Entenberg. Ms. Entenberg testified that she met with Petitioner in September 2013 to evaluate her vocational potential. Ms. Entenberg acknowledged that Petitioner was very bright, very motivated, highly trained, and had transferrable skills. However, she opined that Petitioner would not be able to earn more than $30,000 per year without additional formal education.

The Arbitrator found that Petitioner proved accident, and that her average weekly wage was $673.08. The Arbitrator found Petitioner's upper back and neck conditions were causally related to her September 23, 2005 work injury, and awarded her: $4,975.45 in medical expenses; 482 weeks of temporary partial disability benefits from March 2, 2007 through June 5, 2016; two weeks of temporary total disability benefits from December 29, 2006 through January 5, 2007, and from February 6, 2007 through February 12, 2007; vocational rehabilitation (mostly tuition) expenses totaling $104,995.10, and 40% loss of person as a whole under §8(d)2. The Arbitrator found Petitioner's testimony credible, and the opinions of Dr. Chmell and Susan Entenberg more persuasive than the opinions of Dr. Ghanayem, who found no evidence that Petitioner sustained a workplace injury. The Arbitrator did not consider the opinions of Respondent's vocational rehabilitation expert, Ed Steffan, whose deposition transcript the Arbitrator rejected as an exhibit.

The Commission views some of the evidence differently than did the Arbitrator. We do agree that Petitioner proved she: sustained cervical and thoracic injuries, including disc herniations, as a result of repetitive trauma which manifested on September 23, 2005; had an average weekly wage of $673.08; was entitled to some medical expenses; and was entitled to temporary total disability benefits. However, we disagree that Petitioner proved she was entitled to vocational rehabilitation, temporary partial disability benefits, or 40% loss of person as a whole under §8(d)2.

Accident:

The histories in Petitioner's treating medical records corroborate her testimony that her repetitive work activity of reaching forward in a confined space while working at Respondent caused pain in her neck and back. Dr. Dowling reported that Petitioner's pain, "Appears to be related to sitting position and keeping arms elevated at work…" The Commission finds Petitioner proved accidental injuries which manifested on September 23, 2005, and arose out of and in the course of her employment with Respondent.

Causal Connection and Medical Expenses:

Petitioner testified without rebuttal that her symptoms developed during the course of working for Respondent. Prior to that she was asymptomatic, and no evidence of record suggests any other cause of her pain. The Commission finds Petitioner's cervical and thoracic spine injuries which manifested on September 23, 1005 were causally connected to her repetitive work activities.

However, after Petitioner left her job at Respondent in February 2007, her symptoms and condition quickly improved. On February 28, 2007 Dr. Shapiro reported that given Petitioner's improvement, she required no further treatment. At his final exam of Petitioner on March 28, 2007, Dr. Shapiro reported that most of her symptoms had resolved, and he released her from care without restrictions.

After March 2007, Petitioner received no medical treatment for over two years. She did return to Dr. Dowling on June 9, 2009, complaining of a headache. Dr. Dowling believed that the tenderness in her neck and trapezium muscles at that time was the result of a migraine headache. When Petitioner returned to Dr. Dowling in 2013 complaining of hand numbness, migraine headaches, hip problems, and back pain, he diagnosed her with myalgias, bronchitis, migraine, and cubital tunnel. However, Dr. Dowling offered no opinion that the conditions for which he saw Petitioner in 2009 or 2013 were causally related to her September 23, 2005 accident.

We find that Petitioner reached maximum medical improvement for her work-related injuries on March 28, 2007, the date Dr. Shapiro released her from his care. Petitioner's conditions after that date, and the medical treatment she received for them, were unrelated to her September

23, 2005 accident. The Commission therefore modifies the Arbitrator's award of medical expenses to include only those incurred to treat Petitioner's cervical and thoracic spine conditions from September 23, 2005 through March 28, 2007.

Admissibility of Ed Steffan's Deposition Transcript:

On December 14, 2020, the Arbitrator issued a written order granting defense counsel's, "Motion for Dedimus Potestatum of virtual deposition of Edward P. Steffan, Monday, January 18, 2021." Thereafter, Petitioner's counsel, attorney Lichten, sent an email to the Arbitrator stating he wished to appear in person at Mr. Steffan's deposition, and requesting a hearing on that issue.

The Arbitrator did not conduct a hearing, but replied to both counsel of record via email stating, "Anyone who wants to take a deposition may do so in person or via telephone or WebEx or in some other manner. If one of the attorneys is afraid to be present in person, they own the problem. Every attorney has the right to choose to be physically present at any deposition."

The parties' disagreement whether attorney Lichten should appear virtually or in person at Mr. Steffan's deposition culminated with him not attending at all. At arbitration, attorney Lichten objected to the admission of Ed Steffan's evidence deposition transcript, and the Arbitrator did not admit the testimony into evidence.

Illinois Supreme Court Rule 206(h), pertaining to depositions, provides in pertinent part that any party may take a deposition by telephone, videoconference or other remote electronic means. That Rule further provides, "Nothing in this paragraph (h) shall prohibit any party from being with the deponent during the deposition, at that party's expense; provided, however, that a party attending a deposition shall give written notice of that party's intention to appear at the deposition to all other parties within a reasonable time prior to the deposition." Ill. Rev. Stat., ch. 110A, Sec. 206(h)(3).

We find that Mr. Steffan's deposition transcript should have been admitted into evidence. The Arbitrator's December 14, 2020 order did not prohibit Petitioner's counsel from attending Mr. Steffan's deposition in person. Despite Petitioner's counsel having received notice of that deposition per the Arbitrator's order, the record does not reflect that attorney Lichten attempted to appear in person, was prevented from doing so, or ever intended to participate virtually in the deposition.

Notwithstanding the transcript's admission into evidence, given our finding that Petitioner failed to prove a need for vocational rehabilitation as stated *infra*, we give no weight to the testimony contained therein.

Vocational Rehabilitation:

At the time of Petitioner's injury, she had two baccalaureate degrees, a Master's degree, and a PhD in Biology. Susan Entenberg acknowledged that Petitioner was a highly trained and skilled individual, who functioned at a very high level. Ms. Entenberg admitted that Petitioner did not need help with creating a resume, with computer skills, or with job placement. She agreed Petitioner had transferrable skills relating to biologic and laboratory procedures, pharmacology, and research terminology – all of which could be utilized in other medical-related programs. She acknowledged that Petitioner, without further formal education, could match her earnings at Respondent by becoming a pharmaceutical sales representative – a position in which Petitioner expressed interest and which she told Ms. Entenberg she had sought. Ms. Entenberg further admitted that if Petitioner found a job with proper ergonomic positioning, which allowed the ability to stand and change positions frequently, then Petitioner could find work which matched the earnings of a cancer researcher.

Despite Ms. Entenberg's above-noted testimony, she opined that Petitioner could not earn over $30,000.00 per year without further education. For the reasons stated below, the Commission finds the opinions of Ms. Entenberg's unpersuasive.

Petitioner's actual, post-accident earnings are in contradiction to Ms. Entenberg's opinion. After Petitioner left Respondent's employ in early 2007, she in fact earned in excess of $30,000.00 for that year. In 2009, Petitioner also reported earnings of over $33,000.00.

While Petitioner testified in great detail regarding the myriad, lower paying jobs she found after leaving Respondent, evidence of her searches for jobs which would have utilized her education, experience, and background, and which would have matched her earnings at Respondent, was lacking. Petitioner testified she applied for every research position, "that was open out there," but she identified only two: at Abbott Labs, and the University of Chicago. She did not remember the names of any others, and offered no job search logs.

Ms. Entenberg testified that to her understanding, Petitioner never pursued any postdoctoral cancer research jobs. And although Petitioner told Ms. Entenberg she had applied unsuccessfully for pharmaceutical sales representative jobs, neither Petitioner nor Ms. Entenberg identified any pharmaceutical companies to which she applied, or stated how many such positions Petitioner applied for.

Ms. Entenberg's opinion that Petitioner could not return to her previous position as a cancer researcher was based solely on the report of Petitioner's retained expert, Dr. Chmell; not upon the records of Petitioner's treaters. After March 28, 2007, neither Dr. Stewart, Dr. Dowling, nor Dr. Shapiro restricted Petitioner from returning to her prior position as a cancer researcher – or from any other position. The Commission finds the reports of Petitioner's treating physicians more persuasive on this issue than Dr. Chmell's opinions.

"A claimant is generally entitled to vocational rehabilitation when he sustains a work-related injury which causes a reduction in his earning power and there is evidence that rehabilitation will increase his earning capacity." *Greaney v. Industrial Comm'n,* 358 Ill. App. 3d 1002, 1019 (2005). "[I]t is widely accepted that the primary goal of rehabilitation is to return the injured employee to work." *Schoon v. Indus. Comm'n,* 259 Ill. App. 3d 587, 594 (3rd Dist., 1994). If the injured employee has sufficient skills to obtain employment without further training or education, that factor weighs against an award of vocational rehabilitation. *National Tea Co. v. Industrial Comm'n,* 97 Ill. 2d 424, 432 (1983).

We find that Petitioner had sufficient skills to obtain employment and earnings comparable to her position at Respondent, without further training or education. The injuries Petitioner sustained from working at Respondent did not preclude her from returning to her usual and customary occupation as a cancer researcher, or from any other position. Petitioner did not require vocational rehabilitation, and did not require classes to try to become a medical doctor, a registered nurse, or a certified nurse practitioner. The Commission therefore reverses the Arbitrator's award of $104,995.10 for Petitioner's expenditures for her vocational rehabilitation.

Benefit Rates; AWW:

At arbitration, Petitioner's benefit rates and average weekly wage were undisputed. On the Request for Hearing form, the parties stipulated to both: that during the year prior to Petitioner's injury, she earned $35,000.16, and that her average weekly wage was $573.08. However, in his decision, the Arbitrator found Petitioner's AWW to be *$673.08,* without explanation of how he arrived at that figure.

Because Petitioner's benefit rates and AWW were not disputed at arbitration, no testimony or evidence was offered at that hearing, other than an entry in Ms. Entenberg's report stating Petitioner told her that her salary at Respondent was $35,000.00.

The Commission finds the stipulated, prior annual earnings of $35,000.16, when divided by 52, comes to exactly *$673.08* – the AWW figure found by the Arbitrator. In Petitioner's counsel's brief, he asserts that the discrepancy was the result of a clerical error made when the Request for Hearing form was typed, and that this error was discovered and hand-corrected, with Respondent's knowledge, to reflect an AWW of $673.08. Petitioner's counsel contends he inadvertently submitted an uncorrected copy of this form to the Arbitrator, at trial.

The Commission finds Petitioner's counsel's explanation to be the most likely reason for the stipulation disparity. The two AWW figures are only one digit off. The Commission therefore affirms the Arbitrator's finding that Petitioner's AWW should be *$673.08,* not *$573.08*.

Temporary Total Disability:

The Commission affirms the Arbitrator's dates and calculation of the award of temporary total disability benefits – December 29, 2006 through January 5, 2007, and February 6, 2007 through February 12, 2007 – for the reasons stated in the Arbitrator's decision. However, the Commission finds the two periods of TTD awarded do not total 2 weeks, as stated in the Arbitrator's decision, but rather, total *2-1/7 weeks*. We correct that apparent clerical error.

Temporary Partial Disability:

The Commission vacates the Arbitrator's award of 482 weeks of temporary partial disability benefits from March 2, 2007 through June 5, 2016. The Illinois Workers' Compensation Act did not allow for such benefits until it was amended by P.A. 94-277, which reflected the amendatory changes applicable to accidents occurring *on or after* February 1, 2006. As Petitioner's work accident occurred on September 23, 2005, she was not eligible for temporary partial disability benefits.

Nature and Extent:

The Commission finds Petitioner did not suffer a loss of occupation as a result of her accident, and that her work injuries did not preclude her from returning to work in her usual and customary occupation as a cancer researcher. Ms. Entenberg's opinion to the contrary was not based upon the records of Petitioner's treating physicians, none of whom restricted Petitioner from returning to her prior occupation.

The Commission does find however, that Petitioner's accident caused herniated discs in her cervical and thoracic spines. While those injuries improved with conservative treatment, and after Petitioner stopped working for Respondent, she still experiences numbness in her arms, symptoms in her neck, and occasional flare-ups of pain and tension in her upper back. Considering the record as a whole, Commission modifies the Arbitrator's §8(d)2 permanency award down from 40% loss of person as a whole, to 15% loss of person as a whole.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed June 10, 2022, is hereby modified as stated herein, and otherwise affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that Petitioner's average weekly wage of $673.08 is affirmed.

IT IS FURTHER ORDERED BY THE COMMISSION that the rejection of the deposition transcript of Ed Steffan from evidence is reversed, but not relied upon for reasons stated above.

IT IS FURTHER ORDERED BY THE COMMISSION that the award of temporary partial disability benefits is vacated.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay Petitioner temporary total disability benefits of $448.72 per week for 2-1/7 weeks, for the periods December 29, 2006 through January 5, 2007, and February 6, 2007 through February 12, 2007.

IT IS FURTHER ORDERED BY THE COMMISSION that the award of medical services is modified. Respondent shall pay Petitioner only those reasonable and necessary medical expenses incurred in treating Petitioner's cervical and thoracic spine conditions between September 23, 2005 and March 28, 2007.

IT IS FURTHER ORDERED BY THE COMMISSION that award of vocational rehabilitation benefits in the amount of $104,995.10 is reversed.

IT IS FURTHER ORDERED BY THE COMMISSION that the award of permanent partial disability is modified, and Respondent shall pay Petitioner permanent partial disability benefits of $403.85 per week for 75 weeks, as provided in §8(d)2 of the Act, because the injuries sustained caused a 15% loss of person as a whole.

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

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

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

September 14, 2023

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

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

MP/mcp
o-07/20/23
068

DISSENT

I respectfully dissent from the Decision of the majority. I would have modified the award of vocational rehabilitation by reversing only the vocational rehabilitation expenses Petitioner incurred after becoming a registered nurse. Until that time, Petitioner failed to earn as much as she did while working for Respondent. I would have affirmed and adopted all else in the Arbitrator's decision.

/s/ *Marc Parker*
Marc Parker

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	07WC023593
Case Name	GODLEWSKA, JOANNA v. NORTHSHORE UNIVERSITY HEALTH SYSTEM
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	21
Decision Issued By	Charles Watts, Arbitrator

Petitioner Attorney	Thomas Lichten
Respondent Attorney	Timothy O'Gorman

DATE FILED: 6/10/2022

THE INTEREST RATE FOR THE WEEK OF JUNE 7, 2022 1.71%

/s/Charles Watts, Arbitrator

Signature

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Joanna Godlewska
Employee/Petitioner

v.

Northshore University Health System
Employer/Respondent

Case # **07** WC **23593**

Consolidated cases: _____

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Charles Watts**, Arbitrator of the Commission, in the city of **Chicago**, on **05/18/2021**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On **09/23/2005**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $**35,000.00**; the average weekly wage was $**673.08**.

On the date of accident, Petitioner was **31** years of age, ***single*** with **0** dependent children.

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

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

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

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

ORDER

Medical benefits

Respondent shall pay reasonable and necessary medical services of **$4,975.45**, as provided in Section 8(a) of the Act.

Temporary Partial Disability

Respondent shall pay Petitioner temporary partial disability benefits of **$232.58**/week for **482** weeks, commencing **03-02-2007 - TO - 06-05-2016**, as provided in Section 8(b) of the Act.

Temporary Total Disability

Respondent shall pay Petitioner temporary total disability benefits of **$448.72**/week for **2** weeks, **FROM 12/29/2006 -TO 01/05/2007 AND, FROM 02/06/2007- TO - 02/12/2007.** as provided in Section 8(b) of the Act.

Respondent shall pay Petitioner the temporary total disability benefits that have accrued from **09/23/05** through **present**, and shall pay the remainder of the award, if any, in weekly payments.

Respondent shall be given a credit of **$-0-** for temporary total disability benefits that have been paid.

Permanent Partial Disability: Person as a whole (For injuries before 09/01/2011

Respondent shall pay Petitioner permanent partial disability benefits of **$403.85**/week for **200** weeks, because the injuries sustained caused the **40%** loss of the person as a whole, as provided in Sec. 8(d)2 of the Act.

Vocational Rehabilitation Benefits

Respondent shall pay Petitioner vocational rehabilitation benefits of **$104,995.10** to reimburse Petitioner's expenditures for her vocational rehabilitation.

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

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

_____ **JUNE 10, 2022**

Signature of Arbitrator

FINDINGS OF FACT

The Petitioner was a 31-year-old cancer research scientist, who began a two-year appointment as a postdoctoral fellow in Respondent's Department of Medicine on June 15, 2005. *(Pet. Ex. 7)* The Petitioner, who is fluent in both Polish and English, had earned bachelor's and masters' degrees and a Ph.D. in biology in Poland. She also had been doing cancer research in Poland for four years and had published several papers as author or co-author in the field of cancer research, focused on compounds that had the potential to be anti-cancer drugs.

The Petitioner's research work with Respondent was focused on breast cancer research, as assigned by the supervisor, Dr. Lupu.

The Petitioner's work was in a lab, typically working seven days per week, including holidays, often working more than eight hours per day. Much of her work was performed inside a hood, a deep and broad enclosure, which has a flow of sterile air, optimal for cell growth and also to avoid contamination. The research involved working with cell lines in a biofield medium in many individual Petri dishes.

Instead of having an entire hood, about six-feet wide to work in, Dr. Lupu split the hood in half so that the Petitioner could use only half of the hood, which was also being used by another researcher. As a result, the Petitioner was forced to work in an uncomfortable, cramped position. She had a glass shield in front of her face because she was not supposed to breathe into the hood. She had to reach in front of her and very deep and had to keep her gloved hands forward in front of her nearly all the time.

The work involved multiple Petri dishes containing the cells. The work was very precise and exacting. It involved using pipettes to culture the cells or add different solutions, to harvest the cells for future research, or to treat the cells, working with some gels that required applying a very small volume of the solution to each well in each Petri dish. The Petitioner had to be careful to avoid contamination or damage. She estimated that this part of her work averaged six hours per day.

On cross-examination the Petitioner more fully described the work area inside the hood. She said it was like a big table that you could barely reach the end of with both arms outstretched. She would remove the lid

from a Petri dish, making sure not to get anything inside or on the lid, add the cell culture and the cells, which may need to be counted, suck away the media from the cell line, add new media, sometimes add additional ingredients. Sometimes, depending on the cell lines she was working with, she would need to add a special enzyme preparation and wait until the cells detach from the bottom of the plate or dish. Then she would harvest them, sucking away the whole content of the Petri dish, and collect the fluid from above them. Then more plates could be added with different concentrations of ingredients or some cells might need to be saved quickly in nitrogen. Or, one experiment involved placing the cells in a solidifying kind of agar to understand the metastic potential of the cell lines and to treat the cells in certain ways. Or, another experiment was to use viral vectors to introduce genetic material into the cells to force the cells to change in some way.

The Petitioner explained that she would perform these procedures for hours at a time, being careful to avoid contamination and to follow the strict protocols.

The Petitioner analogized the hood to an enclosed space, like an aquarium turned upside down on top of a table with one kind of glass window movable up and down. It was something like a salad bar in a restaurant but much taller, with the working surface approximately the size of the arbitrator's hearing room desk, with the space inside going up to the ceiling.

The Petitioner explained that in her research work in Poland, prior to ENH, she would use the whole space under the hood, not just half of it. The Petitioner described that she had to reach her arms forward all the time, for hours, almost resting her nose with her neck extended for hours.

The Petitioner stated that she was reaching forward all the time and was not in an ergonomic position. She may have also reached deep into the hood if she had the regular, full space to work in, but she would not be reaching all the time in the one spot.

The Petitioner testified that she was a healthy person, in good physical shape before she began her post-doctoral fellowship at ENH. She stated that working for hours at a time in the cramped, non-ergonomic work station built up tension and pain in her upper back and neck and, over time, numbness in her arms. She spoke to

Dr. Lupu several times about this problem and requested that she be allowed to work in the whole space of the hood, instead of in the narrow half-space. Dr. Lupu did not change the work situation.

Then, on the morning of September 23, 2005, the pain had progressed to the point that, when she woke up that morning, she could not move. She went to the doctor, Dr. Stewart, who was in the HMO plan she had with ENH. She thought that because she had been a healthy person, the only reason she could think of for her pain was the non-ergonomic position at work. The ENH records from September 23, 2005 reflect that the Petitioner thought that the problem started due to work in the context of "posture with computer and reaching into hood." The "Aggravating factors" were "working in hood all the time." The "Relieving factors" were "rest."

The Petitioner stated that she did not feel that she was being heard by the doctor, that she did not get any plan of care or idea of what to do next. Eventually she got physical therapy and imaging and eventually changed doctors to Dr. Dowling. As to the physical therapy, that took some time to arrange, because she was told to find time for her physical therapy that would not interfere with her working hours, which was very hard. She was also told that in order for her muscles to start functioning properly, she would need at least one day off work per week, but this was not allowed. Neither the physical therapy nor painkillers helped much. She continued to have back and neck pain for months. On December 15, 2006, she saw Dr. Dowling about the problem. Dr. Dowling recorded that the Petitioner was a 32-year-old female, "with history of neck and rhomboid pain a year ago when working same job….. Hurts most of the day. A lot of tension and discomfort in traps, nuchal, rhomboid. Some discomfort into bilateral upper anterior arms to forearm. Occupation: Works mostly at a hood, sitting and some at the computer at ENH research institute. Neck forward."

Dr. Dowling stated, "Appears to be related to sitting position and keeping arms elevated at work – she should have something to support arms and have work as close to her as possible with the hood, not having to reach excessively. I am not sure ergonomically how her job/station can be adjusted. Encourage her to fill out Quantos form and get occupational health to look at it." *(Pet. Ex. 9 and Pet. Ex. 11)*

Dr. Dowling ordered more physical therapy. An MRI of the cervical spine done on January 3, 2007 at ENH (Evanston Hospital) was read as showing, "Focal disc protrusion centrally and towards the left at the C5-C6 level." *(Pet. Ex. 4)* An MRI of the thoracic spine done on February 25, 2007 was read as showing: 1. Small left paramedian disc protrusion at T4-5. Overall, no significant disc herniation or spinal stenosis. 2. Probable atypical hemangioma in the T8 vertibral body as discussed. *(Pet. Ex. 5)*

Dr. Dowling referred the Petitioner to Dr. Shapiro at Illinois Bone and Joint Institute. Dr. Shapiro agreed with the reading of the cervical MRI as to the C5-C6 herniated disc off to the left but felt that the MRI of the thoracic spine was over read when it was said to show a small, herniated disc at T4-5. Dr. Shapiro read it as showing a very tiny disc bulge at T4-5.

The Petitioner could not work from December 29, 2006 to January 5, 2007 and from February 6, 2007 to February 12, 2007, documented by notes from Dr. Stewart and Dr. Shapiro, the ENH Employee Health Service, and Petitioner's emails to Dr. Lupu apologizing for missing work. *(Pet. Ex. 8)*

After the Petitioner returned to work in January, 2007, ENH did an ergonomic assessment of its work situation. Nothing was done about the Petitioner's usual work space. ENH provided a better mouse pad and made a slight adjustment to the computer working space.

The Petitioner underwent physical therapy in February, 2007. The physical therapist, Anne, reported that the physical therapy caused increased symptoms peripherally and caused the Petitioner to become nauseated. Ann thought there was instability in the neck. The Petitioner continued to try to work.

However, on or about March 2, 2007, someone from human resources at Respondent telephoned the Petitioner and terminated her. Dr. Lupu was also on the telephone during the termination conversation or joined in later. The Petitioner was at home and unable to work at the time. On March 28, 2007, Dr. Shapiro released the Petitioner from his care, prn, as, in his opinion, most of the Petitioner's symptoms had resolved. *(Pet. Ex. 12)*

The Petitioner lost her health insurance because she could not afford to pay for COBRA. She found a part-time job within walking distance that she could do with a lot of position changing and flexibility at Kafein as a barista/server that paid $3.90 an hour plus tips.

The Petitioner testified on redirect that she had been very devoted to her work doing cancer research and that she loved what she was doing. *(R. 95)*

The Petitioner tried to find other jobs in her field – postdoctoral positions, work with drug companies, other scientific jobs - but was unsuccessful. The Petitioner testified and also told the vocational expert, Susan Entenberg, that she tried to remain within the medical field or research field. She stated that she applied to the University of Chicago, Abbott, and to every open position she could find, including industrial facilities for different research positions, but did not receive a response. *(R. 28-29, 84-85)*

In 2007, in addition to the part-time job at Kafein, she got a job at Leonidas Café Chocolatier as a barista and eventually as a manager. This paid between $8.00 and $12.00 per hour.

In 2008, she also added work at a law firm, Giordano and Associates, reviewing bills on Excel spreadsheets. This job paid $15.00 per hour and continued into 2010.

In 2010, the Petitioner also started taking a post baccalaureate premed program at Northwestern University with the career goal of becoming a medical doctor. She had to retake some classes she had taken in Poland. These included organic chemistry, physics and advanced biology, which she paid for herself. She still had hopes to continue in her career as a cancer researcher, but could not find a job in that field. *(R. 32)* At that time, pay for a principal investigator, head of a research group, was $70,000 to $80,000 a year, but it could be double or even higher, depending on the institution, grants, etc. At present, the average is $130,000 with a university, any industry or any science institution. But in order to get that type of position, she would need to have finished a postdoctoral fellowship and publications, which she didn't have. She has friends who completed a program similar to Petitioner's who continued in the field and were earning the kind of money that Petitioner testified was typically earned. *(R. 33-34)*

The Petitioner also took a physiology and anatomy class with lab at Oakton Community College, as part of her effort to become a doctor.

After completing these courses, in about 2012, she applied to medical school but was not admitted to any medical school.

Also, in 2011 and 2012, from August 1, 2011 to late June of 2012, the Petitioner worked at the Community Health Center as a Polish patient care coordinator supervising, scheduling patients for various appointments, and interpreting for Polish speaking patients at that medical clinic. This job started at $14.00 per hour and went up to $14.35 per hour for 37 ½ hours per week.

Also, in 2013, the Petitioner worked at Retina Consultants part time for $13.00 per hour. She also worked briefly at a soup and salad place, Sweet Tomatoes, as a cashier for $10.00 per hour. The Petitioner also had some additional physical therapy in 2013. *(P. 47)*

After not being admitted to medical school, the Petitioner decided to become a nurse and then a nurse practitioner. She attended DePaul's Masters in Nursing program from January 6, 2014 through November, 2015, graduating with honors. During nursing school, the Petitioner worked as a teaching assistant about eight hours per week from September 10, 2014 to August 31, 2015 at $15.31 per hour. She paid the approximately $80,000 cost of the nursing program.

After finishing nursing school the Petitioner took and passed her licensing board exams and became licensed as a registered nurse. On June 5, 2016, she began working as an RN at the Northwestern Memorial Hospital ER. The work week was 37.5 hours. The pay was $27.30 per hour, with $5.00 an hour on the night shift and $2.00 an hour on weekends. She left Northwestern after a little less than a year for an RN position at PrimeCare, a medical office for outpatient primary care, which paid about $2.00 per hour less than at Northwestern. Part of Petitioner's reason for leaving Northwestern was that in the ER she had to assist transferring patients from wheelchair to hospital bed or vice versa, help patients change position, and sometimes equipment was not available, so the Petitioner was getting more tension, pain, and numbness in her back. *(R. 46)* The job at Primecare was clinical nurse and nurse manager. It involved typical nursing work including

injections, but also a lot of health-related education, helping patients get medical care, helping them navigate through the health care system, get specialty appointments, working with a social worker on providing bus tickets for patients, etc., in the medically underserved area of its clinic. *(R. 41)*

The Petitioner decided to return to school to become a nurse practitioner but had to take a class before she could enroll. She attended Olivet Nazarene University from February 27, 2017 to February 17, 2019. *(R. 48-49)* She did well and paid for this program too. She could not keep working at PrimeCare due to the schedule conflict with the Nurse Practitioner program. She passed the NP exams and became licensed and began working as a family nurse practitioner in April of 2019, at New You family medical practice at a pay rate of around $47-$48 per hour for 36 to 40 hours per week. This job ended after 7 ½ months in November of 2019 due to not enough patients. The Petitioner then started at Innovative Express Care medical office as a Nurse Practitioner in July, 2020, working 36 hours per week at a pay rate of $52.00 per hour. She mostly does COVID testing, which includes interviewing, supervising testing, all care and recommendations, any medical physical assessment, referral to the ER or for other care. The Petitioner finds this job to "really great" because she is moving all the time and is not assigned to one position. She is not doing anything repetitively in one position. Her job involves mostly standing and walking.

The Petitioner testified that she still has pain and tension in her upper back, numbness going down both arms, with some involvement of the neck at times. She does home exercises, stretches, yoga, and gets deep tissue massage. She stated her average pain level is 4, she does not take anything for it. When it gets to 7, she will take ibuprofen. She feels that, over time, she is getting slightly better but gets flare-ups, from, for example, driving for two hours one day.

She paid $2,853.00 for the Northwestern pre-med courses, $923.00 for anatomy classes at Oakton Community College, about $80,000.00 for the DePaul masters in nursing costs, and about $22,000.00 for the nurse practitioner program at Olivet Nazarene University.

Vocational Rehabilitation Evidence

The only vocational rehabilitation evidence in evidence is that of Susan A. Entenberg: Her deposition of July 1, 2016, with attached reports of October 2, 2013 and May 26, 2016. *(Pet. Ex. 1)* and letter of May 7, 2021 *(Pet. Ex. 2)*

In Ms. Entenberg's opinion, the Petitioner's earning capacity, given the effects of her work injury, was limited to $30,000.00 per year. After the Petitioner's injury and termination of her post-doctoral fellowship in cancer research before she was able to complete it, she was unable to find employment in cancer research or any related field. She could not perform cancer research work, given that she requires frequent position changes, no constant sitting, needing to be cautious about ergonomic positioning, as stated by Dr. Chmell. This was also shown by the Petitioner's absences from her post-doctoral research work in the 2 ½ months before Respondent terminated her. As Ms Entenberg stated, if you are to assume that Ms. Godlewska can do a cancer cell research job with the restrictions stated by Dr. Chmell, then she would still be at Evanston Northwestern. Ms. Godlewska had sustained a loss of occupation or profession, that of a cancer researcher. She had sustained a loss of job security and reduction in earnings both current and future, as the salary of a post-doctoral fellow in medical research in Chicago was $52,000.00 and the national average salary for postdocs in medicine was $48,980.00. Further, as Ms. Godlewska stated, pay for a permanent investigator in a research group is $70,000.00 to $80,000.00, and could be double that or higher, and the pay for a researcher in a university, industry, or scientific institution averages $130,000.00 in Chicago.

Ms. Entenberg stated that, based on her past education in the sciences, including a Ph.D. in biology, the Petitioner had transferable skills that can be used in other medical-related programs such as nursing. The Petitioner was extremely motivated to continue her education and to work. She also, in 2013, was 39 years old, with an estimated 28 years of additional work, so that the economic benefit of the cost of nursing and nurse practitioner education, the increase from $30,000.00 per year to an average of $94,000.00, was well worth the cost, in Ms. Entenberg's opinion.

In Ms. Entenberg's opinion the Petitioner's vocational rehabilitation plan of getting the education needed to pursue a career as a nurse or nurse practitioner met all of the criteria under *National Tea Company v. Industrial Commission* 73 IL Dec 575 (1983) for a successful vocational rehabilitation plan.

Medical Evidence

The medical evidence consists of treating records from Evanston Northwestern Healthcare, including Dr. Stewart, Dr. Dowling, and the ENH Employee Health Services, Northshore University Health System, Dr. Shapiro (Illinois Bone and Joint), and Dr. Samuel J. Chmell, Petitioner's expert orthopedic surgeon.

The records reflect a history of upper back and neck pain and arm numbness with a history of working, mostly sitting, in a hood with the neck forward and arms elevated.

The cervical MRI showed a herniated disc at C5-6 centrally and toward the left. The thoracic MRI showed a small left paramedian disc protrusion.

The Petitioner underwent conservative treatment consisting of physical therapy and some pain medication, that was of limited benefit or possibly aggravated her condition.

Both Dr. Dowling, a treater, and Dr. Chmell, an examiner, opined that the Petitioner's repetitive traumatic work conditions, that of working in a hood in cramped position, confined to a three-foot width to work in instead of the hood's full six-foot width, sitting with arms elevated and having to reach excessively and non-ergonomically, and straining her neck and upper back for hours at a time caused the Petitioner's conditions of ill-being. *(Pet. Ex. 9, Pet. Ex. 3)*

As Dr. Chmell stated, the result of this repetitive trauma or repetitive strain injury was aggravation of degenerative disc disease in the cervical and thoracic spine areas and the C5-6 and T4-5 disc protrusions. Because of these work-related conditions the Petitioner had to stop working as a post-doctoral fellow and was terminated, and, in Dr. Chmell's opinion, cannot perform consistent sitting activities such as working at a computer keyboard/terminal, requires frequent position changes and must be cautious about ergonomic positioning. *(Pet. Ex. 3)*

CONCLUSIONS OF LAW

The Arbitrator adopts the Statement of Facts in support of the Conclusions of Law.

Section 1(b)3(d) of the Act provides that, in order to obtain compensation under the Act, the employee bears the burden of showing, by a preponderance of the evidence, that he or she has sustained accidental injuries arising out of and in the course of the employment. 820 ILCS 305/1(b)3(d).

To obtain compensation under the act, Petitioner has the burden of proving, by a preponderance of the evidence, all of the elements of her claim (*O'Dette v. Industrial Commission,* 79 Ill.2d 249, 253 (1980) including that the accidental injury both arose out of and occurred in the course of his employment (*Horvath v. Industrial Commission,* 96 Ill.2d. 349 (1983)) and that there is some causal relationship between the employment and her injury. *Caterpillar Tractor Co. v. Industrial Commission*, I29 Ill. 2d 52, 63 (1998). Decisions of an Arbitrator shall be based exclusively on the evidence in the record of the proceeding and material that has been officially noticed. 820 ILCS 305/1.1(e).

Credibility is the quality of a witness which renders her evidence worthy of belief. The Arbitrator, whose province it is to evaluate witness credibility, evaluates the demeanor of the witness and any external inconsistencies with her testimony. Where a claimant's testimony is inconsistent with her actual behavior and conduct, the Commission has held that an award cannot stand. *McDonald v. Industrial Commission*, 39 Ill. 2d 396 (1968); *Swift v. Industrial Commission*, 52 Ill. 2d 490 (1972). While it is true that an employee's uncorroborated testimony will not bar a recovery under the Act, it does not mean that the employee's testimony will always support an award of benefits when considering all the testimony and circumstances shown by the totality of the evidence. *Caterpillar Tractor Co. v. Industrial Commission*, 83 Ill. 2d 213 (1980). The mere existence of testimony does not require its acceptance. *Smith v. Industrial Commission*, 98 Ill.2d 20, 455 N.E.2d 86 (1983). To argue to the contrary would require that an award be entered or affirmed whenever a claimant testified to an injury no matter how much her testimony might be contradicted by the evidence, or how evidence it might be that her story is a fabricated afterthought. *U.S. Steel v. Industrial Commission*, 44 Ill2d 207, 214, 254

N.E.2d 522 (1969); see also *Hansel & Gretel Day Care Center v. Industrial Commission,* 215 Ill. App. 3d 284, 574 N.E.2d 1244 (1991).

The Petitioner bears the burden of proving every aspect of her claim by a preponderance of the evidence. *Hutson v. Industrial Commission*, 223 Ill App. 3d 706 (1992). "Liability under the Workmen's Compensation Act may not be based on imagination, speculation, or conjecture, but must have a foundation of facts established by a preponderance of the evidence…" *Shell Petroleum Corp. v. Industrial Commission*, 10 N.E.2d 352 (1937). The burden of proof is on a claimant to establish the elements of her right to compensation, and unless the evidence considered in its entirety supports a finding that the injury resulted from a cause connected with the employment there is no right to recover. *Revere Paint & Varnish Corp. v. Industrial Commission*, 41 Ill.2d. 59 (1968). Preponderance of the evidence means greater weight of the evidence in merit and worth that which has more evidence for it than against it. *Spankroy v. Alesky*, 45 Ill. App.3d 432 (1st Dist. 1977).

The Arbitrator observed Petitioner's demeanor at trial and finds that her manner of speech, easy and direct answers to questions, and overall presence to be indicative of sincerity. The Arbitrator finds that Petitioner's testimony was credible. The Arbitrator also finds that Petitioner's testimony was consistent with the histories, treatment and objective findings documented in the medical records, which were offered into evidence at the time of the hearing.

The Arbitrator finds the opinions of Dr. Dowling and Dr. Chmell more credible than those of Section 12 examiner Dr. Ghanayam. Dr. Chmell's detailed analysis of Petitioner's work environment and mechanism of injury is preferred over a more simplistic analysis that was really just constituted conclusory statements by Dr. Ghanayam. Dr. Chmell's opinions were supported by those of Dr. Dowling and the notes in Petitioner's medical records.

B. and D. Accident

The Arbitrator finds that the Petitioner suffered an accidental injury on September 23, 2005, that arose out of and in the course of her employment. This was the date that the Petitioner's injury to her upper back and neck due to cumulative or repetitive trauma manifested itself, because on that date both the fact of the injury

and the connection between the cumulative trauma at work and her condition of ill-being became apparent to the Petitioner, when she awoke that morning and was in such pain in her back and neck that she could barely move.

The cumulative trauma was due to the cramped workplace, one half of the six-foot wide hood that the Petitioner was forced to work in for hours at a time with her arms outstretched and her face pressing against a glass partition, resulting over a period of about three months in permanent damage to the Petitioner's neck and upper back. This is documented by the medical records from ENH of September 23, 2005 and subsequently, including EMG records of Dr. Dowling and the expert opinion of Dr. Samuel J. Chmell.

E. Notice

The Petitioner testified that she repeatedly spoke to her supervisor Dr. Ruth Lupu, about the cramped working space in the half of the hood that the Petitioner was restricted to working in, for about six hours per day, seven days per week, and that it was causing pain in the Petitioner's neck and upper back. The Respondent did not rebut the Petitioner's testimony. The Arbitrator finds that this constitutes notice to the Respondent of the Petitioner's work injury and to cumulative or repetitive trauma.

F. Causal Connection

The Arbitrator finds that there was causal connection between the Petitioner's cumulatively or repetitively traumatic work activities of having to work in a three-foot wide half of a hood for six hours a day, seven days a week, in a cramped position with her face pressed against a glass partition and working with her arms outstretched din front of her, resulting in gradually incurring pain in her neck and upper back and damage to the cervical and thoracic spine.

This finding is supported by the opinion of Dr. Dowling, contained in the ENH medical records, specifically that of December 15, 2006, when Dr. Dowling described the Petitioner's neck and upper back complaints which had begun a year earlier while working mostly at a hood, sitting with arms elevated, and stated that the Petitioner's problems appeared to be related to this work positioning, etc.

The Arbitrator also adopts the opinion of Dr. Samuel Chmell that Ms. Godlewska's work in a cramped and non-ergonomic position in a three-foot wide space in a lab hood for prolonged periods of time, sitting and reaching forward with her upper extremities in front of her and with her face pressed against the glass, all of which blocked her from normal spinal movement of her neck and upper back, caused permanent damage to her cervical and thoracic spine.

J. Medical Services

The Arbitrator finds that the Respondent should pay to the Petitioner $4,975.45 pursuant to Sec. 8(a), consisting of the amounts below. Except for the amount paid by Blue Cross/Blue Shield of Illinois, it appears that the Petitioner has paid the amounts listed. With respect to Blue Cross/Blue Shield, this was a policy through Petitioner's husband, not a policy paid for in whole or part by the Respondent. Therefore, the sum paid by Blue Cross/Blue Shield should also be paid to the Petitioner.

Illinois Bone and Joint Institute:	$ 451.00
North Shore University/Skokie Hospital:	459.16
Blue Cross/Blue Shield of Illinois:	3,929.64
Evanston Northwestern Healthcare:	135.65
TOTAL:	$ 4,975.45

K. Temporary Total Disability Benefits

The Arbitrator finds that the Petitioner is entitled to $448.72 per week for two weeks, covering the periods of December 29, 2006 to January 5, 2007 and February 6, 2007 to February 12, 2007, as shown by the records and off-work notes from Dr. Stewart of Evanston Northwestern Healthcare and Dr. Shapiro of the Illinois Bone and Joint Institute.

K. Temporary Partial Disability Benefits

The period of time from Respondent's termination of Petitioner on March 2, 2007 until June 5, 2016, when the Petitioner began work as a registered nurse at Northwestern Memorial Hospital was 482 weeks. The

Petitioner had a reduced wage-earning capacity during this period, working various low-paying jobs and also attending school as part of her vocational rehabilitation plan. She is entitled to temporary partial disability benefits under Sec. 8(d) for this period.

During that period of 9.269 years, if the Petitioner had continued to earn $35,000.00 per year, she would have earned $324,423.00. During that same period the Petitioner actually earned $156,270.32, as shown below, based on Petitioner's Exhibit 14.

2007 (from March 3, 2007):	21,156.22
2008:	27,099.00
2009:	33,074.00
2010:	15,384.62
2011:	13,630.00
2012:	26,317.94
2013:	13,516.36
2014:	1,897.11
2015:	4,495.01
2016 (to June 5, 2016):	-0-

TOTAL: $ 156,270.32

Subtracting the Petitioner's actual earnings over that 9.269-year period of $156,270.32, from the Petitioner's putative earnings had she been able to continue work at her $35,000.00 annual earnings rate, yields a difference of $168,152.76. Dividing that amount by 482 weeks yields $324.21 loss of income per week. Two-thirds of that figure yields $232.58 per week.

This is both the fairest and most practical way to calculate the Petitioner's temporary partial disability benefit over the 9.269-year period between her termination by Respondent on March 2, 2007 and the end of her wage loss on June 5, 2016, when she began working as a registered nurse at Northwestern Memorial Hospital and no longer was suffering a wage loss.

L. Nature and Extent

The Arbitrator concludes that the Petitioner's injuries caused her to lose her occupation of cancer research scientist, her usual and customary line of employment under Sec. 8(d-2), because her work injuries damaged permanently her cervical and thoracic spine, including disc herniations at C5-6 and T4-5, resulting in the Petitioner's inability to perform her required duties as a breast cancer research scientist, at that time in a post-doctoral fellowship program, resulting in the Petitioner's being terminated from her post-doctoral cancer research fellowship.

The Petitioner's loss of her occupation as a cancer research scientist, which she loved, searching for cures to cancer, was a blow to her psyche from which she did not recover, and to her income, which took her nearly ten years to recover from and which required her to undergo vocational rehabilitation to become a registered nurse and then a family nurse practitioner.

The Petitioner sustained permanent partial disability under Sec. 8(d)2 to the extent of 40% thereof for the permanent physical damage to her cervical and thoracic spine and the loss of her occupation as a cancer research scientist that resulted from her work injury.

O. Other – Vocational Rehabilitation Expenses

The Arbitrator adopts the opinion of Ms. Susan Entenberg that the Petitioner's vocational rehabilitation plan was appropriate and necessary. The Arbitrator orders the Respondent to pay to the Petitioner the expenses she incurred as follows, *(Pet. Ex. A)*, which total $104,995.10.

DePaul University Nursing Program:	$ 80,687.00
Olivet Nazarene University:	3,360.00
" " "	17,172.00
Oakton Community College:	923.00
Northwestern University:	2,853.10
TOTAL:	$104,995.10

Admissibility of Respondent's Exhibit 1, Deposition of Dr. Ghanayem

The record indicates the deposition of Dr. Alexander Ghanayem was terminated at the doctor's request based upon a dispute involving Petitioner's counsel and Respondent's counsel (different person than who tried the case). (e) Motion to Terminate or Limit Examination. A full appreciation of the unfortunate behavior by the attorneys can only be had if one reviews the transcript. (See RX 1).

At any time during the taking of the deposition, on motion of any party or of the deponent and upon a showing that the examination is being conducted in bad faith or in any manner that unreasonably annoys, embarrasses, or oppresses the deponent or party, the court may order that the examination cease forthwith or may limit the scope and manner of taking the examination as provided by these rules. An examination terminated by the order shall be resumed only upon further order of the court. Upon the demand of the objecting party or deponent, the taking of the deposition shall be suspended for the time necessary to present a motion for an order. The court may require any party, attorney or deponent to pay costs or expenses, including reasonable attorney fees, or both, as the court may deem reasonable. IL R S CT Rule 206.

Petitioner's counsel objected to the admission or Respondent's Exhibit 1 on the basis that he was unable to conduct the end of his cross examination. The deposition was terminated at the request of the deponent, partially in response to the behavior of Petitioner's counsel as evidenced by the text of Respondent's Exhibit 1, in pertinent parts:

> The Witness: Excuse me a second. You didn't mean I would answer a question dishonestly, did you.
>
> Mr. Lichten: Well, I think that if you don't have a basis for giving an answer, I don't think you can answer it honestly, so I guess I might be implying that.
>
> The Witness: And I take objection to that. You know me better than that. I've known you for years and I'm under oath and I'm personally offended, after all the years that we've met each other, we've had common patients together, that you would imply I would answer a question dishonestly. RX 1, pg. 39-40.

In further pertinent parts, pages 65 through 75 describe a back and forth between the deponent and the attorneys where the deponent chastises them for their behavior relating to the exchange of a record shown to the

deponent during the deposition. This exchange occurred during Petitioner's counsel's cross examination. The Arbitrator notes despite Petitioner's counsel's objection on the basis that he was unable to finish his cross examination, Petitioner's counsel never presented a motion to compel the taking of the deposition and finalize the taking of his cross examination. As outlined in Illinois Supreme Court Rule 206, "Upon the demand of the objecting party or deponent, the taking of the deposition shall be suspended for the time necessary to present a motion for an order." Id. The deposition was concluded by the deponent in 2013. At no time did Petitioner's counsel file any motion to compel further cross examination. As such, Respondent's Exhibit 1 is admitted.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	20WC019300
Case Name	Martha Salazar v. One Museum Park East
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b) Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	23IWCC0410
Number of Pages of Decision	12
Decision Issued By	Carolyn Doherty, Commissioner

Petitioner Attorney	Matthew Jones
Respondent Attorney	Sofia Vatougios

DATE FILED: 9/15/2023

/s/Carolyn Doherty, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

MARTHA SALAZAR,

Petitioner,

vs. NO: 20 WC 19300

ONE MUSEUM PARK EAST,

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 February 27, 2023 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 $35,700.00. 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.

September 15, 2023

O: 09/07/23
CMD/ma
045

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

/s/ *Marc Parker*
Marc Parker

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	20WC019300
Case Name	Martha Salazar v. One Museum Park East
Consolidated Cases	
Proceeding Type	19(b)/8(a) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	9
Decision Issued By	Elaine Llerena, Arbitrator

Petitioner Attorney	Matthew Jones
Respondent Attorney	Sofia Vatougios

DATE FILED: 2/27/2023

THE INTEREST RATE FOR THE WEEK OF FEBRUARY 22, 2023 4.91%

/s/Elaine Llerena, Arbitrator

Signature

20STATE 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)

Martha Salazar
Employee/Petitioner
v.
One Museum Park East
Employer/Respondent

Case # **20** WC **019300**

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 **July 21, 2022**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On the date of accident, **July 7, 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 $**41,830.36**; the average weekly wage was $**804.43**.

On the date of accident, Petitioner was **62** years of age, ***married*** with **0** dependent children.

Respondent shall be given a credit of $**15,667.78** for TTD, $**0** for TPD, $**0** for maintenance, and $**0** for other benefits, for a total credit of $**15,667.78**.

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

ORDER

Respondent shall pay reasonable and necessary medical services of $51,300.49, as provided in Sections 8(a) and 8.2 of the Act.

Respondent shall authorize and pay for prospective medical care in the form of L3-S1 bilateral radio frequency ablations as recommended by Dr. Lipov.

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 **FEBRUARY 27, 2023**

Signature of Arbitrator

ICArbDec19(b)

STATEMENT OF FACTS:

Petitioner's Testimony

Petitioner testified via interpreter.

Petitioner testified that her job duties up until the date of accident included vacuuming, cleaning carpets, windows, bathrooms, social areas, emergency stairways, garage, garbage, lobby, party room, bathrooms, sauna, indoor pool, the pool, lunch area and grills. (Tr. 8-9) Petitioner testified that she was cleaning the mirrors of the bathroom at work on July 7, 2020, when she stepped down, missed the step, and fell backwards onto her back and head. (Tr. 13) She continued working the rest of the day. (Tr. 14) Petitioner stated that she was off work from July 8, 2020, through February 4, 2021. (Tr. 26) She returned to work on February 5, 2021, and has been working for the Respondent since. (Tr. 27)

Petitioner testified that the head and neck pain eventually resolved. (Tr. 17) Petitioner testified that the injection she underwent following the accident helped for a few days. (Tr. 21) Petitioner testified that she has difficulty sleeping and walking or standing for long periods of time. (Tr. 27) Petitioner explained that she returned to work for financial reasons and that her job duties were different when she returned to work on February 5, 2021, as she had more areas to clean. (Tr. 27-28) Petitioner testified that she has pain and a stabbing sensation in her right lower back when she is working. (Tr. 29) Petitioner testified that her ribs are healing on their own without surgical intervention. (Tr. 30)

Petitioner testified that prior to the work accident, she did not have any issues performing daily activities due to her back, neck, and head. (Tr. 33) On cross examination, Petitioner testified that she tried working immediately following the work accident, but then sought treatment the same day. (Tr. 35) Petitioner testified that she believed she was initially treating more for her ribs and chest. (Tr. 37)

On redirect examination, Petitioner testified that she fell onto her back, hitting her head, and it felt hard to breath after the accident. (Tr. 55) Petitioner testified that for months following the accident, her chest pain was at its worst. (Tr. 56) Petitioner explained that after the accident, her breathing and chest pain improved, but her back pain did not. Id.

Petitioner testified that when she returned to work in February of 2021, she had to change the way she performed her work by organizing the work so that she is not doing constant heavy work that would affect her back. (Tr. 61) Petitioner testified that prior to the accident, she was able to perform the heavy manual work without issue. Id. Petitioner testified that she is no longer operating the industrial vacuum cleaner based on the weight of the vacuum. (Tr. 63-64)

Petitioner testified that she did not want the epidural injection recommended by Dr. Lipov. (Tr. 30-31) Petitioner explained that she did not want to undergo the injection since it would only temporarily relieve her pain. (Tr. 31) Petitioner then testified that while she said the recommended injection would only provide temporary relief, she would accept the injection rather than having nothing at all. (Tr. 54) On further questioning, Petitioner acknowledged that the recommended injection, a radio frequency ablation, is different from the lumbar facet medial branch injection she had already undergone. (Tr. 57-58) Petitioner testified that she wished to proceed with the recommended radio frequency ablation. (Tr. 58)

Medical Records

Adventist GlenOaks Hospital

Petitioner initially sought treatment at the emergency room on July 7, 2020, where she stated that she fell approximately 2 feet off the ground backwards while washing windows, hitting her right upper posterior head, and landing on her back and right chest wall posteriorly. (PX1) She complained of lower right back pain, upper right back pain, mild headache, and reproducible chest wall pain upon deep inspiration upon palpation. She was diagnosed with a closed head injury, contusion of right chest wall, and scalp hematoma. Petitioner was to follow up with Dr. Iram Ahmed in one day.

Petitioner presented to Adventist GlenOaks one last time on July 31, 2020, where chest x-rays and a CT were taken. The x-rays showed fractures of the 4th, 5th, 6th, 7th, and 8th posterior ribs with some callus formation. Chest CT showed subacute rib fractures of the right fourth through ninth ribs and mild anterior wedging deformity of the superior endplate of T12.

Primary Care Services (Dr. Iram Ahmed)

Petitioner saw Dr. Ahmed on July 9, 2020, and complained of continued pain to the right side of her rib area, neck pain, and head pain. (PX2) Dr. Ahmed diagnosed Petitioner as having contusion of right front wall of thorax; fall; scalp pain; and swelling. Petitioner was to remain off work for one week. When she followed up on July 16, 2020, she again complained of right sided rib pain with range of motion difficulty with the right shoulder. (PX2) Petitioner was kept off work for another week.

On July 23, 2020, Petitioner told Dr. Ahmed that she wished to return to work, that her pain had improved, and she felt much better. (PX2) Physical therapy was discussed, and Petitioner indicated she was ready to begin. Petitioner was diagnosis with contusion of right front wall of thorax, fall. At the July 31, 2020, follow-up appointment, Petitioner reported doing better and returning to work the prior Monday. (PX2) Petitioner stated her pain got worse on Tuesday and complained of right-sided pain which radiated to her back along with right upper quadrant pain two days since returning to work. Petitioner was diagnosed with contusion of right front wall of thorax, right upper quadrant abdominal pain, and GERD without esophagitis. Petitioner was to remain off work one more week, continue physical therapy, and was referred for repeat x-ray and abdominal ultrasound.

At her last appointment at Primary Care Services on August 7, 2020, Petitioner complained of continued right sided rib pain that had worsened. (PX2) Her abdominal pain had resolved. Petitioner requested an additional off work slip for two more weeks. The final diagnosis at Primary Care Services was contusion of right front wall of thorax, fall; GERD without esophagitis; closed fracture of multiple ribs of right side without routine healing. Petitioner's pain medication was refilled, and she was provided with the requested off work note.

Athletico Physical Therapy (referred by Dr. Ahmed)

Petitioner presented for physical therapy upon the referral of Dr. Ahmed on July 31, 2020. (PX7) Petitioner did not follow up again after this initial visit until November 2020.

Illinois Orthopedic Network

Petitioner had an initial consultation at Illinois Orthopedic Network (ION) with Dr. Eugene Lipov on August 19, 2020. (PX3) Petitioner complained of tenderness over the right anterior and lateral ribs. She was diagnosed with right rib fracture and was taken off work for 3 weeks. She returned to ION

on September 9, 2020, for follow-up of her right flank pain and complained of 6/10 pain which was localized over the right posterolateral thorax. (PX3) As her pain regimen was adequately controlling her pain, she was to transition back to sedentary work starting on September 10, 2020.

On October 7, 2020, Dr. Lipov had additional x-rays taken of the ribs as Petitioner had continued to complain of right chest wall pain. (PX3) The x-rays showed that healing was not complete and that there was a question as to possible displacement of T5, T6 ribs. Dr. Lipov diagnosed Petitioner with slow healing of the fractured ribs on right side and kept Petitioner off work. Dr. Lipov also referred Petitioner to Dr. Kevin Koutsky for evaluation.

CT scan of the chest was taken on October 14, 2020, and showed posterior right chest wall pain under scapula; impression was subacute right rib fractures, T12 mild compression fracture. (PX5).

Petitioner saw Dr. Koutsky on November 6, 2020, and complained of right sided rib pain and thoracolumbar pain. (PX3) On physical examination, Dr. Koutsky noted para-thoracolumbar muscle tenderness and spasms to palpation with limited ROM and tenderness along right rib cage. Dr. Koutsky reviewed the CT scan and found partial healing of the rib fractures, mild anterior wedging deformity of the superior endplate of T12, and some age-related degenerative changes. Dr. Koutsky recommended MRIs of the thoracic and lumbar spines and physical therapy and kept Petitioner off work.

On November 18, 2020, Petitioner underwent the MRIs at Preferred Open MRI. (PX5) The thoracic spine MRI revealed spondylosis with disc space narrowing and desiccation and that the neural foraminal spinal canal was patent. The lumbar spine MRI revealed a 3mm right paracentral herniation at L1-2; 2 mm right paracentral protrusion at L2-3; lumbar spondylosis and scoliosis with multilevel disc bulging; and moderate central canal stenosis at L4-5.

On December 4, 2020, Dr. Koutsky reviewed the MRIs and diagnosed Petitioner with thoracolumbar pain, stenosis, multiple right-sided rib fractures. (PX3) Dr. Koutsky referred Petitioner to pain management explaining that Petitioner's conditions stemmed from the work-related injury and that Petitioner might benefit from injections. Dr. Koutsky also continued Petitioner's physical therapy.

Petitioner returned to Dr. Lipov on January 14, 2021, where he diagnosed Petitioner with thoracic spondylosis, right rib 4-9 partially healed, posterior rib fractures with minimal displacement. (PX3) Dr. Lipov believed Petitioner's pain was likely coming from right intercostal neuritis secondary to rib fractures and recommended diagnostic and therapeutic right-sided intercostal block, specifically 4-9 and continued physical therapy.

On February 8, 2021, Petitioner followed up with Dr. Lipov complaining of continued pain, but indicated that she wished to return to work. Dr. Lipov again recommended the intercostal block and released Petitioner to return to work at full duty, no restrictions, beginning February 10, 2021. Petitioner received a facet medial branch injection at L3, L4, L5-S1 bilaterally, on March 31, 2021. At her April 28, 2021, follow-up with Dr. Lipov, Petitioner reported improvement for about 4 days but that after that the pain returned. Dr. Lipov recommended Petitioner proceed with L3-S1 bilateral radiofrequency ablation and diagnosed Petitioner as having lumbar facet arthropathy, which he determined was secondary to exacerbation of her pain following trauma at work.

Petitioner was referred by Dr. Lipov to Dr. Cary Templin for a surgical consultation, which Petitioner attended on May 7, 2021. (PX3) Petitioner complained of mid and lower back pain. Dr. Templin reviewed the diagnostic exams and found Petitioner was not a good surgical candidate. Dr. Templin diagnosed Petitioner as having lumbar degenerative disc disease facet arthropathy and low back pain and referred Petitioner back to pain management.

Petitioner continued to follow up with Dr. Lipov who continued to recommend radiofrequency ablation. Petitioner also followed up with Dr. Templin on August 20, 2021. Dr. Templin reviewed the independent medical examination (IME) report from Dr. Vivek Mohan, dated January 15, 2021, and disagreed with Dr. Mohan's causation opinion. Dr. Templin opined that Petitioner sustained an aggravation of her degenerative condition at the time of the work accident and continued to have low back pain since. Therefore, Dr. Templin opined, Petitioner's current condition was causally related to the fall and the aggravation caused by the fall. Dr. Templin recommended continued pain management and physical therapy, as well as facet injections. Dr. Templin also felt that radiofrequency ablation would be helpful.

To date Petitioner has not received either a second injection or the radiofrequency ablation.

Athletico Physical Therapy (referred by Dr. Koutsky)

Petitioner began physical therapy on November 6, 2020. (PX7) At her last physical therapy visit on December 28, 2020, Petitioner stated she wished to speak with her doctor before returning to physical therapy due to her continued pain, but never returned. Petitioner was discharged from physical therapy on January 25, 2021.

ATI Physical Therapy

Petitioner presented to ATI per the referral of Dr. Templin on September 2, 2021. (PX6) She was discharged on November 3, 2021, secondary to lack of authorization.

Section 12 Examination Dr. Vivek Mohan

Petitioner underwent an IME with Dr. Mohan at the request of the Respondent on January 15, 2021. (RX3) Petitioner reported that she had used a stepladder to get onto a countertop to clean a mirror, went to step back down, and missed her step and landed on her right side of her chest and back. Upon review of the records and diagnostics and completion of a physical examination, Dr. Mohan diagnosed Petitioner with healed rib fractures. Dr. Mohan found no evidence on exam of any radiculopathy or disc herniations causing Petitioner pain; Petitioner had positive Waddell's signs on examination that at the time did not correlate to any diagnosis of the thoracolumbar spine. Dr. Mohan stated that the MRI findings of a disc bulge at L1-2, L2-3, and L4-5 stenosis were degenerative conditions and not related to the July 7, 2020, work accident. Dr. Mohan opined that no further medications, diagnostics therapy, or procedures were medically necessary for Petitioner, that she could return to work full duty without restrictions, and that she had reached maximum medical improvement (MMI) regarding the July 7, 2020, accident.

Utilization Reviews

There were two utilization reviews (UR) issued by Respondent. The first, dated September 8, 2020, denied gabapentin and lidopro ointment requested by Dr. Lipov for diagnosis of rib fracture due to lack of documentation of neuropathic pain and the efficacy of the medication was not documented.

(RX4) The second UR, dated November 8, 2020, for an MRI of the thoracic spine requested by Dr. Koutsky, approved the request. (RX5)

WITH RESPECT TO ISSUE (F), IS THE PETITIONER'S PRESENT CONDITION OF ILL-BEING CAUSALLY RELATED TO THE INJURY, THE ARBITRATOR FINDS AS FOLLOWS:

The Arbitrator had the opportunity to personally observe Petitioner's testimony. The Arbitrator finds Petitioner truthful in her assertion that her head, chest/ribs, and back symptoms began as a result of the work accident in a manner consistent with her testimony at trial. The Arbitrator finds Dr. Lipov, Dr. Koutsky, and Dr. Templin specifically to have been credible in their opinions in the medical records regarding the nature of Petitioner's injuries and their causal relationship to the work accident. The Arbitrator does not find the opinions of Dr. Mohan as credible or persuasive on these issues.

The Arbitrator notes that Petitioner underwent diagnostic tests following the accident that showed subacute right rib fractures and a T12 mild compression fracture, spondylosis with disc space narrowing and desiccation in the thoracic spine, a 3mm herniation at L1-2, 2mm right paracentral protrusion at L2-3, spondylosis with multilevel disc bullying, and central canal stenosis at L4-5.

Throughout the majority of Petitioner's treatment with Dr. Lipov, Dr. Koutsky, and Dr. Templin, Petitioner continuously complained of low back pain and testified that it felt like a stabbing sensation. Petitioner acknowledges that during the initial treatment, Petitioner mostly complained of right sided rib pain. However, as Petitioner testified to, she had just suffered multiple rib fractures and was having difficulty breathing. Petitioner testified that her right rib and chest pain was at its worst during the first few months of treatment. Thus, it is reasonable that Petitioner's most symptomatic injury, being her ribs, was taken care of first. The Arbitrator notes that the medical records and Petitioner's testimony corroborate that as Petitioner's rib fractures finally healed, Petitioner's back complaints came to the forefront. Further, Petitioner fell backwards hitting her head, ribs, and back, supporting that Petitioner injured her back during the work accident.

Based on the above, the Arbitrator finds that Petitioner's current condition of ill-being is causally related to the July 7, 2020, work accident.

WITH RESPECT TO ISSUE (J), WERE THE MEDICAL SERVICES THAT WERE PROVIDED TO PETITIONER REASONABLE AND NECESSARY AND HAS RESPONDENT PAID ALL APPROPRIATE CHARGES FOR ALL REASONABLE AND NECESSARY MEDICAL SERVICES, THE ARBITRATOR FINDS AS FOLLOWS:

The Arbitrator finds that the medical opinions and treatment plans set forth in the medical records by the physicians at Primary Care Services, Dr. Lipov, Dr. Koutsky, and Dr. Templin credible and appropriate for the treatment of Petitioner's work-related injuries. As Petitioner's treating physicians that saw Petitioner on several occasions, they were the most equipped physicians to diagnose Petitioner and recommend treatment based on Petitioner's complaints and their own objective findings.

The Arbitrator notes that the opinions provided by Petitioner's treating physicians that her degenerative back condition was aggravated by the work accident is supported by Petitioner's testimony and the medical records which indicate that Petitioner did not have any back problems prior to the July 7, 2020, work accident.

Based on the above, the Arbitrator finds that the medical services provided to Petitioner throughout the course of her treatment were reasonable and necessary and orders the Respondent to pay the outstanding medical bills, totaling $51,300.49, as provided in 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 finds that Petitioner is entitled to L3-S1 bilateral radio frequency ablations as recommended by Dr. Lipov. Petitioner attempted all conservative treatment available to her, including medication, physical therapy, and a lumbar facet medial branch injection. As Petitioner's back condition progressively worsened, Dr. Lipov recommended a L3-S1 bilateral radio frequency ablation. Petitioner was seen by two treating orthopedic surgeons, Dr. Koutsky and Dr. Templin. Both Dr. Koutsky and Dr. Templin referred Petitioner back to pain management and found that Petitioner would benefit from injections. Further, Dr. Templin ruled out surgical intervention, leaving only injections as the possible solution to resolving Petitioner's symptoms.

Dr. Mohan opined that Petitioner did not require any further treatment based on Petitioner having no radiculopathy or disc herniations causing her pain at the time. However, as Dr. Lipov noted in his April 28, 2021, report, Petitioner had lumbar facet pain and that Dr. Mohan's physical examination did not relate to her lower back pain but rather just to neurological symptoms.

The Arbitrator notes that throughout the majority of her treatment, Petitioner complained of lower back pain, not radicular symptoms into her legs. Thus, as the MRIs of the thoracolumbar spines showed facet arthropathy, Dr. Lipov recommended radio frequency ablations as Petitioner had a temporary but positive response to the lumbar facet medial branch injection. This is further supported by Dr. Templin's opinions that Petitioner would benefit from facet injections and possibly an RFA.

The Arbitrator further notes that while it appears that Petitioner initially indicated that she did not want to undergo an injection, a complete reading of the testimony indicates that Petitioner did not wish to undergo another lumbar facet medial branch injection. The testimony further indicates that Petitioner wishes to and is willing to undergo the recommended radio frequency ablations and realizes that it is a different treatment from the lumbar facet medial branch injection. As such, the Arbitrator finds the radio frequency ablations recommended by Dr. Lipov reasonable, necessary, and causally related to the July 7, 2020, work accident.

Based on the above, the Arbitrator orders Respondent to authorize and pay for prospective medical treatment in the form of radio frequency ablations as recommended by Dr. Lipov.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	19WC020166
Case Name	Rhiana Draper v. State of Illinois - Chester Mental Health Center
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	23IWCC0411
Number of Pages of Decision	13
Decision Issued By	Kathryn Doerries, Commissioner

Petitioner Attorney	Thomas C Rich
Respondent Attorney	Aaron Wright

DATE FILED: 9/18/2023

/s/Kathryn Doerries, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF MADISON)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

RHIANA DRAPER,

Petitioner,

vs. NO: 19 WC 20166

STATE OF ILLINOIS,
CHESTER MENTAL HEALTH CENTER,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of causal connection, 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 March 23, 2022 is hereby affirmed and adopted.

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

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

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

September 18, 2023

o-9/5/23
KAD/jsf
42

/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	19WC020166
Case Name	DRAPER, RHIANA v. CHESTER MENTAL HEALTH CENTER
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	10
Decision Issued By	Jeanne AuBuchon, Arbitrator

Petitioner Attorney	Thomas Rich
Respondent Attorney	Aaron Wright

DATE FILED: 3/23/2022

THE INTEREST RATE FOR THE WEEK OF MARCH 22, 2022 0.87%

/s/ Jeanne AuBuchon, Arbitrator

Signature

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

March 23, 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

RHIANA DRAPER
Employee/Petitioner

v.

CHESTER MENTAL HEALTH CENTER
Employer/Respondent

Case # **19** WC **020166**

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 **November 23, 2021**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On **June 10, 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 $**58,486.00**; the average weekly wage was $**1,124.73**.

On the date of accident, Petitioner was **37** years of age, ***single*** with **0** dependent child(ren).

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

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

Respondent shall be given a credit of **all benefits paid** for TTD, $**-** for TPD, $**-** for maintenance, and any **extended benefits paid** for other benefits, for a total credit of **all benefits paid**.

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

ORDER

Respondent shall pay the reasonable and necessary medical services of outlined in Petitioner's Exhibit 1, as provided in § 8(a) of the Act. Respondent shall be given credit for medical benefits that have been paid through its group carrier, and Respondent shall hold Petitioner harmless from any claims by any providers of the services for which Respondent is receiving this credit, as provided in § 8(j) of the Act.

Respondent shall pay Petitioner permanent partial disability benefits of $**674.84**/week for **135** weeks, because the injuries sustained caused the **27**% loss of the **body as a whole**, as provided in § 8(d)2 of the Act.

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

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

Jeanne L. AuBuchon

Signature of Arbitrator

MARCH 23, 2022

PROCEDURAL HISTORY

This matter proceeded to trial on November 23, 2021. The issues in dispute are: 1) the causal connection between the accident and the Petitioner's cervical spine condition, specifically as it relates to surgery to the Petitioner's C3-4 disc; 2) liability for medical bills; and 3) the nature and extent of the Petitioner's injury.

FINDINGS OF FACT

At the time of the accident, the Petitioner, who was 37 years old, was employed by the Respondent as a social worker. (AX1, T. 11) On June 10, 2019, the Petitioner was attacked by a patient and injured her neck. (T. 11-12) Other affected areas of her body were not seriously injured. (T. 12)

On the day of the accident, the Petitioner went to the Chester Memorial Hospital emergency room, where she complained of neck pain, was diagnosed with acute cervical myofascial strain, was prescribed medication and was instructed to follow up with her primary care provider. (PX3) She followed up with Dr. Kurt Martin at SIH Medical Group Center for Medical Arts on June 12, 2019. (PX4) He diagnosed her with a whiplash injury to her neck, prescribed oral steroids and referred her to physical therapy. (Id.) The Petitioner reported improvement in her neck and headaches while taking the steroids but that her symptoms returned. (Id.) She underwent physical therapy at SIH Rehab Unlimited from June 17, 2019, through July 16, 2019, for a total of eight visits. (PX5)

On June 24, 2019, the Petitioner saw Dr. Matthew Gornet, an orthopedic surgeon at The Orthopedic Center of St. Louis, and reported frequent headaches, neck pain to both trapezii and shoulders, pain between her shoulder blades and weakness of both arms, left greater than right. (PX6) Cervical spine X-rays showed well-preserved disc height and no evidence of foraminal

stenosis. (Id.) On a cervical MRI, Dr. Gornet saw disc herniations at C3-4 through C6-7, with the largest at C4-5 causing cord compression. (Id.) He noted disc fragments at C4-5 and C5-6 and an annular tear at C3-4. (Id.) He said foraminal views showed a large foraminal herniation on the right side at C4-5 and to a lesser extent at C5-6 and C6-7, as well as on the left side more at C4-5 and C5-6 and to a lesser extent at C3-4. (Id.) He believed the main culprits for the Petitioner's axial neck pain were C3-4, C4-5 and C5-6. (Id.) He stopped physical therapy on July 18, 2019, because it made the Petitioner's headaches worse and referred her to pain management for injections. (Id.)

Dr. Helen Blake, an interventional pain physician at Pan & Rehabilitation Specialists, performed an interlaminar epidural steroid injection at C4-5 on July 30, 2019, and another at C5-6 on August 20, 2019. (PX8) The Petitioner testified that the physical therapy and injections provided limited relief. (T. 13) She said she was having trouble sleeping due to pain in her arms, and increased activity caused pain in her arm. (T. 14)

The Petitioner returned to Dr. Gornet on September 12, 2019, and reported that the injections helped her neck pain, but as her activities increased, she noticed increasing pain in her hands with tingling in her hands and feet. (PX6) Dr. Gornet believed this was early myelopathy and recommended moving forward with fairly urgent surgery because of the progression in symptoms. (Id.) On September 18, 2019, Dr. Gornet performed disc replacements at C3-4, C4-5 and C5-6. (Id.) At her follow-up appointments, the Petitioner reported great improvement. (Id.) Dr. Gornet released her to full duty work on January 6, 2020, and found her to be at maximum medical improvement on November 12, 2020. (Id.)

On April 20, 2021, the Petitioner underwent a Section 12 examination by Dr. Robert Bernardi, an orthopedic surgeon at Olive Surgical Group. (RX2) He took a history from the

Petitioner and reviewed records from Dr. Martin, Rehab Unlimited and Dr. Gornet. (Id.) Dr. Bernardi reviewed the cervical MRI and found minor degenerative disc disease at C2-3 and C3-4 and more advanced degenerative changes at C4-5 and C5-6. (Id.) He found posterior protrusions that were more pronounced at C4-5, where the anterior subarachnoid space was effaced. (Id.) He said the other discs were normal. (Id.) On the axials, he saw a left-sided disc/osteophyte complex at C4-5 that narrowed the left C5 foramen and displaced the left side of the cord. (Id.) He said there was a much shallower, broad-based disc/osteophyte complex at C5-6 without any associated stenosis. (Id.) He also performed a physical examination. (Id.)

Dr. Bernardi stated that the objective physical and imaging findings would appear to be causally related to her occupational incident. (Id.) He said the question of whether the treatment to date was reasonable and necessary. (Id.) He found that the treatment at C4-5 and C5-6 was reasonable, but he did not understand why C3-4 was included, noting that there was only very mild spondylosis and no associated kyphotic deformity nor associated stenosis. (Id.) He said C2-3 looked identical but was not treated. (Id.) He concluded that the disc replacement at C3-4 was neither necessary nor appropriate. (Id.)

Prefacing his opinion, Dr. Bernardi noted that the Petitioner told him that prior to the surgery, she had stiffness in her neck and pain that radiated down her right hand. (Id.) He stated that this was compatible with cervical radiculopathy, but the MRI was not impressive for any foraminal pathology lateralized to the right, and the history she gave him was not reflected in the records. (Id.) He pointed out that Dr. Martin noted that she did not have a lot of radicular symptoms, and he did not see any mention of arm pain in her physical therapy notes. (Id.) he said that when she saw Dr. Gornet, she had neck, shoulder and interscapular discomfort and reported

weakness in both arms, but there was no mention of pain. (Id.) Dr. Bernardi acknowledged that the Petitioner's evolving symptoms were consistent with myelopathy. (Id.)

Dr. Gornet testified consistently with his reports at a deposition on August 19, 2021. (PX14) He said that during the surgery, he found a central herniation and a large tear in the disc at C5-6 and an even larger herniation, central and more to the left at C4-5. (Id.) At C3-4, he identified a central annular tear and a small central protrusion. (Id.) He said all of this indicated a structural problem that was rectified with the disc replacements. (Id.) He said the Petitioner did very well after the surgery with dramatic improvement in all of her symptoms, although she did have some level of pain that he said he will continue to observe. (Id.)

Regarding the need for surgery at C3-4, Dr. Gornet said it was done to cure and relieve the effects of the Petitioner's work injury and pointed out that he treated that level because of the Petitioner's persistent headaches and axial neck pain – not because of spinal compression. (Id.) He stated that just because there is not significant spinal cord compression, that does not mean the disc has not been injured. (Id.) He said the interpretations of the MRI by himself and the radiologist, along with the inter-operational findings showed structural disc problems at C3-4. (Id.) He explained that recent research showed that in treatment of patients with significant axial pain and/or headaches, it is of paramount importance to treat all of the pathology present.

Dr. Bernardi testified consistently with his report at a deposition on September 17, 2021. (RX3) Prior to the deposition, Dr. Bernardi reviewed the intraoperative videos from Dr. Gornet. (Id.) The only comments he had about the videos was to say they showed removal of the discs. (Id.) In looking at the operative report, Dr. Bernardi took issue with Dr. Gornet reporting that he decompressed the disc at C3-4 when there was no evidence that it was compressed. (Id.)

The Petitioner testified that the surgery relieved the pain in her arm, wrist, fingers and feet and relieved her headaches. (T. 14) She said she still has "jerking episodes" in her sleep and still experiences neck pain and stiffness with activity, such as playing with her children, as well as muscle spasms. (T. 17-18) She said she still runs, is able to do her normal activities and works out at a gym. (T. 19, 21) At the time of arbitration, the Petitioner was working as a social worker for Wexford Health Services at Menard Correctional Center. (T. 22)

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

CONCLUSIONS OF LAW

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

The doctors agreed that the Petitioner cervical spine injuries were caused by the work accident. Although it was couched in terms of causation, the main issue is whether the disc replacement at C3-4 was reasonable and necessary. That is addressed below.

Therefore, the Arbitrator finds that the Petitioner has met her burden of proving by a preponderance of the evidence that the work accident caused her 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, 327 Ill.Dec. 883 (2009). A claimant is entitled to recover reasonable medical expenses that are causally related to the accident and that are determined to be

required to diagnose, relieve, or cure the effects of claimant's injury. *F & B Mfg. Co. v. Indus. Comm'n*, 325 Ill. App. 3d 527, 534, 758 N.E.2d 18, 259 Ill.Dec. 173 (1st Dist. 2001).

Dr. Bernardi did not believe the pathology at C3-4 was significant enough to warrant replacement of that disc. Dr. Gornet believed that disc was contributing to the Petitioner's axial neck pain and headaches to the point that replacement was necessary. Dr. Bernardi did not make much of the intraoperative videos, but Dr. Gornet did explain how what he observed during the surgery caused him to replace the C3-4 disc also. Another difference between the two doctors' approaches is that Dr. Bernardi did not pay much attention to the persistent headaches the Petitioner was suffering. Dr. Gornet believed disc replacement at all three levels was necessary to address all the Petitioner's symptoms – not just radicular symptoms.

As the Petitioner's treating physician, Dr. Gornet had the opportunity to become familiar with the Petitioner and the progression of her symptoms. He was able to correlate these symptoms with the pathology he saw at C3-4 on the imaging study and during the surgical procedure. For all these reasons, the Arbitrator gives more weight to Dr. Gornet's opinions than Dr. Bernardi's.

Therefore, the Arbitrator finds that the disc replacement at C3-4 was reasonable and necessary to relieve or cure the effects of the Petitioner's injury, and the Respondent has not paid the bills for this treatment. Therefore, the Respondent is ordered to pay the medical expenses contained in Petitioner's Exhibit 1 pursuant to Section 8(a) of the Act and in accordance with medical fee schedules.

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

Pursuant to Section 8.1b of the Act, permanent partial disability from injuries that occur after September 1, 2011, is to be established using the following criteria: (i) the reported level of impairment pursuant to subsection (a) of Section 8.1; (ii) the occupation of the injured employee;

(iii) the age of the employee at the time of the injury; (iv) the employee's future earning capacity; and (v) evidence of disability corroborated by the treating medical records. 820 ILCS 305/8.1b. The Act provides that, "No single enumerated factor shall be the sole determinant of disability." *Id.*

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

(ii) **Occupation.** The Petitioner still works as a social worker but is now at Menard Correctional Center and is not regularly exposed to violent mental health patients as she was at Chester Mental Health. Therefore, the Arbitrator places some weight on this factor.

(iii) **Age.** The Petitioner was 37 years old at the time of the injury. She has many work years left during which time she will need to deal with the residual effects of the injury. The Arbitrator places significant weight on this factor.

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

(v) **Disability.** The Petitioner testified that she still experiences neck pain and stiffness, but this does not greatly affect her ability to work or conduct her normal activities. The Arbitrator puts some weight on this factor.

Therefore, the Arbitrator finds the Petitioner's permanent partial disability to be 27 percent of the body as a whole as it pertains to the Petitioner's cervical spine.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	20WC012921
Case Name	Amy Kuhns v. Midwest Orthopaedic Institute
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	23IWCC0412
Number of Pages of Decision	11
Decision Issued By	Marc Parker, Commissioner

Petitioner Attorney	Jordan Browen
Respondent Attorney	Kevin Luther

DATE FILED: 9/18/2023

/s/Marc Parker, Commissioner

Signature

DISSENT: /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 down	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Amy Kuhns,

Petitioner,

vs. No. 20 WC 012921

Midwest Orthopaedic Institute - Sycamore,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by Respondent herein and notice given to all parties, the Commission, after considering the issues of accident, causal connection, medical expenses, temporary 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.

Petitioner, a 38-year-old Imaging Manager at Midwest Orthopaedic Institute, sustained injury to her neck on April 22, 2020 as a result of repetitive activities at work. Two weeks earlier, she began a project of removing some of the thousands of MRI and x-ray films which Respondent had in storage. The films were in 25 lb. boxes, many of which were on overhead shelves. While working on April 22, 2020, Petitioner began experiencing neck pain which, over time, worsened and began radiating down her arms.

Petitioner initially saw Dr. Malalis, a pain management physician who worked for Respondent. Dr. Malalis ordered a cervical MRI which, on May 5, 2020, revealed a moderate-large C5-C6 extrusion. Dr. Malalis referred Petitioner to Dr. Roh, an orthopedic surgeon at Rockford Spine Center. Dr. Roh recommended cervical epidural steroid injections, but those only provided temporary relief. Dr. Roh ultimately performed a C5-C6 anterior cervical discectomy and total disc replacement on June 15, 2020.

One week after Petitioner's surgery, she was able to return to work at her prior job, albeit with lifting restrictions. Five weeks later, on July 28, 2020, Dr. Roh reported Petitioner's myeloradiculopathy had completely resolved. He also noted her numbness was vastly improved, with only a little remaining in the tips of a few fingers which he felt might improve over time. Dr. Roh released Petitioner from care on that date, with instructions to follow-up with him as needed.

Petitioner testified she still works for Respondent, though the company has since merged with Northwestern Medicine. Petitioner now performs more administrative work at her job, but still has the same job title and earns more than she did at the time of her accident.

The Arbitrator found Petitioner proved she sustained a neck injury from her work at Respondent, which resulted in a herniated disc and need for a C5-C6 anterior discectomy and total disc replacement. He found Petitioner now has relatively minor continued complaints affecting her everyday life. The Arbitrator awarded Petitioner 25% loss of use of person as a whole under §8(d)2.

The Commission views the evidence differently than the Arbitrator, and modifies the permanent partial disability award. Pursuant to §8.1b of the Act, permanent partial disability from injuries occurring after September 1, 2011, is to be established using the following criteria: (i) the reported level of impairment from a physician; (ii) the occupation of the injured employee; (iii) the age of the employee at the time of the injury; (iv) the employee's future earning capacity; and (v) evidence of disability corroborated by the treating medical records. 820 ILCS 305/8.1b. The Act provides that, "No single enumerated factor shall be the sole determinant of disability." 820 ILCS 305/8.1b(b). The Commission has considered these factors, and now assigns the following relevance and weights to them:

(i) **Disability impairment rating:** no relevance or weight, because neither party offered an impairment rating into evidence.

(ii) **Employee's occupation:** significant relevance and weight, because Petitioner was able to return to her usual job as an Imaging Manager for Respondent, and testified that none of her current job duties exacerbate her symptoms.

(iii) **Employee's age:** some relevance and moderate weight, because Petitioner was 38 years old at the time of her injury, and has many years left in the work force.

(iv) **Future earning capacity:** some relevance and moderate weight, because Petitioner suffered no loss of earning capacity, testifying that she earns more now than at the time of her injury.

(v) **Evidence of disability corroborated by the treating records:** significant relevance and weight, because although Petitioner underwent cervical surgery, she made a speedy recovery and returned to her usual job after being off work for only one week. Dr. Roh's records document Petitioner's report that immediately after her surgery, her arm

> pain was gone and her numbness was vastly improved, with only some numbness in the tips of a few of her fingers. Six weeks after Petitioner's surgery, Dr. Roh released her from his care, noting she had complete resolution of her myeloradiculopathy, had no restrictions, and she was very pleased with her results.

Based upon our consideration of the above factors, we modify the Arbitrator's permanent partial disability award, and find that the injuries Petitioner sustained as a result of her April 22, 2020 accident caused a 20% loss of use of person as a whole under §8(d)2.

Finally, the Commission notes that the parties stipulated, on the Request for Hearing sheet, that Petitioner's average weekly wage was $1,634.62. However, the Arbitration Decision incorrectly reported that figure as $1,634.20. We correct that apparent error, and find Petitioner's correct average weekly wage to be $1,634.62.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed December 1, 2022, is modified as stated herein, and otherwise affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay to Petitioner her reasonable and necessary medical expenses incurred in treating her cervical spine condition, from April 22, 2020 through her release by Dr. Roh on July 28, 2020, as provided in §8(a) and §8.2 of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay to Petitioner the sum of $1,089.75 per week for a period of one week, from June 15, 2020 through June 21, 2020, that being the period of temporary total incapacity from work under §8(b) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay to Petitioner the sum of $836.69 per week for 100 weeks, because the injuries sustained to Petitioner's cervical spine caused the 20% loss of use of the body as a whole, under §8(d)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.

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.

September 18, 2023

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

MP/mcp
o-08/24/23
068

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

DISSENT

I respectfully dissent from the Decision of the majority. I would have affirmed and adopted the Arbitrator's Decision in its entirety.

Petitioner's cervical MRI showed a moderate to large C5-C6 extrusion with caudal migration, superimposed upon a disc-osteophyte complex. She required an anterior cervical discectomy and total disc replacement under intraoperative fluoroscopy. Since her surgery, she still experiences constant numbness in some of her fingers, and neck pain and spasms. She testified that she now sees a chiropractor on a monthly basis, and occasionally has to ice her neck. She also avoids certain physical activities out of fear of reinjuring herself.

For these reasons, I would have affirmed and adopted the Arbitrator's permanent partial disability award of 25% loss of the body as a whole.

/s/ *Marc Parker*
Marc Parker

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	20WC012921
Case Name	Amy Kuhns v. Midwest Orthopaedic Institute
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	6
Decision Issued By	Gerald Granada, Arbitrator

Petitioner Attorney	Jordan Browen
Respondent Attorney	Kevin Luther

DATE FILED: 12/1/2022

THE INTEREST RATE FOR THE WEEK OF NOVEMBER 29, 2022 4.55%

/s/Gerald Granada, Arbitrator

Signature

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

AMY KUHNS
Employee/Petitioner

v.

MIDWEST ORTHOPAEDIC INSTITUTE
Employer/Respondent

Case # **20** WC **012921**

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 **OCTOBER 25, 2022**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On **April 22, 2020**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $**85,000**; the average weekly wage was $**1,634.20**.

On the date of accident, Petitioner was **38** 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** 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

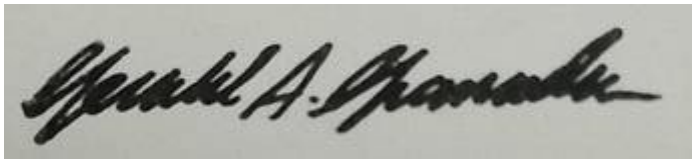
Respondent shall pay directly to Petitioner the reasonable and necessary medical expenses, subject to the medical fee schedule, of: Midwest Orthopaedic Institute - $4,009.75; Rockford Spine Center - $33,265.00; St. Anthony Hospital - $48,745.45; and Rockford Anesthesiologists - $4,200.00; for a grand total of $89,950.20, as provided in Sections 8(a) and 8.2 of the Act. Respondent shall receive a credit for any/all payments previously made towards these bills if any.

Respondent shall pay Petitioner temporary total disability benefits of $1,089.75/week for 1 week, commencing June 15, 2020 through June 21, 2020, as provided in Section 8(b) of the Act.

Respondent shall pay Petitioner permanent partial disability benefits of $836.69/week for 125 weeks, because the injuries sustained caused the 25% loss of the person as a whole, as provided in Section 8(d)2 of the Act.

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

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



DECEMBER 1, 2022

Signature of **Arbitrator Gerald Granada**

FINDINGS OF FACT

This case involves Petitioner Amy Kuhns who alleges sustaining injuries while working for the Respondent Midwest Orthopaedic Institute on April 22, 2020. Respondent disputes Petitioner's claim, with the issues being: 1) accident; 2) causation; 3) medical expenses; 4) TTD; and 5) nature and extent.

In April of 2020, Petitioner worked for Respondent as their Imaging Manager. She held this position for 15 years. Her job duties included overseeing all the MRI's and x-ray's for the orthopedic practice. That involved facility concerns such as linen supplies as well as scheduling for all employees. Her role also included patient interaction and administering MRI's and x-ray's.

Petitioner testified that in April of 2020, the work volume was down because of COVID. The practice wanted to keep its employees working and getting their hours so Petitioner had to find busy work. She testified that in the basement file room there were hundreds of thousands of imaging film that they never found the time to purge. There was value to purging the imaging because there was silver that could be recycled for money back to the practice. Petitioner described the imaging files weighed "a lot" and were contained across three shelves. She would be lifting the files from ground level and from a ladder. She would have to bend down low, work at waist level, as well as overhead for the images stored on the top shelf. Petitioner testified that they started this task in mid-April and after two weeks she noticed having neck pain, which she dismissed as muscular from overhead pulling and lifting, which she was not used to ever doing. Over the weeks, Petitioner's neck got worse, and she started having numbness in her fingers and radiating down her arms. Petitioner denied having a history of neck pain or the radicular symptoms she noticed in her arms.

Respondent's Human Resources Manager, Erin Hodapp authored an email to Respondent's insurance adjuster dated May 13, 2020 in which she described Petitioner working on a project "…to clear out x-rays from downstairs to make room for additional records. This required frequent reaching overhead and bringing down 20-25 pound files of x-rays to purge." (PX 6) Ms. Hodapp further described that the project was undertaken over a two-week timeframe and that Petitioner reported discomfort in the neck and shoulder turned into excruciating pain which led her to seek medical attention with Respondent. (PX 6)

On May 7, 2020, Petitioner saw Dr. Malalis, a pain management physician who also works for Respondent. The onset of symptoms was noted to be April, 2020 and complaints of neck pain, right upper extremity weakness were noted. Dr. Malalis reviewed an MRI of the surgical spine dated May 5, 2020. It was further noted that Petitioner was 2 weeks into her current symptomology that began while repetitively lifting boxes into and out of shelves at work. Dr. Malalis later authored a letter in which she opined that Petitioner's condition was related to her work injury. Petitioner was given a surgical referral to Dr. Roh due to weakness in her right upper extremity. (PX 1, p.7-9)

On May 14, 2020, Petitioner saw Dr. Roh, who noted a history of symptoms of right-sided neck, trapezial, and shoulder pain that started after lifting heavy film and cassettes over her head while at work. After a physical examination and review of the MRI imaging, Dr. Roh diagnosed severe right upper extremity cervical myeloradiculopathy secondary to large C5-6 herniated nucleus pulposus resulting in severe spinal cord compression. Dr. Roh recommended continuing PT and an injection. He indicated that if symptoms did not improve, he would proceed with surgery. (PX 2A, p.18-21) On June 15, 2020, Petitioner underwent a C5-C6 anterior surgical discectomy and total disc replacement. (PX 2A, p.30-31) Petitioner followed up with Dr. Roh on July 28, 2020. She was six weeks post surgery and reported her symptoms of arm pain were gone immediately after surgery and the numbness vastly improved. It was noted that she had numbness in her fingers on the right hand and the pinkie on the left. She took a week off before returning to work. She was instructed to follow up as needed without any restrictions. (PX 2B, p.7)

On July 3, 2020, Dr. Andrew Zelby authored an IME report following his review of Petitioner's medical records and various reports. (RX 1) There is no indication that Dr. Zelby conducted a physical examination of Petitioner. In his report, Dr. Zelby references a recorded statement given by Petitioner in which she indicates that on April 22, 2020, she was pulling heavy grids down to remove film for disposal, which she did almost every day since that date, when she started to notice pain down her neck. Dr. Zelby confirmed the MRI findings of a herniated cervical disc and the appropriateness of her medical care but did not believe the activities she described caused the herniation. He noted that Petitioner did not have a specific injury and he did not believe a herniated disc is a condition of repetitive trauma.

Petitioner testified to constant numbness in her fourth and fifth digits. Her neck pain was better after surgery but that she will have to live with pain and ices her neck all the time. She further testified that computer work can exacerbate the numbness in her hands on a bad day. Outside of work, Petitioner attends games for her kids that requires support while she is seated. She also described avoiding certain activities that could cause re-injury such as being pulled behind a boat on a raft.

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 Petitioner's unrebutted testimony and the preponderance of the evidence which show that on April 22, 2020, Petitioner was engaged in lifting and moving heavy MRI and X-Ray films that required Petitioner to work overhead in addition to bending and working at waist level while handling the films. She began to notice pain in her neck that worsened as she continued to perform this work-related activity. Petitioner's testimony that the repetitive activity she described caused injury to her neck is corroborated by her medical records. The case law is clear that an injury is considered accidental even though it develops gradually over a period of time as a result of a repetitive trauma, without requiring complete dysfunction, if it is caused by the performance of claimant's job. *Cassens Transport Co. v. Industrial Comm'n,* 262 Ill.App.3d 324, 330 (1994). Other than Dr. Zelby's IME report, there was no evidence offered to rebut Petitioner on this issue. Accordingly, the Arbitrator concludes that the Petitioner sustained an accident arising out of and in the course of her employment on April 22, 2020.

2. Consistent with the findings above, 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 her medical evidence, which show that as a result of her April 22, 2020 work accident, Petitioner sustained an injury to her neck resulting in a C5-C6 herniation. The Arbitrator finds persuasive the opinion of Petitioner's treating physician, Dr. Malalis on this issue, as this doctor displayed familiarity in the type of work Petitioner was performing leading up to her injuries, and also conducted a physical examination of the Petitioner. Respondent's IME did not conduct a physical exam of Petitioner and did not appear to have a clear understanding of the duties Petitioner was performing. As such, the Arbitrator concludes that the Petitioner's current condition of ill-being in her cervical neck is causally connected to her April 22, 2020 work accident.

3. Consistent with the findings above, regarding the issue of medical expenses, the Arbitrator finds that the Petitioner's medical expenses related to her neck condition have been reasonable and necessary in addressing her work-related condition. Respondent's IME agreed to the reasonableness of Petitioner's medical care. As such, the Arbitrator awards the Petitioner the following medical expenses subject to the fee schedule: 1) Midwest Orthopaedic Institute - $4,009.75; 2) Rockford Spine Center - $33,265.00; 3) St. Anthony Hospital - $48,745.45; and 4) Rockford Anesthesiologists - $4,200.00 for a grand total of $89,950.20. Respondent shall receive a credit for any/all payments previously made towards these bills.

4. Based on the Arbitrator's conclusions above, the Arbitrator further finds that Petitioner was temporarily totally disabled from June 15, 2020 through June 21, 2020. This finding is supported by Petitioner's unrebutted testimony and the medical evidence. The records show that Petitioner underwent her neck surgery on June 15, 2020 and took only week off work before she returned with no apparent restrictions. Therefore, the Arbitrator awards Petitioner TTD benefits for this period.

5. Regarding the issue of the nature and extent of the Petitioner's injuries, the Arbitrator applies the factors set forth in Section 8.1b of the Act and notes the following: (i) no impairment rating was entered into evidence and the Arbitrator gives no weight to this factor; (ii) Petitioner worked as a manager for Respondent and was able to return to the same occupation without any restrictions- the Arbitrator gives significant weight to this factor; (iii) Petitioner was 38 years old at the time of the injury and the Arbitrator gives some weight to this factor; (iv) there was no evidence that Petitioner's future earnings were affected by this injury, so the Arbitrator gives no weight to this factor; (v) there was evidence of disability corroborated by the medical records that showed Petitioner sustained a neck injury resulting in herniated disc at C5-C6 for which she underwent a C5-C6 anterior surgical discectomy and total disc replacement, resulting in relatively minor continued complaints that have affected her everyday life - the Arbitrator gives great weight to this factor. Based on the factors above, the Arbitrator concludes the injuries sustained by Petitioner caused a 25% loss of use of the person as a result of the April 22, 2020 work accident.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	22WC012101
Case Name	Diana Paredes v. A&B Staffing Services, LLC
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b) Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	23IWCC0413
Number of Pages of Decision	17
Decision Issued By	Carolyn Doherty, Commissioner

Petitioner Attorney	James McHargue
Respondent Attorney	Kelly Kamstra

DATE FILED: 9/20/2023

/s/Carolyn Doherty, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

DIANA PAREDES,

Petitioner,

vs. NO: 22 WC 12101

A&B STAFFING SERVICES, LLC,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of 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 March 3, 2023 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 $22,100.00. 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.

September 20, 2023
O: 09/07/23
CMD/ma
045

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

/s/ *Marc Parker*
Marc Parker

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	22WC012101
Case Name	Diana Paredes v. A&B Staffing Services, LLC
Consolidated Cases	
Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	14
Decision Issued By	Nina Mariano, Arbitrator

Petitioner Attorney	James McHargue
Respondent Attorney	Kelly Kamstra

DATE FILED: 3/3/2023

THE INTEREST RATE FOR THE WEEK OF FEBRUARY 28, 2023 4.98%

/s/Nina Mariano, Arbitrator

Signature

STATE OF ILLINOIS)	☐ Injured Workers' Benefit Fund (§4(d))
)SS.	☐ Rate Adjustment Fund (§8(g))
COUNTY OF Cook)	☐ Second Injury Fund (§8(e)18)
	☒ None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

Diana Paredes
Employee/Petitioner

v.

A&B Staffing Services, LLC
Employer/Respondent

Case # **22** WC **012101**

Consolidated cases:

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Nina Mariano**, Arbitrator of the Commission, in the city of **Chicago**, on **December 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. ☐ 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 21, 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 $**5,744.00**; the average weekly wage was $**666.00**.

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

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

Respondent shall be given a credit of $**0** for TTD, $**0** for TPD, $**0** for maintenance, and **$0** for medical, 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 for 25 and 3/7 weeks, commencing May 4, 2022 through June 15, 2022 and from August 5, 2022 through December 19, 2022 at a rate of $444.00 per week, as provided in Section 8(b) of the Act.

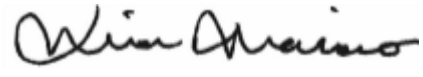
Respondent shall pay reasonable and necessary medical services, pursuant to the medical fee schedule, of Midwest Specialty Pharmacy, $4,737.28; Illinois Orthopedic Network, $2,687.92; La Clinica, $3,070.00; and Athletico, $166.00, as provided in Sections 8(a) and 8.2 of the Act.

The Arbitrator orders Respondent to authorize and pay for the right first extensor compartment release and right carpal tunnel release as recommended by Dr. Wiesman.

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.



MARCH 3, 2023

Signature of Arbitrator

ICArbDec19(b)

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

ILLINOIS WORKERS' COMPENSATION COMMISSION

DIANA PAREDES,	)	
	)	
Petitioner,	)	
	)	Number: 22 WC 012101
vs.	)	
	)	
A&B STAFFING SERVICES, LLC,	)	
	)	
Respondent.	)	

FINDINGS OF FACT

This matter proceeded to hearing on December 19, 2022 in Chicago, Illinois before Arbitrator Nina Mariano on Petitioner's Request for Immediate Hearing under Section 19b/8a of the Illinois Workers' Compensation Act. Issues in dispute include causal connection, unpaid medical bills, temporary total disability benefits ("TTD") and prospective medical care. Arbitrator's Exhibit "Ax" 1.

Petitioner testified that A&B Staffing, Respondent, was her employer in April of 2022. T. 8. Petitioner testified that she worked at a facility that dealt with plastics for Respondent. Id. Petitioner was hired for this position in February and began working on March 6, 2022. Id. Petitioner testified that she worked as a packer, where she would work with different sized plastic or aluminum containers. Id. at 9. Petitioner testified that she worked multiple jobs for Respondent as employees changed lanes every four hours. Id. 10. Petitioner testified that on April 21, 2022, she was packing large containers with aluminum handles as they were coming down a conveyor belt, and this was her first time doing this so someone was standing with her while she gained experience. Id. at 11-12. Petitioner testified that she had to place handles on plastic containers while standing at the conveyor belt and then stack the plastic containers on the floor, with approximately eight to ten plastic containers in each stack. Id. at 12-14. Petitioner testified that the handles were on the top part of the containers near the opening. Id. at 14. Petitioner testified that on April 21, 2022, she was stacking the containers incorrectly, with the opening facing upwards. Id. at 14-15. Petitioner testified that she then started to correct the stacks by flipping the containers to face downwards with the handles also on the bottom. Id. at 15. Petitioner testified that as she was flipping the

containers to face downwards, the thumb of her right hand got caught in the handles of the containers. Id. at 16.

Petitioner testified that she felt immediate pain in her right thumb and the fingernail on the right thumb became detached. Id. at 17. Petitioner testified that she notified her supervisor and was transferred to another line to continue working on the accident date. Id. at 18. Petitioner was transferred to a job which included cleaning buckets with an alcoholic cleaning solution. Id. at 19. Petitioner testified that as she was cleaning the buckets with an alcoholic cleaning solution, her right thumb started to burn, and the pain went up into her right arm. Id. Petitioner testified that she was wearing sewn gloves with holes that were made to protect against heat. Id. at 22. Petitioner testified that as she was cleaning the buckets for three hours, her gloves became soaked, and she started feeling the pain in her right thumb and right arm. Id. at 23-24.

Petitioner testified that she returned home on the date of the accident with significant pain. Id. at 24. Petitioner testified that she notified her supervisor the following day but was not immediately sent for medical treatment. Id. at 24-25. Petitioner testified that she continued working for Respondent for a week following the work accident. Id. at 25. Petitioner testified that her supervisor placed her in a position for a week after the accident where she only had to remove "hot caps." Id. at 25-26. Petitioner testified that she mostly used her left hand to remove the caps and that she was taking antibiotics for her right hand so that it would not get infected. Id. at 26.

Petitioner first sought medical treatment on May 4, 2022 with Dr. Wiesman at Illinois Orthopedic Network, at the referral of her Attorney, with right thumb pain, pain radiating up her right arm, and a cut in the mid distal aspect of the right thumb nail. Px1, at 4-5. Petitioner gave a history consistent with the testimony at trial, but reported that the bin fell on her thumb. Id. On physical examination of the right upper extremity, Dr. Wiesman noted no nail plate over the right thumb, a cut over the distal aspect of the nail bed on the right thumb, ecchymosis on the right thumb, and tenderness at the phalanx and IPJ. Id. Dr. Wiesman recommended Petitioner avoid submerging her right thumb in water, use a finger splint, start physical therapy, and placed Petitioner on work restrictions of no use of the right upper extremity. Id. Throughout Petitioner's treatment with Dr. Wiesman, he placed Petitioner on these light duty restrictions. Id.

Petitioner followed up with Dr. Wiesman on May 20, 2022 with increased pain with movements that radiate up to the right elbow, numbness and tingling on the palmar aspect of the right thumb, and 7/10 pain. Id. at 10-11. On physical examination of the right hand, Dr. Wiesman noted limited range of motion at the DIP joint, tenderness along the distal phalanx of the thumb and distal aspect of the nail, and

decreased sensation along the volar aspect of the right thumb compared to contralateral side. Id. Dr. Wiesman continued his recommendation of physical therapy. Id. Petitioner completed physical therapy at Athletico from May 24, 2022 through August 12, 2022. Px3.

Petitioner presented to Dr. Wiesman on June 17, 2022 and July 15, 2022 with improvement in pain from physical therapy, but still having pain to the radial side of the wrist and hand as well as to the distal phalanx, pain radiating up the forearm, weakness with gripping and grasping, and pain making a full fist. Px1, at 16-18, 23-24. Dr. Wiesman noted similar physical examination findings on June 17, 2022. Id. On August 15, 2022, Petitioner followed up with Dr. Wiesman with persistent right hand and wrist pain, numbness over the dorsoradial side of the hand as well as her fingertip. Id. at 35-36. On physical examination of the right hand/wrist, Dr. Wiesman noted atrophy over the first interweb space and tenderness over the carpal tunnel. Id. Dr. Wiesman diagnosed Petitioner with right de Quervain's tenosynovitis, right hand paresthesias, and recommended an EMG of bilateral upper extremities to evaluate for any right peripheral neuropathy given continued significant weakness, muscular atrophy as well as associated right hand paresthesias. Id.

On July 28, 2022, Petitioner presented for an independent medical examination with Dr. Papierski at the request of Respondent. Rx1. At this visit, Petitioner gave a history consistent with her testimony at trial and complained of right thumb pain, numbness, and pain radiating into the index finger and up the volar forearm. Id. On physical examination, Dr. Papierski noted tenderness at the thumb A1 pulley, index metacarpal, and decreased sensation and range of motion of the right thumb. Id. Dr. Papierski diagnosed Petitioner with a laceration of the right thumb involving the nail bed, and numbness with diminished touch to the tip of the right thumb. Id. Dr. Papierski opined that isopropyl alcohol could cause numbness and affect nerves if it is absorbed through the skin, especially an open wound. Id. Dr. Papierski opined that Petitioner's numbness and pain in the right thumb was related to the work accident but found de Quervain's Syndrome unrelated. Id. Dr. Papierski indicated that there was nothing to prevent Petitioner from attempting to return to normal work, but that she might have discomfort and weakness. He also noted that Petitioner had pain along the tendons of her thumb, but that her condition should improve with time. Id. Petitioner testified that she spent about five minutes in the examination room with Dr. Papierski. T. 35.

On August 27, 2022, Petitioner underwent an EMG of her bilateral upper extremities, which showed findings consistent with a mild right medial and ulnar sensory neuropathy. Px2.

On September 19, 2022, Petitioner followed up with Dr. Wiesman with continued tenderness over the right carpal tunnel and paresthesias of the right wrist and thumb. Px1, at 42-43. On physical examination of the right hand, Dr. Wiesman noted tenderness over the first extensor department, pain with Tinel's over the carpal tunnel and pain with Phalen's, positive Finkelstein, and reduced right grip strength. Id. Dr. Wiesman reviewed Dr. Papierski's IME report, indicated that Petitioner had failed conservative treatment, including medications, therapy, and steroid injections, and recommended a first extensor compartment release and a right carpal tunnel release. Id. Petitioner followed up for her last visit with Dr. Wiesman on October 31, 2022 with similar complaints and was awaiting the recommended surgery. Id.

At trial, Petitioner testified that Respondent offered her a position within her restrictions after her first medical visit on May 4, 2022. Tx28. Petitioner testified that the job offered by Respondent was thirty miles away and was for only four hours of work per day. Id. Petitioner testified that the job was too far, and gas was too expensive at the time, and that she leased a car. Id. Petitioner testified that if she was offered a position with Respondent at the same facility she worked at previously, she would have accepted. Id. Petitioner testified that since the initial light duty offer, the employer has not reached out to her. Id. at 28. Petitioner testified that she wishes to proceed with the surgery recommended by Dr. Wiesman. Id. at 31. Petitioner testified that she is taking medications daily such as Meloxicam for her condition but has side effects such as stomach pain and she cannot sleep well. Id. at 32.

Petitioner testified that she worked for another company, Focal Point, from June 16, 2022 through August 4, 2022. Id. at 33. Petitioner testified that she packed cables at Focal Point and Focal Point accommodated her restrictions. Id. at 32-33. Petitioner testified that she continues to feel pain in her right hand, has difficulty with gripping, and uses her left hand to perform activities. Id. at 34. Petitioner testified that she had no issues with her right thumb, right hand, or right arm prior to the work accident. Id. at 35. Petitioner testified that she is right-hand dominant. Id.

On cross examination, Petitioner testified that the light duty offer she was given was not in Chicago. Id. at 37. Petitioner testified that she put the address of the light duty employment into her GPS and told the agency it was too far. Id. Petitioner testified that she could not recall the exact address. Id. Petitioner testified that she was not terminated by Respondent but was told not to return. Id. at 38. Petitioner testified that she spoke with Elsa Maldonado on May 4, 2022 from Respondent regarding the light duty offer, but never received a letter regarding the job offer. Id. at 41. Petitioner testified that she told Ms. Maldonado the job was too far, and Ms. Maldonado was going to call back if they found another position. Id. at 41.

Petitioner testified that she would switch lanes at Respondent every four hours during her shift. Id. at 44. Petitioner testified that each lane varied in job duties from assembling/packing, cleaning containers, applying stickers to the containers, and placing lids on the containers. Id. at 47. Petitioner testified that the containers she was working with when she was injured were large white painter buckets. Id. at 47. Petitioner testified that she had to stack and wrap these buckets. Id. at 48. Petitioner testified that she was wearing acrylic nails at the time of the accident, but that they were not long or short. Id. at 49. Petitioner testified that she reported the injury to the person in charge of her lane at Respondent when the accident occurred. Id. at 51. Petitioner testified that she did not reach out to Respondent for job placement following the work accident. Id. at 53-54.

On redirect examination, Petitioner testified that she met with Elsa Maldonado after she received her initial work restrictions on May 4, 2022. Id. at 54. Petitioner testified that Ms. Maldonado sent her home and then called Petitioner around a week or two after May 4, 2022. Id. at 54. Petitioner testified that she discussed a light duty offer with Ms. Maldonado and that she input the address of the light duty employment in her GPS, and it was over thirty miles away. Id. at 55. Petitioner testified that she has not corresponded with Respondent since that conversation with Ms. Maldonado. Id. at 56. Petitioner testified that Ms. Maldonado checks the employee's fingernails before every shift as they come into the factory. Id. at 58.

Respondent presented a Supervisor Report authored by Elsa Maldonado, the A&B Onsite Staffing Manager. RX 2. This report was created on May 4, 2022. Id. In this report, Ms. Maldonado indicates that on the day Petitioner applied for the job she was provided Personal Protective Equipment (PPE) information and informed that employees were not allowed to wear acrylic and/or long fingernails. Id.

Ms. Maldonado indicates that Petitioner reported the injury the next day to a supervisor at the "client's," but did not report the incident to her until May 2, 2022. Id. Petitioner had a day off on May 2, 2022, but was asked to come into the office to fill out an incident report and the company would send to her a clinic if needed, but by the time she came in on May 4, 2022, she had already seen her own physician. Id.

The Report further indicates that Petitioner's acrylic nails were too long and when she lifted one of the buckets she was assembling and packing, her nail bent and broke and she injured her thumb. Id. This report is not signed by Petitioner, and it is unclear where Ms. Maldonado obtained a history of the accident from.

CONCLUSIONS OF LAW

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

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

It is the function of the Commission to judge the credibility of the witnesses and to resolve conflicts in the medical evidence and assign weight to witness testimony. O'Dette v. Industrial Commission, 79 Ill.2d 249, 253, 403 N.E.2d 221, 223 (1980); Hosteny v. Workers' Compensation Commission, 397 Ill. App. 3d 665, 674 (2009). Internal inconsistencies in a claimant's testimony, as well as conflicts between the claimant's testimony and medical records, may be taken to indicate unreliability. Gilbert v. Martin & Bayley/Hucks, 08 ILWC 004187 (2010).

In the case at hand, the Arbitrator observed Petitioner during the hearing and finds 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. While Petitioner showed difficulty answering the questions that were actually asked, the Arbitrator was not presented with any evidence indicating a willingness to lie or deceive on the Petitioner's part.

(F) IS PETITIONER'S PRESENT CONDITION OF ILL-BEING CAUSALLY RELATED TO THE INJURY?

The Arbitrator finds the Petitioner truthful in her assertion that her right thumb, hand, and wrist symptoms began as a result of the work accident in a manner consistent with her testimony at trial. The Arbitrator finds Dr. Wiesman to be credible in his opinions in the medical records regarding the nature of her injuries and their causal relationship to the work injury. The Arbitrator does not find the opinions of Dr. Papierski as credible or persuasive on this issue.

Petitioner credibly testified that on April 21, 2022, she was turning over containers with handles when her right thumb got caught by one of the handles. This caused her right thumb fingernail to be lifted

off and crack the distal part of the nailbed. After notifying her lane supervisor, Petitioner was placed at a lane where she had to clean buckets for three hours using an alcoholic solution. Petitioner was wearing sewn gloves which became soaked with an alcoholic solution and her right hand/thumb was directly exposed to the solution. Petitioner testified that she felt a burning sensation in her right thumb and pain radiating up her right arm. The Arbitrator notes that accident and notice were stipulated to, and Petitioner's testimony is consistent with the medical records.

Petitioner then started treating with Dr. Wiesman from May 4, 2022 through October 31, 2022 with consistent complaints of right thumb pain, numbness, and tingling, and pain radiating up her forearm/wrist. Throughout Dr. Wiesman's treatment of Petitioner, he noted positive physical examination findings such as tenderness over the first extensor compartment and over the carpal tunnel, reduced range of motion of the right thumb, decreased sensation along the volar aspect of the right thumb, and difficulty with gripping and grasping of the right hand. Dr. Wiesman recommended an EMG, which was completed on August 27, 2022, and showed a mild right medial and ulnar sensory neuropathy. Dr. Wiesman diagnosed Petitioner with right de Quervain's tenosynovitis and right carpal tunnel syndrome. As Petitioner's symptoms continued to persist despite the several months of physical therapy, medications, and splinting, Dr. Wiesman recommended a first extensor compartment release and right carpal tunnel release. Dr. Wiesman opined that Petitioner's work accident caused her current condition.

Respondent relies on Dr. Papierski's opinions contained in his IME report. Both Dr. Wiesman and Dr. Papierski agree that Petitioner's laceration and nail bed injury on her right thumb have healed and were causally related to the work accident. However, Dr. Papierski opined that Petitioner's right thumb tenosynovitis was unrelated to the work accident because it "came up later" and "there was no injury nor chemical applied to this area." Rx1. However, as Dr. Wiesman opined in response to Dr. Papierski's IME report:

> I disagree that the paresthesias, as well as de Quervain's, are unrelated to the incident. These certainly can be caused from trauma. The patient has been complaining of radial sided pain, specifically thumb pain since the initial accident. At the time, the area of the laceration was more severe than the pain over the dorsum of the thumb, as well as the numbness and tingling, however, since the laceration has healed, these symptoms are her biggest concern. She had no prior issues with this hand or thumb prior to incident date on 04/21/2022.

Px1, at 43.

As Dr. Wiesman opined, Petitioner consistently complained of radial sided pain along her right thumb up her forearm from the beginning of her treatment. On May 4, 2022, Petitioner's first medical visit, Petitioner complained of "right thumb pain that she rates as an 8/10. She reports difficulty with range of motion of the IP joint. She is concerned about the cut that is in the mid distal aspect of the nail as well as the pain throughout the thumb that radiates up her arm." Px1, at 4. Thus, the medical records clearly indicate Petitioner had complained of symptoms consistent with right de Quervain's tenosynovitis at the onset of her treatment. As Dr. Wiesman points out, Petitioner's laceration and numbness in the dorsum of the thumb was her primary complaint initially, but once that resolved, Petitioner's de Quervain's and wrist symptoms became her biggest concern. Dr. Papierski's opinions that this condition "came up later" is contrary to Petitioner's testimony and medical records.

Additionally, Petitioner's testimony is consistent with the medical records after she cleaned containers for three hours with alcoholic solution, she felt a burning sensation that started from her right thumb and radiated up her right arm. Dr. Papierski opined that no chemical was applied to the area for de Quervain's tenosynovitis. However, as Petitioner testified to, her whole right hand was exposed as the sewn gloves she was wearing became soaked with the alcoholic solution. Dr. Papierski opined that:

> …rubbing alcohol is isopropyl alcohol, and can be absorbed through the skin. If used more intensively can result in tissue damage, skin cracking, redness, dermatitis, pain, and numbness especially to fingertips, which is where the nerve endings for sensation exist.

Rx1.

Thus, by Dr. Papierski's own admission, if Petitioner had exposure to the alcohol, which the medical records and testimony indicate, then Petitioner's numbness and nerve issues were directly related to the work accident. Further, as Dr. Wiesman indicated and Petitioner testified to, Petitioner had no issues with her right thumb, hand, or wrist prior to the work accident. Following the work accident, Petitioner had consistent complaints of right thumb and wrist pain, numbness, and tingling. Thus, Dr. Weisman's opinions that Petitioner's right de Quervain's tenosynovitis and right carpal tunnel syndrome began with the accident is consistent with the medical records and testimony.

Finally, Dr. Papierski never reviewed the EMG nor opined as to Petitioner's right carpal tunnel syndrome and its relation to the work accident. Respondent offered no second IME report or addendum report in which Dr. Papierski reviewed any medical records or made any opinions beyond his July 28, 2022 report. Dr. Wiesman reviewed the EMG, which confirmed right carpal

tunnel syndrome, and opined Petitioner's right carpal tunnel syndrome was related to the work accident. Thus, the Arbitrator notes that Respondent offered no evidence to refute or dispute Dr. Wiesman's opinions on that issue.

The Arbitrator finds Dr. Wiesman credible and persuasive on the issues of causation regarding Petitioner's right thumb, hand, and wrist and does not find Dr. Papierski as credible and persuasive on these issues. Therefore, the Arbitrator finds that Petitioner's right thumb, hand, and wrist conditions are causally related to her April 21, 2022 work accident. This is supported by Petitioner's testimony and the medical records.

(J) WERE THE MEDICAL SERVICES THAT WERE PROVIDED TO PETITIONER REASONABLE AND NECESSARY?

The Arbitrator finds that the medical services provided to Petitioner were reasonable and necessary. This is supported by Petitioner's medical records from Dr. Wiesman.

The Arbitrator finds that the medical opinions and treatment plans set forth in the medical records from Petitioner's treating physician are both credible and appropriate for her work-related injuries. As Petitioner's treating physician, Dr. Wiesman was the most equipped physician to diagnose Petitioner and recommend treatment based on Petitioner's subjective complaints and his own objective findings.

Dr. Papierski found Petitioner's medical treatment related to her right thumb condition to be reasonable and necessary. However, Dr. Papierski opined that Petitioner's conditions should improve with time and the de Quervain's tenosynovitis was unrelated. However, Petitioner continued to have subjective complaints months after the IME in July of 2022, and Petitioner's condition did not appear to improve. As such, the Arbitrator finds Dr. Wiesman's treatment plan and opinions regarding Petitioner's medical treatment more persuasive than Dr. Papierski's opinions.

Thus, having found Dr. Wiesman's opinions more credible than Dr. Papierski related to Petitioner's right thumb, de Quervain's tenosynovitis, and right carpal tunnel conditions, the Arbitrator finds that the medical services provided to Petitioner throughout the course of her treatment were both reasonable and necessary. The Arbitrator orders the Respondent to pay the medical bills listed under #7 on the Request for Hearing Form (Arb. Ex. 1) and included in Petitioner's Exhibits, pursuant to the Fee Schedule.

(K) IS PETITIONER ENTITLED TO PROSPECTIVE MEDICAL CARE?

The Arbitrator orders Respondent to authorize treatment in the form of right first extensor compartment release and right carpal tunnel release as recommended by Dr. Wiesman. Petitioner has exhausted all conservative treatment including medications, therapy, and bracing. As Petitioner's symptoms continued to persist despite conservative treatment, Dr. Wiesman recommended surgery.

Therefore, having already found for Petitioner on the issue of causation, the Arbitrator finds Petitioner is entitled to the right first extensor compartment release and right carpal tunnel release as recommended by Dr. Wiesman. The Arbitrator does not find the opinions of Dr. Papierski as credible on this issue as he only evaluated her one time and did not review the EMG confirming the carpal tunnel syndrome diagnosis. Thus, the Arbitrator orders the Respondent to authorize and pay for the recommended surgery and associated care.

(L) IS PETITIONER ENTITLED TO TEMPORARY TOTAL DISABILITY BENEFITS?

Arbitrator finds that Petitioner is entitled to TTD benefits from May 4, 2022 through June 15, 2022 and from August 5, 2022 through December 19, 2022. Petitioner was initially placed on work restrictions of no use of the right upper extremity on May 4, 2022. Petitioner testified that she spoke with Elsa Maldonado regarding a light duty offer a week or two after May 4, 2022, and that the employment offered was over thirty miles away from Petitioner's residence. Additionally, Petitioner testified that this light duty offer was only for four hours of work per day. As such, the Arbitrator deems this "light duty offer" to be unreasonable. Further, Petitioner testified that if she was offered a light duty position at the facility in which she was originally hired for by Respondent, she would have accepted the position.

Respondent offered into evidence a letter addressed to Petitioner regarding a light duty job offer in Chicago dated May 19, 2022. (RX 4) There was no certification included showing that the letter was mailed or delivered to Petitioner. Respondent did not present any witnesses which confirmed a discussion with Petitioner regarding this job offer. Therefore, the Arbitrator affords it little weight and finds the Petitioner's testimony to be unrebutted on the issue of how far away the location of the light duty job offer was. Thus, the Arbitrator finds that Respondent's light duty offer was unreasonable and outside the scope of accommodating Petitioner. Petitioner then started employment within her restrictions at Focal Point, where she worked with packing cables. Petitioner worked for Focal Point from June 16, 2022 through August 4, 2022.

Thus, having previously found that Petitioner's current condition of ill-being was causally related to her work injury and adopting her treating doctor's opinions regarding course and care of treatment, Petitioner is entitled to TTD benefits from May 4, 2022 through June 15, 2022 and from August 5, 2022 through December 19, 2022, for a total of 25 and 3/7 weeks.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC010026
Case Name	Mark Mitchell v. Darling International Inc
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b) Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	23IWCC0414
Number of Pages of Decision	21
Decision Issued By	Deborah Simpson, Commissioner

Petitioner Attorney	Giambattista Patti
Respondent Attorney	Christopher Crawford

DATE FILED: 9/20/2023

/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

MARK MITCHELL,

Petitioner,

vs. NO: 21 WC 10026

DARLING INTERNATIONAL,

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 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).

The Commission notes a clerical error in the Decision of the Arbitrator. The caption of the Decision of the Arbitrator names Respondent as Darling Ingredients. However, Respondent's name is actually Darling International. Accordingly, the Commission changes the Respondent's name on the caption from "Darling Ingredients" to "Darling International." Otherwise, the Commission affirm and adopts the Decision of the Arbitrator, which is which is attached hereto and made a part hereof.

IT IS THEREFORE ORDERED BY THE COMMISSION that the caption of the Decision of the Arbitrator filed June 22, 2022, is hereby changed as specified above and otherwise is affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner total disability benefits of $884.64 per week for 44 weeks, from April 24, 2021 through February 25, 2022, as provided by §8(b) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay the necessary and reasonable services outlined in Petitioner's exhibit 11, except for the MR spectroscopy performed by Dr. Gornet, 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 authorize prospective surgery recommended by Dr. Gornet, as well as reasonable and necessary associated post-surgical care.

IT ISFURTHER ORDERED BY THE COMMISSION, that in no instance shall this award be a bar to subsequent hearing and determination of any additional amount of medical benefits or compensation for a temporary or permanent disability, if any.

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 $70,000.00. 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.

September 20, 2023

O-9/6/23
DLS/dw
046

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

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

/s/*Marc Parker*
Marc Parker

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC010026
Case Name	MITCHELL, MARK v. DARLING INTERNATIONAL INC
Consolidated Cases	
Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	18
Decision Issued By	Jeanne AuBuchon, Arbitrator

Petitioner Attorney	Giambattista Patti
Respondent Attorney	Christopher Crawford

DATE FILED: 6/22/2022

/s/ Jeanne AuBuchon, Arbitrator

Signature

INTEREST RATE WEEK OF JUNE 22, 2022 2.39%

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

Mark Mitchell
Employee/Petitioner

v.

Darling Ingredients
Employer/Respondent

Case # **21** WC **010026**

Consolidated cases: **N/A**

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

DISPUTED ISSUES

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

FINDINGS

On the date of accident, **7/21/20**, 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 $**69,001.92**; the average weekly wage was $**1,326.96.**

On the date of accident, Petitioner was **56** 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 $**any paid** for TTD, $**N/A** for TPD, $**N/A** for maintenance, and $**N/A** for other benefits, for a total credit of $**any paid**.

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

ORDER

Respondent shall pay the reasonable and necessary medical services outlined in Petitioner's Exhibit 11, as provided in § 8(a) and § 8.2 of the Act, with the exception of the MR spectroscopy performed by Dr. Gornet. Respondent shall have credit for any amounts previously paid and shall indemnify and hold Petitioner harmless from claims made by any health providers arising from the expenses for which it claims credit.

Respondent shall authorize and pay for treatment recommended by Dr. Gornet, including surgical intervention.

Respondent shall pay Petitioner temporary total disability benefits of $**884.64**/week for **44** weeks, representing April 24, 2021, through February 25, 2022, as provided in Section 8(b) of the Act.

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

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

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

Jeanne L. PuBuchon

Signature of Arbitrator **June 22, 2022**

PROCEDURAL HISTORY

This matter proceeded to trial on February 25, 2022, pursuant to Sections 19(b) and 8(a) if the Illinois Workers' Compensation Act (hereinafter "the Act"). The issues in dispute are: 1) the causal connection between the accident and the Petitioner's low back condition; 2) payment of medical bills incurred; 3) entitlement to TTD benefits from April 24, 2021, through February 25, 2022; and 4) entitlement to prospective medical care to the Petitioner's low back.

FINDINGS OF FACT

At the time of the accident, the Petitioner was 56 years old, employed with Respondent as a plant manager and had worked for the Respondent for 27 years. (AX1, T. 12) On July 21, 2020, the Petitioner was helping put together a big grinder, known as a pre-hogger, and while he was holding a bearing housing weighing 75-85 pounds, the drain upon which he was standing fell in. (T. 13, 16) He said he felt immediate pain in his feet, lower back and legs. (T. 24) Rich Dunnevant, a maintenance mechanic who was working with the Petitioner that day, testified that after the Petitioner fell through the drain grate, the housing was on a shaft on the pre-hogger that supported the weight of the housing and had not been dislodged. (T. 123)

The Petitioner reported the accident that day to the compliance supervisor, Roy Wayne Howard, who filled out an investigation report. (T. 24-25) The report stated that the Petitioner was standing on the floor grate, and it gave way, causing his back and foot to hurt. (PX9) Ten days after the accident, the Petitioner completed an accident report that listed injuries to his ankles, feet and legs. (T. 27-28) Mr. Howard testified that he did not have the Petitioner fill out a report at the time the accident occurred. (T. 91)

On July 31, 2020, the Petitioner received treatment from Dr. James Belcher at Concentra, to whom the Petitioner complained of midline lower back pain, stiffness and decreased range of

motion, as well as ankle pain. (PX1) Dr. Belcher ordered lumbar, foot and ankle X-rays that showed no significant radiological findings. (Id.) He diagnosed contusions of the Petitioner's feet and ankles and a lumbosacral strain. (Id.) He gave the Petitioner a hot/cold pack and a walker boot, referred the Petitioner for physical therapy and gave work restrictions. (Id.) The Petitioner returned to Concentra and saw Dr. Anjum Razzaque on August 4, 2020, reporting that his lower back was feeling better with deceased pain and range of motion almost back to baseline with no radiation of pain into his posterior thighs but continued pain in both ankles and feet with intermittent numbness in the feet. (Id.) Dr. Razzaque gave the Petitioner pain-relieving gel and continued work restrictions. (Id.)

On August 11, 2020, the Petitioner saw Dr. Jessica Cox at Concentra who reported that the Petitioner cited that his back pain had "now resolved at this time." The Petitioner denied saying that his back pain had resolved, and said it never went back to normal. (T. 58, 32) He said he was probably having a good day when he was asked. (T. 32) Dr. Cox diagnosed only foot and ankle contusions, prescribed Voltaren gel, instructed the Petitioner to continue physical therapy for his feet and continued work restrictions. (PX1) On August 19, 2020, Dr. Cox prescribed oral steroids and continued work restrictions. (Id.)

The Petitioner underwent physical therapy at Concentra from August 4, 2020, through August 20, 2020, for a total of six visits. (Id.) After the initial session, the therapy focused on the Petitioner's feet and ankles. (Id.) The Petitioner continued treating for foot complaints by Dr. Cox, who referred him to an orthopedic specialist on September 15, 2020. (Id.) He saw Dr. Mahesh Bagwe, an orthopedic surgeon specializing in knees, feet and ankles, on September 23, 2020. (Id.) Dr. Bagwe recommended wearing a boot on his right foot and elevating and icing his feet. (Id.) He gave work restrictions of no climbing, no lifting more than 20 pounds and being

allowed to sit up to 50 percent of the time. (Id.) The Petitioner underwent another round of physical therapy for his feet from October 14, 2020, through November 20, 2020, for a total of six visits. (Id.)

Due to numbness in his feet, the Petitioner had an EMG and nerve conduction studies on October 23, 2020, by physiatrist Dr. Boris Khariton that showed electrodiagnostic evidence of neuropathic changes in all tested nerves of the bilateral lower extremities that could represent a sensory-motor peripheral neuropathy or polyneuropathy. (Id.) The Petitioner noted no significant low back pain at that time. (Id.)

On November 4, 2020, the Petitioner returned to Dr. Bagwe, who recommended that he see his primary care doctor for evaluation of peripheral neuropathy, adding that this was not a work-related injury. (Id.) Dr. Bagwe gave work restrictions of avoiding steps and climbing. (Id.) Dr. Bagwe ordered MRIs of the Petitioner's feet and ankles that he said on January 13, 2021, showed marrow edema (bone bruise), tibial tendon inflammation and flat feet. (Id.) Dr. Bagwe believed the bone bruising was likely from the Petitioner's flat foot deformity and the amount of walking and standing the Petitioner did during the day because any edema from the accident would have resolved by then. (Id.) He said the aching and throbbing in the Petitioner's feet was more consistent with peripheral neuropathy and recommended evaluation by neurology. (Id.) He also recommended the Petitioner see his primary care physician about possible poor bone density. (Id.) At his last visit to Dr. Bagwe on March 3, 2021, the Petitioner had been scheduled for a neurology evaluation, and Dr. Bagwe recommended an evaluation by physiatry. (Id.) Dr. Bagwe said there were no specific fractures or tendon tears that he could address. (Id.) He gave continued work restrictions of being allowed to sit for 15 minutes every hour and no climbing. (Id.)

The Petitioner said he told Dr. Bagwe that he was having back pain after August 11, 2020, but Dr. Bagwe only treated his feet. (T. 33-34) He said that during Dr. Bagwe's treatment, he was working under light duty restrictions and still had foot and back pain when he was released by Dr. Bagwe. (T. 35-36)

The Petitioner next sought treatment on April 20, 2021, for low back and bilateral ankle pain from chiropractor Ashley Eavenson and physical therapist Corey Voss at Multicare Specialists. (PX2) The Petitioner reported that he had mentioned his lower back pain in the past but had not been fully evaluated. (Id.) An examination revealed multiple areas of tenderness on the ankles and decreased mobility; sensory loss in the left anterolateral thigh; positive straight leg raise bilaterally; positive slump on the right and negative on the left; tenderness across the right lumbar spine and SI joint; and pain with active lumbar flexion extension and right lateral flexion. (Id.) Dr. Evanson diagnosed a lumbar disc protrusion with bilateral lower extremity radiculitis and ankle pain. (Id.) She recommended an MRI of the lumbar spine and continued restrictions. (Id.) PT Voss performed electrical stimulation and moist heat to the Petitioner's low back and bilateral ankles and ultrasound to the low back. (Id.) Later physical therapy sessions added manual stretching and exercises. (Id.)

On May 4, 2021, the Petitioner underwent a CT scan of the lumbar spine that Dr. Eavenson said revealed circumferential disc bulges with posterior element hypertrophy at the L2-3, L3-4 and L4-5 levels with minimal grade 1 anterolisthesis at L4-5 and associated facet and ligamentum flavum hypertrophy at all three levels. (Id.) She noted mild central canal stenosis at L4-5, bilateral foraminal stenosis at all three levels and a small central broad-based protrusion at L5-S1 with facet arthropathy resulting enteral displacement but no central canal or foraminal stenosis. (Id.) Dr. Eavenson referred the Petitioner to Dr. Matthew Gornet, an orthopedic surgeon at The Orthopedic

Center of St. Louis. (Id.) The Petitioner had 14 physical therapy sessions with PT Voss from April 20, 2021, through May 25, 2021. (Id.) He testified that physical therapy did not help. (T. 39)

On May 21, 2021, the Petitioner saw Dr. Gornet and complained of low back pain to both sides and in his right buttock, skipping with pain and tingling in both feet. (PX3) He reported no previous problems of significance with his back. (Id.) An examination revealed decreased extensor hallucis longus function bilaterally and a subtle decrease in ankle dorsiflexion bilaterally, with the right side more affected than the left. (Id.) There was decreased sensation in the S1 distribution bilaterally. (Id.) An MRI showed a large annular tear at L4-5 with mild facet changes and a smaller disc herniation laterally right at L3-4. (Id.) Dr. Gornet prescribed medication, recommended steroid injections at L3-4 and L4-5 right and took the Petitioner off work until August 2, 2021. (Id.)

Dr. Helen Blake, a pain management specialist at Pain & Rehabilitation Specialists, performed transforaminal lumbar epidural steroid injections at the right L3-4 on June 1, 2021, and at the right L4-5 on June 15, 2021. (PX6) She gave an interlaminar epidural steroid injection at the right L4-5 on June 29, 2021. (Id.) The Petitioner testified that the injections did not help. (T. 40)

On August 2, 2021, Dr. Gornet recommended medial branch blocks and facet rhizotomies at L3-4 and L4-5 bilaterally. (PX3) He prescribed medication and continued off-work orders until October 28, 2021. (Id.) On August 10, 2021, Dr. Blake performed right L3-4 and L4-5 facet medial branch blocks and on the left on August 24, 2021. (PX6) On September 7, 2021, she performed radiofrequency ablation of the right L3-4 and L4-5 facet nerves and on the left on October 26, 2021. (Id.)

The Petitioner underwent a Section 12 evaluation on October 4, 2021, by Dr. Daniel Kitchens, a neurosurgeon at Cardinal Neurosurgery & Spine. (RX1, Deposition Exhibit 2) Dr. Kitchens took a history and reviewed the MRI, CT scan and medical records from Concentra, Multicare Specialists, Dr. Gornet and Dr. Blake. (Id.) On the MRI, he found: multiple-level lumbar degenerative disc disease; degenerative disc bulging and modic endplate changes at L2-3, L3-4 and L4-5; an annular tear at L4-5; facet hypertrophy and increased T2 signal within the facet joints at L3-4 and L4-5; and no evidence of disc herniation or nerve root impingement. (Id.) On the CT scan, he found: multiple level degenerative changes; anterior spurring at L3-4 and L4-5; bilateral facet hypertrophy at L3-4 and L4-5; and no evidence of fracture or subluxation. (Id.) A pain diagram had markings of stabbing pain and numbness in the Petitioner's lower back, numbness in his lower legs and feet and stabbing pain in his feet. (Id.)

Dr. Kitchens diagnosed the Petitioner with lumbar degenerative disc disease and opined that the work incident was not a causative factor in that diagnosis. (Id.) He said the chronic changes revealed on the MRI and CT scans take decades to develop and the findings such as anterior spurring, degenerative facet disease, annular tear and degenerative disc bulging are well-known consequences of the aging process of the lower lumbar spine. (Id.) He said he did not find evidence of an acute injury, such as a disc herniation, instability or fracture. (Id.) He said the Petitioner did not require additional treatment as it related to the work incident, and the Petitioner could return to work without restrictions. (Id.)

The Petitioner returned to Dr. Gornet on October 28, 2021, who recommended a CT discogram at L4-5 and L5-S1 and MR spectroscopy from L3 to S1, prescribed medication and continued off-work orders until January 31, 2022. (Id.) He reported that his tentative thinking

was disc replacement surgery at L3-4 and L4-5, and his working diagnosis was disc injury at those levels and aggravation of pre-existing moderate facet changes at L4-5 and moderate stenosis. (Id.)

Dr. Gornet testified consistently with his records at a deposition on November 1, 2021. (PX4) He said the results of his examination of the Petitioner were consistent with nerve irritation, which caused him to order further imaging. (Id.) Regarding his use of MR spectroscopy for the Petitioner, Dr. Gornet explained that the test evaluates objective chemicals that cause back pain in the disc and gives information that other scans cannot, helping better plan how to treat. (Id.)

He stated that the mechanism of the Petitioner's injury – a sudden fall for which he was unprepared – easily could cause a disc injury in the face of his pre-existing disc degeneration due to the mechanical load. (Id.) He said any event that exceeds what the disc can handle can cause a disc injury. (Id.) He stated that although a lot of disc injuries "calm down," the Petitioner's did not and had progressed and became worse. (Id.) He said his causation opinion was based on the Petitioner's history, his own experience in treating similar patients and objective pathology as seen on the MRI. (Id.)

As to his surgical recommendation, Dr. Gornet testified that he would not expect the Petitioner to improve without surgery. (Id.) He predicted that the Petitioner would experience significantly disabling back pain and nerve irritation, which often leads to depression, narcotic dependence and poor function. (Id.) He believed the Petitioner's quality of life had been affected, and his only option was to undergo further treatment to cure and relieve the effects of his work-related injury. (Id.) Regarding the work restrictions he gave, Dr. Gornet said he did not feel the Petitioner was capable of gainful employment – even of a sedentary nature – because of the pathology present and the Petitioner's level of pain. (Id.)

In his commentary on Dr. Kitchens' evaluation, Dr. Gornet said Dr. Kitchens was "parsing words." (Id.) He disagreed with Dr. Kitchens that the Petitioner's torn disc was a degenerative change, explaining that a torn disc is related to mechanical stress on the disc. (Id.)

Dr. Kitchens testified consistently with his report at a deposition on December 8, 2021. (RX1) He said that in his examination showed no evidence of nerve injury or radiculopathy. (Id.) He said the findings on the MRI were consistent with a 57-year-old man of his height and weight and indicative of degenerative changes that occur over decades. (Id.) He stated that there does not have to be an acute event to make a degenerative condition in the low back to become symptomatic. (Id.) He said the numbness in the Petitioner's lower extremities were from peripheral neuropathy and not a sign of lumbar radiculopathy. (Id.) After reviewing updated notes from Dr. Gornet, Dr. Kitchens testified that neither MR spectroscopy nor surgery were indicated for the Petitioner because the Petitioner did not have signs or symptoms of lumbar spinal stenosis, nerve impingement or radiculopathy. (Id.)

On cross-examination, Dr. Kitchens said he had not performed any disc replacements since 2005. (Id.) When asked if a trauma or mechanical loading will cause a degenerative condition to become symptomatic, Dr. Kitchens said he was not so sure about causation, but it certainly may be correlated or may be coincidence or happenstance. (Id.) He said it was difficult to say that trauma or mechanical loading actually causes the symptoms from degenerative disc disease. (Id.) He agreed with the statement that in spite of the fact that the Petitioner's reported symptoms began after the work accident, because the MRI showed degeneration there was no causal relationship to the work accident. (Id.) He said he did not believe the Petitioner's symptoms were in any way caused or aggravated by the work accident. (Id.)

Dr. Kitchens also testified that he did not note any symptom magnification or fabrication by the Petitioner, leading to the conclusion that he had no reason to doubt the Petitioner's symptomatic presentation. (Id.) He acknowledged that it is not uncommon for symptoms to wax and wane. (Id.)

At a follow-up visit on January 21, 2022, Dr. Gornet reported that the CT discogram was negative at L5-S1 and was positive at L4-5 with 8/10 concordant pain with an obvious annular tear. (Id.) He said the MR spectroscopy revealed chemicals of 6.27 at L3-4, 9.97 at L4-5 and 7.04 at L5-S1. (Id.) He recommended disc replacements at L3-4 and L4-5 and continued off-work orders until May 9, 2022. (Id.) Dr. Gornet reviewed Dr. Kitchens' report and pointed out that Dr. Kitchens did not mention the disc pathology at L3-4 nor any significant facet arthritis. (Id.) He said he believed the anterior calcifications mentioned by Dr. Kitchens had no bearing on the case as the MRI scan indicated structural disc pathology that was acute in nature and included annular tears and central disc protrusions. (Id.) He stated that if Dr. Kitchens believed the anterior calcifications and disc degeneration were the cause of the Petitioner's current symptoms, he did not explain why these were not causing the Petitioner to be symptomatic before the accident. (Id.) Dr. Gornet stated that there was no facet arthritis nor severe disc degeneration. (Id.) He said all the findings supported a disc injury in the face of pre-existing degenerative changes. (Id.)

Mr. Howard testified that following the accident, he did not recall the Petitioner mentioning that he had back pain but had no reason to doubt that the Petitioner would have expressed that he was having ongoing back pain in the fall of 2020. (T. 84) He did recall the Petitioner complaining of foot pain constantly. (T. 86) He said he was aware that the Petitioner was under light duty restrictions until he was terminated, but the Petitioner did not follow those restrictions in that he was out in the plant eight hours a day, performing maintenance, working on machinery, walking

on the plant floors and climbing stairs and ladders. (T. 85-86, 92-95) He did not recall the Petitioner voicing complaints about climbing up machinery or down stairs. (T. 96) He acknowledged that the restrictions did not prohibit working out in the plant or performing maintenance. (T. 98-99) Another co-worker, overnight supervisor Adam Przybysz, testified that the Petitioner complained of back pain because of the accident and that he helped the Petitioner pick things up because the Petitioner was not able to. (T. 133-134)

The Petitioner testified that he was still in pain, that his symptoms waxed and waned and that his symptoms never returned to what they were before the accident. (T. 28, 41) He said his current symptoms were different in that on good days he can get out of his chair well and cut grass on a lawn mower but nothing else, like walking long distances. (T. 42) He said he wanted to have the surgery recommended by Dr. Gornet. (T. 45)

On cross-examination, the Petitioner acknowledged that he underwent two prior hip replacements but denied that he walked with a limp. (T. 45-46) Also prior to the accident, he had broken his toe, which he said did cause him to limp. (T. 46-47) He said he had knee surgery 35 or 37 years ago. (T. 47) Mr. Howard said the Petitioner limped after having hip surgery but did not know if he limped immediately before the work accident. (T. 87-88) Mr. Przysbysz said he did not see the Petitioner limp prior to the accident. (T. 136) The current plant manager, Evan Weibhuner-Birch, testified that the Petitioner always walked with a limp between 2012 and 2014 – not favoring either side, but all over. (T. 143) He said he had not seen the Petitioner since probably 2014. (T. 147) Regional vice president Phil Anderson said he visited the plant about every six to eight weeks, and the Petitioner tended to walk slowly and sometimes with a limp, but he could not recall when he saw the Petitioner limp. (T. 157-158) Mr. Anderson said that

following the accident, the Petitioner mentioned foot complaints, but not back complaints. (T. 160)

The Petitioner previously received treatment for left thigh pain after a lifting accident that occurred on August 8, 2016, and was referred to a physiatrist. (RX7) He settled a workers' compensation case for this injury for 5.5 percent loss of use of the left leg. (RX5) He again was treated for left thigh pain in 2017 and was referred to an orthopedic specialist. (RX6) Dr. Peter Anderson, an orthopedic surgeon at Illinois SW Orthopedics reported on May 4, 2017, that he did not see any problems with the Petitioner's hip but said his pain may be from his back. (RX4)

The Petitioner was fired from his job on April 23, 2021, and said that until then, he was able to work with his restrictions. (T. 49) There was testimony about the circumstances surrounding the Petitioner's firing.

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).

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

The Petitioner had degenerative disc disease that was asymptomatic prior to the work accident. He reported back pain to his supervisor on the day of the accident and to the medical providers at Concentra at his initial visits. The Arbitrator finds the Petitioner to be credible. He explained that the reason for reporting no back pain at a subsequent Concentra visit was that he was probably having a good day on that day. In addition, there was no evidence of an intervening incident. The Arbitrator finds the lack of back pain reports to not be significant, as Dr. Bagwe was treating the Petitioner's feet. The Arbitrator believes the Petitioner's statements that his back pain waxed and waned but continued throughout his treatment.

The gist of Dr. Gornet's testimony was that the Petitioner's degenerative disc condition weakened his lumbar discs and the mechanical load from the work accident caused the discs to be injured, making his previously asymptomatic condition symptomatic. Dr. Kitchens was careful to not say the accident caused or aggravated the Petitioner's degenerative disc disease to become symptomatic – using the terms correlated, coincidence and happenstance. He agreed with the statement that in spite of the Petitioner's reported symptoms beginning after the work accident, because the MRI showed degeneration there was no causal relationship to the work accident. This definition of causal relationship does not correlate with the law in the cases cited above. Therefore,

the Arbitrator gives little weight, if any, to Dr. Kitchens' opinions and more weight to Dr. Gornet's opinions. The Arbitrator also gives greater weight to Dr. Gornet's opinions because, as a treating physician, he has had more opportunities to be familiar with the Petitioner and his condition.

Therefore, the Arbitrator finds that the Petitioner has met his burden of proof establishing causal connection between the accident and the Petitioner's lumbar spine and foot 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 above findings regarding causation, the Arbitrator finds that the treatment rendered was reasonable and necessary. However, the Commission and Appellate Court of Illinois Fifth District have found the use of MR spectroscopy was not reasonable and necessary as a diagnostic tool for lower back pain. See *Lewis v. The Illinois Workers' Compensation Commission*, 2021 IL App (5th) 200302, *Cruse v. Choate Mental Health Center*, 19IWCC0419; *Streater v. Bi-State Development Agency*, 20IWCC0034; and *Burwell v. Walgreens*, 21IWCC0505.

Therefore the Arbitrator orders the Respondent to pay the medical expenses contained in Petitioner's Exhibit 11, with the exception of the MR spectroscopy performed by Dr. Gornet. 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 a neurosurgeon, Dr. Kitchens rightfully focused on his perception of lack of radiculopathy as the rationale for his opinion that surgery was not indicated. From the tenor of his report and testimony, this opinion also was a result of his belief that the Petitioner's low back condition was not causally related to the work accident. As stated above, the Arbitrator has given Dr. Kitchens' opinions little weight. The Arbitrator relies on the opinions of Dr. Gornet, who believed disc replacement surgery would relieve or cure the effects of the Petitioner's injury.

Therefore, the Arbitrator finds that the Petitioner is entitled to prospective medical care as recommended by Dr. Gornet, including disc replacement surgery, and the Respondent shall authorize and pay for such care.

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

The parties dispute temporary total disability benefits from April 24, 2021, (the day after the Petitioner was fired) through the trial date of February 25, 2022. An employee is temporarily totally incapacitated from the time an injury incapacitates him for work until such time as he is as far recovered or restored as the permanent character of his injury will permit. *Archer Daniels Midland Co. v. Indus. Comm'n*, 138 Ill.2d 107, 118 (1990). The ability to do light or restricted work does not preclude a finding of temporary total disability. *Id.* at 121.

As of April 24, 2021, the Petitioner was under work restrictions from Dr. Eavenson. He was taken off work completely by Dr. Gornet on May 21, 2021. The Arbitrator trusts that, as treating physicians, Drs. Eavenson and Gornet used their professional judgment to determine under what circumstances the Petitioner should work. Therefore, the Petitioner is entitled to temporary total disability benefits pursuant to Section 8(b) of the Act for 44 weeks, from April 24, 2021, through February 25, 2022.

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	20WC001292
Case Name	Tim Menefee v. City of Peoria
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b) Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	23IWCC0415
Number of Pages of Decision	38
Decision Issued By	Stephen Mathis, Commissioner

Petitioner Attorney	Stephen Kelly
Respondent Attorney	Kevin Day, Adam Casson

DATE FILED: 9/20/2023

/s/Stephen Mathis, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF ROCK ISLAND)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Tim Menefee,

Petitioner,

vs. NO. 20WC 01292

City of Peoria,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petitions for Review having been filed under §19(b-1) by both parties herein and notice given, the Commission, after considering the issues of wage calculations, benefit rates, causal connection, maximum medical improvement, medical expenses, prospective medical care, temporary total disability and temporary 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. The Commission further remands this case to the Arbitrator for further proceedings for a determination of a further amount of temporary total compensation or of compensation for permanent disability, if any, pursuant to Thomas v. Industrial Commission, 78 Ill.2d 327, 399 N.E.2d 1322, 35 Ill.Dec. 794 (1980).

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed May 22, 2023, 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 the Respondent pay to Petitioner interest under §19(n) of the Act, if any.

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

No bond is required for removal of this cause to the Circuit Court. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

September 20, 2023

SJM/sj
o-9/6/23
44

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

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

/s/ *Marc Parker*
Marc Parker

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	20WC001292
Case Name	Tim Menefee v. City of Peoria
Consolidated Cases	
Proceeding Type	19(b-1) Petition Remand Arbitration
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	35
Decision Issued By	Bradley Gillespie, Arbitrator

Petitioner Attorney	Stephen Kelly
Respondent Attorney	Adam Casson, Kevin Day

DATE FILED: 5/22/2023

/s/Bradley Gillespie, Arbitrator

Signature

THE INTEREST RATE FOR THE WEEK OF MAY 16, 2023 4.98%

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
19(b-1)

Tim Menefee
Employee/Petitioner
v.
City of Peoria
Employer/Respondent

Case # **20** WC **001292**

Consolidated cases: _____

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. Petitioner filed a *Petition for an Immediate Hearing Under Section 19(b-1) of the Act* on **12/28/22**. Respondent filed a *Response* on **1/19/23**. The Honorable **Bradley Gillespie**, Arbitrator of the Commission, held a pretrial conference on **1/11/23**, and a trial on **5/10/23**, in the city of **Rock Island**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On the date of accident, **6/3/19**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $**64,410.84**; the average weekly wage was $**1,23867**.

On the date of accident, Petitioner was **56** years of age, ***married*** with **0** dependent children.

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

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

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

ORDER

- Petitioner sustained an accident that arose out of and in the course of the employment of the Respondent on June 3, 2019.
- Petitioner's condition of ill-being was causally related to the work injury of June 3, 2019.
- Respondent shall pay all reasonable, necessary and causally related medical and hospital bills, from the date of the injury through the time of trial according to Section 8(a) and 8.2 of the Act.
- Respondent shall pay Petitioner temporary total disability benefits of $825.77/week for 31 5/7weeks, commencing January 20, 2021, through August 30, 2021, as provided in Section 8(b) of the Act.
- Respondent shall authorize and pay for the prospective medical care recommended by Dr. Crosby.

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

RULES REGARDING APPEALS Unless a party 1) files a *Petition for Review* within 30 days after receipt of this decision; and 2) certifies that he or she has paid the court reporter $ **1,538.80** or the ***final*** cost of the arbitration transcript and attaches a copy of the check to the *Petition*; and 3) 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
Signature of Arbitrator
May 22, 2023

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

TIM MENEFEE,	)	
	)	
Petitioner,	)	
	)	
v.	)	**Case No: 20WC001292**
	)	
CITY OF PEORIA,	)	
	)	
Respondent.	)	
	)	

19(b-1) DECISION OF THE ARBITRATOR

I. Alleged Accident, Claim for Compensation, and 19(b-1) Petition

On or about January 9, 2020, Tim Menefee [hereinafter "Petitioner"] filed an Application for Adjustment of Claim alleging injuries to his left shoulder on June 3, 2019, after attempting to start a gas-powered blower while working for the City of Peoria [hereinafter "Respondent"]. (Arb. T. pp.153-154). On December 28, 2022, Petitioner filed a Petition for Immediate Hearing Under Section 19(b-1) of the Act. Therein, Petitioner alleged he was unable to work due to his work-related injuries and was not receiving appropriate temporary benefits or medical benefits. On May 10, 2023, the parties proceeded to hearing on said Petition in Rock Island, Illinois. (Arb. Ex. 1). The following issues were in dispute at arbitration:

- Causal Connection;
- Petitioner's Earnings;
- Medical Expenses;
- Temporary Total Disability Benefits;
- Temporary Partial Disability Benefits; and
- Prospective Medical Treatment

II. Section 19(b-1) Hearing Testimony

A. Testimony of Ed Hopkins

Ed Hopkins, Respondent's Senior Human Resources Specialist, was called as an adverse witness by Petitioner. As part of his job duties, Mr. Hopkins manages or oversees workers' compensation claims filed by Respondent's employees. (Arb. T. pp. 24-25). At the time of arbitration, Mr. Hopkins had been an employee of Respondent for approximately nineteen (19) years. Prior to his employment with Respondent, Mr. Hopkins obtained a degree in environmental biology from Eastern Illinois University. He also served in the Air National Guard for twenty-one (21) years, retiring at age thirty-eight (38). Prior to becoming the Senior Human Resources Specialist, Mr. Hopkins worked in environmental health for the State of Illinois and Peoria County. (Arb. T. pp. 87-88).

Over objections from Respondent's counsel, Mr. Hopkins provided testimony regarding meetings between City of Peoria representatives, Respondent's third-party workers' compensation adjuster, and OSF Occupational Health employees, namely Dr. Edward Moody and Nurse Case Manager Jessica Kelly. (Arb. T. pp. 27-40). Mr. Hopkins acknowledged meeting participants would discuss coordination of care for injured workers, including Petitioner. (Arb. T. pp. 27-43).

Mr. Hopkins went on to acknowledge Petitioner injured his left shoulder on June 3, 2019, and received medical treatment from Dr. Lawrence Li, including two (2) surgeries. (Arb. T pp. 43-44). Petitioner continued working for Respondent after the injury until his first left shoulder surgery in December of 2019. Mr. Hopkins also acknowledged Petitioner did not work between his first and second surgeries, due to the restrictions implemented by Dr. Li. He further agreed Petitioner underwent physical therapy after the second surgery at the direction of Dr. Li and was still under Dr. Li's care leading up to December of 2020. (Arb. T. pp. 44-45).

Mr. Hopkins acknowledged Petitioner's work restrictions from Dr. Li could have been discussed in a December 2020 meeting with OSF Occupational Health. He was unaware of whether OSF Occupational Health possessed a valid medical authorization from Petitioner after June of 2020. Mr. Hopkins agreed he relied upon Dr. Moody's opinions regarding Petitioner's ability to work at times throughout his claim. (Arb. T p. 45).

Mr. Hopkins stated he would not dispute Dr. Li's records regarding Petitioner's treatment and work restrictions from Dr. Li in January of 2021. (Arb. T pp. 47-50). He testified Petitioner worked for Respondent in the Public Works Department as a Maintenance Worker. (Arb. T p. 48). He also stated he testified at a hearing involving a labor grievance involving Petitioner. At the hearing, Mr. Hopkins provided testimony regarding Petitioner's job duties as a maintenance worker. *Id.*

Mr. Hopkins acknowledged Dr. Edward Moody placed permanent work restrictions on Petitioner, stating he could not return to work as a Maintenance Worker for Respondent. (Arb. T. pp. 49-50). He further agreed, on January 12, 2021, Respondent's attorney provided documents to OSF Occupational Health and asked Dr. Moody to review them and assess Petitioner's work status. Mr. Hopkins agreed Dr. Moody issued a letter stating Petitioner couldn't return to work as a Maintenance Worker, which Respondent relied upon for certain decisions. (Arb. T. pp. 51-56). He could not recall the specific work restrictions placed on Petitioner by Dr. Li and Dr. Nicholas Crosby in January 2021 or at the time of arbitration. (Arb. T. pp. 56-59).

Mr. Hopkins acknowledged he was aware Petitioner was examined by an orthopedic doctor, Dr. Brian Cole, who recommended a pain management referral. He also agreed Respondent subsequently requested a Section 12 examination with a pain management specialist. (Arb. T. pp. 59-60; 70-71).

Over Respondent's counsel's objection, Mr. Hopkins provided testimony concerning the facts leading-up to Petitioner's termination, which served as the basis for his labor grievance. (Arb. T. pp. 60-67). He then reaffirmed he would not dispute the records in evidence from Dr. Moody, Dr. Li, Dr. Crosby, and Dr. Cole. (Arb. T. pp. 67-77; 96-98). Mr. Hopkins testified a temporary

Maintenance Worker position was offered to Petitioner in June of 2021. (Arb. T. pp. 66-67). It was Mr. Hopkins understanding this job was offered based on a representation Petitioner could perform the unrestricted duties of a Maintenance Worker for Respondent. He affirmed it was his understanding as well that Respondent would have rehired Petitioner if he accepted the offer. (Arb. T. pp. 88-93). Based on his review of records in Respondent's possession, it was also Mr. Hopkins understanding Petitioner's base salary in the year preceding his accident was $65,000.00. (Arb. T. pp. 93-94). He further agreed the records offered as Petitioner's Exhibit 16 were accurate. (Arb. T. pp. 98-100).

B. Testimony of Sie Maroon

Respondent's Deputy Director of Operations for the Public Works Department, Sie Maroon, was also called as an adverse witness by Petitioner. At the time of arbitration, Mr. Maroon had been the Deputy Director for eight (8) years and three (3) months. He testified he was indirectly Petitioner's boss, as there was a supervisor between them. (Arb. T. p. 106).

Mr. Maroon was aware of Petitioner's work injury in June of 2019 and his subsequent surgeries. When Petitioner returned to work in January of 2021, Mr. Maroon testified he was involved in the process. He acknowledged he then sent Petitioner home the next day. Mr. Maroon was aware Dr. Moody generated a report at that time stating Petitioner had permanent work restrictions. (Arb. T. pp. 106-109).

Mr. Maroon was also aware Petitioner exceeded one hundred and twenty (120) days of light duty while working for Respondent. (Arb. Tr. p. 109). He then testified regarding the process for employees providing work status notes, the process for assigning light duty work, and the documents and notes he maintains as a part of those processes. (Arb. T. pp. 110-115; 118-119).

Over Respondent's counsel's objection, Mr. Maroon acknowledged he attended meetings with OSF, Ed Hopkins, and department heads, which were held to provide updates on the status of care of injured workers, including Petitioner. (Arb. T. pp. 119-122).

Mr. Maroon further testified overtime within the Public Works Department is primarily based on seniority. (Arb. T. pp. 214-215). Mr. Maroon stated overtime within the Public Works Department was only mandatory during storm or weather-related events, like a snowstorm or flood. This mandatory overtime would consist of twelve-hour shifts during a large storm or flood. According to Mr. Maroon, any overtime not performed during a storm or weather-related event would be voluntary pursuant to a seniority-based overtime scheduling system. (Arb. T. pp. 214-215). Based on his long tenure with Respondent and understanding of these types of weather-related events, Mr. Maroon testified the weather-dependent overtime would not be regularly scheduled. (Arb. T. p. 215).

C. Testimony of David Haste

David Haste testified on behalf of Petitioner. Mr. Haste worked for Respondent in the Street, Sewer, and Forestry Departments, until he retired in 2016. He knew Petitioner and felt he was a hard worker and truthful. (Arb. T. pp. 127-129). Mr. Haste was in charge of street

maintenance during his employment with Respondent. He acknowledged Petitioner also worked in that department and it was heavy-duty work. In Mr. Haste's opinion, an individual with work restrictions would not be able to perform the work. (Arb. T. pp. 129-131).

D. Testimony of Jessica Kelly

Over the objections of Respondent's counsel and in-house counsel from OSF, Vince Boyle, Jessica Kelly was called as an adverse witness by Petitioner. At the time of arbitration, and subsequent to Petitioner's work accident, Ms. Kelly was the Nurse Case Manager for OSF Occupational Health. She acted as a liaison between OSF and employers. She facilitated appointments, documentation, and communication regarding medical care. (Arb. T. pp. 134-135; 142-146).

Over additional objections from Respondent's counsel and in-house counsel from OSF, Ms. Kelly testified she helped coordinate meetings between representatives of Respondent and OSF. (Arb. T. pp. 140-141; 146-149). She testified these meetings ended at some point. (Arb. T. pp. 146-148). She also coordinated documentation and treatment updates between OSF and Dr. Li's office. (Arb. T. pp. 142-143).

E. Testimony of Petitioner

Petitioner testified he was employed as a maintenance worker for Respondent when the accident occurred in June 2019. (Arb. T. p. 151). He classified his position as heavy work. He was able to perform his job leading up to June 3, 2019, without any medical restrictions or medical treatment for his left shoulder. (Arb. T. pp. 152-153).

On June 3, 2019, he and his crew were working downtown Peoria. He was trying to start a gas-powered blower when he injured his left shoulder. He reported it to the Lead Painter, Gordon Crow. On June 4, 2019, he went to Dr. Edward Moody at OSF Occupational Health. (Arb. T. pp. 153-155). After meeting with Dr. Moody, he returned to work with restrictions. (Arb. T., pp. 155-156).

According to Petitioner, Dr. Li conducted an MRI of the left shoulder around June 18, 2019. Dr. Li gave him the option of surgery and physical therapy. Work restrictions were provided at that time, which included no lifting, pushing, and pulling over chest with his left arm. Per Dr. Li's direction, he went to physical therapy from June 20, 2019, to July 16, 2019. (Arb. T. pp. 157-158).

Petitioner then followed up with Dr. Li on July 18, 2019. They decided to do an injection, which eventually wore off. He then continued physical therapy until his first left shoulder surgery on December 10, 2019. After surgery, Dr. Li took him off work. Petitioner clarified he was working in a light duty capacity prior to the surgery. (Arb. T. pp. 158-161).

Petitioner testified he attended physical therapy after the first surgery through the middle of February 2020. He followed-up with Dr. Li on February 11, 2020, and Dr. Li told him he had

adhesive capsulitis in his left shoulder. Dr. Li administered another steroid injection and kept him off work. (Arb. T. pp.161-163).

He continued physical therapy through March of 2020 and returned to Dr. Li on March 11, 2020. At that time, his shoulder was not getting better, so Dr. Li recommended a left arthroscopic shoulder surgery. The surgery was performed on April 7, 2020. After the surgery, he remained off work. Petitioner continued physical through July of 2020. On August 10, 2020, Dr. Li recommended a left shoulder MRI. (Arb. T pp. 163-166).

Dr. Li then referred Petitioner to Dr. Brian Cole at Midwest Orthopedics at Rush in September of 2020 to address pain relief. Dr. Cole recommended a pain management consultation. Petitioner then attended an independent medical examination at the request of Respondent. (Arb. T. pp. 166-167).

Dr. Li ultimately referred him to Dr. Nicholas Crosby at the Indiana Shoulder Center, who recommended a nerve test. He then went to a separate facility and received an injection in his left shoulder. (Art. T pp. 168-169).

Petitioner testified Dr. Crosby eventually recommended a third shoulder surgery. According to Petitioner, he would proceed with this surgery, if he could afford it. He stated Respondent did not authorized the surgery. According to Petitioner, Dr. Li, Dr. Crosby, and Dr. Moody still had him on work restrictions at the time of arbitration. (Arb. T pp. 169-170).

Petitioner testified he returned to work at Respondent's request in January of 2021. He went back to work but was sent home the next day. In late January of 2021, he was informed he was being terminated. Petitioner testified he couldn't physically do the job Respondent offered him in June 2021. (Arb. T. pp. 171-172).

According to Petitioner, at the time of the labor grievance hearing, he was still being recommended for surgery by Dr. Crosby. He hadn't seen Dr. Li for some time by then, but he had not been released by him or Dr. Cole. (Arb. T. pp. 173-174).

Petitioner testified his workers' compensation temporary benefits were terminated around January 19, 2021. He affirmed he was seeking off-work benefits from January 9, 2021, to August 30, 2021, at arbitration. (Arb. T. pp. 174-175). Petitioner started working for MPSI on August 31, 2021. He testified that income does not substitute the money he made from Respondent while he was off work. (Arb. T. p. 175). He also has a business called Precision Products and Coatings, which is not supporting itself. It was never intended to supplement the income he lost while working for Respondent. The work he is doing for the business and MPSI does not exceed the restrictions placed on him by Dr. Li. (Arb. T. pp. 175-176).

Petitioner testified he tried to drive his friend's dump truck for three (3) hours, because his friend was looking for help. He stopped after three (3) hours due to a lot of pain in his left shoulder. (Arb. T. pp. 176-177). He also acknowledged he performs mowing at his commercial property but does not exceed the restrictions placed on him by Dr. Li. (Arb. T. p. 178).

At the time of arbitration, Petitioner was having pain in his left shoulder. He often can't get comfortable and doesn't sleep well. He also testified he gets fatigued and doesn't have the strength he did before his accident. According to Petitioner, if the surgery recommended by Dr. Crosby is authorized by Respondent, he would have it immediately, assuming he still met the criteria. (Arb. T pp 179-180).

On cross-examination, Petitioner acknowledged Respondent paid him all of the temporary benefits he was owed from the date of accident through January 19, 2021. (Arb. T p. 183-184). He further acknowledged Respondent authorized all medical treatment from his date of accident through January 12, 2021, when his therapy ended. (Arb. T pp. 184-185).

Petitioner affirmed the testimony he gave during the labor grievance hearing on February 10, 2022, was true and accurate. (Arb. T p. 182). He then recalled a left shoulder injection procedure he underwent on July 30, 2021, which was recommended by Dr. Crosby. Petitioner testified he got significant relief from the procedure. (Arb. T. pp. 185-188). He used a credit card to pay for this procedure. (Arb. Tr. pp. 208-209).

Petitioner was then asked, "You got such good relief, you felt you could return to your full, unrestricted job duties at the City of Peoria as a maintenance worker; correct?" To which he replied, "No." (Arb. T. p. 188).

He was then asked, "Do you recall during the grievance arbitration being asked, is it your testimony that you can perform full function as a maintenance worker with no modifications regarding your left arm [as of February 10, 2022]?" Petitioner recalled this question. However, when asked, "Do you recall your answer being, quote, 'I believe that given the opportunity, yes, I can,'" Petitioner stated he believed his testimony was actually "I'd like to opportunity to try." (Arb. T. pp. 188-189).

Petitioner was then directed to his sworn labor grievance arbitration testimony, specifically page 196, line 18 of Petitioner's Exhibit 12. After reviewing his prior testimony, Petitioner then affirmed, on February 10, 2022, he testified he could perform his full functions as a maintenance worker with no modifications regarding your left arm. (Arb. T. pp. 188-189).

Additionally, after reviewing additional labor grievance arbitration testimony on pages 196 and 197 of Petitioner's Exhibit 12, Petitioner affirmed, on February 10, 2022, he stated he felt he could perform the full functions of a maintenance worker with no modifications for his left arm due to success of the left shoulder injection procedure. (Arb. T. pp. 189-190).

Petitioner then testified he had no left shoulder pain following the injection procedure for "a day or two." He did not recall having no left arm pain as of February 10, 2022. He also did not recall stating, as of February 10, 2022, he had no intention of proceeding with the surgery recommended by Dr. Crosby. (Arb. T. pp. 190-191). Petitioner testified, "I believe [on February 10, 2022] I didn't have [the surgery] scheduled." (Arb. T. p. 191).

Petitioner was then redirected to his grievance arbitration testimony, specifically page 185 of Petitioner's Exhibit 12. He then acknowledged, on February 10, 2022, he testified, "No, sir." when asked whether he "was still trying to get the third surgery." (Arb. T. pp. 191-192).

Petitioner then acknowledged, on February 10, 2022, he testified he'd "gotten a lot stronger after [his] last procedure" and "I believe I can" do all work required of a maintenance worker with his left arm." (Arb. T. pp. 191-192).

He further acknowledged he utilized his wife's group health insurance through the Illinois Department of Transportation for in-network procedures in July of 2022.

Petitioner went on to discuss his current part-time employment with MPSI. (Arb. T. pp. 193-203). He carries a firearm in his job with MPSI, performing armed carrier services for the deposits from a cannabis dispensary. He carries the bags of money with his right hand, not his left hand. He drives to the dispensary, the money is placed in the vehicle, then he goes to the bank. (Arb. T. pp. 193-196). He'd been a fill-in for MPSI from August 31, 2021, to the time of arbitration, sometimes working 2-3 weeks in a row before not working for a period. He is paid a flat rate of $200.00 if he's a rider. As a driver, his pay is based on a formula since they're driving their own vehicle. (Arb. T. pp. 197-198)

From August 31, 2021, through February 13, 2022, he received about $5,200.00, or about $1,000.00 a month, in his employment with MPSI. (Arb. T. pp. 199-200). Without looking at a spreadsheet his wife prepared, he cannot say how much he was paid by MPSI from February 15, 2022, to the time of arbitration. (Arb. T. pp. 200-202).

He told MPSI about his left shoulder when they originally reached out to him. He told them he didn't feel he could adequately protect his partner, so held off for a bit. However, eventually, he felt he could perform his job duties, which could require confrontational situations and firearm use from August 2021 to the time of arbitration. (Arb. T. pp. 203-204).

III. Petitioner's Medical Treatment

Voluminous medical evidence was submitted by the parties at arbitration addressing Petitioner's medical treatment. Having reviewed said evidence, the Arbitrator makes the following factual findings with regard to the medical treatment relevant to Petitioner's Petition for Immediate Hearing Under Section 19(b-1) and the conclusions of law set forth herein.

On June 4, 2019, Petitioner was seen at OSF Occupational Health by Dr. Edward Moody. Petitioner reported he injured his right shoulder on June 3, 2019, while attempting to start a gas-powered leaf blower that required repetitive pulling. After he attempted this, he had intense pain in his anterior shoulder and proximal left biceps. The pain continued and interfered with his sleep. Dr. Moody assessed the injury as a left shoulder rotator cuff injury. Work restrictions of no overhead use and no use of the arm away from the body, maximum arm-hand force of one (1) pound, paperwork only for left arm, and no work in areas where use of one arm compromises safety. Petitioner was scheduled for a follow up appointment in one week. (Pet. Ex. 1).

Petitioner followed-up with Dr. Moody on June 10, 2019. Petitioner noted he continued to have left shoulder pain that interferes with sleep and continued to have pain with abduction. An MRI was ordered of the left shoulder. Work restrictions of no overhead use, no use of the arm away from the body, and maximum arm-hand force of five (5) pounds was set in place. (Pet. Ex. 1).

On June 18, 2019, Petitioner was seen by Dr. Lawrence Li at Orthopedic and Shoulder Center. Petitioner noted a dull, sharp, and aching pain with moderate pain intensity. He also noted he has difficulty with reaching, raising his arm, and reaching out to the side. An ultrasound was performed by Dr. Li on Petitioner's left shoulder and bicep area. Dr. Li's diagnosis was a left shoulder rotator cuff tear from a traction injury and Petitioner may have injured his labrum, biceps, and strained his left AC joint. An MRI was recommended with a follow-up appointment to determine treatment. (Pet. Ex. 2).

A multiplanar multisequence MRI of the left shoulder was performed by Dr. Li on June 18, 2019, by Dr. Li. The general impression from the MRI was a grade 2 strain/partial-thickness tear of the infraspinatus muscle and tendon near the myotendinous junction, tendinosis and multifocal partial-thickness tears of the distal supraspinatus and infraspinatus tendons, mild tendinosis of the long head of the bicep tendon, possible degeneration and/or tear of the posterior superior labrum, and moderate acromioclavicular degenerative joint disease. (Pet. Ex. 2).

Petitioner began physical therapy with Traci Kissinger at Orthopedic and Shoulder Center on June 20, 2019. Petitioner's Exhibit 2 discusses Petitioner's course of physical therapy from June 20, 2019, through November 25, 2019. (Pet. Ex. 2).

Petitioner was seen by Dr. Lawrence Splitter at OSF Occupational Health on June 20, 2019. Dr. Splitter indicated the MRI demonstrated a grade 2 strain/partial thickness tear of the infraspinatus muscle and tendon near the myotendinous junction as well as the supraspinatus tendon. Mild tendinosis of the long head of the biceps tendon, possibility of degeneration and/or tear of the posterior superior labrum, and moderate acromioclavicular degenerative joint disease was also noted. Left shoulder restrictions of no pushing, pulling, or lifting above chest level were ordered. (Pet. Ex. 1).

Petitioner was seen by Dr. Moody at OSF Occupational Health on July 25, 2019. Petitioner indicated overall improvement. No overhead work restrictions were ordered. Dr. Moody indicated improving left rotator cuff partial thickness tear. Left shoulder restrictions include no pushing, pulling, or lifting above chest level. (Pet. Ex. 1).

Petitioner had a follow up appointment with Dr. Moody on August 22, 2019. Petitioner reported left shoulder pain that has been worsening and he has plateaued with physical therapy. Petitioner is discussing having another steroid injection with the orthopedist, and then possible surgery in mid to late November. Dr. Moody left Petitioner on the current work restrictions of no pushing, pulling, or lifting above chest level. (Pet. Ex. 1).

Petitioner's final physical therapy session prior to his first surgery was on November 25, 2019, with PT Kissinger. PT Kissinger reported Petitioner was more guarded as compared to previous sessions. Petitioner is scheduled for surgery on December 10, 2019. (Pet. Ex. 2).

On December 10, 2019, Petitioner underwent a left shoulder arthroscopy with rotator cuff repair, arthroscopic subacromial decompression, excision of distal clavicle, extensive debridement of tenosynovitis glenohumeral joint and subpectoral biceps tenodesis. Surgery was performed by Dr. Li at Ireland Grove Center for Surgery. (Pet. Ex. 5).

Petitioner began a second course of physical therapy at Orthopedic and Shoulder Center on December 12, 2019. Physical therapy was recommended 2-3 times per week for 20-24 weeks. Petitioner's Exhibit 2 discusses Petitioner's course of physical therapy from December 12, 2019, through March 11, 2020. (Pet. Ex. 2).

Petitioner was seen by Dr. Moody on February 17, 2020. Petitioner reported he underwent left shoulder surgery on December 10, 2019. Dr. Moody reported with some effort, Petitioner was able to abduct the left shoulder 90 degrees and can internally rotate to bring his thumb to his left hip. Dr. Moody order work restrictions of no operation of commercial or industrial vehicles, and no use of the left arm. (Pet. Ex. 1).

Petitioner had a follow up appointment with Dr. Moody on March 5, 2020. Petitioner indicated he failed to progress with range of motion in physical therapy. Dr. Moody reported Petitioner actively abducts the left shoulder 80 degrees, range of motion of the left elbow 5 to 120 degrees, and passive abduction of the left shoulder is congruent with active range of motion. Dr. Moody noted Petitioner's left shoulder abduction is worse than the prior examination. The same work restrictions were ordered. (Pet. Ex. 1).

On April 7, 2020, Petitioner underwent a left shoulder arthroscopy with extensive debridement, arthroscopic lysis of adhesions and manipulation. Surgery was performed by Dr. Li at Ireland Grove Center for Surgery. Dr. Li indicated Petitioner had developed adhesive capsulitis post rotator cuff repair. (Pet. Ex. 5).

Petitioner began a third course of physical therapy at Orthopedic and Shoulder Center on April 8, 2020. Petitioner demonstrated signs and symptoms consistent with post-op status, including deficits in left shoulder, range of motion/flexibility, strength, joint mobility, postural awareness, pain, edema, and activity tolerance. It was noted Petitioner would benefit from skilled PT to address current deficits and to return Petitioner to full functional mobility. Petitioner is recommended to perform PT five (5) times per week for two (2) weeks, and then two to three (2-3) times per week for four to six (4-6) weeks. Petitioner's Exhibit 2 discusses Petitioner's course of physical therapy from April 8, 2020, through September 4, 2020. (Pet. Ex. 2).

At Petitioner's physical therapy session on April 15, 2020, Petitioner reported moderate soreness from the previous session. Petitioner was too sore to use the CPM machine. No complaints were presented at the end of the session. (Pet. Ex 2).

At Petitioner's physical therapy session on May 1, 2020, Petitioner demonstrated significantly improved passive external rotation since the last therapy session. Petitioner reported good pain reduction with IFC. (Pet. Ex 2).

Petitioner attended a physical therapy session on May 11, 2020, and reported he "is not terribly pleased with my progress." Gradual increase in range of motion was reported on the CPM machine. Moderate or moderate to severe limitation was indicated on all functional activities. Petitioner showed significant improvements in objective measurements from the previous session. Petitioner continues to exhibit deficits in left shoulder AROM, strength, joint mobility, postural awareness, pain, and activity tolerance. (Pet. Ex 2).

Petitioner exhibited fairly good shoulder range of motion with minimal deficits at the physical therapy session on May 13, 2020. Petitioner displayed good tolerance with exercises. (Pet. Ex 2).

On May 13, 2020, Petitioner was seen by Dr. Li at Orthopedic and Shoulder Center. Dr. Li indicated Petitioner is making slow progress in therapy. Mild swelling in the left shoulder was noted. During Petitioner's shoulder examination, Dr. Li noted strength testing of 4/5 supraspinatus and external rotation. Petitioner's range of motion was active flexion: 150; active abduction: 120; active ER: 40; Active IR: L5; passive flexion: 170; passive abduction: 160; and passive ER: 85. Dr. Li performed an ultrasound on the left shoulder which showed the rotator cuff and subpectoral-biceps appeared intact. Petitioner was ordered to remain off work and follow up in four weeks. (Pet. Ex 2).

On May 18, 2020, Petitioner was seen by Dr. Moody as OSF Occupational Health. Petitioner reported since his prior visit, he underwent left shoulder arthroscopic debridement scar tissue on or about April 7, 2020, by Dr. Li. Petitioner reported he has been in physical therapy. Dr. Moody indicated Petitioner was at 85 to 90 degrees of left shoulder abduction. Dr. Moody ordered no work until the next appointment and expects Petitioner to return to at least light duty. (Pet. Ex. 1).

Petitioner was seen by Dr. Li on June 10, 2020. Petitioner indicated he was making very slow progress but is making progress. Dr. Li inspected Petitioner's left shoulder and noted strength testing of 4/5 supraspinatus and 5/5 external rotation. Petitioner's range of motion was active flexion: 170; active abduction: 160; active ER: 80; Active IR: L5; passive flexion: 170; passive abduction: 170; and passive ER: 90. An ultrasound was performed and showed the supraspinatus tendon appeared with tendinosis changes noted to the bursal aspect of the distal insertion. A cortisone injection would be scheduled to relieve some of Petitioner's current discomfort. (Pet. Ex 2).

Petitioner was seen by Dr. Moody on June 16, 2020. Petitioner reported frustration with lack of progress in his left shoulder. Examination of the left shoulder was limited due to postoperative status. Petitioner was able to abduct the left shoulder 145 degrees. Dr. Moody indicated Petitioner's left shoulder abduction has improved significantly compared to his last visit. Petitioner still have a significant internal rotation deficit but appears to be making progress with strength training in therapy. Dr. Moody ordered no working until next appointment. (Pet. Ex 1).

Petitioner was seen by Dr. Li on July 8, 2020. Petitioner indicated he has regained his motion and still has pain that limits left shoulder strength and the ability to pick things up. Dr. Li examined the left shoulder and reported strength testing of 4/5 supraspinatus and external rotation. Petitioner's range of motion was active flexion: 175; active abduction: 170; active ER: 85; Active IR: L4; passive flexion: 180; passive abduction: 175; and passive ER: 90. An ultrasound was performed and showed the supraspinatus tendon appears with thickening noted to the bursal aspect of the distal insertion. (Pet. Ex. 2).

Petitioner was seen by Dr. Li on August 5, 2020. Petitioner reported he continued to gain strength and good range of motion but still continued to have pain. Petitioner's range of motion was active flexion: 175; active abduction: 170; active ER: 85; Active IR: L4; passive flexion: 180; passive abduction: 170; and passive ER: 95. An ultrasound was performed and showed thickening to the bursal aspect of the supraspinatus distal insertion with fraying. An MRI was ordered and follow up appointment was scheduled. (Pet. Ex. 2).

On August 8, 2020, Petitioner underwent an MRI of the left shoulder due to continued pain and limited range of motion. The MRI found a signal void corresponding to postsurgical changes of prior rotator cuff repair. No evidence of a recurrent full thickness tear was found. (Pet. Ex. 2).

Petitioner was seen by Dr. Li on August 10, 2020, for a follow up for Petitioner's MRI. Dr. Li reported the MRI showed no evidence of a recurrent full thickness tear. Upon examination of the left shoulder, Dr. Li reported Petitioner's range of motion was active flexion: 175; passive flexion: 180; active abduction: 170; passive abduction: 170; active ER: 85; passive ER: 90; and Active IR: L4. Dr. Li scheduled a cortisone injection, and continued Petitioner in physical therapy. (Pet. Ex. 2).

Petitioner received a Kenalog/Lidocaine 40mg injection on August 12, 2020. (Pet. Ex. 2).

Petitioner attended a physical therapy session on August 18, 2020, where he reported continued pain and opined the cortisone injection did not help. (Pet. Ex. 2).

Petitioner had a physical therapy session at Orthopedic and Shoulder Center on September 1, 2020. Petitioner reports his shoulder is doing worse. During range of motion testing, Petitioner's left shoulder AROM flexion was 150 degrees, abduction was 146 degrees, ER was 70 degrees and IR was 35 degrees. Slow and shaky was indicated next to flexion, abduction, and ER. Petitioner's right shoulder AROM flexion was 162 degrees, abduction was 168 degrees, ER was 97 degrees, and IR was 62 degrees. The overall assessment was Petitioner was progressing slowly with strength and continues to have significant pain that does not respond to therapeutic modalities. (Pet. Ex. 2).

Petitioner had a physical therapy session at Orthopedic and Shoulder Center on September 4, 2020. Petitioner reported his pain continued to worsen and the pain medication isn't working. Petitioner noted the prone extension isn't nearly as painful, and isn't sore at all while performing the exercise, but pain returns upon stopping. (Pet. Ex. 2).

Petitioner was seen by Dr. Li on September 8, 2020. Petitioner indicated his pain is unchanged and that the injection as well as therapy did not make a big difference. During the shoulder examination, Dr. Li noted Petitioner experienced a pain increase with active abduction at 90 degrees and then the pain subsides. Dr. Li reported Petitioner is still having pain despite MRI showing no evidence of a recurrent full-thickness tear. Dr. Li recommended a referral to Dr. Brian Cole for a second opinion. (Pet. Ex. 2).

On September 28, 2020, Petitioner was seen by Dr. Brian Cole at Midwest Orthopedics at Rush. Petitioner reported the pain is nearly constant and still cannot lift his arm over his head. An x-ray was performed on the left shoulder which Dr. Cole noted the results were normal. Dr. Cole also reviewed the August 10, 2020, MRI and noted it also appeared to be normal. After reviewing Petitioner's shoulder, Dr. Cole reported he is uncertain of the exact cause of Petitioner's pain. Dr. Cole suggested the chronically painful shoulder "may not be an orthopedic anatomical issue that can be addressed surgically." Dr. Cole recommended a pain management consultation for alternative measures to be considered. Dr. Cole also noted on the Quick Report that Petitioner is able to work but did not consider Petitioner to be at MMI given the need for a pain management consult. (Pet. Ex. 7).

Petitioner was seen by Dr. Moody as OSF Occupational Health on November 25, 2020. Petitioner reported he is no longer in physical therapy, and he gets some tingling in his left third and fourth fingers that appears to be position/activity dependent. Dr. Moody reported Petitioner is able to abduct the left shoulder 90 degrees, passive abduction was equal to active, and no gross tandem motion of the scapula. Dr. Moody noted Dr. Cole's suspicion for an alternative pain generator is certainly reasonable, given the delayed recovery. Dr. Moody ordered work restrictions of light duty if available with limited use of the left upper extremity. (Pet. Ex. 1).

Petitioner had an occupational therapy appointment on December 8, 2020, at Orthopedic and Shoulder Center. Petitioner indicated his left shoulder is still painful and reported numbness in the left hand when he does stretches at home. Petitioner demonstrated significant weakness to the left rotator cuff and the left peri scapular stabilizers. (Pet. Ex. 2).

Petitioner had an occupational therapy appointment at Orthopedic and Shoulder Center on December 21, 2020. Petitioner indicated he was still having a lot of pain in the shoulder, and it was not getting any better. Petitioner was able to perform his exercises but demonstrated weakness of the rotator cuff and fatigued quickly. (Pet. Ex. 2).

On January 5, 2021, Petitioner had an occupational therapy appointment at Orthopedic and Shoulder Center. Petitioner indicated pain at about an 8-9/10, and his shoulder seems to be getting worse. TOS provocation testing showed negative during Roos, Adson, and Costoclavicular maneuver, and positive during the Allen test. Petitioner reported severe tenderness to palpation over the anterior left shoulder, moderate tenderness to palpation over the left AC joint, and mild tenderness to the palpation over the left subacromial space. Petitioner was noted to be progressing slowly. (Pet. Ex. 2).

Petitioner's final occupational therapy appointment was on January 12, 2021. Petitioner indicated his pain was a 7-8/10 and his shoulder seems to be getting worse. Petitioner noted pain

at the AC joint during the cross-body adduction test, and mild numbness in the 4th digit at 20 seconds during the Category Cyriax release test. Petitioner was very limited with active left shoulder range of motion to all planes of motion activity. Petitioner demonstrated good passive range of motion of the left shoulder to all planes of motion. Weakness was still demonstrated by Petitioner in the left rotator cuff and left peri scapular stabilizers. (Pet. Ex. 2).

Petitioner had a follow up appointment with Dr. Li on January 14, 2021. Dr. Li noted there was no significant functional improvement in Petitioner's left shoulder. Petitioner still fatigued easily and had residual weakness. Petitioner indicated he still has pain when raising his arm in abduction. Dr. Li marked no bruising and full active range of motion for Petitioner's shoulder. Dr. Li opined the potential cause for Petitioner's weakness would be compression of the suprascapular nerve. Dr. Li recommended proceeding with getting an EMG/NCV to evaluate any neurologic cause to Petitioner's dysfunction and weakness. (Pet. Ex. 2).

Petitioner was seen by Dr. Edward Trudeau at Memorial Medical Center for an EMG on January 25, 2021. Dr. Trudeau agreed with Dr. Li's assessment of a suprascapular nerve entrapment. (Pet. Ex. 3).

On February 4, 2021, Petitioner had an appointment with Dr. Li for a follow up on Petitioner's EMG results. Petitioner indicated pain with active abduction. Pain increased during the visit with active abduction at 90 degrees and then it subsides. Dr. Li diagnosed Petitioner with a left shoulder rotator cuff repair with residual dysfunction due to suprascapular nerve entrapment. A referral was made to Indiana Hand to Shoulder Center for continued evaluation. (Pet. Ex. 2).

Petitioner was seen by Dr. Nicholas Crosby at Indiana Hand to Shoulder Center on June 9, 2021. Petitioner was diagnosed with carpal tunnel syndrome. Dr. Crosby noted he is concerned about Petitioner's left shoulder, but he is unsure if Petitioner's symptoms are related to suprascapular nerve compression. Dr. Crosby recommended a repeat nerve study to corroborate the findings of the suprascapular nerve compression as well an image-guided glenohumeral injection to evaluate for pain or to rule out pain, potentially intra-articularly. (Pet. Ex. 4).

A fluoroscopically guided left glenohumeral therapeutic injection was performed by Dr. Anthony Parr at Center for Diagnostic Imaging on July 30, 2021, with comparison on Petitioner's August 10, 2020, left shoulder MRI. Dr. Parr concluded: (1) technically successful fluoroscopically guided left glenohumeral therapeutic injection; and (2) Resolution of the patient's left shoulder pain and significantly improved range of motion following intra-articular injection of anesthetic and steroid. Petitioner reported a post-procedure pain level of zero out of ten (0/10) with significantly improved range of motion. (Pet. Ex. 4).

Petitioner had a second visit with Dr. Crosby at Indiana Hand to Shoulder Center on September 8, 2021. Dr. Crosby requested a new EMG study as he had concern for the existence of suprascapular nerve impingement. Dr. Crosby noted "it actually only showed a little bit of possible cervical radiculopathy and maybe some carpal tunnel syndrome, could not pick up the suprascapular nerve concern as it was specifically looked at." Petitioner reported the glenohumeral injection was extremely helpful for the first two days, and he had virtually no pain. His range of motion improved and felt very good for several weeks. Petitioner reported left shoulder symptoms

began to recur within the last week. Dr. Crosby and Petitioner discussed the possibility of doing a scope going into the joint and evaluating the structures and treating as necessary, including likely revision rotator cuff repair and a debridement and subacromial decompression with acromioplasty. Dr. Crosby stated, "I am encouraged that the injection helped significantly, although having 2 surgeries on this side, I am a little nervous about the ability to improve his pain. He wants to be functional. He wants to be back to normal use at work if he would choose to do so." (Pet. Ex. 4).

Petitioner's final visit to Dr. Li was on September 16, 2021. Dr. Li notes Petitioner "wants to go over the recommendations of Dr. Crosby who plans another arthroscopy and possible repair of the partial tears." Dr. Li discussed with Petitioner Dr. Crosby's findings. Dr. Li further notes "he will proceed with the surgery and we will handle the therapy per Dr. Crosby's instructions." (Pet. Ex. 2).

IV. Evidence Deposition Testimony

A. Deposition Testimony of Dr. Lawrence Li

Dr. Li is a board-certified orthopedic surgeon affiliated with OSF and Carle BroMenn in Bloomington, Illinois. (Pet. Ex. 11, p. 7). He is Petitioner's treating physician. (Pet. Ex. 11, p. 8). Dr. Li said in his testimony in this case was given in reliance on his treating medical records. (Pet. Ex. 11, p. 28). Dr. Li testified his medical treatment records are summaries and relevant information related to a particular examination. *Id.*

Dr. Li provided treatment to Petitioner for the first time in December of 2016 (Pet. Ex. 11, p.8). He assessed him as having pain in the right shoulder *Id*. Petitioner was released from Dr. Li's care regarding his right shoulder injury in May of 2018. *Id.* Dr. Li next saw Petitioner on June 18, 2019. *Id.* Dr. Li took a history of Petitioner at that time. *Id.* The history was Petitioner was pulling a backpack blower and had to pull it about five (5) times and felt a sudden pain in his left shoulder. (Pet Ex. 11, p. 8-9). Petitioner reported he was having pain in his left shoulder, wasn't getting any better, it hurt him to raise his arm, reach to the side, and it kept him up at night. *Id.*

Dr. Li stated the MRI performed on June 18, 2019, showed a partial tear of the posterior aspect of the supraspinatus tendon that measured about 2 centimeters by 1 centimeter. (Pet. Ex. 11, p. 8-9) The MRI also showed a partial tear of the subscapularis tendon which measured about 1.1 centimeters. (Pet Ex. 11, p. 9). Dr. Li's diagnosis was some large partial tears to the rotator cuff tendons in the left shoulder. (Pet. Ex. 11, p. 10). Dr Li testified, "to a reasonable degree of medical certainty, that the June 3rd incident when he was pulling on the blower was a direct cause of his left shoulder rotator cuff tears." (Pet. Ex. 11, p. 11).

Dr. Li provided additional testimony consistent with his other examinations of Petitioner. Surgery was performed by Dr. Li on December 10, 2019. (Pet. Ex. 11, p. 14-15). Dr. Li performed a let should arthroscopy with rotator cuff repair, arthroscopic subacromial decompression, excision of distal clavicle, a debridement of all inflammation in the joint, and a subpectoral biceps tenodesis for labral tearing and biceps tearing. (Pet. Ex. 11, p. 15). Dr. Li confirmed the findings he saw on surgery on December 10, 2019, were consistent with what he saw in the MRI on June 18, 2019. (Pet. Ex. 11, p. 16). Dr. Li explained the post care treatment is to start with therapy, and therapy

could last between four to six months depending on the extent of the problem. *Id.* Dr. Li uses a Game Ready Vasopneumatic compression device for swelling, and a CPM machine to help decrease the risk of adhesive capsulitis, which Dr. Li admitted Petitioner developed and had treated. (Pet. Ex. 11, p. 16-17). Dr. Li testified all medical modalities used to treat Petitioner were reasonable, necessary, and essential to treating Petitioner's problems. *Id.*

When asked about Petitioner's tears in his rotator cuff, Dr. Li testified "they weren't the largest, but they were, I would say, moderate to large." (Pet. Ex. 11, p. 17). Dr. Li acknowledged he ordered an ultrasound on March 11, 2020, for the purpose of monitoring Petitioner's healing of the tendon. *Id.* Dr. Li also acknowledged Petitioner consistently participated in recommended physical therapy between his first surgery on December 10, 2019, and his second surgery on April 7, 2020. (Pet. Ex. 11, p. 18). Dr. Li acknowledged Petitioner was off work leading up to his second surgery on April 7, 2020. *Id.* On April 7, 2020, Dr. Li performed a left shoulder arthroscopy with debridement and lysis of the adhesions and manipulation on Petitioner. *Id.* Dr. Li testified Petitioner developed adhesions after the first surgery, which is common, but Petitioner's adhesions were too much, and he wasn't making any progress in therapy. (Pet. Ex. 11, p. 18-19). Dr. Li explained he used the same modalities on Petitioner for the second surgery as he did for the first surgery. (Pet. Ex. 11, p. 19). The main focus in therapy was to get Petitioner's range of motion and strength back. *Id.*

Dr. Li acknowledged a second MRI was ordered for Petitioner's left shoulder on August 10, 2020. (Pet. Ex. 11, p. 19-20). Dr. Li testified that the reason for the MRI "was because on the August 5th visit, we had determined that his range of motion was good but he was still having pain, and because of the persistent pain I recommended MRI to see if there was something on the MRI that would show us what's causing this pain." (Pet. Ex. 11, p. 20). Dr. Li testified his interpretation of the MRI result was consistent with postoperative changes and he did not see any full thickness tearing of the rotator cuff, tendon, or any disruption of the repair. *Id.* Dr. Li further stated as a result of no findings of additional structural causes, he treated Petitioner or pain due to inflammation, and recommended a cortisone shot and therapy. *Id.*

Dr. Li acknowledged the inflammation in Petitioner's left shoulder was related to the injury in June 2019, the subsequent surgeries and the treatment for the injuries. (Pet. Ex. 11, p. 20-21). Dr. Li further acknowledged the inflammation in the left shoulder can often cause pain. *Id.*

Dr. Li acknowledged he is still treating Petitioner today, and he kept Petitioner off work from August 2020 to January 2021. (Pet. Ex. 11, p. 21). On January 4, 2021, Dr. Li referred Petitioner for an EMG with Dr. Trudeau in Springfield, Illinois. (Pet. Ex. 11, p. 21-22).

Dr. Li testified the results of the EMG revealed Petitioner had a left suprascapular neuropathy, moderate in nature, which would explain the persistent pain. (Pet. Ex. 11, p. 22). The EMG also showed Petitioner had left median neuropathy at the carpal tunnel. *Id.*

Dr. Li next saw Petitioner on February 4, 2021. (Pet. Ex. 11, p. 23)., Dr. Li testified Petitioner indicated he continued to have pain with active abduction, and it was his complaint for several months. (Pet. Ex. 11, p. 24). Dr. Li concluded Petitioner had that pain and weakness due to the suprascapular nerve entrapment. (Pet. Ex. 11, p. 24-25). Dr. Li recommended a referral to

Indiana Hand to Shoulder Center for an evaluation. (Pet. Ex. 11, p. 25). Dr. Li opined the referral was related to the described work injury through the treatment Petitioner had undergone. *Id.*

Dr. Li testified he still has Petitioner off work at the time of the deposition, and Petitioner is not at maximum medical improvement. (Pet. Ex. 11, p. 26). Dr. Li testified "it's my opinion, to a reasonable degree of medical certainty, that the injury that he suffered back in June of '19 pulling on – pulling hard on a blower that was hard to start directly led to the subsequent treatment and the development of the suprascapular nerve injury." (Pet. Ex. 11, p. 27). Dr. Li further testified all treatment provided was reasonable, necessary, and directly related to the June 2019 injury. *Id.*

On cross-examination, Dr. Li acknowledged he had treated injured employees represented by Mr. Kelly other than Petitioner. (Pet. Ex. 11, p. 29). Dr. Li further acknowledged he has performed independent medical examinations at Mr. Kelly's request and is paid a fee for performing those IMEs. *Id.* Dr. Li admitted on cross-examination he is not a pain management specialist and is not board certified in pain management. (Pet. Ex. 11, p. 31).

When asked if Dr. Li would rely upon a specialist's opinion whom he referred a patient to, Dr. Li testified "I would certainly listen to that specialist's opinion and seriously consider it." *Id.* Dr. Li further acknowledged there were no objective issues during the ultrasound on January 14, 2020, to suggest the surgery performed on December 10, 2019 was unsuccessful. (Pet. Ex. 11, p. 35-36).

Dr. Li testified on cross-examination over fifty percent (50%) of his patients develop adhesive capsulitis following a rotator cuff repair. (Pet. Ex. 11, p. 36-37). When asked on cross-examination about the MRI results of Petitioner's left shoulder on August 10, 2020, Dr. Li testified his impression was the MRI was a typical post-op rotator cuff repair MRI. (Pet. Ex. 11, p. 39). Dr. Li testified what he saw in the MRI was what he would expect in a rotator cuff repair that is healing. (Pet. Ex. 11, p. 40). Dr. Li further acknowledged he did not have any explanation for Petitioner's pain complaint. (Pet. Ex. 11, p. 40-41).

When asked about Petitioner's pain complaints on September 8, 2020, Dr. Li testified "Petitioner's subjective pain complaints were inconsistent with the objective findings on MRI." (Pet. Ex. 11, p. 41). Dr. Li acknowledged he referred Petitioner for a second opinion and stated "I referred him for a second opinion because I could not think of what was causing his pain, I couldn't come up with a reason, so I thought it would be in his best interests to get a fresh set of eyes to oversee his treatment and see if there's something I missed." (Pet. Ex. 11, p. 41-42). Dr. Li further testified he refers patients for second opinions approximately once a month or once every two months. *Id.*

Dr. Li acknowledged he referred Petitioner to Dr. Cole and admitted he trusts Dr. Cole's opinion. (Pet. Ex. 11, p. 42). Dr. Li further acknowledged Dr. Cole's reputation and opinions are highly regarded in the orthopedic and medical community *Id.*

When reviewing Dr. Cole's report from September 28, 2020, Dr. Li acknowledged Dr. neither Dr. Cole nor himself could identify an objective orthopedic issue to Petitioner's shoulder

pain. (Pet. Ex. 11, p. 45-46). Dr. Li further admitted he referred Petitioner to Dr. Ji Li for a pain management evaluation based on Dr. Cole's recommendations. (Pet. Ex. 11, p. 46).

When asked if Dr. Li identified any recent orthopedic issues with Petitioner's left shoulder, Dr. Li testified "right now we have a suprascapular nerve neuropathy, that's an orthopedic condition." (Pet. Ex. 11, p. 48-49).

On re-direct, Dr. Li acknowledged Dr. Cole did not have an EMG report in front of him since the EMG was done after the exam with Dr. Cole. (Pet. Ex. 11, p. 49-50). Dr. Li further testified the EMG identified an orthopedic issue that explains Petitioner's pain complaint *Id.* Dr Li continued by testifying he would disagree with any position that Petitioner is at maximum medical improvement. *Id.*

B. Deposition Testimony of Dr. Nicholas Crosby

Dr. Nicholas Crosby is a board-certified orthopedic surgeon with Indiana Hand to Shoulder Center. (Pet. Ex. 10, p. 6). Dr. Crosby specializes in the entire upper extremity, hand to shoulder. (Pet. Ex. 10, p. 7). Petitioner was referred to Dr. Crosby by Dr. Li. Petitioner presented himself to Dr. Crosby's office on June 9, 2021. (Pet. Ex. 10, p. 8). Dr. Li said in his testimony in this case was given in reliance on his treating medical records. (Pet. Ex. 11, p. 28). Dr. Li testified his medical treatment records are summaries and relevant information related to a particular examination. *Id.*

Petitioner provided a history to Dr. Crosby of his past surgeries to his right shoulder in 2016 and his left shoulder in 2019. (Pet. Ex. 10, p. 9.) Petitioner reported to Dr. Crosby he had a rotator cuff repair and a secondary surgery due to stiffness for capsular release. (Pet. Ex. 10, p. 10). Petitioner further reported to Dr. Crosby he had ongoing pain in his left shoulder and never improved much after the first surgery *Id.* Petitioner explained to Dr. Crosby that he had a recent MRI, ultrasound and nerve study performed. (Pet. Ex. 10, p.11). Dr. Crosby testified he treats some supraspinatus nerve impingement, and the condition is very rare. *Id.* Dr. Crosby further stated an EMG showing a supraspinatus nerve impingement would be "a very unusual finding." *Id.*

Dr. Crosby added Petitioner complained of numbness, tingling middle and ring fingers, and the nerve study showed some carpal tunnel syndrome. (Pet. Ex. 10, p. 12). Dr. Crosby performed a physical examination of Petitioner on June 9, 2021. *Id.* The physical examination found the carpal tunnel had showed positive provocative symptoms, positive Phalen's, positive compression, negative Tinel's, which would all be consistent with carpal tunnel syndrome. (Pet. Ex. 10, p. 12-13.) Dr. Crosby noted Petitioner's left shoulder had limited range of motion due to pain specifically and then some weakness. *Id.* Dr. Crosby did not observe any atrophy in the supraspinatus and infraspinatus muscles, but found suprascapular nerve innervation, and findings that were consistent with rotator cuff pathology. *Id.* Dr. Crosby did not see any significant weakness but Petitioner had pain when Dr. Crosby stressed the two rotator cuff muscles at the top. *Id*.

When asked about his diagnosis of Petitioner, Dr. Crosby testified, "I was concerned. And the diagnosis or preliminary diagnosis here was carpal tunnel syndrome, which again I believe was

involved but I don't know this is a major concern…" (Pet. Ex. 10, p. 14). Dr. Crosby further testified because of the EMG showing suprascapular nerve impingement, he "wasn't finding physical symptoms that would agree with that…" *Id.* Dr. Crosby was concerned about Petitioner's rotator cuff, whether or not it had fully healed or if there was some tearing or complete tearing of the cuff again. *Id.* Dr. Crosby acknowledged a "back pocket" diagnosis was suprascapular nerve impingement. *Id.* Dr. Crosby's preliminary diagnosis was a rotator cuff pathology, meaning partial tearing, tendinitis, or complete tearing. *Id.* Dr. Crosby acknowledged his diagnosis was consistent with the history Petitioner gave him. (Pet. Ex. 10, p. 15).

When asked about a treatment plan for Petitioner, Dr. Crosby wanted to have a new EMG completed, and an ultrasound-guided injection. (Pet. Ex. 10, p. 15-16.). A electromyogram and nerve conduction velocity was performed on Petitioner's shoulder on July 30, 2021 at JWM Neurology. (Pet. Ex. 10, p. 16). Dr. Crosby indicated the results of the EMG study showed there "could be some cervical nerve compression leading to changes in the trapezius muscle, carpal tunnel, and then possibly some nerve compression down in the forearm." (Pet. Ex. 10, p. 16-17). Dr. Crosby admitted the findings form the EMG study were not consistent with his initial diagnosis. (Pet. Ex. 10, p. 17).

The next test conducted on Petitioner was a fluoroscopic-guided injection into the shoulder joint. *Id.* Dr. Crosby noted Petitioner's pre-procedure pain rating was a "7 out of 10" and after the procedure a "0 out of 10." (Pet. Ex. 10, p. 18). Dr. Crosby noted a very significant and notable pain improvement. *Id.* Dr. Crosby saw Petitioner again on September 8, 2021, to discuss what he found on both diagnostic studies. (Pet. Ex. 10, p. 19). Dr. Crosby indicated he made a note that Petitioner stated, "he wanted to get back to normal and get back to work." (Pet. Ex. 10, p. 20). Dr. Crosby performed another physical examination on Petitioner which showed his range of motion improved a little, and still some findings consistent and concerning for rotator cuff pathology. *Id.* Dr. Crosby reported good strength in Petitioner's left shoulder. *Id.* Petitioner indicated the injection helped him for one or two days. (Pet. Ex. 10, p. 21).

When asked about his diagnosis of Petitioner, Dr. Crosby testified "I believe probably his main complaints would be any of the structures in the joint, the shoulder joint itself, I was a little concerned also about possible biceps tendon pathology, but really the rotator cuff was what stood out and I was concerned that despite having the repair he may have a retear, whether complete or partial, of his rotator cuff, and that evaluation of that and possible re-repair would be helpful. (Pet. Ex. 10, p. 21).

When asked about his "back pocket" diagnosis of suprascapular nerve impingement, Dr. Crosby stated, "I moved away from that even more after the first visit, getting into the second visit. The nerve study did not pick it up, my exam continued to be less concerning for that, and again when you're looking at prevalence of injuries, suprascapular nerve impingement is really not very common and so I pretty much brushed that off as suggesting that that's not the concern." (Pet. Ex. 10, p. 22).

Dr. Crosby recommended Petitioner undergo arthroscopic surgery, more specifically an arthroscopic evaluation of the rotator cuff with either partial debridement, if it looked mostly intact, or repair if it's torn. (Pet. Ex. 10, p. 23). Dr. Crosby indicated the recovery time to discharge

and fully return to work after arthroscopic surgery would be six months. (Pet. Ex. 10, p. 24). Dr. Crosby acknowledged that after both examinations, Petitioner was not able to go back to full duty. (Pet. Ex. 10, p. 25). Dr. Crosby also agreed with Dr. Li's work restrictions of no lifting more than 15 pounds and limited use of the left arm. *Id*. Dr. Crosby further indicated that light duty would be appropriate for Petitioner. *Id.* Dr. Crosby acknowledged he would perform surgery on Petitioner if Petitioner want to proceed with surgery. (Pet. Ex. 10, p. 26).

When asked about the mechanisms of Petitioner's injury, Dr. Crosby acknowledged this injury could tear the biceps tendon up high. (Pet. Ex. 10, p. 26-27). Dr. Crosby also admitted he had not ruled out cervical involvement. (Pet. Ex. 10, p. 29). When asked about carpal tunnel syndrome, Dr. Crosby indicated he could not comment on whether Petitioner's work activities could bring on the condition of carpal tunnel syndrome. (Pet. Ex. 10, p. 30).

When asked whether his diagnosis and conclusions of Petitioner's shoulder was an orthopedic issue or pain specialist issue, Dr. Crosby indicated the suprascapular nerve impingement and arthroscopy are both orthopedic issues. *Id.* Dr. Crosby testified pain management would not take care of Petitioner's issue if he wanted to improve. (Pet. Ex. 10, p. 33).

On cross-examination, Dr. Crosby acknowledged his opinions he was providing during the deposition would be limited to Petitioner's condition and treatment as of September 8, 2021. (Pet. Ex. 10, p. 35). Dr. Crosby acknowledged in his notes for Petitioner's initial visit, he indicated the concern for nerve impingent was unusual. (Pet. Ex. 10, p. 36). Dr. Crosby further admitted he did not pick up the suprascapular nerve concern in the study he ordered. *Id.*

Dr. Crosby admitted on cross-examination the arthroscopic examination of Petitioner's shoulder would be "partial exploratory with a high level of suspicion for rotator cuff pathology." (Pet. Ex. 10, p. 37). Dr. Crosby acknowledged he had concerns whether a third surgery would improve Petitioner's pain complaints. *Id.* When asked about the increased risk of performing a third surgery on an individual's left shoulder, Dr. Crosby testified "I do believe that revision of a rotator cuff has a higher risk of failure, but not necessarily any risk to the shoulder joint itself." *Id.*

On further cross-examination, Dr. Crosby stated his treatment plan would be altered if Petitioner was doing better since September 8, 2021. Dr. Crosby stated, "I mean, they feel like they can do their job and are functional and almost pain-free or virtual pain-free I would not operate on a person like that." (Pet. Ex. 10, p. 38-39).

V. Independent Medical Examinations

A. Section 12 Examination of Dr. Kenneth Candido

On December 22, 2020, Petitioner attended a pain management Independent Medical Examination with Dr. Kennth Candido. Dr. Candido noted the left AC joint was tender to palpation, limited internal rotation and elevation on the left side, compared to the right side. Neer's and Hawkins' signs on the left were positive for impingement of the left shoulder. Based on the objective findings on the physical examination of Petitioner, Dr. Candido opined the reduction in elevation/abduction of the left shoulder does not correlate with Petitioner's subjective complaints

of pain in the left acromioclavicular joint. Petitioner's pain is not related to the glenohumeral joint, but to the AC joint. Dr. Candido noted Petitioner's pain complaints correlates with the August 10, 2020, MRI which revealed arthritis in the AC joint. Dr. Candido opined Petitioner is capable of lifting and carrying up to 100 pounds, but his overhead work is limited by his limited range of motion. Dr. Candido opined Petitioner can work heavy duty work with no use of the left arm and left shoulder to do overhead work with work over 10 pounds. Dr. Candido felt Petitioner can perform some, but not all of his current job duties with the City of Peoria. Dr. Candido suggested that Dr. Cole essentially determined Petitioner to be at MMI form an orthopedic perspective. Dr. Candido opined that interventional pain management would not resolve Petitioner's left shoulder impingement syndrome and therefore, from a pain management perspective, he was also at MMI. (Pet. Ex. 8).

B. Section 12 Examination of Dr. Troy Karlsson

Petitioner was seen for an Independent Medical Evaluation by Dr. Troy Karlsson at DuPage Medical Group. Petitioner indicated he gets pain over the front and lateral aspects of the left shoulder. Petitioner further indicated the pain is worse if he is completely still and not doing any activity or if he is trying to raise his arm up in the air. Dr. Karlsson found normal girth of the left arm with no muscular wasting or atrophy. He noted the finding of mild to moderate suprascapular nerve dysfunction from the EMG nerve conduction test does not correlate to Petitioner's areas of pain. Petitioner was found by Dr. Karlsson to have 5/5 rotator cuff strength, similar to Dr. Cole's finding and Dr. Li's prior notes. Dr. Karlsson stated he "believe he has a subclinical compression of his suprascapular nerve, which is not leading to any clinical problems." Dr. Karlsson found Petitioner to be at MMI since August 10, 2020, when Petitioner had the MRI confirming lack of re-tear to the rotator cuff. Dr. Karlsson noted the MRI was approximately 4 months after Petitioner's second surgery for the shoulder, which would be generous time for recuperation. Dr. Karlsson further noted that he does not believe Petitioner needs nay further medical treatment, referring back to Petitioner having 5/5 rotator cuff strength by Dr. Cole and himself. When discussing Petitioner requiring occupational or non-occupational restrictions, Dr. Karlsson stated "he needs no restrictions whatsoever. He has been documented by surgery, ultrasound, and MRI to have an intact rotator cuff. He has regained normal girth and has documented near normal motion in Dr. Li's notes." (Resp. Ex. 3).

VI. Grievance Arbitration Proceedings

A. Testimony of William Ed Hopkins

Ed Hopkins testified in the grievance hearing on 2/10/22. Ed testified that his job title is Senior Human Resources Specialist for the City of Peoria (Pet. Ex. 12, pg. 9). Mr. Hopkins testified that he has helped administer over 1,000 workers compensation claims for the City of Peoria (Pet. Ex. 12, pg. 10). Mr. Hopkins testified that the City utilizes the city's doctors at OSF Occupational Health to review and look at employee's work restrictions and determine their abilities to return to work (Pet. Ex. 12, pg. 12).

Mr. Hopkins testified that in a workers' compensation claim, if the claim has already been accepted, the City relies solely upon the medical (Pet. Ex. 12, pg. 14). He further testified

that employees are offered light duty work. He further testified that when a doctor determines that an employee is able to work in a light duty or modified capacity, the doctor will forward a note and list the restrictions. Once the restrictions are received, the department will determine whether or not there is a job available that would not violate the restrictions. (Pet. Ex. 12, pg. 16-17).

Mr. Hopkins testified that light duty work is covered by the Collective Bargaining Agreement. He testified that the contract provided a limitation on the number of days an employee could have light duty work provided to 120 days (Pet. Ex. 12, pg. 17). Mr. Hopkins testified that typically the City does not make exceptions for Laborer's Unions to work in excess of 120 days (Pet. Ex. 12, pg. 17).

Mr. Hopkins testified that maximum medical improvement is where the doctor has determined that an employee does not require additional treatment warranted or necessary at that point (Pet. Ex. 12, pg. 20).

Mr. Hopkins testified that he is aware the Petitioner sustained a work injury on 6/3/19 (Pet. Ex. 12, pg. 28). He testified that at the time of the injury, Petitioner was a maintenance worker assigned to the sign shop working on the paint truck. Mr. Hopkins further testified that the work of a maintenance worker for the City of Peoria is considered heavy work (Pet. Exh. 12, pg. 29).

Mr. Hopkinstestified that the Petitioner's job description showed the position to be "very heavy, exerting over 100 lbs. occasionally, 50 to 100 lbs. frequently or up to 20 to 50 lbs. constantly." (Pet. Ex. 12, pg. 30).

Mr. Hopkins testified that the first surgery with Dr. Li in December 2019 was authorized. Additionally, he confirmed the second surgery with Dr. Li was authorized in April 2020 (Pet. Ex. 12, pg. 32).

Mr. Hopkins testified that the Petitioner was sent to an independent medical exam at the request of the employer to Dr. Cole on 9/28/20. At that time, Dr. Cole did not place the Petitioner at maximum medical improvement. (Pet. Ex. 12, pg. 36-37).

Mr. Hopkins testified that Petitioner was sent to Dr. Candido for an independent medical exam at the request of the employer. At that time, Dr. Candido determined that Petitioner had an ongoing orthopedic shoulder condition. (Pet. Ex. 12, pg. 39).

Mr. Hopkins testified that as of 12/22/20, the City had an opinion from Dr. Cole and Dr. Candido regarding Petitioner's ability to return to work and maximum medical improvement and that is why the City told the Petitioner to return to work (Pet. Ex. 12, pg. 40).

Mr. Hopkins testified that the Petitioner returned to work on 1/12/21. He confirmed that the Petitioner was assigned his previous position of maintenance worker working on the paint truck. Mr. Hopkins testified that he was aware Sie Maroon believed Petitioner could not do the job (Pet. Ex. 12, pg. 41).

Mr. Hopkins testified that Dr. Moody issued a letter on 1/13/21 stating that after reviewing the medical records, it was his opinion that Petitioner had reached medical maximum improvement. Dr. Moody also provided permanent restrictions of 3 lbs. maximum force, no use of the left arm, left arm away from the body, no above chest level work, no pushing, pulling or repetitive motion of the left arm (Pet. Ex. 12, pg. 42). He also testified that Petitioner would not be able to work as a maintenance worker with said work restrictions (Pet. Ex. 12, pg. 43).

Mr. Hopkins testified that he was aware that as of September 2021, Petitioner was still receiving medical treatment. He confirmed that Petitioner's treating physicians still had him on work restrictions (Pet. Ex. 12, pg. 45).

Mr. Hopkins testified that in May 2021, Petitioner's counsel requested that the City return the Petitioner to work full duty. He testified that the City offered the Petitioner a temporary maintenance worker position (Pet. Ex. 12, pg. 46).

Mr. Hopkins testified that other maintenance workers had workers' compensation claims against the Respondent at the same time as the Petitioner. Those individuals were Frankie King, Robert Jackson, and Aubrey Duncan. He testified that in the City's opinion, these individuals had reached maximum medical improvement. Mr. Hopkins confirmed that all of these individuals had been terminated. (Pet. Ex. 12, pg. 49).

B. Sie Maroon Testimony

Sie Maroon testified in the grievance hearing on February 10, 2022. Mr. Maroon testified that his job title is Deputy Director of Operations for the City of Peoria. He testified that the Petitioner worked for the City of Peoria as a maintenance worker (Pet. Ex. 12, pg. 70). He testified that a maintenance worker requires heavy work with a lot of pushing, pulling, lifting, and carrying (Pet. Ex. 12, pg. 72). He also testified that a painter requires heavy job duties as they use the forklift and carry 5-gallon buckets (Pet. Ex. 12, pg. 73-75). Mr. Maroon testified that a leaf blower that maintenance workers operate with weight up to 20 lbs. (Pet. Ex. 12, pg. 76).

Mr. Maroon testified that workers could have to lift and carry paint stencils to haul to locations. (Pet. Ex. 12, pg. 78). He testified that, if Petitioner had 15 lb. restrictions, he would not be able to complete the job duties (Pet. Ex. 12, pg. 78). Mr. Maroon testified that Petitioner's job duties would include flipping and installing signs that weigh up to 30 lbs. (Pet. Ex. 12, pg. 79). He testified that Petitioner's job duties would also include drilling fence posts using an auger weighing up to 25 lbs. or more (Pet. Ex. 12, pg. 82).

Mr. Maroon testified that workers must also be able to use sandbags on windy days when putting up signs. He testified that sandbags weigh up to 50 lbs. (Pet. Ex. 12, pg. 84). He testified that portable signs would be used to replace a stop sign that was knocked down or power outage of traffic signals. Mr. Maroon confirmed that the portable signs have to be pushed and pulled and weighed about 20 lbs. (Pet. Ex. 12, pg. 85).

Mr. Maroon reiterated that, if Petitioner had a work restriction of no lifting more than 15 lbs., he would not be able to perform the job functions of a maintenance worker. (Pet. Ex. 12, pg. 87). He testified that Petitioner's job duties would also include driving a 7-ton haul truck. Mr. Maroon testified that Petitioner would have to pull himself into the truck using his arms. (Pet. Ex. 12, pg. 89). He testified that the truck pans are very heavy weighing more than 30 lbs. sometimes taking 2 people to get the pan up, level, and locked in. (Pet. Ex. 12, pg. 90).

Mr. Maroon testified that maintenance workers would be responsible for flooding work. He testified that flooding work involves bagging sand, building sandbag walls and driving equipment. (Pet. Ex. 12, pg. 92).

Mr. Maroon testified that the Petitioner returned to work in January 2021 for 1 day, but he sent him home the next day. (Pet. Ex. 12, pg. 96). He testified that it is a condition of employment that Petitioner be able to fulfill all job requirements. (Pet. Ex. 12, pg. 96).

Mr. Maroon testified that given Petitioner's 15 lb. work restrictions, Petitioner would not be able to handle the job tasks of that of a maintenance worker (Pet. Ex. 12, pg. 95). He further stated that, if Petitioner had any work restrictions, he would not be able to perform the job tasks of a maintenance worker full duty. (Pet. Ex. 12, pg. 98).

The Arbitrator has reviewed the corrected opinion award of Arbitrator Brian E. Reynolds. This was a result of the grievance hearing that took place on February 10, 2022.

The Arbitrator notes that Arbitrator Reynolds rendered an opinion that the Petitioner was not capable of returning to full duty work unrestricted.

At the May 10, 2023, hearing, Petitioner offered into evidence a transcript of grievance arbitration proceedings between the City of Peoria and Laborers International Union of North America, Local #165 concerning the discharge of Petitioner. (Pet. Ex. 12). Petitioner also offered into evidence the corresponding written decision of Arbitrator Brian Reynolds concerning the grievance filed by Petitioner as a result of his termination from Respondent, effective January 29, 2021. (Pet. Ex. 13).

Having reviewed the grievance arbitration evidence, the Arbitrator determines the labor grievance evidence is consistent with regard to the medical treatment and physician testimony above. Three (3) of the four (4) witnesses who testified at the February 10, 2022, grievance arbitration also testified during the Section 19(b-1) hearing on May 10, 2023, Ed Hopkins, Sie Maroon, and Petitioner. While useful for gauging the credibility of these witnesses, the grievance arbitration transcript and decision primarily establish facts not in dispute at the May 10, 2023, hearing.

The evidence establishes Petitioner began working for Respondent on September 6, 2012. He was initially assigned to Streets and Sewers, but later transferred to the Traffic Division and paint truck. Petitioner was working in this capacity at the time of the work accident.

The Maintenance Worker job duties and job description were discussed at length, including the specific equipment and duties on the paint truck. The job description describes the paint truck assignment as involving heavy-duty work, "[e]xerting 50-100 lbs. occasionally, 10-25 lbs. frequently, or up to 10-20 lbs. constantly." Examples of PTW assignment heavy duty work include carrying 35-pound buckets of paint or cleaning material and operating leaf blowers and power washers. The sign shop work includes lifting signs, 50-pound sandbags, and moving around traffic cones and barrels.

On June 3, 2019, Grievant injured his left shoulder while trying to start a gas-powered blower the crew uses to prepare to paint a stripe. It did not start on first pull and when he pulled the cord the second time, he felt a very sharp pain in his shoulder which felt numb and tingly and was sufficiently painful to drop Grievant to one knee. Petitioner then received fairly extensive treatment for his left shoulder injury. The labor grievance evidence is consistent with the above treatment summary, deposition testimony, and IME reports.

The labor grievance evidence ultimately establishes Petitioner returned to work for one (1) day on January 12, 2021. When he returned to work on January 13, 2021, Petitioner was pulled aside and informed that he was not meant to be there. Dr. Moody subsequently placed Petitioner at maximum medical improvement and recommended permanent restrictions. Petitioner was later informed his employment would be terminated, effective January 29, 2021, based on the maximum medical improvement opinions of Dr. Cole, Dr. Candido, and Dr. Moody, and Petitioner's inability to perform his essential job functions.

Although Petitioner testified that he could perform his full, unrestricted job duties as a Maintenance Worker as of February 10, 2022, and stated he had no intention of moving forward with additional medical treatment, including surgery, the grievance arbitrator found Respondent had just cause to terminate Petitioner as of January 29, 2021. This decision is final and unappealable.

CONCLUSIONS OF LAW

Petitioner's Average Weekly Wage

Petitioner's average weekly wage was placed at issue by the parties at arbitration. As stated in Arbitrator's Exhibit 1, Petitioner alleged his average weekly wage was $1,411.53 during the fifty-two (52) weeks preceding the accident. Respondent alleged Petitioner's correct average weekly wage was $1,238.67. The Arbitrator finds the parties' disagreement concerning Petitioner's appropriate average weekly wage is largely, if not solely, based upon whether Petitioner's overtime earnings should be included in his average weekly wage calculation.

The Act defines average weekly wage as "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. (Emphasis added).

The Act expressly states overtime is to be excluded from calculating average weekly wage. 820 ILCS 305/10. In *Airborne Express, Inc. v. Illinois Workers' Compensation Commission,* 372 Ill. App. 3d 549 (1st Dist. 2007), the First District Appellate Court reiterated that overtime hours are not to be included unless (1) the worker is required to work overtime as a condition of his or her employment (*i.e.,* it is mandatory); (2) the worker consistently works a set number of hours of overtime each week; and (3) the overtime hours worked were part of his or her regular hours of employment. Petitioner has the burden of proving, by a preponderance of the evidence, the elements of his claim, including his average weekly wage. *Bagwell v. Illinois Workers' Compensation Commission (Nestle USA, Inc)*, App. 4 Dist.2017, 416 Ill. Dec. 672, 84 N.E.3d 1149.

At the May 10, 2023, hearing, Sie Maroon, Respondent's Deputy Director of Operations for Public Works, testified overtime within the Public Works Department is primarily based on seniority. (Arb. T. p. 214-215). Mr. Maroon stated overtime within the Public Works Department was only mandatory during storm or weather-related events, like a snowstorm or flood. This mandatory overtime would consist of twelve-hour shifts during a large storm or flood. According to Mr. Maroon, any overtime not performed during a storm or weather-related event would be voluntary pursuant to a seniority-based overtime scheduling system. (Arb. T. pp. 214-215). Based on his long tenure with Respondent and understanding of these types of weather-related events, Mr. Maroon testified the weather-dependent overtime would not be regularly scheduled. (Arb. T. pp. 215).

The Arbitrator notes Petitioner did not offer any testimony at the May 10, 2023, hearing regarding his earnings during the fifty-two (52) weeks prior to his claimed accident or any overtime he may have worked for Respondent prior to his accident. However, during the February 10, 2022, grievance arbitration, Petitioner offered testimony consistent with Mr. Maroon's explanation of the seniority process and the twelve-hour shifts used for snow plowing. (Pet. Ex. 12 p. 126-128).

With regard to Petitioner's appropriate average weekly wage, the Arbitrator further notes Respondent's Senior Human Resources Specialist Ed Hopkins testified he reviewed documents in Respondent's possession and control prior to arbitration regarding Petitioner's earnings during the fifty-two (52) prior to the accident. Based on his review of said documents, Mr. Hopkins understood Petitioner's earnings during that time were approximately $65,000.00. (Arb. T., 93-94). Petitioner did not testify as to the overtime included in his pay stubs submitted as Petitioner's Exhibit #16. Therefore, there is no way for the Arbitrator to infer that the overtime included in those pay stubs was mandatory as opposed to voluntary or based on seniority.

Based on the foregoing and the evidentiary record as a whole, the Arbitrator finds two cases particularly instructive on the issue of Petitioner's correct average weekly wage - *Herbert Taylor v. City of Chicago,* 20 I.W.C.C 0655, 2020 WL 8474830 and *Allen Yates v. City of Peoria*, 20 WC 031799.

In *Taylor*, the claimant was employed as a Motor Truck Driver for the Chicago Water Department. In addition, he volunteered to also work for the Department of Streets and Sanitation as a seasonal snowplow driver, for which he was paid an overtime rate. He claimed his average weekly wage should be computed with his overtime pay included. The arbitrator found the claimant failed to prove his overtime hours were a condition of employment, mandatory, regular,

and consistent. In that case, there was no evidence that overtime hours as a seasonal snowplow driver were either regular or consistent. The arbitrator held snowplow drivers are subject to the vagaries of weather, which are neither regular nor consistent. Accordingly, the claimant's overtime pay was not included in the computation of his average weekly wage. *Taylor,* 20 I.W.C.C 0655, 2020 WL 8474830.

In *Yates*, this Arbitrator reviewed wage documents and the relevant testimony of the claimant and Mr. Maroon and concluded the claimant's overtime hours were neither regular nor consistent. While the evidence in this matter establishes Petitioner may have been required to work mandatory overtime occasionally during storm-related incidents, like the claimant in *Yates*, said overtime was subject to the vagaries of weather and was neither regular or consistent. As such, Petitioner cannot meet his burden of proving, by a preponderance of the evidence, his overtime pay should be considered and computed into his average weekly wage.

The case at hand is similar to *Taylor* and *Yates.* While the evidence establishes Petitioner would have to work mandatory overtime during storm related incidents, the overtime hours were subject to the vagaries of weather, which are neither regular nor consistent. For overtime pay to be considered and computed into average weekly wage, the overtime hours must be a condition of employment, mandatory, regular, and consistent. As such, Petitioner cannot meet his burden of proving, by a preponderance of the evidence, his overtime pay should be considered and computed into his average weekly wage.

Based on the foregoing and the evidence submitted at arbitration, the Arbitrator finds and concludes that Petitioner's earnings in the year preceding his accident were $64,410.84 providing thereby producing an average weekly wage is $1,238.67.

Maximum Medical Improvement and Causation

The Arbitrator incorporates by reference the Findings of Fact and Conclusions of Law set for in the foregoing paragraphs.

The parties agree that Petitioner sustained a work injury that arose out of and in the course of his employment with Respondent on June 3, 2019. The parties agree that Petitioner's condition of ill-being immediately following his accident up to the time of Dr. Candido's Independent Medical Evaluation on December 22, 2020. At arbitration, with the exception of the aforementioned wage issue, the remaining issues were in dispute: (1) causation; (2) payment of incurred medical expenses; (3) responsibility and payment for, prospective medical treatment; and (4) Petitioner's entitlement to additional temporary benefits. After reviewing the evidence and arguments of the parties, the Arbitrator finds these issues primarily involve the threshold question of whether Petitioner had reached maximum medical improvement from his June 3, 2019, work accident at the time his benefits and employment were terminated.

Petitioner bears the burden to prove, by a preponderance of evidence, his condition of ill-being at the time of hearing is causally related to the work accident on June 3, 2019. *Hansel & Gretel Day Care Center v. Industrial Comm'n*, 215 Ill. App. 3d 284 (1991). Similarly, Petitioner

bears the burden of proving he has not reached maximum medical improvement for his alleged condition.

A careful review of the evidence establishes Petitioner has met this burden. The Arbitrator adopts and incorporates by reference the above factual findings in support of this conclusion, particularly, the opinions of Dr. Cole, Dr. Li, and Dr. Crosby. Respondent attempts to characterize Dr. Cole's report as an MMI opinion which is a blatant mischaracterization. While Dr. Cole does not see a condition which needs to be addressed from an orthopedic surgery perspective, Dr. Cole is abundantly clear in his Quick Report that he does not consider Petitioner to be at Maximum Medical Improvement. In fact, Dr. Cole recommended a referral to pain management for "consideration for other possible intrinsic pain generator to the upper extremity, such as a cervical spine, other narrative root hyperactivity or other pain generator that has not been addressed." (Pet. Ex. 7) Based upon Dr. Cole's report, Respondent directed Petitioner to see Dr. Candido for an Independent Medical Examination on December 22, 2020. Again, this IME was described as a pain management consultation which misrepresents the true character of the appointment. Dr. Candido suggested that Dr. Cole's opinion was that Petitioner was at MMI from an orthopedic perspective. (Pet. Ex. 8) However, that misrepresents Dr. Cole's report. After reviewing Dr. Cole's report with Petitioner, Dr. Li sent Petitioner to Dr. Trudeau for an EMG nerve conduction study. (Pet. Ex. 3) Based upon the results of the EMG nerve conduction study Dr. Li sent Petitioner to Dr. Crosby to evaluate a possible supraspinatus nerve impingement. (Pet. Ex. 2) Even though Petitioner was pronounced at Maximum Medical Improvement by Dr. Moody, the company medical doctor, Petitioner continued to voice concerns regarding his left shoulder pain to his doctors and physical therapist.

Respondent seeks to conflate two separate time frames by drawing inferences from Petitioner's testimony at the February 10, 2022, grievance arbitration to suggest that he was at MMI in January of 2021. However, the medical evidence in this case establishes that Petitioner was under active care with Dr. Li when he was told to return to work in January 2021. The facts establish that Petitioner saw Dr. Cole on September 28, 2020. (Pet. Ex. 7) He was then evaluated by Dr. Moody on November 25, 2020. (Pet. Ex. 1) Dr. Moody noted Dr. Cole's suspicion for an alternative pain generator to be reasonable given Petitioner's delayed recovery. *Id* Dr. Moody recommended light duty if available with limited use of the left upper extremity. *Id.* Petitioner had occupational therapy with the Orthopedic and Shoulder Center on December 8, 2020, December 21, 2020, January 5, 2021, and January 12, 2021, where he continued to report pain in his left shoulder that was not getting better. (Pet. Ex. 2) Petitioner was sent home from work on January 13, 2021. Petitioner followed up with Dr. Li on January 14, 2021, reporting ongoing pain complaints (Pet. Ex. 2) Dr. Li recommended an EMG nerve conduction study to examine the possibility of compression of the suprascapular nerve. *Id.* The EMG nerve conduction study was undertaken by Dr. Trudeau on January 25, 2021. (Pet. Ex. 3) Petitioner returned to Dr. Li on February 4, 2021, still complaining of pain with active abduction. (Pet. Ex. 2) Based on his review of the EMG nerve conduction and his physical examination, Dr. Li diagnosed a left rotator cuff repair with residual dysfunction due to suprascapular nerve entrapment. He then referred Petitioner to Dr. Crosby. Thereafter, Dr. Crosby recommended a repeat EMG nerve conduction study and based upon its result and his physical examination recommended a third arthroscopic surgery.

Respondent offered no opinion that Petitioner had any intervening accident or event severing causation. In fact, Dr. Cole was of the opinion that Petitioner's condition was causally related to his work accident. Dr. Candido confirmed Petitioner's left shoulder diagnosis was related to the initial work injury. Petitioner testified at the time of arbitration that he was still having issues with his left shoulder and those complaints have never gone away since the injury.

The Arbitrator finds the opinions of Dr. Cole, Dr. Candido, Dr. Moody, and Dr. Karlsson less persuasive than the opinions of Dr. Li and Dr. Crosby.

Wherefore, based upon the preponderance of the evidence, the Arbitrator finds and concludes that Petitioner's present condition of ill-being is causally related to his June 3, 2019, work injury.

Temporary Benefits

The Arbitrator incorporates by reference the Findings of Fact and Conclusions of Law set forth in the foregoing paragraphs. Petitioner placed temporary total disability benefits at issue at arbitration. Petitioner claimed entitlement to temporary total disability benefits and temporary partial disability benefits. Petitioner testified he was paid all temporary benefits through at least January 19, 2021. At the grievance arbitration, he testified he was paid all temporary benefits through January 26, 2021. Respondent presented no evidence as to the amount of TTD benefits it paid.

Based on the record at Arbitration, the Arbitrator finds and concludes that Petitioner is owed TTD benefits from January 20, 2021, through August 30, 2021, when he commenced his new employment. This period is 31 5/7 weeks at Petitioner's TTD rate of $825.77 equals $26,188.70. While an award of temporary partial disability might be available to Petitioner from August 21, 202, through the time of arbitration, the amount of such benefits is too speculative to discern based upon the scant evidence provided about Petitioner's current earnings.

Medical Bils

Past Medical Expenses and Prospective Medical Treatment

The Arbitrator hereby incorporates by reference the Findings of Fact and Conclusions of Law as set forth in the foregoing paragraphs.

The Arbitrator finds and concludes that the Medical bills set forth in Petitioner's Exhibit 14 are reasonable, necessary and causally related to Petitioner's June 3, 2019, work accident.

Wherefore, the Arbitrator orders the Respondent to pay all outstanding medical bills for Petitioner's reasonable and necessary care, as outlined in Petitioner's Exhibit 14 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.

Provider:	Service Date:	Amount Billed:	Adjustments:	Amount Paid:	Payor:	Amount Owed:
Rx Partners	12/17/2019	$1,686.26		$312.58		$1,373.68
	12/3/2020	$1,210.22		$194.30		$1,015.92
	1/14/2021	$1,210.22		$194.30		$1,015.92
TOTAL:		$4,106.70		$701.18		**$3,405.52**
Ireland Grove Surgery						
	12/10/2019	$46,783.25	$21,309.55	$25,473.70		
	4/7/2020	$13,027.25	$8,211.82	$4,815.43		
TOTAL:		$59,810.50	$29,521.37	$30,289.13		**$0.00**
Dr. Li	6/18/2019	$1,945.80		$1,657.28		$288.52
	6/19/2019	$1,469.99				$1,469.99
	6/20/2019	$204.21		$204.21		
	6/24/2019	$175.08		$175.08		
	6/26/2019	$175.08		$175.08		
	7/2/2019	$148.47		$148.47		
	7/5/2019	$194.29		$194.29		
	7/9/2019	$178.75		$178.75		
	7/11/2019	$175.08		$175.08		
	7/16/2019	$148.47		$148.47		
	7/18/2019	$621.61		$621.61		
	7/23/2019	$591.34		$591.34		
	7/26/2019	$144.84		$144.84		
	7/30/2019	$591.34		$591.34		
	8/1/2019	$545.48		$545.48		
	8/8/2019	$545.48		$545.48		
	9/5/2019	$224.60		$224.60		
	9/13/2019	$148.47		$148.47		
	9/20/2019	$591.30		$591.30		
	9/24/2019	$545.48		$545.48		
	10/11/2019	$545.48		$545.48		
	10/17/2019	$274.09		$274.09		
	10/25/2019	$545.48		$545.48		
	11/1/2019	$545.48		$545.48		
	11/8/2019	$594.97		$594.97		
	11/19/2019	$545.48		$545.48		
	11/21/2019	$651.89		$651.89		
	11/25/2019	$575.76		$575.76		
	12/10/2019	$44,394.06		$35,598.54		$8,795.52
	12/12/2019	$204.21		$169.84		$34.37
	12/17/2019	$988.56		$988.56		
	12/20/2019	$178.75		$178.75		
	12/24/2019	$175.08		$175.08		
	Service Date:	**Amount Billed:**	**Adjustments:**	**Amount Paid:**	**Payor:**	**Amount Owed:**
	12/27/2019	$175.08		$175.08		
	12/31/2019	$175.08		$175.08		
	1/3/2020	$178.07		$178.07		
	1/7/2020	$232.15		$232.15		
	1/10/2020	$181.81		$181.81		
	1/14/2020	$480.04		$480.04		

1/17/2020	$178.12	$178.12	
1/21/2020	$178.12	$178.12	
1/24/2020	$178.12	$178.12	
1/28/2020	$181.81	$181.81	
1/30/2020	$178.07	$178.07	
2/4/2020	$178.07	$178.07	
2/7/2020	$160.05	$160.05	
2/10/2020	$291.86	$291.86	
2/11/2020	$539.41	$539.41	
2/13/2020	$1,629.20	$629.56	$999.64
2/18/2020	$151.02	$151.02	
2/19/2020	$214.13	$214.13	
2/21/2020	$163.79	$163.79	
2/25/2020	$181.81	$181.81	
2/26/2020	$256.99	$256.99	
2/28/2020	$4,791.39	$4,791.39	
3/3/2020	$181.81	$181.81	
3/10/2020	$181.81	$181.81	
3/11/2020	$607.82	$607.82	
4/7/2020	$15,913.37	$6,633.11	$9,280.26
4/8/2020	$207.73	$172.78	$34.95
4/9/2020	$181.81	$181.81	
4/10/2020	$228.41	$228.41	
4/13/2020	$178.07	$178.07	
4/14/2020	$510.83	$510.83	
4/15/2020	$228.41	$228.41	
4/16/2020	$181.81	$181.81	
4/17/2020	$208.07	$208.07	
4/20/2020	$181.81	$181.81	
4/21/2020	$232.15	$232.15	
4/23/2020	$177.28	$177.28	
4/27/2020	$181.81	$181.81	
4/29/2020	$178.12	$178.12	
5/1/2020	$705.27	$705.27	
5/6/2020	$224.77	$224.77	
5/8/2020	$147.33	$147.33	
5/11/2020	$197.67	$197.67	
5/13/2020	$480.04	$480.04	
5/15/2020	$151.02	$151.02	
5/18/2020	$151.02	$151.02	
5/22/2020	$151.02	$151.02	
5/26/2020	$151.02	$151.02	
5/29/2020	$151.02	$151.02	
6/3/2020	$151.02	$151.02	
6/5/2020	$151.02	$151.02	
6/8/2020	$151.02	$151.02	
6/10/2020	$480.04	$480.04	
6/12/2020	$1,501.42	$100.68	$1,400.74
6/15/2020	$151.02	$151.02	
6/17/2020	$151.02	$151.02	
6/22/2020	$151.02	$151.02	
6/26/2020	$151.02	$151.02	
6/29/2020	$151.02	$151.02	
7/1/2020	$151.02	$151.02	
7/2/2020	$151.02	$151.02	
7/6/2020	$151.02	$151.02	
7/8/2020	$557.48	$557.48	
7/10/2020	$151.02	$151.02	
7/13/2020	$547.18	$547.18	
7/15/2020	$197.62	$197.62	
7/17/2020	$151.02	$151.02	

Service Date:	Amount Billed:	Adjustments:	Amount Paid:	Payor:	Amount Owed:
7/20/2020	$547.18		$547.18		
7/22/2020	$547.18		$547.18		
7/24/2020	$547.18		$547.18		
7/27/2020	$597.52		$597.52		
7/29/2020	$547.18		$547.18		
7/31/2020	$547.18		$547.18		
8/3/2020	$151.02		$151.02		
8/5/2020	$224.72		$224.72		
8/7/2020	$151.02		$151.02		
8/10/2020	$1,434.67		$1,434.67		
8/12/2020	$1,501.42		$501.78		$999.64
8/14/2020	$181.81		$181.81		
8/18/2020	$151.02		$151.02		
8/21/2020	$151.02		$151.02		
8/25/2020	$181.81		$181.81		
8/28/2020	$181.81		$181.81		
9/1/2020	$201.36		$201.36		
9/4/2020	$151.02		$151.02		
9/8/2020	$77.44		$77.44		
10/8/2020	$406.46		$406.46		
11/5/2020	$406.46		$406.46		
12/3/2020	$406.46		$406.46		
12/8/2020	$154.15		$154.15		
12/15/2020	$147.28		$147.28		
12/21/2020	$147.28		$147.28		
1/5/2021	$147.28		$147.28		
1/12/2021	$232.96		$149.18		$83.78
1/14/2021	$495.54		$495.54		
2/4/2021	$162.22		$162.22		
6/8/2021	$162.22		$162.22		
8/23/2021	$162.22		$162.22		
9/16/2021	$162.22		$162.22		
TOTAL:	$109,243.25		$84,564.14		$24,679.11

Memorial Physicians

1/25/2021	$6,331				$6,331
TOTAL:	$6,331				$6,331

Indiana Hand to Shoulder

6/9/2021	$250		$250		
9/8/2021	$265		$265 pt paid		
TOTAL:	$515				$515

GRAND TOTAL:	**$180,006.45**	**$29,521.37**	**$115,819.45**		**$34,665.63**

Prospective Medical Treatment

The Arbitrator hereby incorporates by reference the Findings of Fact and Conclusions of Law as set forth in the foregoing paragraphs.

Based on the medical testimony by the treating physicians, Dr. Li and Dr. Crosby, the Arbitrator finds and concludes that Respondent is liable for the prospective medical treatment recommended by Dr. Crosby. Respondent shall be responsible for Petitioner's medical care and treatment such time as Petitioner has been deemed at maximum medical improvement by his treating physicians from these work injuries.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	22WC001081
Case Name	Joseph Chillemi v. National DCP, LLC
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b) Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	23IWCC0416
Number of Pages of Decision	17
Decision Issued By	Christopher Harris, Commissioner

Petitioner Attorney	Brian McManus Jr
Respondent Attorney	Bethany White

DATE FILED: 9/21/2023

/s/ Christopher Harris, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF KANE)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

JOSEPH CHILLEMI,

Petitioner,

vs. NO: 22 WC 1081

NATIONAL DCP, LLC,

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 causal connection, the reasonableness and necessity of the medical treatment and charges, prospective medical treatment, temporary total disability benefits (TTD), and penalties, 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).

For reasons stated below, the Commission finds that the Petitioner has established that his left shoulder condition is causally related to the November 17, 2021 work-related accident. The Commission further finds that the Petitioner is entitled to prospective medical treatment as recommended by Dr. Steven Chudik ("Dr. Chudik") of Hinsdale Orthopaedics. All else is affirmed and adopted.

The Petitioner testified that he sustained a prior injury to his left shoulder on September 28, 2018. (T.12.) Following that injury, Petitioner underwent treatment and was returned to work full duty despite continued pain and weakness. (*Id.)* Petitioner then had a 2 year gap in treatment before beginning left shoulder treatment with Dr. Chudik on July 27, 2020. (PX.2c.) An MRI of the left shoulder was performed on October 14, 2020 at Dr. Chudik's request. The MRI revealed subacromial fluid but no obvious rotator cuff tear. (*Id.*) Dr. Chudik diagnosed Petitioner with left shoulder impingement and recommended physical therapy and injections. (*Id.*)

Respondent obtained a Section 12 opinion from Dr. Prasant Atluri ("Dr. Atluri") of Hand to Shoulder Associates on December 10, 2020. (RX.6c.) Dr. Atluri stated that the Petitioner may have sustained a sprain or strain of his left shoulder in September 2018 but there were no objective findings indicative of any significant shoulder injury. He recommended 6-8 weeks of supervised physical therapy and a possible left shoulder arthroscopy if the therapy did not relieve his symptoms. Dr. Atluri opined that Petitioner's left shoulder condition was not causally related to the 2018 injury based on the lack of any documented ongoing symptoms or treatment for the previous 2 years. Because of this, Dr. Atluri stated Petitioner was at maximum medical improvement ("MMI") from the 2018 accident. (*Id.)*

Petitioner continued to treat with Dr. Chudik through April 7, 2021. At that time, Petitioner reported 75% improvement of his left shoulder symptoms. Petitioner reported that the requested physical therapy had been denied by the insurance company. He was, however, satisfied with his progress and was not interested in left shoulder surgery. Petitioner was allowed to work full duty with regard to his left shoulder. (PX.2c.)

Petitioner was working full duty at the time he sustained the undisputed work-related injury on November 17, 2021. He sought treatment at Physicians Immediate Care following the injury and was diagnosed with left shoulder pain. Light duty work restrictions were prescribed. Petitioner underwent an MRI on December 18, 2021 and he was referred to an orthopedic physician. (PX.1c.)

Petitioner presented to Dr. Chudik on January 24, 2022 for left shoulder pain. Dr. Chudik noted that Petitioner reaggravated his left shoulder on November 17, 2021. Dr. Chudik noted that the December 18, 2021 MRI revealed subacromial fluid but was of poor imaging quality. An updated MRI was performed on April 5, 2022. Dr. Chudik interpretated the MRI as showing possible medial subluxation of the bicep, a possible superior labral tear, degenerative changes of the AC joint, and thickening of the supraspinatus. He diagnosed Petitioner with a possible labral tear and impingement of the left shoulder. Dr. Chudik recommended a left shoulder arthroscopy with evaluation of the labrum, cartilage and rotator cuff on May 13, 2022. Dr. Chudik opined that Petitioner's left shoulder condition and the need for treatment were causally related to the work accident of November 17, 2021. (PX.2c.)

Respondent obtained a Section 12 examination from Dr. James Stiehl ("Dr. Stiehl") on June 28, 2022. He found that Petitioner had a modest aggravation of his left upper extremity symptoms and that he had a normal left shoulder for his age. Petitioner's low grade chronic cervical

radiculopathy caused him to develop significant left shoulder discomfort. Dr. Stiehl diagnosed Petitioner with cervical degenerative arthritis not related to the accident. (RX.1c.) Dr. Stiehl issued a second opinion on September 27, 2022. He stated that there was a mild temporary injury that temporarily exaggerated Petitioner's pre-existing condition that should have disappeared within a few months. (*Id.*)

Whether a claimant's disability is attributable solely to a degenerative process of the preexisting condition or to an aggravation or acceleration of a preexisting condition because of an accident is a factual determination to be decided by the Industrial Commission. *Roberts v. Industrial Comm'n*, 93 Ill. 2d 532, 538, 67 Ill. Dec. 836, 445 N.E.2d 316 (1983); *Caterpillar Tractor Co. v. Industrial Comm'n*, 92 Ill. 2d at 36-37; *Caradco Window & Door v. Industrial Comm'n*, 86 Ill. 2d 92, 99, 56 Ill. Dec. 1, 427 N.E.2d 81 (1981).

It is well-established that an accident need not be the sole or primary cause—as long as the employment is a cause—of a claimant's condition. *Sisbro, Inc. v. Industrial Comm'n*, 207 Ill. 2d 193, 205, 797 N.E.2d 665, 278 Ill. Dec. 70 (2003). Furthermore, an employer takes its employees as it finds them. *St. Elizabeth's Hospital v. Illinois Workers' Compensation Comm'n*, 371 Ill. App. 3d 882, 888, 864 N.E.2d 266, 309 Ill. Dec. 400 (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, 440 N.E.2d 861, 65 Ill. Dec. 6 (1982).

Moreover, a chain of events which demonstrates a previous condition of good health, an accident, and a subsequent injury resulting in disability may be sufficient circumstantial evidence to prove a causal nexus between the accident and the employee's injury." *International Harvester v. Industrial Comm'n*, 93 Ill. 2d 59, 63-64, 442 N.E.2d 908, 66 Ill. Dec. 347 (1982). In such cases, "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." *Schroeder v. Ill. Workers' Comp. Comm'n*, 2017 IL App (4th) 160192WC, 414 Ill. Dec. 198, 79 N.E.3d 833. "The salient factor is not the precise previous condition; it is the resulting deterioration from whatever the previous condition had been." *Id.*

The Commission finds Dr. Chudik's opinion, that Petitioner's left shoulder condition is causally related to the November 17, 2021 accident, persuasive. The evidence clearly demonstrates that while the Petitioner had a prior left shoulder injury in 2018, his condition had markedly improved and he was capable of resuming full duty work. He continued to work for 2 years before seeking treatment with Dr. Chudik in July 2020 for left shoulder pain. The October 2020 MRI revealed subacromial fluid but no obvious rotator cuff tear. Petitioner was diagnosed with impingement of the left shoulder. He underwent physical therapy and injections, which provided 75% relief of his symptoms. Because of this, Petitioner elected to not undergo surgery. Dr. Atluri, Respondent's Section 12 examiner, opined that Petitioner was at MMI from the 2018 accident. Petitioner then worked without restrictions from April 2021 until his work-related accident on November 17, 2021. Following the accident, Petitioner resumed treatment and received light duty work restrictions. After his review of the April 2022 MRI, Dr. Chudik diagnosed Petitioner with a

possible labral tear and impingement of the left shoulder. Surgical repair of the left shoulder was recommended. Dr. Chudik opined that Petitioner's condition and need for surgery were causally related to the November 17, 2021 accident. The Commission finds that Dr. Chudik's causation opinion is supported by the Petitioner's testimony, the medical records, the objective testing and the applicable case law.

The Commission is not persuaded by Dr. Stiehl's Section 12 opinion that Petitioner's work-related injury caused a temporary aggravation that should have resolved within a few months. Contrary to Dr. Stiehl's opinion, the post-accident records clearly demonstrate an increase in Petitioner's complaints with no substantial improvement noted. Further, the April 2022 MRI now showed a possible superior labral tear. There is nothing in the record to suggest that this was a temporary aggravation. While the Petitioner had a pre-existing left shoulder condition, the record undoubtedly establishes that the November 17, 2021 accident aggravated his left shoulder condition and accelerated the need for surgery. Therefore, the Commission finds that the Petitioner has established that his left shoulder condition is causally related to the November 17, 2021 work-related accident.

Having found that Petitioner's left shoulder condition is causally related to his November 17, 2021 work-related accident, the Commission finds that Petitioner is entitled to prospective medical treatment as recommended by Dr. Chudik including a left shoulder arthroscopy with evaluation of the labrum, cartilage and rotator cuff.

The Commission affirms the Arbitrator's denial of TTD benefits. The Commission finds that the Petitioner failed to meet his burden of proof that he is entitled to TTD benefits. The Commission further affirms the Arbitrator's award of medical expenses. The parties have agreed that all medical expenses have been paid by the Respondent. All else is affirmed and adopted.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator, filed December 20, 2022, is hereby modified as stated above and otherwise affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall authorize and pay for prospective medical treatment as recommended by Dr. Chudik including a left shoulder arthroscopy with evaluation of the labrum, cartilage and rotator cuff.

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

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

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

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $100.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

September 21, 2023
O: 9/7/23
CAH/tdm
052

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

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

/s/ *Marc Parker*
Marc Parker

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	22WC001081
Case Name	Joseph Chillemi v. National DCP, LLC
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	Brian McManus, Jr.
Respondent Attorney	Bethany White

DATE FILED: 12/20/2022

THE INTEREST RATE FOR THE WEEK OF DECEMBER 20, 2022 4.55%

/s/Stephen Friedman, Arbitrator

Signature

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

Joseph Chillemi
Employee/Petitioner

v.

National DCP, LLP
Employer/Respondent

Case # **22** WC **001081**

Consolidated cases: **See Decision**

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Stephen J. Friedman**, Arbitrator of the Commission, in the city of **Geneva**, on **November 17, 2022**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On the date of accident, **November 17, 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 not*** causally related to the accident.

In the year preceding the injury, Petitioner earned $**89,437.40**; the average weekly wage was $**1,719.95**.

On the date of accident, Petitioner was **67** 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 $**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

Because Petitioner failed to prove by a preponderance of the evidence that his current condition of ill-being is causally connected to the accident on November 17, 2021, and further failed to prove by a preponderance of the evidence that he is entitled to medical benefits, prospective medical benefits, or temporary compensation, Petitioner's claim for compensation is hereby 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.

/s/ Stephen J. Friedman
Signature of Arbitrator

December 20, 2022

ICArbDec19(b)

Statement of Facts

This matter had been consolidated with three prior claims 18WC038101; 21WC003060; and 21WC009961. These prior claims were settled and approved prior to the issuance of this decision. Only the current claim remains pending.

Petitioner Joseph Chillemi testified that he was first employed by Respondent National DCP in May 2014. He was employed as a transportation delivery driver. His duties were to deliver freight to Dunkin Donuts locations. He would deliver 25,000 to 30,000 pounds of freight by hand. He would remove it on pallets using a hand truck and bring it into the locations. Petitioner identified RX 5C as an accurate job description.

Petitioner testified he had a prior left arm injury in 2018, He was treated by Dr. Chudik. He did not have a surgical recommendation at that time. He was released to full duty work. Petitioner first saw Dr. Chudik for this injury on July 27, 2020 (PX 2C). He reported that he was injured on September 28, 2018, when he slipped on a pallet and fell on his left arm and hit an additional pallet and jammed his shoulder and elbow between the pallet and ground. He reported having some physical therapy and returning to full duty work even though he continued to experience pain and weakness. Petitioner was diagnosed with left AC joint arthritis and concern for a rotator cuff tear as well as possible carpal tunnel or cubital tunnel syndrome. He was scheduled for a shoulder MRI and referred to neurology for the elbow and wrist. (PX 2C).

The October 15, 2020 MRI of the left shoulder impression was articular surface and interstitial tearing of the anterior supraspinatus tendon, but no full thickness or retracted tears and some bursal fraying at the central supraspinatus myotendinous junction. In the labral capsule the radiologist noted intra capsular biceps tendon with moderate tendinosis. Petitioner also had a left wrist MRI and EMG of the left upper extremity (PX 2C). On October 19, 2020, Dr. Chudik diagnosed left shoulder impingement and carpal tunnel syndrome. Petitioner was scheduled for physical therapy for his shoulder (PX 2C). On December 1, 2020, Dr. Chudik administered a cortisone injection to the shoulder and released Petitioner to full duty work.

Petitioner was examined at Respondent's request by Dr. Atluri on December 10, 2020 (RX 6C). Petitioner reported initial treatment at occupational medicine and his attorney referral to Dr. Chudik. Petitioner reported pain with elevation and reaching. He reported limited range of motion. Dr. Atluri stated Petitioners findings are suggestive of internal derangement with possible impingement. His responses are suspicious for a labral tear. Although Dr. Atluri did not find Petitioner's condition causally related to the September 28, 2018 accident due to the 2 year gap in care, he stated Petitioner should complete additional therapy, and if that did not relieve his symptoms, he could consider arthroscopic surgery (RX 6C).

Petitioner had shoulder therapy from October 27, 2020 through January 6, 2021. He had continued limitations with reaching overhead, lifting items of weight, and reaching. On January 13, 2021, Dr. Chudik notes full range of motion and full strength. Petitioner was to continue therapy and HEP and limit activities that cause pain. He was released to full duty work (PX 2C). Petitioner continued treatment for his left wrist and hand complaints. He had left carpal tunnel surgery on February 16, 2021 and therapy thereafter. On April 7, 2021, Petitioner advised Dr. Chudik that he was 75% improved, but has pain with abduction above 90 degrees which is excruciating and is 8-9/10. Dr. Chudik recommended Petitioner attend work conditioning and have a left shoulder FCE. Petitioner was released to work without restrictions (PX 2C).

Petitioner testified that on November 17, 2021, his electric pallet jack ceased working. He tried to wiggle it and hit a pothole, tipping the pallet and pallet jack to the left, jerking his arm down. He testified he felt immediate pain in his left shoulder. He notified his transportation manager. As soon as he returned to Respondent location in Mokeno, he was directed to Physicians Immediate Care for a drug test and treatment for his shoulder. Petitioner reported the accident history as his electric pallet jack died before he could get it into his truck, and he had to physically drag it into the truck. He reported sharp pain in his left elbow. He also noticed "stiffness" to the left shoulder. He noticed some soreness in the left wrist. He denied any similar problems in the past. X-rays were negative and Petitioner was diagnosed with pain in the left shoulder, elbow, and wrist, and strain of unspecified muscles, fascia and tendons. He was given restrictions for work (PX 1C).

On November 21, 2021, Petitioner reported pain persists in his left shoulder with decreased motion. Elbow is improved and wrist is feeling better. Petitioner was referred for an MRI of the shoulder and kept on restrictions. On November 26, 2021, Petitioner reported both elbow and wrist are back to normal. He noted pain with push/pull. He was lifting weights and was comfortable up to 25 pounds to chest level, but still has issue with lighter weights over shoulder level. Petitioner was referred for physical therapy and kept on left arm lifting restrictions. On December 9, 2021, Petitioner reported he has resigned his job with Respondent and is now driving for Bob's Discount Furniture which does not require lifting. He says his shoulder is 95% back to baseline. He is taking no pain medication. He has improved range of motion. He was released to increased lifting restrictions through December 19, 2021. The December 18, 2021 MRI impression was high signal in the supraspinatus likely due to a partial bursal surface tear, degenerative arthropathy of the AC joint, and mild fluid in the subacromial subdeltoid bursa. The radiologist notes the glenoid labrum does not show obvious tear. On December 19, 2021, Petitioner reported some increased symptoms after the MRI yesterday due to positioning. Today, he has just "soreness." He was to return on January 2, 2022, and given an orthopedic referral. He had not been scheduled for PT. The diagnosis remained strain and pain in the left shoulder (PX 1C).

After having his recollection refreshed, Petitioner testified he applied for the job at Bob's on November 2, 2021. His hire date was December 6, 2021. He testified he left Respondent due to a hostile work environment and not having proper equipment. He testified he did not recall taking a planned sick day on November 16, 2021, or why he may have taken such a sick day.

Petitioner saw Dr. Chudik on January 24, 2022 (RX 7C). He reports the initial 2018 accident and his return to work after the carpal tunnel surgery. He states he reaggravated his shoulder on November 17, 2021. He states he was referred by his primary care. He complains of limited range of motion and is unable to perform any overhead activities without pain. He also reports pain and numbness radiating into his left forearm, hand and fingers, and pain with head movement. Dr. Chudik's impression is a possible rotator cuff tear. He notes the MRI is of poor quality and ordered a new MRI. He states the condition and need for treatment are causally related to "the above described injury." He took Petitioner off work (PX 2C, RX 7C).

Petitioner left Bob's on February 18, 2022 to go into business for himself as an owner/operator as KNC Logistics. He contracted with Integrity Logistics of Iowa hauling refrigerated freight cross country. He carried about 10 loads from February 2022 through April 6, 2022.

Petitioner had a left shoulder MRI on April 5, 2022 (PX 2C). It was not compared to any prior study. The impression was mild to moderate rotator cuff tendinopathy without discrete tear, mild AC osteoarthritis, and mild subacromial subdeltoid bursitis. The radiologist notes the labrum appears intact. Petitioner saw Dr. Chudik on April 7, 2022 with continued complaints. Dr. Chudik interprets the MRI as showing a possible medial

subluxation of the bicep, possible superior labral tear, degenerative changes in the AC joint. He diagnoses possible labral tear and impingement. He notes that the MRI does not show labral pathology well and it is hard to determine if there is a tear vs. degeneration. Based upon the patient's symptoms, he could have a possible labral tear. Dr. Chudik suggested PT. If that fails, we will discuss surgical intervention (PX 2C). Dr. Chudik authored a slip taking Petitioner off work for 6 weeks, listing dates of accident on 9/28/2018 and 11/17/2021 (PX 2C). On May 13, 2022, Petitioner reported completing 4 weeks of physical therapy without improvement. He reports 6/10 to 10/10 pain and cannot perform simple household chores. Dr. Chudik recommended left shoulder arthroscopy with evaluation of the labrum, cartilage, and rotator cuff. Petitioner wants to proceed with surgery. He kept Petitioner off work (PX 2C).

On June 28, 2022, Dr. James Stiehl, performed a record review at Respondent's request (RX 1C). He reviewed the Physicians Immediate Care records of November 17, 2021 and December 19, 2021, the April 5, 2022 MRI, and Dr. Chudik notes through May 13, 2022. Dr. Stiehl opined that Petitioner suffered a modest aggravation of left upper extremity symptoms in the alleged work injury. He stated that Petitioner has a normal left shoulder for his age. More likely, he has a low-grade chronic cervical radiculopathy. He opined that the work injury is not a cause or contributing cause of the current diagnosis. The work incident did not aggravate a pre-existing condition (RX 1C).

Petitioner returned to Dr. Chudik on September 16, 2022 and October 28, 2022 with continued complaints. Dr. Chudik continues to recommend arthroscopic surgery for the left shoulder. Dr. Chudik again states the "patient's condition and need for treatment is causally related to the above described incident."

Dr. Stiehl performed a Section 12 examination at Respondent's request on September 27, 2022 (RX 2C). Petitioner reported his condition continues to worsen. He has marked radiation of pain into his neck on the left side, has minimal use of his left upper extremity, and is unable to abduct or forward flex more than about 60 to 70 degrees. Petitioner provided no relevant past history. Dr. Stiehl reviewed records from an earlier 2016 right elbow injury, October 2018 records for his earlier left shoulder and wrist injury, Dr. Chudik and Dr. Fajardo records from July 2020 through April 2021, including October 14, 2020 MRI, and records for his current treatment at Physicians Immediate Care and Dr. Chudik through May 13, 2022 including the April 5, 2022 MRI. Dr. Stiehl opined that the November 17, 2021 injury was minor. Petitioner's current diagnosis is advancing chronic cervical radiculopathy not caused by the injury claimed. The work injury is not the cause or a contributing cause of the current diagnosis. There was a mild temporary exacerbation. This aggravation was mild and should have disappeared within a few months. He states that treatment up to May 13, 2022 would have been related to the accident when he feels Petitioner reached MMI. Petitioner could have had restrictions through May 13, 2022 related to the injury. Thereafter, his recommendations relate to the pre-existing condition (RX 2C).

Petitioner testified he has been off work since April 6, 2022, per Dr. Chudik's instructions. He testified he asked to be allowed to drive a commercial vehicle, but was advised he would be risking an accident. Petitioner has not received further temporary compensation, but all of his medical bills have been paid. Petitioner has applied for regular Social Security retirement due to his age. He is also a part owner of a real estate investment. He does not have any responsibilities for maintenance of the property.

He still desires to have the left shoulder surgery to discover the cause of his pain and to get back to normal everyday activities, including returning to commercial driving. Petitioner testified he has limited range of motion. He cannot lift his arm in certain positions. If he goes beyond a certain point, he has intense pain. He has

problems with reaching for anything in a cabinet, opening a jar with his left hand, using his left arm to reach his back. Petitioner underwent an examination to maintain his commercial driver's license in September 2021 and July 2022. He was certified to drive.

Conclusions of Law

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

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

If the claimant had health problems prior to a work-related injury, he bears the burden of showing that the preexisting condition was aggravated by the employment and that the aggravation occurred as a result of an accident which arose out of and in the course of his employment. *Nunn v. Industrial Comm'n, 157 Ill. App. 3d 470, 476, 510 N.E.2d 502, 505, 109 Ill. Dec. 634 (1987)*. Cases involving aggravation of a preexisting condition concern primarily medical questions and not legal ones. That is, if a claimant is in a certain condition, an accident occurs, and following the accident, the claimant's condition has deteriorated, it is plainly inferable that the intervening accident caused the deterioration. The salient factor is not the precise previous condition; it is the resulting deterioration from whatever the previous condition had been. *Nanette Schroeder v. The Illinois Workers' Compensation Comm'n*, 2017 IL App (4th) 160192WC (4th Dist., 2017).

Petitioner had a previous shoulder injury in 2018. He sought treatment with Dr. Chudik beginning July 2020, almost 2 years after his initial release to full duty, with a history of continued pain and weakness. Petitioner was diagnosed with left AC joint arthritis and concern for a rotator cuff tear. The October 15, 2020 MRI of the left shoulder impression was articular surface and interstitial tearing of the anterior supraspinatus tendon, but no full thickness or retracted tears and some bursal fraying at the central supraspinatus myotendinous junction. In the labral capsule the radiologist noted intra capsular biceps tendon with moderate tendinosis. Dr. Chudik diagnosed left shoulder impingement. Dr. Chudik administered a cortisone injection to the shoulder. Petitioner has shoulder therapy from October 27, 2020 through January 6, 2021. He had continued limitations with reaching overhead, lifting items of weight, and reaching. On January 13, 2021, Dr. Chudik notes full range of motion and full strength. Petitioner was to continue therapy and HEP and limit activities that cause pain. On April 7, 2021, Petitioner advised Dr. Chudik that he was 75% improved, but has continued pain with abduction above 90 degrees which is excruciating and is 8-9/10. Dr. Chudik recommended Petitioner attend work conditioning and have a left shoulder FCE. Petitioner was released to work without restrictions. On December

10, 2020, Dr. Atluri stated Petitioners findings are suggestive of internal derangement with possible impingement. His responses are suspicious for a labral tear. Given this significant prior history of left shoulder injury and treatment, and the ongoing complaints, the Arbitrator finds that Petitioner has failed to establish causation by the chain of events.

Petitioner sustained an undisputed accident on November 17, 2021. His emergency room history is that he was injured when his electric pallet jack died before he could get it into his truck, and he had to physically drag it into the truck. He reported sharp pain in his left elbow. He also noticed “stiffness” to the left shoulder. He noticed some soreness in the left wrist. This history is far less dramatic that Petitioner’s testimony and later descriptions of the incident. Petitioner was diagnosed with pain in the left shoulder, elbow, and wrist, and strain of unspecified muscles, fascia and tendons. On December 9, 2021, Petitioner reported he had resigned his job with Respondent and is now driving for Bob’s Discount Furniture. He says his shoulder is 95% back to baseline. He is taking no pain medication. He has improved range of motion. He was released to increased lifting restrictions through December 19, 2021. The December 18, 2021 MRI impression was high signal in the supraspinatus likely due to a partial bursal surface tear, degenerative arthropathy of the AC joint, and mild fluid in the subacromial subdeltoid bursa. The radiologist notes the glenoid labrum does not show obvious tear.

Petitioner then treats with Dr. Chudik, giving a history including the 2018 accident and the subsequent incident. He states he reaggravated his shoulder on November 17, 2021. Dr. Chudik states the ‘patient’s condition and need for treatment is causally related to the above described incident.” The April 5, 2022 MRI was not compared to any prior study. The impression was mild to moderate rotator cuff tendinopathy without discrete tear, mild AC osteoarthritis, and mild subacromial subdeltoid bursitis. The radiologist notes the labrum appears intact. On April 7, 2022, Petitioner’s history notes that his left shoulder posterior pain began September 28, 2018. Dr. Chudik interprets the MRI as showing a possible medial subluxation of the bicep, possible superior labral tear, degenerative changes in the AC joint. He diagnoses possible labral tear and impingement. He notes that the MRI does not show labral pathology well and it is hard to determine if there is a tear vs. degeneration. Based upon the patient’s symptoms, he could have a possible labral tear. Dr. Chudik authored a slip taking Petitioner off work for 6 weeks, listing dates of accident on 9/28/2018 and 11/17/2021. After May 13, 2022, Petitioner did not return to Dr. Chudik until September 2022.

Respondent offered the opinions of Dr. Atluri of Petitioner’s condition prior to the November 17, 2021 accident and of Dr. Stiehl for his current condition. Dr. Atluri stated Petitioners findings are suggestive of internal derangement with possible impingement. His responses are suspicious for a labral tear. Although Dr. Atluri did not find Petitioner’s condition causally related to the September 28, 2018 accident due to the 2 year gap in care, he stated Petitioner should complete additional therapy, and if that did not relieve his symptoms, he could consider arthroscopic surgery. Dr. Stiehl opined that the November 17, 2021 injury was minor. Petitioner’s current diagnosis is advancing chronic cervical radiculopathy not caused by the injury claimed. There was a mild temporary exacerbation of his left shoulder condition. This aggravation was mild and should have disappeared within a few months. He states that treatment up to May 13, 2022 would have been related to the accident when he feels Petitioner reached MMI. Petitioner could have had restrictions through May 13, 2022 related to the injury.

It is the Commission's province to assess the credibility of witnesses, draw reasonable inferences from the evidence, determine what weight to give testimony, and resolve conflicts in the evidence, particularly medical opinion evidence. *Berry v. Industrial Comm'n*, 99 Ill. 2d 401, 406-07, 459 N.E.2d 963, 76 Ill. Dec. 828 (1984); *Hosteny v. Illinois Workers' Compensation Comm'n*, 397 Ill. App. 3d 665, 675, 928

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

Having heard the testimony and reviewed the exhibits, the Arbitrator finds that Petitioner failed to meet his burden to establish causal connection of Petitioner's current condition of ill-being to the November 17,2021 accident. Dr. Chudik does not provide an opinion specifically with respect to the November 17, 2021 injury. His records include both injuries. The objective medical evidence fails to establish an objective condition related to that injury. Petitioner never recovered fully from the 2018 injury, he treated over 2 years with only 75% improvement. He continued to describe excruciating pain on abduction over 90 degrees. The MRI studies do not establish any pathology related to the November 21, 2021 condition. There is no significant difference identified between the pre-accident and post-accident studies. No comparison was made. Dr. Atluri opines that any labral tear could be related to the earlier 2018 injury. Even Dr. Chudik admits that there is no finding of a labral tear on MRI. Dr. Stiehl's opinions are corroborated by the greater weight of the medical findings and the Arbitrator finds his opinions persuasive.

The Arbitrator also notes Petitioner's subjective testimony is colored by his actions and is therefore given lesser weight. Petitioner has a gap in care after the 2018 injury until 2020, during which time he was working full duty despite his alleged significant symptoms requiring his seeking care from Dr. Chudik. The Commission has considered such a gap in care in determining causal connection. See: *Richard Olcikas v. Dominick's Finer Foods, Inc.*, 2009 Ill. Wrk. Comp. LEXIS 1098, affirmed *Olcikas v. IWCC*, 2012 Ill. App. Unpub. LEXIS 26; 2011 IL App (1st) 103274WC-U; 2012 WL 6951575; *Jacob Haltom v. Center for Sleep Medicine*, 2013 Ill. Wrk. Comp. LEXIS 509; 13 IWCC 563, affirmed *Haltom v. IWCC*, 2015 IL App (1st) 133954WC-U; 2015 Ill. App. Unpub. LEXIS 1568; *Jose Ruben Meraz vs. Minute Men Staffing*, 2015 Ill. Wrk. Comp. LEXIS 30; 15 IWCC 30. Thereafter, Petitioner was already seeking his employment with Bob's Discount Furniture before his reinjury, for his espoused dissatisfaction with Respondent. He continued to work for Respondent and then Bob's Discount Furnture. Despite being given an off work slip by Dr. Chudik in January 2022, he continued to work full duty for Bob's and then starts his own LLC, driving refrigerated freight cross country. The Arbitrator does not find his testimony that the April 2022 off work slip was more inclusive of driving persuasive.

Based upon the record as a whole, the Arbitrator finds that Petitioner has proven by a preponderance of the evidence that he sustained a temporary aggravation of his left shoulder condition on November 17, 2021. This condition reached maximum medical improvement as of May 13, 2022 as opined by Dr. Stiehl. His current condition of ill-being in the left shoulder is not causally connected to the accident of November 17, 2021.

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

Under section 8(a) of the Act, a claimant is entitled to recover reasonable medical expenses that are causally related to the accident and that are necessary to diagnose, relieve, or cure the effects of his injury. *Absolute Cleaning/SVMBL v. Illinois Workers' Compensation Comm'n, 409 Ill. App. 3d 463, 470, 949 N.E.2d 1158, 1165, 351 Ill. Dec. 63 (2011)*. Based upon the Arbitrator's finding on Causal Connection, reasonable and necessary medical care for Petitioner's left shoulder condition through his date of maximum medical improvement would be compensable. As noted above, the Arbitrator finds the opinions of Dr. Stiehl persuasive that Petitioner reached maximum medical improvement as of May 13, 2022. Petitioner submitted PX 3C with billings for Petitioner's treatment. Respondent offered RX 4, being the medical payment log. The records reflect that Respondent has paid all medical bills submitting including payment to Hinsdale Orthopedic through October 28, 2022. Therefore, all reasonable, necessary and causally related medical has been paid. Respondent has requested credit for bills paid beyond the date of MMI, but has offered no precedent for the Arbitrator to award them a credit for these voluntary payments made to a third party against other benefits which may be owed to the Petitioner.

Based upon the record as a whole and the Arbitrator's finding with respect to Causal Connection, the Arbitrator finds that Petitioner has failed to prove that he is entitled to any medical benefits. Respondent has failed to establish entitlement to any credit against Petitioner for bills voluntarily paid.

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)*. As more fully addressed in the Arbitrator's findings with respect to Causal Connection and Medical above, the Arbitrator finds the opinion of Dr. Stiehl that Petitioner's current condition of ill-being is not causally connected to the accident on November 17, 2021 and that Petitioner reached maximum medical improvement as of May 13, 2022 persuasive. Any future treatment would not be causally connected to the accident.

Based upon the record as a whole and the Arbitrator's finding with respect to Causal Connection, the Arbitrator finds that Petitioner has failed to prove by a preponderance of the evidence that he is entitled to any prospective medical treatment causally connected to the accident on November 17, 2021.

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

Temporary compensation is provided for in Section 8(b) of the Workers' Compensation Act, which provides, weekly compensation shall be paid as long as the total temporary incapacity lasts, which has interpreted to mean that an employee is temporarily totally incapacitated from the time an injury incapacitates him for work until such time as he is as far recovered or restored as the permanent character of his injury will permit. The dispositive test is whether the claimant's condition has stabilized, i.e., reached MMI. *Sunny Hill of Will County Mechanical Devices v. Industrial Comm'n*, 344 Ill. App. 3d 752, 760 (4th Dist. 2003). To be entitled to TTD

benefits a claimant must prove not only that he did not work but that he was unable to work. *Freeman United Coal Min. Co. v. Indus. Comm'n*, 318 Ill. App. 3d 170, 175, 741 N.E.2d 1144, 1148 (2000).

Petitioner is seeking temporary compensation from April 6, 2022, when he testified that he stopped driving because of Dr. Chudik's off work slip, through November 17, 2022, the date of the 19(b) hearing. Based upon the Arbitrator's finding with respect to Causal Connection, the Arbitrator finds that Petitioner reached maximum medical improvement on May 13, 2022. No temporary compensation can be awarded thereafter.

With respect to the period from April 6, 2022 through the MMI date, the Arbitrator finds that Petitioner has failed to establish entitlement to temporary compensation. Petitioner was initially given restrictions at Physicians Immediate Care. Despite Petitioner's testimony of the physical nature of his job with Respondent, there is no evidence disputed that he that he either continued his duties or was accommodated by Respondent until he chose to quit and go to work for Bob's Discount Furniture. He continues his full duty job there even though he was taken completely off work by Dr. Chudik on January 24, 2022, and then worked as an independent contractor driver hauling cross country loads. There is no objective medical evidence why he could not have continued his duties. He provided no testimony or explanation as to why he chose to stop working on April 6, 2022, other than his physician told him it was too dangerous to do so, a statement not contained in or supported by the medical records. Dr. Stiehl stated he could have worked with restrictions even considering his conditions not causally related to the accident. The Arbitrator does not place great weight on this testimony as a basis for needing to be off work due to lack of corroborating evidence to support his testimony and the Petitioner's apparent ability to work from the date of injury through April 6, 2022, without significant issue. The Arbitrator notes that Petitioner chose to take his Social Security benefits at the time.

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

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

Based upon the Arbitrator's findings with respect to Causal Connection, Medical and Temporary Compensation, the Arbitrator finds that Petitioner has failed to establish entitlement to Penalties or Attorney's fees.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	10WC003519
Case Name	Debra Taylor (Wife and Admin of Estate of Timothy A. Taylor) v. Jack Cooper Transport Co Inc
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	23IWCC0417
Number of Pages of Decision	42
Decision Issued By	Kathryn Doerries, Commissioner, Maria Portela, Commissioner

Petitioner Attorney	Brian Wendler, Angie Zinzilieta
Respondent Attorney	Timothy Furman

DATE FILED: 9/25/2023

/s/Maria Portela, Commissioner

Signature

DISSENT: /s/Kathryn Doerries, Commissioner

Signature

23IWCC0417

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

DEBRA TAYLOR, WIFE OF TIMMY A. TAYLOR
And Named Personal Representative of the Estate of
TIMMY A. TAYLOR,

Petitioner,

vs. NO: 10 WC 3519

JACK COOPER TRANSPORT CO., INC.,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of causation, medical expenses, temporary total disability benefits, nature and extent, Section 5(b) credit, and "any and all issues raised at the various trials and decided in the March 1, 2018, November 11, 2021, and January 27, 2023 Arbitration Decisions" and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof, but makes a clarification as outlined below.

The Commission strikes the "TTD" portion of the Order of the March 1, 2018, Arbitration Decision, incorporated by reference in the January 27, 2023, Decision, and replaces it with the following:

> Respondent is ordered to pay Petitioner temporary total disability benefits for the period commencing January 12, 2010, through February 17, 2016, at the rate of $961.33, a period of 318 2/7 weeks. As noted above, Respondent shall be given a credit of $62,444.48 for temporary total disability benefits paid.

Additionally, the Commission corrects the following scrivener's errors:

In the second sentence of the first paragraph of Petitioner's Testimony on page 4 of the Addendum to the Decision of the Arbitrator contained in the March 1, 2018, Arbitration Decision, incorporated by reference in the January 27, 2023, Decision, the Commission changes "October 1, 1997" to "October 1, 2007".

In the paragraph beginning "the medical evidence indicates…" on page 14 of the Addendum of the Decision to the Arbitrator contained in the March 1, 2018, Arbitration Decision, incorporated by reference in the January 27, 2023, Decision, the Commission changes "January 12, 2012" to "January 12, 2010".

All else is affirmed and adopted.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $961.33 per week for a period of 318 2/7 weeks, that being the period of temporary total incapacity for work under §8(b) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $664.72 per week for a period of 150 weeks, as provided in §8(d)2 of the Act, for the reason that the injuries sustained caused the 30% loss of the person as a whole.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the reasonable and necessary medical services contained in Px14 for medical expenses under §8(a) of the Act, subject to the fee schedule in §8.2 of the Act. Respondent shall be given a credit of $42,387.77 for medical benefits that have been paid and Respondent shall hold Petitioner harmless from any claims by any providers of the services for which Respondent is receiving this credit, as provided in Section 8(j) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent is not entitled to a credit under Section 5(b) of the Act.

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

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

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.

September 25, 2023

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

/s/ *Amylee H. Simonovich*
Amylee H. Simonovich

MEP/dmm
O:72523
49

DISSENT

I respectfully dissent from my colleagues regarding the issues of causation and Respondent's Section 5(b) right to assert its lien for the reasons outlined below. Therefore, I would reverse the Arbitrator's findings on causation, adopt Dr. Ghanayem's opinion regarding causation, and modify the awards of TTD, medical and PPD accordingly. Further, I would find that Respondent retains its Section 5(b) rights, if any.

Petitioner complained of low back pain on October 9, 20017, on his intake form, only seven days after the October 1, 2007 accident. (Arbitrator's Hearings October 13, 2016 and January 24, 2017 "AH 1 & 2", PX3) Petitioner continued to have low back pain complaints reported on November 12, 2007. (AH 1 & 2, PX1 intake form) Dr. Odor reports Petitioner's low back pain complaints in the consult letter to Dr. Olsen on November 14, 2007. (AH 1 & 2, PX1) However, at that time, Petitioner's acute and urgent complaints were related to his reported cervical and left shoulder conditions. Petitioner underwent treatment for his cervical spine, including cervical fusion surgery on February 21, 2008. *Id.* Petitioner then underwent left shoulder treatment, including left shoulder surgery on July 31, 2008, in addition to the cervical spine recovery treatment. (AH 1 & 2, PX3) Petitioner returned to his cervical spine surgeon, Dr. Odor, on August 18, 2008, complaining of low back pain he related to the original accident on October 1, 2007. He was in fact released from care at MMI for his cervical spine by Dr. Odor on that same date, however, was still treating for his left shoulder, undergoing physical therapy and seeing Dr. Olson while simultaneously seeking authorization from the 2007 insurance carrier to treat his lumbar spine. (AH 1 & 2, PX1, RX5, PX3) He was released by Dr. Olsen on October 30, 2008, deemed to be at maximum medical improvement (MMI) for his left shoulder condition and given a work trial release with no restrictions. (AH 1 & 2, PX3)

Thereafter, on November 24, 2008, Petitioner returned to Dr. Olsen and reported he returned to work on a trial basis, but had to cut it short because of the development of significant low back pain.(AH 1 & 2, PX3; RX5) He reported that he had a tentative appointment with Dr. Odor in January but he was eager to proceed with that evaluation before that time secondary to the extreme pain. He reported his low back pain has also caused difficulty in using both of his arms because it exacerbates his low back pain. *Id.* On the same date, Petitioner underwent a lumbar spine MRI. The radiologist's report confirms Findings at two levels, L3-L4 and L4-L5, the same levels purportedly affected after the 2010 accident. The 2008 lumbar MRI radiology report Findings state, in pertinent part, the following:

> Intervertebral Discs: Small circumferential disc bulges are present at L3-4 and L4-5. At L3-4 is a small right foraminal disc protrusion. All remaining lumbar and lower thoracic intervertebral discs are intact.
>
> Facet Joints and Foramina: The facet joints are not particularly hypertrophic. Regarding the intervertebral foramina, there is moderate narrowing in the right at L3-4 and mild narrowing in the left at L4-5.
>
> Vertebral L5 is a transitional vertebral body. There is no evidence of a pars defect,

anterolisthesis, compression fracture, or marrow replacement.

Epidural Space: The thecal sac is mildly indented anteriorly at L4-5.

The radiologist's Impression confirmed the following:

1. L5 is a transitional vertebral body;
2. At L3-4, a small circumferential disc bulge has mildly indented the anterior thecal sac and mildly narrowed the left intervertebral foramen;
3. At L3-4, a small right foraminal disc protrusion, superimposed on a small circumferential disc bulge, has caused moderate narrowing of the right intervertebral foramen;
4. The remainder of the lumbar spine has a normal appearance. (AH 1 & 2, PX1; RX5)

Petitioner was diagnosed with lumbar radiculopathy and treated with lumbar transforaminal epidural steroid injections (TFESIs) at L3-4 on April 24, 2009, and other modalities as described in the Arbitrator's March 1, 2018 Decision. Further, on May 15, 2009, it was noted in an Impairment rating report, that, "he has not been able to partake in work activities because of difficulties associated with low back pain. He states that with regard to the cervical spine and left shoulder, he can perform regular work activities." (AH 1 & 2PX1; RX5)

Although Petitioner would not, as the Arbitrator characterized it, "admit" that he was seeing Dr. Odor for low back pain as recently as late 2009, the medical records confirm he was undergoing active treatment through the end of 2009, and as of May 15, 2009, not able to work. He underwent his 3rd ESI and facet injection at L3-4 on the left on June 10, 2009, and was going to attempt to return to work. He was to return for follow-up in six weeks for re-evaluation. (AH 1 & 2, RX5) As of September 4, 2009, Petitioner went back to work and reported to Dr. Odor the job required more physical activity and his low back and neck "flared up." Dr. Odor advised Petitioner to "consider his future options in terms of work." (AH 1 & 2, PX1, RX5) Dr. Odor planned to proceed with a series of transforaminal ESIs again at L3-4 on the left with facet injections L3-4 left if he was still flared up in November 2009. *Id.*

On November 6, 2009, Petitioner reported to Dr. Odor that he continued to have a flare up of pain in his low back with radiation down the left buttock and leg, sometimes in the right as well. (AH 1 & 2,RX5)

On December 11, 2009, Petitioner underwent a transforaminal epidural steroid injection, L3-4 on the left. On December 18, 2009, Petitioner presented to Dr. Odor who noted Petitioner's report that his "right side now hurts." His current pain level was noted as 7-8 on the right, and 5-6 on the left. Dr. Odor recommended TFESI at L3-4 on the right and an injection at L3-4 on the right. *Id.*

On December 21, 2009, Odor's office sought authorization for this right-side epidural injection and left a message for adjuster Michelle Price. (AH 1 & 2, RX5) On December 28, 2009, Dr. Odor's office made additional efforts to contact Michelle Price noting she was out of office. *Id.*

Therefore, the medical evidence proves that since the date of the 2007 accident, Petitioner had low back pain and had been in active treatment for his low back as recently as weeks before the new accident and he was in the process of seeking authorization for additional lumbar back treatment.

Prior to the subject accident on January 12, 2010, Petitioner underwent extensive conservative lumbar spine treatment and he was never released at MMI with regard to his lumbar spine. Post accident, his symptoms were the same or similar despite Dr. Odor's advocacy. Dr. Odor testified Petitioner "had gotten a lot better" and "just prior to this new injury he was feeling well." (AH 1 & 2, PX1). This testimony is not credible when the facts confirm that Dr. Odor's office was still seeking authorization four days prior to the 2010 injury for an injection at L3-4 on the right.

Despite Dr. Odor's testimony that Petitioner had minimal residual symptoms prior to the 2010 injury, his office not only reached out for treatment authorization four days before the 2010 accident but another appointment was scheduled for January 28, 2010, before the 2010 accident date. On that date Dr. Odor noted "new symptom" of radiculopathy which was clearly present prior to the 2010 accident.

Furthermore, I find Dr. Ghanayem's opinion more credible than Dr. Odor's opinion. Dr. Ghanayem examined Petitioner several times and found that Petitioner's subjective complaints and physical examination did not warrant any surgical intervention despite the discography findings. (AH 1 & 2, RX1-5)

Dr. Ghanayem opined the 2008 and 2010 MRI scans simply show degenerative findings. He testified that when he reviewed the two scans, he found nothing structural causing neurologic compression. In his opinion, "[t]here was some foraminal narrowing that was present on both the old and the new scans and so there was consistency there, and the nature of the narrowing would not cause any neurologic-type problems. So there was mismatch between the subjective complaints and the objective diagnostic studies." (AH 1 & 2, RX1, 17) After his second evaluation of Petitioner, Dr. Ghanayem testified that he saw nonorganic pain behaviors and "nothing short of willful malingering based on my examination and findings today." *Id.* at 21. Further, the subjective complaints could not be related to any structural problems. *Id* at 22.

For the foregoing reasons, I would find that Petitioner has failed to prove his lumbar spine condition is causally related to the 2010 work injury.

The evidence before us also includes a Mutual Settlement Agreement and Release ("Settlement Agreement") with respect to the two accidents that occurred in 2007 and 2010. (Arbitrator's Hearing March 11, 2021 "AH 3", PX2) Further, settlement monies were intentionally allocated 100% to the 2007 accident and 0% to the subject 2010 accident. Respondent waived all workers' compensation liens applicable from the 2007 accident in exchange for $40,000.00 according to the agreement. Plaintiffs agreed to voluntarily dismiss the 2007 Illinois Section 5(b) rights. (AH3, PX2)

It is patently obvious that there was never a discussion with the Federal judge in Missouri regarding the fact that there were two different insurers for the two different accidents. (See AH3, PX5) The Settlement Agreement, which was reached before the Commission Decision on the

2010 case, never contemplated the repercussion on the two different insurance carriers for the two accidents. In addition, the consequence of conceding all settlement monies should be put on the 2007 case could be interpreted as the Petitioner's concession that his lumbar spine condition was 100% attributable to the 2007 accident and, therefore, his treatment after the 2010 accident was continuous treatment for his degenerative condition.

The Plaintiff's Motion to Enforce Settlement (AH, PX3), explicitly states that without the allocation "and a good faith finding approving it, there is a real possibility that funds Plaintiff obtains in the workers' compensation proceedings arising from the 2010 injuries will be completely or almost completely offset by funds Plaintiff obtained from his settlement of these third party claims. See Exhibits two and three; See also 820 ILCS 305/5(b)" This indicates that the parties were convinced the allocation would preclude Respondent from pursuit of reimbursement under Section 5(b).

Notably, the Settlement Agreement is silent regarding the Section 5(b) rights in the 2010, case. (AH3, PX2) I do not agree, absent specific language regarding waiver of the Section 5(b) right in the 2010 case, that pursuit of a Section 5(b) lien in the 2010 case is barred by the Settlement Agreement.

The majority opinion draws the conclusion that because zero settlement monies were allocated to the 2010 accident, Respondent's Section 5(b) claim is denied; however, I do not agree that Respondent's Section 5(b) lien right is waived in the subject case without a specific term to that effect in the Settlement Agreement.

For all of the foregoing reasons, I respectfully dissent from the majority opinion. I would reverse the Arbitrator's findings on causation, find Dr. Ghanayem is more credible than Dr. Odor, modify the awards of TTD, medical and PPD accordingly and find that Respondent has retained their right to pursue a Section 5(b) lien in this case.

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	10WC003519
Case Name	Timothy A. Taylor v. Jack Cooper Transport Co Inc
Consolidated Cases	
Proceeding Type	
Decision Type	Amended Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	35
Decision Issued By	Jessica Hegarty, Arbitrator

Petitioner Attorney	Angie Zinzilieta, Brian Wendler
Respondent Attorney	Timothy Furman

DATE FILED: 1/27/2023

THE INTEREST RATE FOR THE WEEK OF JANUARY 24, 2023 4.68%

/s/ Jessica Hegarty, Arbitrator

Signature

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

AMENDED
ARBITRATION DECISION

TIMMY A. TAYLOR
Employee/Petitioner

v.

JACK COOPER TRANSPORT COMPANY, INC.
Employer/Respondent

Case # **10** WC **003519**

Consolidated cases: _____

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **JESSICA A. HEGARTY** , Arbitrator of the Commission, in the city of Chicago, IL on 3/11/21. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
B. ☐ Was there an employee-employer relationship?
C. ☐ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
D. ☐ What was the date of the accident?
E. ☐ Was timely notice of the accident given to Respondent?
F. ☐ Is Petitioner's current condition of ill-being causally related to the injury?
G. ☐ What were Petitioner's earnings?
H. ☐ What was Petitioner's age at the time of the accident?
I. ☐ What was Petitioner's marital status at the time of the accident?
J. ☐ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
K. ☐ Is Petitioner entitled to any prospective medical care?
L. ☐ What temporary benefits are in dispute?
☐ TPD ☐ Maintenance ☐ TTD
M. ☐ Should penalties or fees be imposed upon Respondent?
N. ☐ Is Respondent due any credit?
O. ☒ Other **REMAND ORDER issued by Commission on 12/6/2023**

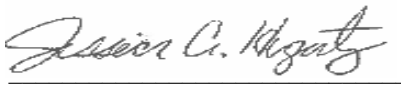
ORDER

The Arbitrator incorporates by reference the Arbitrator's decisions (i.e. findings of fact, conclusions of law, addendums, and orders) issued on March 1, 2018, and on November 11, 2021, and combines both into a single Amended Decision.

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

January 27, 2023

ICArbDec19(b)

TIMMY A. TAYLOR	)	
	)	
Petitioner,	)	
v.	)	10 WC 003519
	)	
JACK COOPER TRANSPORT COMPANY, INC.	)	
	)	
Respondent.	)	

AMENDED

ADDENDUM TO THE DECISION OF THE ARBITRATOR

1. On February 25, 2020, the Commission remanded this case to the Arbitrator "to reopen proofs for the limited purpose of the admission into evidence of the Federal Court Settlement documents and to address the 5(b) issue". (See 20 IWCC 000128).

2. Pursuant to the above order, the parties convened for a hearing in which proofs were re-opened for the limited purpose of considering Respondent's claimed entitlement to credit pursuant to §5(b) and for admission of the Federal Court settlement documents into evidence.

3. The Arbitrator issued a decision on November 11, 2021, denying Respondent's claim to any §5(b) credit. In this decision, the Arbitrator failed to incorporate the prior decision (i.e. findings of fact, conclusions of law, addendums, and orders) from March 1, 2018.

4. On December 6, 2022, the Commission, again, remanded this case to the Arbitrator for "the sole purpose of having the Arbitrator combine both decisions issued on March 1, 2018, and on November 11, 2021," into a single "Amended Decision".

5. **Accordingly, the Arbitrator incorporates by reference the Arbitrator's decisions issued on March 1, 2018, and on November 11, 2021, and combines both into a single Amended Decision.**

ILLINOIS WORKERS' COMPENSATION COMMISSION 23IWCC0417
NOTICE OF ARBITRATOR DECISION

TAYLOR, TIMMY Case# **10WC003519**
Employee/Petitioner

JACK COOPER TRANSPORT COMPANY INC
Employer/Respondent

On 3/1/2018, 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 1.83% 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:

5542 WENDLER LAW PC
BRIAN WENDLER
900 HILLSBORO SUITE 10
EDWARDSVILLE, IL 62025

4866 KNELL O'CONNOR DANIELEWICZ
MICHAEL DANIELEWICZ
901 W JACKSON BLVD SUITE 301
CHICAGO, IL 60607

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

Timmy Taylor
Employee/Petitioner

Case # **10** WC **3519**

v.

Jack Cooper Transport Company, Inc.
Employer/Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Jessica Hegarty**, Arbitrator of the Commission, in the city of **Geneva, IL, on October 13, 2016 and January 24, 2017**. 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. ☒ PTD, accrued unpaid TTD, unpaid medical bills, Section 5 third-party settlement set off, Section 5 third-party reimbursement

FINDINGS

On **January 12, 2010,** Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the 52 weeks preceding the injury, Petitioner earned **$74,984.00.** The average weekly wage was **$1,442.00.**

On the date of accident, Petitioner was **43** 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 **$62,444.48** for TTD, $0 for TPD, $0 for maintenance, and $0 for other benefits under Section 8(j) of the Act, for a total TTD credit of **$62,444.48.**

Respondent shall be given a credit of **$42,387.77** 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.

ORDER

TTD
Respondent is ordered to pay Petitioner 256 weeks of accrued unpaid TTD at the rate of $961.33 weekly for benefits commencing March 25, 2011, through February 17, 2016. As noted above, Respondent shall be given a credit of $62,444.48 for TTD under Section 8(j) of the Act.

Medical Bills
Respondent shall pay reasonable and necessary medical services, pursuant to the medical fee schedule, for medical services and treatment, contained in Petitioner's Exhibit 14, as provided in Sections 8(a) and 8.2 of the Act. As noted above, Respondent shall be given a credit of $42,387.77 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.

Nature & Extent of Petitioner's Injury
Respondent shall pay Petitioner permanent partial disability benefits of $ 664.72 /week for 150 weeks, because the injuries sustained caused the 30% loss of the person as a whole, as provided in Section 8(d)2 of the Act.

Third Party Lien under Section 5 of the Act
No ruling on this issue.

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.

Jason C. Mozenter

Signature of Arbitrator

2-26-18
Date

MAR 1 - 2018

BEFORE THE WORKERS' COMPENSATION COMMISSION
OF THE STATE OF ILLINOIS

TIMMY TAYLOR, Petitioner,	)	
VS.	)	NO. 10 WC 3519
JACK COOPER TRANSPORT, INC. Respondent.	)	

ADDENDUM TO THE DECISION OF THE ARBITRATOR

This matter commenced on October 13, 2016 and was continued until January 24, 2017, at which time proofs were closed (Ax. 1). Thereafter, Petitioner filed a motion to re-open proofs to allow for additional evidence

Petitioner's Testimony

Petitioner testified he worked as a driver, hauling cars for Respondent, since 1997. (Tr. 11) Prior to the accident at issue, Petitioner was injured while working for Respondent on October 1, 1997, in a slip and fall accident in which he sustained cervical and shoulder injuries. (Tr. 12, 17). Sometime following surgeries to his shoulder and neck, Petitioner returned to full time work for Respondent until the date of injury involving the case at bar. (T. 17-18).

As a driver/hauler for Respondent, Petitioner was required to load and unload vehicles onto a trailer, pull and push heavy ramps from beneath the truck, and tighten chains, which requires a driver to lift up to 80 lbs. and exert a pushing force of up to 100 lbs. per Respondent's written job description. (PX. 24) Drivers, like Petitioner, are also required to sit for long periods of time, hauling vehicles over long distances, and must be able to perform tie down procedures in confined spaces, work outside in excessive heat, cold, and inclement weather, and have the agility to climb trucks to access vehicles and balance on narrow rails which are high off the ground while performing their work. (Id.).

Petitioner testified that on January 12, 2010, he was at a car dealership in Illinois where he had finished unloading 4-5 cars. As he climbed up the side of his truck to unload the last vehicle, he "went to swing" himself over, lost his balance and fell approximately 12 feet to the ground. (Tr. 18). Petitioner did not remember how he landed on the ground but did recall he was lying on his back when a man walked up to him and carried him inside the car dealership after which he was transported to a hospital via ambulance. (Tr. 23). Petitioner testified his neck, back, and shoulders hurt when he was at the hospital. (Tr. 24). After being hospitalized for three days, Petitioner was transported by ambulance to the airport after which he flew home to Oklahoma. (Id.). After his arrival home, he treated with Dr. Odor and Dr. Olsen with whom he previously treated for his prior work-related injuries. (Tr. 25).

Petitioner testified that following this accident he walked in a hunched over fashion and was unable to stand up straight. (Id. 29-30). He further testified that Dr. Odor performed surgery nearly two years after the accident

consisting of an anterior triple fusion at L3 through S1 with instrumentation including 3 implants, 18 screws and six pieces of steel. (Id. 30-31).

Petitioner testified that rather than authorize the above surgery, Respondent flew him to Chicago twice to be examined by Dr. Ghanayem. (Id., 32). Following that appointment, Dr. Ghanayem concluded Petitioner could return to work full duty after which, Respondent instructed Petitioner to report to work in Arlington, Texas. (Id. 34). Petitioner testified that a friend drove him to Arlington, Texas as Petitioner was taking Hydrocodone and muscle relaxers at the time. (Id. 35, 38). Petitioner further testified that once he reported to work, he was instructed to report for a DOT physical exam (required for all interstate truck drivers) and drug screen. (Id. 34-35).

The records indicate that Petitioner presented on 4/4/11 for a Commercial Driver Fitness Determination exam. (PX. 11). Petitioner testified and the records confirm that once the examining doctor determined that Petitioner was taking certain medications, he was deemed unfit to perform commercial driving duties. (Tr. 37; PX. 11).

Petitioner testified that after failing the DOT physical, Respondent did not offer him any light duty work. (Tr. 38).

Petitioner testified he underwent a posterior triple lumbar fusion on 9/11/12. Following that surgery, he used a walker but did not undergo any physical therapy or rehabilitation because Respondent would not authorize such treatment. (Id. 39-40).

Pursuant to his testimony, he is now able to walk using a straighter posture as opposed to his pre-surgical walking style where he was hunched over forward. (Id. 29-30).

Petitioner testified he saw his surgeon, Dr. Odor about one week before he testified at this hearing on October 13, 2016 at which time Dr. Odor made his restrictions permanent. (Id. 41). Petitioner testified he can now sit for 15-30 minutes and can stand for 15-25 minutes. (Id. 41). Petitioner testified he is taking medication for pain, sleeping and depression as well as muscle relaxers. (Id. 46). Petitioner testified he can walk 50-75 yards without resting. (Id. 46).

Petitioner testified he worked as a limousine driver after his back surgery which did not require any lifting. (Id. 75). Petitioner testified the job involved sitting for 20-minute periods as he was driving short distances. (Id. 75).

Petitioner further testified he was injured (prior to the accident at issue) at work on October 1, 2007 resulting in neck and shoulder surgeries. (Id. 17).

On cross-examination, Petitioner would not admit that he had low back complaints in 2009. (Id. 49). Petitioner was asked whether his back pain was so bad that he stopped working in 2008, Petitioner answered he had a doctor's appointment and went back to work after that. (Tr. 50). Petitioner did not recall attempting to return to work in June of 2009. (Id. 50). Petitioner testified he more than likely underwent a lumbar epidural injection in 2009. (Id. 50-51). Then, Petitioner testified he did not know if he was having low back pain in 2009. (Id. 51). Petitioner testified he could not remember low back pain in 2009. (Id. 50). Petitioner was asked whether he was treating with Dr. Odor for low back pain prior to the January 12, 2010 accident, but Petitioner answered he was "released to go to work." (Id. 51). For a second time, Petitioner was asked whether he was treating with Dr. Odor for low back pain prior to the January 12, 2010 accident, and Petitioner testified "I'm lost." (Tr. 51). For a third time, Petitioner was asked whether he was treating with Dr. Odor for low back pain prior to the January 12, 2010 accident, and specifically June of 2009. (Id. 51-52). Petitioner testified "[p]robably so because I went

back to work the next month. (Id. 52). Petitioner was asked a fourth time, whether he was treating with Dr. Odor for low back pain prior to the January 12, 2010 accident, and Petitioner testified "I don't understand what you're trying to say." (Id. 52).
At this point, the Arbitrator stated, "You can go back to work and still be treated by a doctor at the same time." (Id. 52-53). The Arbitrator asked Petitioner, "When you went back to work, were you still going to visit Doctor Odor?" Petitioner testified "I don't recall." (Id. 53).

Petitioner testified he likely told Dr. Bartlow that he always worked in some form of driving since age 21. (Id. 53). Petitioner testified he has a valid commercial chauffeur's license and has worked for a limousine company, Paris Limousine, prior to 2015. (Id. 53-54). Petitioner testified that if Paris Limousine would give him work, then Petitioner would work. (Id. 57). Petitioner then testified he told Dr. Bartlow about his previous work as a limousine driver and that Petitioner would like to continue working as a limousine driver. (Id. 58). However, other than driving for Paris Limousine, Petitioner testified he has not attempted to look for work anywhere else in the years 2015 or 2016. (Id. 58-59). Petitioner testified he did not produce any job logs identifying his efforts of looking for work. (Id. 59). Petitioner testified he did not look for any work in the year 2013 or 2014, other than Paris Limousine. (Id. 60). Petitioner testified he did not look for work with any other employer in 2015 and he does not have any job logs that show he looked for work in 2015. (Id. 61). Petitioner testified he did not work for any employer in the year 2016, nor did he attempt to look for work. (Id. 62).

Petitioner testified he was recently a plaintiff in a third-party case in the United States District Court for the Eastern District of Missouri. (Id.). Petitioner testified he received a settlement pursuant to that case but does not recall the amount of that settlement. (Id.). The Arbitrator asked Petitioner, "No clue?" (Id.). Petitioner testified he had "no clue." (Id. 64). Petitioner testified that the third-party case had settled at least five or six weeks ago. (Id.). Petitioner testified he knew the settlement amount had been deposited into his Chase Bank accounts but did not know how much was deposited. (Id. 65). Petitioner's attorney stated on the record that the settlement agreement amongst the parties allocated zero percent of the settlement to [the 1/12/10] injury. (Id. 66).

Injury and Treatment Summary
Following Petitioner's work-related accident of January 12, 2010

Records from the Aurora Fire Department dated 1/12/2010 note Petitioner's report that he fell off his truck at a Honda dealership in Aurora, Illinois. He said someone helped him up. When the EMTs arrived, they found Petitioner sitting in a chair in an office inside the Valley Honda. (Px. 1).

1/12/10 records from Rush Copley Medical Center note Petitioner presented to Dr. Muna Salman with a history of "attempting to empty his truck and he fell off and he landed on his back." Petitioner denied any loss of consciousness. Dr. Salman noted, "He apparently fell about 8 to 10 feet". Petitioner's complaints of back and left hip pain were noted. He denied any leg pain, tingling or numbness. Dr. Salman noted the hip exam was "pretty benign." (Id.).

CT of Petitioner's cervical, thoracic and lumbar spine showed no evidence of fracture or deformity and no post traumatic subluxation. Mild central canal stenosis at L3-4 and L4-L5, and moderate bilateral neural foraminal narrowing at L5-S1 and at L4-L5 were noted. Degenerative changes at multiple levels throughout the thoracic/lumbar spine, including disc space narrowing, endplate sclerotic changes, osteophyte formation, facet joint hypertrophy and vacuum disc phenomenon at L4-L5 were noted. (Id.).

On 1/15/2010, Petitioner presented to Southwest Oklahoma MRI for lumbar and cervical spine MRI. The findings from that exam are contained in a letter to Dr. Odor noting a small circumferential disc bulge at L4-L5

had caused mild indentation of the anterior thecal sac and mild bilateral foraminal stenosis. A transitional vertebral body was noted at L5. At L3-4, a small circumferential disc bulge had caused mild narrowing of the right intervertebral foramen. MRI of Petitioner's cervical spine showed an anterior interbody fusion of C4, C5, and C6 with anterior plate, screws and spaces in position. At C6-7, a small midline disc bulge had resulted in partial effacement of the ventral subarachnoid space was noted. At C3-4, a tiny midline disc protrusion had partially effaced the ventral subarachnoid space. (Id.).

On 1/28/2010, Petitioner presented to Dr. James Odor for examination. Dr. Odor noted he had treated Petitioner's neck and lower back related to prior injuries sustained on 10-1-07. The doctor noted Petitioner's prior low back treatment was conservative in nature, including physical therapy and injections. Dr. Odor noted the "[Petitioner] had gotten a lot better and states just prior to this new injury he was feeling well." After reviewing the CT scans, X-rays, and Petitioner's MRIs, Dr. Odor's impressions noted Petitioner's previous ACDF C-4-5 & C5-6 remained solid. The doctor further noted Petitioner's previous cervical lumbar symptoms, due to an injury of 10-01-07 were improving to the point of maximal medical benefit prior to this injury. The doctor noted new injuries to the cervical, thoracic and lumbar spine with cervical disc protrusions at C-3-4 and C6-7, lumbar disc protrusion L3-4 and L-4-5 with new onset of lumbar radicular symptoms, related to injury as above and thoracic pain of uncertain etiology;

Pursuant to Dr. Odor's recommendation, a thoracic MRI was performed on 2/8/10 which noted a small disc protrusion in the left paramedian effaced the ventral subarachnoid space at T7-8. At T8-9, T9-10, and T10-11, small circumferential disc bulges had partially effaced the ventral subarachnoid space at each level. (Id.).

On 2/25/10, Dr. Odor recommended Petitioner receive bilateral transforaminal epidural steroid injections at L4-L5 along with physical therapy. (Id.).

On 3/02/2010, Dr. James Odor noted Petitioner's complaints of bilateral shoulder pain. Petitioner was referred to a shoulder specialist. (Id.).

On 3/26/2010, Dr. Odor noted a pre-procedure diagnosis of bilateral lumbar radiculopathy. Dr. Odor administered epidurography and epidural steroid injection ("ESI") at L4-5 on the right and left. (Id.).

On 4/08/2010, Todd Olsen, D.O., noted Petitioner presented with bilateral shoulder complaints. Dr. Olsen recommended physical therapy and follow-up appointments every 4 weeks. (Id.).

On 4/12/2010, Dr. Odor reviewed MRI scans of the lumbar spine from 11-24-2008 and 1-15-2010 noting bilateral foraminal stenosis at L4-5 on the 1-15-2010 MRI scan. Regarding the 11-24-08 scan, the doctor noted mild narrowing of the left L4-5 foramina. Dr. Odor further noted Petitioner's symptoms changed following his newer injury of 1-12-10, indicating that Petitioner's current need for treatment was causally related to his injury of 1-12-2010. (Id.).

5/07/2010 records from Oklahoma Spine Hospital note Petitioner received multiple transforaminal ESIs and multiple epidurography injections. (Px. 1).

On 5/20/2010, Dr. Odor noted the injections were not helping. The doctor recommended lumbar discography. (Px. 1).

On 5/27/2010, Todd Olsen, D.O., noted Petitioner's report that his right and left shoulder status had not changed since his last examination. (Px. 2).

On 6/03/2010, Petitioner presented to Dr. Alexander Ghanayem for an Independent Medical Examination pursuant to Respondent's Section 12 request. (Rx. 1, p. 8).
On 7/06/2010, Todd Olsen, D.O., noted a diagnosis of bilateral right shoulder pain, strain and contusion. (Px. 2).

On 12/3/2010, Dr. Odor administered injections for discography, radiologic supervision and interpretation at L2-3, L3-4, L4-5, L5-S1. Summary of findings noted positive discography at L3-4, L4-5. Petitioner was sent for a CT scan for further structural diagnostic evaluation. Impression of the radiology report noted narrowing of the disc spaces at L3-4 and L4-5, annular fissures at L3-4 and L4-5 and mild to moderate foraminal stenosis bilaterally at L4-5. (Px. 1).

On 12/9/2010, Dr. Odor issued an addendum to his 12/3/2010 report stating that Petitioner should have the option of a two-level anterior posterior lumbar fusion at L3-4 and L4-5 with stabilization and anterior reconstruction to restore sagittal height and alignment. (Px. 1).

On 1/11/11, Dr. Ghanayem reviewed pre- and post-accident MRI scans of Petitioner's lumbar spine, confirming that Petitioner had reached maximum medical improvement and that Petitioner could return back to work at regular duty with no need for further medical care. (Rx. 1)

On 3/2/2011, Petitioner presented for another independent medical examination with Dr. Ghanayem who noted that Petitioner exhibited "nothing short of willful malingering" based on his examination and findings. The doctor noted again that Petitioner required no further medical care, and should have been able to return back to regular work activities no later than three months post injury. (Id.).

On 5/5/2011, Dr. Odor noted Petitioner's complaints of severe low back pain with bilateral radiation into his hips and legs with associated weakness and numbness with walking. The doctor noted an impression of severe lumbar radicular pain syndrome related to lumbar stenosis and lumbar central disc herniation L4-5 with retrolisthesis at L4-5 and multiple reasons for pain with two level positive discography L3-4 and L4-5 with updated MRI. (Px. 1).

On 4/19/2012, Dr. Odor noted Petitioner's complaints of continued pain in his neck, arms, back and legs. Dr. Odor's impression was lumbar radicular syndrome with known L3-4 and L4-5 lumbar instability, and lumbar stenosis with radiculopathy. Petitioner's ongoing cervical radicular pain were noted status post two level ACDF C4-5 and C5-6, which Dr. Odor noted was solid. It was recommended that Petitioner receive another MRI of the lumbar spine. (Id.).

On 4/24/2012, MRI of Petitioner's lumbar spine demonstrated moderate right neural foraminal stenosis at L3-4 from a right foraminal protrusion, mild bilateral neural foraminal narrowing at L4-5 from a mild disc bulge, a small posterior protrusion at T11-12 minimally effacing the thecal sac and mild disc dehydration. (Id.).

On 4/30/2012, Dr. Odor noted Petitioner's the most recent lumbar MRI showed significant disc disruption. Dr. Odor noted his continued recommendation for a two-level lumbar decompression, restoration of sagittal alignment, interbody reconstruction and two-level fusion L3-4 and L-4-5 with decompression. (Id.).

On 9/11/2012, Dr. Michael Riggs and Dr. Odor performed surgery at Oklahoma Spine Hospital. Dr. Riggs operative report noted a preoperative diagnosis of degenerative lumbar disc disease at L3-4, L4-5, and L5-S1 with lumbar instability and spondylolisthesis. Dr. Odor's preoperative diagnosis noted lumbar stenosis, lumbar

instability, lumbar spondylolisthesis, lumbar radiculopathy and lumbosacral instability. Petitioner underwent an anterior lumbar interbody fusion at L3-4, L4-5 and L5-S1, with discectomy and anterior instrumentation at L3-4, L4-5 and L5-S1. (Px. 9).
On 10/11/2012, Dr. Odor noted Petitioner returned for a one-month post-operative visit status three level lumbar decompression, fusion and instrumentation. The doctor noted Petitioner was doing well and was walking erect for the first time in almost three years. (Px. 1).

Petitioner continued to follow-up with Dr. Odor who noted on 6/14/2013 that Petitioner had increased his walking to 3 times a day while x-ray showed continuing consolidation. (Id.).

On 9/11/2013, Dr. Odor noted Petitioner was one year postop following a three-level lumbar fusion and stabilization. Petitioner reported feeling much better than he did before his surgery. X-rays showed the fusion appeared to be consolidating nicely with no evidence of screw loosening or instability. (Id.).

On 12/12/2013, Petitioner returned to Dr. odor reporting some flare up due to the cold weather and some pain over his hardware, especially over the L-5 and S-1 screws. Petitioner was advised of the possibility of hardware removal in the future. (Id.).

Petitioner continued to follow-up with Dr. Odor on 2/13/2014 when the doctor noted Petitioner demonstrated a normal gait and was neurologically intact. On 4/17/2014, Dr. Odor noted Petitioner was 1.5 years post-op from his fusion surgery. X-rays showed that his fusion appeared to be consolidating nicely with no evidence of screw loosening or instability. (Id.).

On 9/18/2014, Dr. Odor noted Petitioner reported having had some good days and bad days but overall was much improved. X-rays showed his fusion continued to consolidate. (Id.).

On 11/20/2014, Dr. Odor noted radiographs demonstrated a solid fusion. Petitioner continued to take medication for pain management. Dr. Odor recommended a follow up in 4 months. (Id.).

On 3/19/2015, Dr. Odor noted Petitioner continued to limit his activities within his restrictions. For now, Petitioner was to continue with medication and was to be seen in 4 months. (Id.).

On 8/26/2015, Dr. Odor noted Petitioner may still need more injections, ongoing pain management, and posterior hardware removal. (Id.).

On 2/17/16, Petitioner presented to Dr. Odor reporting new pains over the last several months in his hips and SI joints. Dr. Odor issued temporary restrictions not to exceed lifting of 10 lbs., push/pull 15 lbs. Petitioner was also restricted from "walking, standing, and sitting," but doctor Odor did not elaborate on the duration of the limitation. Petitioner was also restricted from bending, twisting, climbing, and crawling. Petitioner was to follow up in 2 months. (Id.).

On 4/20/16, Petitioner returned to Dr. Odor reporting his pain has been stable and controlled, other than a recent flare up due to rainy weather. Dr. Odor continued the same temporary restrictions as 2/17/16 and added that Petitioner could not operate machinery. Petitioner was to follow up in 3 months. (Id.).

On 7/7/16, Petitioner presented to Dr. Odor reporting weakness in his legs after standing for very long or walking for more than 15-20 minutes. Dr. Odor noted a new lumbar MRI might be needed at some point and

continued the same temporary restrictions as 2/17/16. Dr. Odor issued a prescription for more medication and instructed Petitioner to follow up in 3 months. (Id.).

On 10/6/2016, Petitioner presented to Dr. Odor noting a diagnosis of post laminectomy syndrome, chronic pain syndrome, and bilateral sacroiliitis. Dr. Odor issued permanent restrictions of maximum lifting of 10 lbs., push/pull 15 lbs. Petitioner was also restricted from bending, twisting, climbing, crawling, and from reaching overhead and away from the body. He recommended ongoing medication and follow-up in 2 months. (Id.).

On 12/8/16, Dr. Odor noted permanent restrictions not to exceed lifting of 10 lbs., push/pull 15 lbs. Petitioner was further restricted from operating machinery and "walking, standing, and sitting". Petitioner was also restricted from bending, twisting, climbing, and crawling. Petitioner was to continue his medications and home exercise program and follow-up in 3 months. (Id.).

Lower Back Injury and Treatment Summary Prior to January 12, 2010

On 8/18/2008, Petitioner presented to Dr. James Odor of Spine Surgery, Inc., reporting he injured his lower back. Dr. Odor noted he would see Petitioner for lower back issue if authorized. (Px. 1).

10/18/2008 records from Oklahoma Physical Therapy note Petitioner "displays negativity towards progression with exercises." Petitioner's "progression with exercise and range of motion, at this point in time, is self-limiting. He shows very little motivation to return to work at this time."

11/24/2008 records from Olsen Orthopedics note Petitioner is status post left shoulder arthroscopy with labral debridement and subacromial decompression. Petitioner stated, "he went back to work on a work trial but had to cut it short because of the development of significant lower back pain." Petitioner agreed to "proceed with an MRI of the lumbar spine and request for a timely evaluation from Dr. Odor." (Rx. 5).

Records from Oklahoma MRI dated 11/24/2008 noted a lumbar spine MRI showed L5 is a transitional vertebral body. At L3-4, a small circumferential disc bulge that mildly indented the anterior thecal sac and mildly narrowed the left intervertebral foramen was noted. At L3-4, a small right foraminal disc protrusion, superimposed on a small circumferential disc bulge, causing moderate narrowing of the right intervertebral foramen was documented. (Id.).

On 12/19/2008, Petitioner presented to Dr. James Odor who noted complaints of lower back pain with radiation at times into the left buttock and leg with associated numbness and tingling. On exam, Petitioner displayed limited lumbar motion with significant spasms of the lumbar spine. On review of the 11/24/08 lumbar MRI, Dr. Odor noted a disk bulge at L3-4 and mild narrowing of the foramen at L3-4. There were no significant findings with regard to L4-5 or L5-S1 (in contrast to the MRI's and operative notes following the January 12, 2010, injury). The clinical impression was lumbar radicular pain syndrome likely arising from the L3-4 level. Dr. Odor advised Petitioner to begin a trial of physical therapy, epidural steroid injections, and medications were prescribed.

On 4/03/2009, Petitioner presented to Dr. Odor who noted a diagnosis of lumbar radiculopathy at L3-4. Petitioner received an ESI and epidurography at L3-4 on the left. (Id.).

On 4/24/2009, Dr. James Odor noted a diagnosis of lumbar radiculopathy at L3-4 on the right and lumbar facet joint syndrome at L3-4 on the left. Petitioner received an ESI and epidurography at left L3-4, left lumbar facet joint injection and fluoroscopy at L3-4. (Id.).

On 5/22/2009 Petitioner received an ESI, epidurography, fluoroscopy and lumbar facet joint injection at L3-4 on the left. (Id.).
On 6/10/2009, Dr. Odor administered an ESI and facet injection at L3-L4 on the left. Petitioner asserted that he felt much better and could go back to work. Dr. Odor believed Petitioner could return to work in 6 weeks. (Id.).

On 9/04/2009, Petitioner presented to Dr. James Odor reporting that he had returned to work. Petitioner noted he had a flare up and did not think he reached MMI. Petitioner noted he did benefit from his most recent injections. (Id.).

On 11/6/2009, Dr. Odor noted Petitioner's report of continued low back pain with radiation down his left buttock and leg, sometimes in the right as well. Petitioner was still performing the same activities at work, chaining down trucks. Petitioner requested injections. (Id.).

On 12/11/2009, Dr. Odor administered an ESI and epidurography at L3-4 on the left with moderate conscious sedation. (Id.).

On 12/18/2009, Petitioner presented to Dr. Odor who noted Petitioner's report that his "right side now hurts." His current pain level was noted as 7-8 on the right, and 5-6 on the left. Dr. Odor recommended TFESI at L3 - 4 on the right and an injection at L3 - 4 on the right. (Id.).

On 12/21/2009, Dr. Odor's office sought authorization for this right-side epidural injection and left a message for adjuster Michelle Price. (Rx. 5). On 12/28/2009: Dr. Odor's office made additional efforts to contact Michelle Price noting she was out of office. (Id.).

On 1/6/2010, Dr. Odor's office contacted the new adjuster. (Id.).

Dr. Alexander Ghanayem's Independent Medical Evaluations and Deposition Testimony

June 3, 2010 Evaluation

Petitioner presented to Dr. Alexander Ghanayem for an independent medical evaluation on June 3, 2010 pursuant to Respondent's Section 12 request. Dr. Ghanayem noted an accident history consistent with Petitioner's testimony at the arbitration hearing. Petitioner reported low back pain radiating to the front of his thighs and down to his knees. He denied any prior low back problems. On examination, Petitioner stood with normal posture and walked with a slight forward pitch. The exam of the lumbar spine showed tenderness throughout the entire lumbar region. Tensions signs were negative for radicular pain and back pain. (Rx. 1, deposition exhibit 2, pg. 1).

Upon review of Petitioner's prior medical records, Dr. Ghanayem noted "significant low back problems that predate" Petitioner's work injury "despite his history to me denying any prior low back problems". Dr. Ghanayem noted Petitioner's lumbar problems required treatment including injections up until the month before Petitioner's work injury in January of 2010. Further, the cervicothoracic and lumbar CTs scan performed in January 2010 showed no fractures and some degenerative arthritis. (Id.)

With respect to Petitioner's cervical spine, the doctor opined Petitioner "has some muscular discomfort consistent with a cervical strain".

Regarding Petitioner's lumbar spine, the doctor opined that Petitioner has "non-organic physical findings on today's exam consistent with symptom magnification". (Id.). Dr. Ghanayem noted he found "nothing objective on today's examination." (Id.). Further, Dr. Ghanayem noted, "Clinically, this patient represents contraindication to discography with the multiple nonorganic physical findings consistent with symptom magnification. While he did sustain injury when he fell, it would appear that this injury was only soft tissue in nature. (Id.)

Dr. Ghanayem requested the lumbar MRI scans from January 15, 2010 and November 24, 2008 be forwarded to his attention for further review. (Id.).

January 11, 2011 Addendum

On January 11, 2011, after reviewing the two lumbar MRI scans from 2008 and 2010, Dr. Ghanayem found "nothing structural causing neurologic compression." The doctor noted that any narrowing exhibited in the scans was not significant, and even "if the narrowing was significant it would not cause the subjective complaints that the patients noted at the June 3, 2010 examination." Dr. Ghanayem opined, based on the mechanism of injury, that Petitioner sustained a back sprain and had reached MMI. Dr. Ghanayem further testified that lumbar discectomy was not indicated. In his opinion, Petitioner could return back to regular duty and no further medical care was required. (Id.)

March 2, 2011 Evaluation

Dr. Ghanayem re-evaluated on Petitioner March 2, 2011 noting on exam that Petitioner "essentially threw himself forward," after which, Dr. Ghanayem caught him. The doctor noted, "It was very clear in feeling the tone in his musculature that he was essentially acting." The doctor concluded Petitioner exhibited "nothing short of willful malingering" based on his examination and findings.

Despite positive findings on discography, the doctor found Petitioner's subjective complaints and physical exam findings did not warrant any surgical intervention. Dr. Ghanayem noted Petitioner's lumbar MRI scans simply showed degenerative changes. The foraminal narrowing present on MRI would not cause significant neurological compression that would explain Petitioner's complaints of generalized lower extremity weakness. Dr. Ghanayem confirmed that no further medical care was required, noting Petitioner should have been able to return to regular work activities no later than three months post injury. Dr. Ghanayem noted physical therapy would have been reasonable for Petitioner's injury. (Id.)

Dr. Todd Olsen's Deposition Testimony

Dr. Todd Olsen, D.O., testified that Petitioner presented for initial consult on October 17, 2007 with complaints of left shoulder and radicular arm pain. (Id., Pg. 10). Subsequently, MRI of Petitioner's cervical spine showed a C5-C6 disc protrusion, resulting in lateral stenosis. (Id., Pg. 11). Dr. Olson further testified that Petitioner reported low back complaints prior to his January 12, 2010 accident. (Id., Pg. 23). Petitioner's low back complaints were significant enough that Dr. Olsen ordered a lumbar MRI on November 24, 2008. Petitioner was in excruciating pain and couldn't stand up straight. (Id., Pg. 39-40). It was Dr. Olsen's opinion that Petitioner could have had back problems as early as 2007. (Id., Pg. 45). During the entire time that Dr. Olsen treated Petitioner, for 18 visits altogether, Petitioner gait was always normal, heel to toe. (Px. 3, Pg. 45-46). Dr. Olsen testified Petitioner had a normal gait after his January 2010 accident. (Id., Pg. 47). Dr. Olsen also knew

that Petitioner smoked one or two packs each day and confirmed that smoking can affect the healing process. (Id., Pg. 49).

Cary Bartlow, Ph. D. Deposition Testimony

Cary Bartlow, Ph.D. opined the sedentary restrictions placed on Petitioner by his treating physician are too profound and too limiting to enable any type of driving work. (Px. 4, Pg. 16). Dr. Bartlow did not perform a job market analysis because he didn't believe Petitioner is capable of working. (Px. 4, Pg. 20). He did look at the Dr. Odor's recommendations for permanent physical limitations. (Px. 4, Pg. 25). Cary Bartow confirmed his job is to determine the need for and practicality of vocational rehabilitation services and to place people in rehabilitation training or job placement when determined appropriate. (Px. 4, Pg. 34).

Of note, Petitioner drove approximately 30 minutes to the appointment with Dr. Barlow. (Px. 4, Pg. 40)

He opined that Petitioner is 100% vocationally disabled, but acknowledged Petitioner had engaged in part-time work following the accident at issue. (Px. 4, Pg. 54).

Labor Market Survey of Charline M. McGrath, M.S. C.R.C

Charlene McGrath reviewed the opinions of Dr. Ghanayem and Petitioner's vocational rehabilitation consultant. (Rx. 2, p Pg. 1). Ms. McGrath noted Petitioner's report of brief employment as a part-time limo driver in 2015 and that he received his Commercial Chauffer's License at age 21 and had been engaged in commercial driving since 1994 at Jack Cooper. (Rx. 2, pg. 2).

Ms. McGrath performed a Labor Market Survey that identified job targets focused on alternative "driving" and related positions. (Rx. 2, Pg. 8). These job targets are consistent with Petitioner's expressed job interests per Dr. Bartlow's evaluation. (Rx. 2, Pg. 8). Ms. McGrath noted that if accommodations were necessary for Petitioner to return to full duty employment, all employers in her Survey would consider modification and/or accommodation requests for individuals with disabilities. (Rx. 2, Pg. 8).

CONCLUSIONS OF LAW

F: Is Petitioner's Current Condition Causally Related to the Injury?
J: Responsibility for Medical Treatment Pursuant to Section 8(a)

There is no dispute that Petitioner sustained a work-related injury on January 12, 2010, while in the course of his employment with Respondent when he fell eight to twelve feet off the top of his trailer and landed flat on his back onto the pavement below. Without anything more, it would not be surprising if a serious injury resulted from such a fall or an aggravation of a pre-existing condition.

The evidence *prior* to the January 12, 2010 accident indicates that Petitioner engaged in a conservative course of treatment for lumbar radicular pain arising from the L3-L4 level on the left with no significant findings or treatment relative to L4-L5:

- Petitioner presented for lumbar MRI on 11/24/2008 which indicated at L3-4, a small circumferential disc bulge that mildly indented the anterior thecal sac and mildly narrowed the left intervertebral foramen. No significant findings regarding L4-5 or L5-S1 were noted (in contrast to the 1/15/10 lumbar MRI).

Petitioner's treating surgeon. Dr. Odor, noted a clinical impression of lumbar radicular pain syndrome likely arising from the L3-4 level. Dr. Odor advised Petitioner to begin a trial of physical therapy, epidural steroid injections, and medications.

- On 4/03/2009, an ESI and epidurography at left L3-4 left were administered. (Id.). On 4/24 and 5/22/09, Petitioner received an ESI, epidurography, and lumbar facet joint injection at left L3-4. On 6/10/2009, Petitioner returned to Dr. Odor for facet injection and ESI at L3-L4 on the left. Petitioner asserted that he felt much better and could go back to work. Dr. Odor believed Petitioner could return to work in 6 weeks.

- On 9/04/2009, Petitioner presented to Dr. Odor reporting he had returned to work. Reportedly, Petitioner had a flare up and did not think he reached MMI. Petitioner noted he did benefit from his most recent injections. Dr. Odor noted Petitioner was to continue various treatment modalities. (Id.).

- On 11/6/2009, Dr. Odor noted Petitioner's report of continued low back pain with radiation down his left buttock and leg, sometimes in the right as well. Petitioner was still performing the same activities at work, chaining down trucks. Petitioner requested injections. (Id.).

- On 12/11/2009, Dr. Odor administered an ESI and epidurography with moderate conscious sedation at L3-4 on the left. (Id.).

- On 12/18/2009, Petitioner presented to Dr. Odor reporting that his "right side now hurts." His current pain level was noted as 7-8 on the right, and 5-6 on the left. Dr. Odor recommended TFESI at L3 - 4 on the right and an injection at L3 - 4 on the right. (Id.).

The medical evidence indicates that *after* the uncontested January 12, 2012 injury, Petitioner presented with a new onset of lumbar radicular symptoms that clinically correlate to new objective findings (notable at L4-L5) which required significant medical intervention:

- On 1/15/10, lumbar MRI noted at L4-L5, a small circumferential disc bulge at L4-L5 had caused mild indentation of the anterior thecal sac and mild bilateral foraminal stenosis with a transitional vertebral body at L5. At L3-4, a small circumferential disc bulge had caused mild narrowing of the right intervertebral foramen.

- On 4/12/2010, Dr. Odor reviewed MRI scans of Petitioner's lumbar spine from 11-24-2008 and 1-15-2010. Regarding the 2010 scan, the doctor noted bilateral foraminal stenosis at L4-5 while the 2008 scan revealed mild narrowing of the left L4-5 foramina. Dr. Odor further noted Petitioner's symptoms changed following his newer injury of 1-12-10, indicating that Petitioner's current need for treatment was causally related to his injury of 1-10-10. (Id.).

- On 12/3/2010, Dr. Odor administered injections for lumbar discography at L2-3, L3-4, L4-5, L5-S1. Summary of findings noted a two-level positive lumbar discography at L3-4, L4-5 with normal disc L2-3 and L5-S1. Petitioner was sent for a CT scan for further structural diagnostic evaluation. Impression of the radiology report noted narrowing of the disc spaces at L3-4 and L4-5. There were annular fissures at L3-4 and L4-5. Mild to moderate foraminal stenosis bilaterally at L4-5 was noted.

- On 12/9/2010, Dr. Odor issued an addendum to his 12/3/2010 report stating that Petitioner should have the option of a two-level anterior posterior lumbar fusion at L3-4 and L4-5 with stabilization and anterior reconstruction to restore sagittal height and alignment. (Px. 1).

- On 4/24/2012, MRI of Petitioner's lumbar spine demonstrated moderate right neural foraminal stenosis at L3-4 from a right foraminal protrusion. At L4-5, mild bilateral neural foraminal narrowing from a mild disc bulge was noted. A small posterior protrusion at T11-12 minimally effaced the thecal sac. There was mild disc dehydration. (Id.).

- On 4/30/2012, Dr. Odor noted Petitioner's most recent lumbar MRI showed significant disc disruption. The doctor's continued recommendation for a two-level lumbar decompression, restoration of sagittal alignment, interbody reconstruction and two-level fusion L3-4 and L-4-5 with decompression of the spinal canal was noted. (Id.).

- On 9/11/2012, Dr. Michael Riggs and Dr. Odor performed surgery at Oklahoma Spine Hospital. Dr. Riggs operative report noted a preoperative diagnosis of degenerative lumbar disc disease at L3-4, L4-5, and L5-S1 with lumbar instability and spondylolisthesis. Dr. Odor's preoperative diagnosis noted lumbar stenosis, lumbar instability, lumbar spondylolisthesis, lumbar radiculopathy and lumbosacral instability. Petitioner underwent an anterior lumbar interbody fusion, L3-4, L4-5 and L5-S1, with discectomy and anterior instrumentation at L3-4, L4-5 and L5-S1. (Px. 9).

In his deposition on February 24, 2016, Dr. James Odor testified:

A: [On January 28, 2010,] I discussed the fact that he had new injuries to his cervical, thoracic, and lumbar spine, cervical disc protrusions at C3-4 and C6-7 surrounding his fusion construct, thoracic pain of uncertain etiology, and a lumbar disc protrusion at L3-4 and L4-5 with new onset of lumbar radicular symptoms that, in my opinion, were related to his injury of . . . 1/12/10.

Q. So just so we're clear, the conditions and the problems that you've just diagnosed and described in your opinion are related to the injury sustained on January 12, 2010; correct?

A. Correct. (PX #1, p. 23).

In part, Dr. Odor based his opinion upon a comparison between a prior MRI scan and an MRI taken after the 2010 accident.

A. . . . I reviewed MRI scans of the lumbar spine, the first being dated 11/24/08, and the second dated January 15th of 2010. Also reviewed my record and noted the difference on the two scans with bilateral foraminal stenosis at L4-5 being present on the January 15th, 2010, MRI. And on the 11/24/08 scan only showing mild narrowing of the left L4-5 foramen.

Q. And then what did you conclude based on that?

A. I stated the patient's symptom changed following his newer injury of 1/12/10. Also indicates the patient has a current need for treatment, major cause to be related to his injury of January 12, 2010. (PX #1, p. 25-6).

Dr. Odor opined that the need for the lumbar surgery was caused by the injury of January 12, 2010:

A. I recommended that the patient have the option of an anterior/posterior lumbar fusion. At that time, I mentioned L3-4 and L4-5, two-level with stabilization and anterior reconstruction to restore sagittal height and alignment.

Q. Okay. Was that, in your opinion, to correct the injury sustained in the January 12, 2010, incident?

A. Yes. (PX #1, p. 33).

Prior to the surgery, Dr. Odor evaluated Petitioner's gait and posture:

Q. Okay. Would you explain to the arbitrator what you observed when you saw Mr. Taylor walking before the surgery?

A. Well, he had to take very short steps and he was flexed forward at the lumbar spine and held himself in a -- in a hip-flexed position, which then, in order to kind of offset that disturbance in his center of gravity, required him to bring his neck back up. I mean, it almost looked kind of like a -- oh, almost kind of like a bird walk. It was just an odd -- it was an odd walk that I've only seen when patients are in such dire pain that they're just doing what they can to walk and not exacerbate their pain. (PX #1, p. 34).

Having treated Petitioner for both the workplace injuries sustained in 2007 and 2010 (PX #1), Dr. Odor was in a position to differentiate between the effects of each injury. At the January 28, 2010, examination, Dr. Odor noted that Petitioner "had gotten a lot better" and "just prior to this new injury he was feeling well" (PX #1, Ex. 3). Dr. Odor further noted, "He had only minimal residual symptoms, which he was able to tolerate and in fact, was scheduled to see me today to be released." However, due to the recent injury, instead of being released from Dr. Odor's care, Petitioner now complained of new neck, low back, and mid-back thoracic area pain. Dr. Odor noted that Petitioner "gets about the room very slowly." Dr. Odor testified that Petitioner had new injuries to his cervical, thoracic, and lumbar spine, cervical disc protrusions at C3-4 and C6-7 surrounding his fusion construct, thoracic pain of uncertain etiology, and a lumbar radicular symptoms that were related to his injury of 1/12/10 (PX #1, p. 23). Dr. Odor also noted that Petitioner did not walk with his unique and guarded gait until after the 2010 injury (PX #1, p. 30). Dr. Odor testified that the medical treatment and care, including charges, provided for Petitioner from January 12, 2010, to present (date of deposition: February 24, 2016) were related to the January 12, 2010, injury (PX #1, p. 59-60).

With respect to Petitioner's surgery Dr. Odor testified Petitioner was scheduled for a two-level fusion at 3-4 and 4-5 although:

> [A]fter getting in there and also reviewing all the imaging studies concomitantly in the OR, I decided to do L5-S1 because it was asymmetrically tilted in the coronal plane throwing him into a slight scoliosis. And so it wouldn't have been proper to stop 3 at just 3-4 and 4-5 without connecting it to 4 the -- to the base of the spine. So he underwent a three-level, anterior and posterior lumbar decompression and fusion with stabilization.

Dr. Odor further testified to his intraoperative impressions:

Q. Okay. Doctor, after getting into Mr. Taylor's lumbar spine and seeing what the condition was in the surgical process, was there any doubt in your mind whatsoever that Mr. Taylor was faking or malingering any of his complaints, symptoms, or altered gait?

A. No. And, in fact, it further confirmed. Actually looked worse than, you know, what the scans had indicated, especially with that L5-S1 level as well. It was also in what we call restrolisthesis position and asymmetrically tilted. And so, you know, I went - I was very comfortable with being there after seeing the findings, knowing that we were doing the right thing. (PX #1, p. 45-7).

Furthermore, Dr. Odor examined and observed Petitioner after the surgery, including Petitioner's first post-operation visit on October 11, 2012. Dr. Ghanayem did not have the benefit of this or any other post-op follow up visit:

Q. How was Mr. Taylor's gait that day?

A. It was good. He was walking erect. First time I'd seen him walk in that normal gait position for almost three years.

Q. Do you recall how his spirits were?

A. He was smiling. He was happy. He was doing very well. He was -- he was really a pleased patient.

Q. Okay. And, Doctor, after having performed the surgery and seeing the end results, do you have an opinion within a reasonable degree of medical certainty as to whether the end results verified the need for the surgery, or validated the need for the surgery, I should say?

A. Well, it always helps. When you see such a striking difference between pre and post op, it helps confirm the right decisions were made. (PX #1, p. 48-9).

Regarding Petitioner's shoulder pain, Dr. Olsen testified that shortly before Petitioner's 2010 injury, Petitioner had gone back to full activity with no particular complaints until he suffered another work injury in January 2010. (PX #3, p. 24). Dr. Olsen further testified that the symptoms he treated Petitioner for in 2010 were not related to the injuries sustained in 2007 (PX #3, p. 24-5). As a result of the 2010 injury, Dr. Olsen ultimately diagnosed Petitioner with left and right shoulder pain with mild mechanical symptoms of his right shoulder. (PX #3, p. 34).

Regarding medical evidence to the contrary, on June 3, 2010, Dr. Ghanayem performed an examination pursuant to Section 12 of the Act. Notably, Dr. Ghanayem advised that he had no opinion on issues of causation and treatment with respect to Petitioner's shoulders. (RX #1, p. 8). Regarding Petitioner's lumbar spine, the doctor opined that Petitioner has "non-organic physical findings on today's exam consistent with symptom magnification". (Id.). Dr. Ghanayem noted he found "nothing objective on today's examination." Dr. Ghanayem acknowledged Petitioner did sustain injury when he fell, he believed such was only soft tissue in nature. The Arbitrator notes the doctor had not reviewed the lumbar MRI scans from January 15, 2010 and November 24, 2008 on this date.

When Dr. Ghanayem had the opportunity to review Petitioner's 2008 and 2010 MRI comparison scans, he did find that "there was [were] some differences in foraminal stenosis being bilateral on the latter scan and unilateral on the older scan" (RX #1, p. 11). Ultimately, Dr. Ghanayem concluded that Petitioner suffered a "soft tissue injury of the back," and he "felt that he [Petitioner] needed nothing further and should move on" (RX #1, p. 18). Dr. Ghanayem stated the belief that Petitioner's condition was the result of "malingering" and symptom exaggeration, based upon his examination and observations, but, in his reports and testimony, Dr. Ghanayem never provided a detailed analysis of the medical treatment record to support his theory.

Regarding the proposed surgery, Dr. Ghanayem concluded there was no objective basis that required spine surgery (RX #1, p. 48, 55). Dr. Ghanayem last examined Petitioner in 2011 and last reviewed Petitioner's medical records on September 12, 2012 (RX #1, p. 44). Therefore, he had no access to the additional MRIs, operative report, or four years of additional medical treatment records.

Based on careful review of the evidence contained in the record, the Arbitrator finds the preponderance of the evidence supports a finding that Petitioner's current condition of ill being is causally connected to his work-related accident of January 12, 2010, necessitating all of the medical treatment of record (PX #14) provided to Petitioner since that date.

Regarding Issue "K," whether temporary total disability (TTD) benefits are due, the Arbitrator finds the following:

Following Dr. Ghanayem's first Section 12 examination, the Respondent terminated temporary total disability benefits. There is no stipulation regarding the precise stipulated date of the onset of Respondent's payment of TTD or termination date. However, there is a stipulation between the parties that the Respondent is entitled to receive credit for having paid a total of $62,444.78 in TTD. Accordingly, the Arbitrator finds that Respondent has paid TTD from the date of accident through March 24, 2011. Therefore, at issue is Petitioner's entitlement for additional TTD commencing on March 25, 2011, and when that obligation would end. Petitioner claims that he is entitled to TTD through the date of February 17, 2016, which coincides with an office visit and examination by Dr. Odor.

The medical records in evidence show that from the date of accident until the date of maximum medical improvement, Petitioner was under the continuous care of his treating physicians for the purposes of curing and alleviating the injurious effects of his accidental injury until the date of MMI. Dr. Odor had either excused Petitioner from work altogether or to the extent that Dr. Odor released Petitioner to return to work with restrictions pending MMI. Respondent elected not to take Petitioner back to work in a position accommodating his restrictions in a non-DOT capacity (PX #1, Ex. 3). Respondent never challenged the examining DOT physician's determination that Petitioner was medically unfit to perform his duties as a commercial driver.

Consistent with well recognized Illinois law on this issue, it is the holding of the Arbitrator that pending MMI during a period of temporary total disability and if the employer is unable to accommodate the injured employee's medical restrictions governing a return to work, the employer is obligated to continue TTD payments until the worker has attained maximum medical improvement. Petitioner's having reported to the Texas facility to return to work, after being informed by Dr. Ghanayem that he was medically fit to do so and despite whatever misgivings or concerns Petitioner may have had, shifted the burden to Respondent to either provide work he was capable of performing or pay TTD through MMI.

Accordingly, Respondent is ordered to pay Petitioner 256 weeks of accrued unpaid TTD at the rate of $961.33 weekly for benefits commencing March 25, 2011, through February 17, 2016.

Regarding Issue "L," the nature and extent of Petitioner's injury, the Arbitrator finds the following:

The Arbitrator does not agree that Petitioner is permanently and totally disabled as a result of his work accident. "An employee is totally and permanently disabled for the purpose of workmen's compensation benefits when he is unable to make some contribution to industry sufficient to justify payment to him of wages." *A. M. T. C. of Illinois, Inc., v. Indus. Comm'n*, 77 Ill. 2d 482, 487 (1979). However, this does not require that the injured party be reduced to a state of total physical or mental incapacity or helplessness. *Id.* A person is totally disabled when he cannot perform services except those that are so limited in quantity, dependability or quality that there is no reasonably stable market for them. *Id.* Therefore, if an employee can take up some form of employment without seriously endangering his health or life he is not entitled to total and permanent disability compensation. *Id.* at 488.

At the very least, the "medical reports admitted into evidence must state that he is permanently and totally disabled." *Id.* On the other hand, the claimant can also testify that he is permanently and totally disabled." *Id.* at 489. "However, the inability to do very strenuous manual labor does not necessarily make one permanently and totally disabled." *Id.* "Disability is not tested by any particular occupation." *Id.* "[E]ven a skilled craftsman who can no longer perform his craft due to an industrial injury may not be deemed totally disabled if there is regular unskilled work that is continuously available to him." *Id.* Therefore, just because the claimant cannot perform very strenuous physical labor does not, by itself, entitle him to an award as permanently and totally disabled. *Id.*

"In arriving at a determination of an award for permanent and total disability, the Commission should consider the extent of the claimant's injury, the nature of his employment, his age, experience, training and capabilities." *Id.*

"If a claimant's physical disability is limited in nature so that he is not obviously unemployable, then it is not unreasonable that the burden be upon him to establish the unavailability of work to a person in his circumstances." *Id.* at 490. "This burden can be met by showing that reasonable efforts were made to secure suitable employment the kind of employment that can be performed by a person in his circumstances." *Id.* In *A. M. T. C. of Illinois, Inc.*, the petitioner "did not attempt to seek other employment, nor did he testify that he cannot perform work other than heavy moving due to physical inability or lack of training and skills." *Id.* Similarly, in this case, Petitioner testified he can work as a limousine driver, and that he would work as a dispatcher if he was offered such a position. Accordingly, Petitioner is not so obviously unemployable. Petitioner testified he does not have any job logs showing confirming that he looked for work in the years between his date of loss January 12, 2010 and the date of this hearing October 13, 2016. Petitioner confirmed during trial he did not look for any work in any of these years. It is also noted Petitioner never demanded vocational rehabilitation services from Respondent.

Petitioner never underwent a Functional Capacity Evaluation to objectively test his work restrictions.

The Arbitrator is not persuaded by the opinions of Petitioner's vocational rehabilitation counselor that Petitioner is not employable. Petitioner himself testified he can and did work as a limousine driver after his back surgery and that he still has a limousine Chauffer's driving license. Petitioner further testified that he would work as a dispatcher if he was offered such a position. Dr. Odor noted that Petitioner could go back to a job that is within his restrictions. When asked if he expects Petitioner to go back to work in some capacity, Dr. Odor answered "sure."

Based on a careful review of the evidence contained in the record, the Arbitrator finds that Petitioner has failed to prove he is permanently and totally disabled.

Based on a careful examination of the evidence contained in the record, the Arbitrator finds that Petitioner is entitled to an award of permanent partial disability to the extent of 30% loss of use of the person as a whole pursuant under Section 8(d)(2) of the Act, or 150 weeks at a PPD rate of $664.72.

Regarding Issue "O," whether Respondent is entitled to Section 5(b) credit, the Arbitrator finds the following:

The Arbitrator does not have enough evidence to rule on this issue.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	10WC003519
Case Name	TAYLOR, TIMOTHY v. JACK COOPER TRANSPORT CO., INC
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	10
Decision Issued By	Jessica Hegarty, Arbitrator

Petitioner Attorney	Brian Wendler
Respondent Attorney	Timothy Furman

DATE FILED: 11/11/2021

THE INTEREST RATE FOR THE WEEK OF NOVEMBER 9, 2021 0.06%

/s/ Jessica Hegarty, Arbitrator

Signature

STATE OF ILLINOIS)
)SS.
COUNTY OF WILL)

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

23IWCC0417

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

TIMMY A. TAYLOR Case #**10 WC 003519**

Employee/Petitioner

v.

JACK COOPER TRANSPORT CO., INC.
Employer/Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **JESSICA A. HEGARTY**, Arbitrator of the Commission, in the city of **Chicago, IL on 3/11/21**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

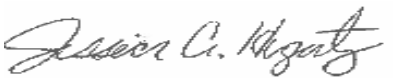
FINDINGS

- Respondent ***is NOT*** entitled to a credit under Section 5(b) of the Act.

- The Arbitrator will not include the issues of Petitioner's entitlement to penalties and fees as this was not an issue for the Arbitrator to address on remand from the Commission.

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

NOVEMBER 11, 2021

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

TIMMY A. TAYLOR,	)	
	)	
Petitioner,	)	
v.	)	Case No. 10 WC 003519
	)	
JACK COOPER TRANSPORT COMPANY, INC.	)	
	)	
Respondent.	)	

ADDENDUM TO THE DECISION OF ARBITRATOR

On February 25, 2020 the Commission remanded this case to the Arbitrator "to reopen proofs for the limited purpose of the admission into evidence of the Federal Court Settlement documents and to address the 5(b) issue". (see 20 IWCC 0128).

The issue at bar is whether Respondent is entitled to reimbursement or set-off pursuant to §5(b) of the Illinois Workers' Compensation Act (the "Act") in relation to a 3rd party Federal Court settlement agreement that allotted 100% of the settlement proceeds to a different case and a different accident, than the accident and case before the Commission.

BACKGROUND

In 2007, Petitioner was injured in a work-related accident (the "2007 Injury") while working for Respondent, Jack Cooper Transport Company, Inc. The 2007 Injury is not the case before the Commission.

The case at bar involves work-related injuries that Petitioner sustained in 2010 while employed by Respondent (the "2010 Injury").

Petitioner also filed suit in the United States District Court for the Eastern District of Missouri, Cause No. 4:09 CV 356. (*Id* at 1-2) (the "Federal Lawsuit") claiming damages from Cottrell, Inc. and Auto Handling Corp. for the 2007 Injury and the 2010 Injury while employed by Respondent. (Petitioner's Ex. 5).

Although the Respondent did not intervene as a 3rd party in the Federal Lawsuit, Auto Handling Corp. is the Respondent's wholly owned subsidiary. (Id at 21; *Yow v. Jack Cooper Transp. Co., Inc.*, 2015 IL App (5th) 140006).

The 2010 Injury, the case at bar, proceeded to hearing before the Arbitrator on October 13, 2016 and January 24, 2017.

Prior to October 13, 2016, Respondent filed a motion entitled, Demand Pursuant to Section 5 and Objection to Hearing ("Respondent's Motion"). Respondent's Motion asserted that on September 3, 2016, Respondent's counsel learned about a "global settlement" in the Federal Lawsuit and had attempted to secure additional information from Petitioner's counsel so that Respondent could assert its right to set off the Federal Lawsuit Settlement Agreement against any recovery Petitioner might have in the 2010 case at bar. Respondent's council

represented that he had no information about the Federal Court Settlement Agreement. Petitioner's counsel advised that the Federal Lawsuit Settlement Agreement (that was approved by the United States District Court judge in St. Louis) specifically allocated "zero percent" of that settlement to the 2010 Injury (the case at bar) and 100% to the 2007 Injury.

Based on the representation that none of the Federal Lawsuit Settlement Agreement monies stood to be directed to the case at bar, the 2010 Injury, the Arbitrator directed the hearing commence on October 13, 2016. The hearing was continued until January 24, 2017, at which time, the proofs were closed and the case was taken under advisement by the Arbitrator.

While the arbitration decision was still pending, Petitioner filed a Motion to Reopen Proofs to supplement the record with the Federal Lawsuit Settlement Agreement. On June 29, 2017 a hearing on Petitioner's Motion to Reopen Proofs was conducted. Petitioner sought to supplement the record with the Federal Lawsuit Settlement Agreement at issue here (the same Settlement Agreement at issue in the above-mentioned "Respondent's Motion"). Respondent, in a complete reversal of position, now objected and sought to deny admission of the very Settlement Agreement he claimed to know nothing about and used as a basis to object to the commencement of the arbitration hearing on October 13, 2016.

The Arbitrator denied Petitioner's Motion to Reopen Proofs which, in hindsight, was a mistake.

The Arbitration Decision was filed on March 1, 2018. Respondent and Petitioner timely filed appeals of the Arbitration Decision and the Commission issued a Decision and Opinion in which the matter was remanded to the Arbitrator "to reopen proofs for the limited purpose of the admission into evidence of the Federal Court Settlement documents and to address the 5(b) credit issue". (Id.).

The parties re-opened proofs and proceeded to hearing on March 11, 2021, at which time, the parties submitted a signed stipulation sheet relative to the issues in dispute. (Arb. 1). Petitioner's counsel then submitted a second stipulation sheet in which the issue of whether penalties and fees were appropriate pursuant to Sections 19(l) and 16 was added. (Arb. 2). The Arbitrator reserved ruling on whether penalties and fees would be deemed an issue.

The Federal Lawsuit Settlement Agreement (herein "Settlement Agreement") at issue was admitted into evidence as Respondent's Exhibit 2 ("Rx2")and Petitioner's Exhibit 2 ("Px2") .

FACTS

The Settlement Agreement at issue concerns two accidents sustained by the Petitioner while employed by Respondent, Jack Cooper Transport Company, Inc. ("JCT"). The first accident occurred on October 1, 2007 (the 2007 accident) and the second accident occurred on January 12, 2010 (the 2010 accident)(Px2; Rx 2). The 2010 accident is the same case at bar.

After reviewing the Settlement Agreement, the Arbitrator notes the following:

- The settlement monies allocated **100% to the 2007 accident** and **0% to the 2010 accident** that occurred in Illinois (the IWCC case at bar).

- The defendants Cottrell, Inc. and Auto Handling Corporation, Inc., agreed to pay a confidential sum to the Plaintiffs Timmy Taylor and his wife, Debra Taylor. In exchange, the Plaintiffs agreed to release Defendants from any liability related to "2 accidents more particularly described" in a "United States District Court for the Eastern District of Missouri, Case No. 4:09-cv-536 HEA";

- Respondent, JCT, did not intervene in the Federal Lawsuit, although JCT was a signatory to the Settlement Agreement;

- The terms of the Release did not "discharge, resolve in any way or impede Timmy Taylor's pending Claims for Compensation with the Illinois Division of Workers' Compensation as it relates to Jack Cooper Transport Company" and the "Agreement has no effect whatsoever on such claims";

- Plaintiffs agreed that all claims, liens and or credits held by but not limited to Medicare shall be the Responsibility of Plaintiffs and shall not be paid by Defendants "**other than through the workers compensation systems described above in which Defendant, Auto Handling Corporation's, insurer also provides coverage for Jack Cooper Transport Company.**

- JCT and its insurers expressly agreed to waive all workers compensation liens applicable to the claim arising from the 2007 accident in exchange for $40,000.00;

- Plaintiffs agreed to voluntarily dismiss the 2007 Illinois claim upon entry of a good faith settlement finding pursuant to 820 ILCS 305/5(b), and after the time for an appeal of such finding has expired. The parties agree that this entire judgement is subject to and contingent upon a good faith finding by the Court;

- This Settlement Agreement and Release was to become effective following execution by the Plaintiffs, Cottrell, Inc., Jack Cooper Transport Company and Auto Handling Corp., The parties agreed that settlement was null and void in the event the District Court or the Eighth Circuit Appellate Court failed or refused to find this settlement to have been reached in good faith;

- The Settlement Agreement was signed by all parties including Terry Milford on behalf of Jack Cooper Transport Company and Auto Handling Corporation on August 31, 2016.

Charles Armbruster's Testimony

Petitioner called Charles Armbruster, one of Plaintiff's attorneys in the underlying Federal Lawsuit against Cottrell, Inc., and Auto Handling Corporation, Inc, to testify at the March 11, 2021 hearing in this matter. Mr. Armbruster testified that in January 2016 the parties to the Federal lawsuit reached a settlement and that it later became necessary for Plaintiffs to file a Motion to Enforce the settlement agreement. (Transcript of March 11, 2021 hearing, "T.", 22-23). Charles Armbruster testified that in January of 2016 the parties in the federal court matter reached a settlement agreement that all the proceeds would be attributed to the 2007 injury. Nothing was to be attributed to the 2010 injury. Despite this agreement amongst the parties, the Plaintiff (Petitioner) was forced to file a motion to enforce the settlement agreement. Defendant Auto Handling Corp. filed a motion for declaratory judgment. (Px5) Mr. Armbruster testified that two injuries were involved in the federal court product liability; an injury that occurred in 2007 and a 2010 injury (the case at bar). Mr. Armbruster testified the settlement agreement terms allocated all proceeds to the 2007 injury and none to the 2010 injury and "Despite everyone agreeing to that effect, to those

terms, we nonetheless had to file a motion to enforce it because Jack Cooper Auto Handling weren't concluding the settlement." (T. at 25). Mr. Armbruster testified that Jack Cooper Transport Company (Respondent) was represented by Paul Wickens in federal court. (Id.). Paul Wickens identified "Mr. Danielkowitz as the attorney in Chicago who he was dealing with". (Id.).

Mr. Armbruster testified that the result of the Motion to Enforce the Settlement Agreement was two-fold:

> *Judge Autry ordered the settlement was reached in good faith and it was to be enforced and then I think it was a week or two of getting Judge Autrey's order we got the signed, notarized settlement agreement documents from Auto Handling and Jack Cooper.* (T. at 26).

Further, the signed, notarized settlement agreement document was signed by Terry Milford on behalf of Jack Cooper Transport Company (Respondent). (Id.).

On cross-exam, Mr. Armbruster testified that Paul Wilkens "represented to us during the settlement negotiations that he had authority to speak for both Auto Handling and Jack Cooper." (T. at 31-32). Mr. Armbruster agreed that Respondent, Jack Cooper, was not a "direct party" but "Jack Cooper did sign off on the settlement." (T. 32). Mr. Armbruster testified (again) that Mr. Wilkens represented he was speaking on behalf of Respondent, Jack Cooper and Auto Handling, Inc. (T. 33).

Mr. Armbruster testified that Jack Cooper received $40,000.00 from the 2007 settlement. (T. at 32). Mr. Armbruster could not testify as to whether there were different carriers assigned to the 2007 and 2010 claims respectively. (T. at 32-33).

Following Judge Autry's entry of an order enforcing the settlement agreement, the settlement agreement was signed and notarized on August 31, 2016. (T. at 25, 38). Mr. Armbruster acknowledged that the Order enforcing settlement did not use the terms "good faith" finding. (T. at 37).

Again, one of the signatures on the Settlement Agreement was that of Mr. Terry Milford, on behalf of Jack Cooper Transport Company. (T. at 31).

Transcript of United States District Court Motion Hearing on August 17, 2016

The parties in Petitioner's Federal Lawsuit appeared before United States District Judge Henry Autry on August 17, 2016 on Plaintiff's Motion to Enforce Settlement and Defendant Auto Handling Corporations Motion for Declaratory Judgment. (Px 5). The parties in the Federal Lawsuit spent nearly one hour arguing their respective positions. (Id.).

Federal Court Order granting Petitioner's Motion to Enforce Settlement

On August 19, 2016 United States District Court Judge Henry E. Autry ordered, pursuant to the August 17, 2016 hearing and after consideration of the pleadings, memoranda and arguments of the parties, Petitioner's Motion to Enforce Settlement was granted. Judge Autry further order the Defendant, Auto Handling Corporations Motion for Declaratory Judgment was denied, "as improvident".

The court ordered the parties, within 14 days, to submit dismissal papers in accordance with the previously entered into settlement agreement. (Petitioner's Ex. 4).

CONCLUSIONS OF LAW

RESPONDENT IS NOT DUE ANY 5(B) CREDIT

The Commission remanded this matter to the Arbitrator "to reopen proofs for the limited purpose of the admission into evidence of the Federal Court Settlement documents and to address the 5(b) issue". (see 20 IWCC 0128).

Respondent claims entitlement to 5(b) credit from the 3rd party Federal Court Settlement Agreement proceeds. The Arbitrator overwhelmingly finds that Respondent is not entitled to any such credit.

Section 5(b) of the Act states that after the filing of a third party action by an employee, "the employer may, at any time thereafter join in the action upon his motion so that all orders of court after hearing and judgment shall be made for his protection." (Id.). Further, §5(b) provides that, "No release of settlement of claim for damages by reason of injury or death, and no satisfaction of judgment in such proceedings shall be valid without the written consent of both employer and employee or his personal representative, except in the case of the employers, such consent is not required where the employer has been fully indemnified or protected by court order." (Id).

Although Respondent elected not to intervene in the Federal Court suit, it is clear that Respondent had representation during settlement negotiations and that Respondent's interests were protected. Respondent was a signatory to the Settlement Agreement which states, "This Settlement Agreement and Release shall become effective upon the execution by the Plaintiffs, Cottrell, Inc., Jack Cooper Transport Company and Auto Handling Corp." (Rx2; Px2). Terry Milford signed the Settlement Agreement on behalf of and as a representative of Respondent as well as Defendant Auto Handling Corp. (Id.). The Respondent negotiated and benefitted from the Settlement Agreement at issue with respect to the 2007 Injury (which is a separate workers' compensation claim from the 2010 Injury at issue). Respondent received $40,000 back on the 2007 claim and resolved all civil claims against its wholly owned subsidiary, Auto Handling Corp.

The Settlement Agreement at issue allocated 100% of the proceeds to the 2007 accident and 0% allocated to the 2010 accident (the case at bar).

The issue as to the settlement allotment was raised on Respondent's behalf at the Motion Hearing in Federal Court. (Px 5). In fact, the parties spent nearly one hour in front of Judge Autry addressing the very issue that Respondent now seeks to re-litigate.

On August 19, 2016 Judge Autry ordered, pursuant to the August 17, 2016 hearing, and after consideration of the pleadings, memoranda and arguments of the parties, Petitioner's Motion to Enforce Settlement was granted. Judge Autry further order the Defendant, Auto Handling Corporation's Motion for Declaratory Judgment was denied, "as improvident".

Based on a preponderance of the credible evidence contained in the record including the Settlement Agreement at issue (Rx2; Px2), the transcript of the Federal Court hearing on Plaintiff's Motion to Enforce Settlement and Defendant's Motion for Declaratory Judgment (Px5), and the August 19, 2016 Federal Court Order granting Plaintiff's Motion to Enforce Settlement (Px4), the Arbitrator find Respondent is not entitled to any 5(b) credit.

RESERVED RULINGS:

ARE PENALTIES AND FEES AN ISSUE IN DISPUTE?

The Arbitrator will not consider whether Respondent is liable for penalties and fees, pursuant to Sections 19(l) and 16 as this issue goes beyond the scope of the remand issued by the Commission.

Petitioner's Exhibits 3 and 6

At trial, the Arbitrator reserved rulings on Petitioner's Exhibit 3 and 6 (T. at 39-40). Respondent objected to both exhibits on the basis that Exhibit 3 was both hearsay and irrelevant (T. at 15), and Exhibit 6 was not relevant to any issue to be decided at trial. (T. at 18).

Regarding Petitioner's Exhibit 3, Respondent's objections are sustained

Petitioner's Exhibit 3 is a copy of the Motion to Enforce Settlement filed by the Plaintiff in the Federal Lawsuit against Cottrell Inc. and Auto Handling Corp., United States District Court for the Eastern District of Missouri, Eastern Division Cause No.: 4:09-cv-536 HEA.

Under Illinois Rule of Evidence 801(c), "hearsay" is "a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted."

Petitioner's Exhibit 3 contains hearsay evidence. The predicate motion filed with the federal court constitutes an out-of-court statement of "facts" by its author. In addition, the motion includes hearsay evidence in the form of email exchanges amongst the various counsel, a proposed settlement agreement, and declarations of Plaintiff's attorneys which, by their own admission, are "unsworn."

Accordingly, Petitioner's Exhibit 3 will not be admitted into evidence.

Petitioner's Exhibit 6, Respondent's objections are overruled

Petitioner's Exhibit 6 is Respondent's Response to Petitioner's Motion to Reopen Proofs. Respondent objected on the grounds that the document is not relevant to any issue in the case (T. at 18).

Under Illinois Rule of Evidence 401, "'Relevant evidence' means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence."

The Arbitrator finds Petitioner's Exhibit 6 (referred to above as Respondent's Motion) is relevant to the matter at hand, in fact, it is exactly the same case and issue at bar. This Exhibit contains Respondent's objections to the October 16, 2016 arbitration hearing and Respondent's "demand" pursuant to Section 5 of the Act. This document is a motion, authored by Respondent and is part of the Illinois Workers' Compensation Commission file in the case at hand.

Respondent's objection is overruled.

Respondent's Exhibits:

At trial, Petitioner objected to Respondent's Exhibits 3, 4, 5, 7, 9, 10 (various submissions of the parties in the Federal Lawsuit) on the grounds that the exhibits were hearsay.

Respondent claims that Respondent's Exhibits 3, 4, 5, 7, 9, 10 were being offered for the non-hearsay purpose of putting into the record the chronology of the parties' submissions in federal court and the arguments made in that tribunal; not to establish the truth of the arguments. (T. at 41).

The Arbitrator finds that Respondent has not provided a sufficient legal basis for the admission of these exhibits. Petitioner's objection to these exhibits is sustained.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	18WC019974
Case Name	Annetra Young v. Metro South Medical Center
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b) Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	23IWCC0418
Number of Pages of Decision	12
Decision Issued By	Maria Portela, Commissioner

Petitioner Attorney	Steven Seidman
Respondent Attorney	Courtney Cronin

DATE FILED: 9/25/2023

/s/Maria Portela, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

ANNETRA YOUNG,

Petitioner,

vs. NO: 18 WC 19974

METRO SOUTH MEDICAL 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 causation, medical necessity and prospective medical treatment and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof, but makes a clarification as outlined below. The Commission further remands this case to the Arbitrator for further proceedings for a determination of a further amount of temporary total compensation or of compensation for permanent disability, if any, pursuant to Thomas v. Industrial Commission, 78 Ill.2d 327, 399 N.E.2d 1322, 35 Ill.Dec. 794 (1980).

The Commission affirms the decision of the Arbitrator, however corrects the following scrivener's errors:

The Commission transposes the first and third paragraphs on page 5 of the Arbitrator's Decision so they are in chronological order.

The Commission strikes the second paragraph on page 5 of the Arbitrator's Decision beginning with "On June 14, 201, Petitionr returned to Dr. Raja…" as it is duplicative of the fourth paragraph on the same page.

All else is affirmed.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed May 12, 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 $57,683.00. 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.

September 25, 2023

MEP/dmm
O: 081523
49

/s/ *Maria E. Portela*

/s/ *Amylee H. Simonovich*

/s/ *Deborah L. Simpson*

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	18WC019974
Case Name	YOUNG, ANNETRA v. METRO SOUTH MEDICAL CENTER
Consolidated Cases	
Proceeding Type	19(b)/8(a) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	9
Decision Issued By	Elaine Llerena, Arbitrator

Petitioner Attorney	Steven Seidman
Respondent Attorney	Courtney Cronin

DATE FILED: 5/12/2022

THE INTEREST RATE FOR THE WEEK OF MAY 10, 2022 1.38%

/s/Elaine Llerena, Arbitrator

Signature

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

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

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

Annetra Young
Employee/Petitioner

v.

Metro South Medical Center
Employer/Respondent

Case # **18** WC **019974**

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 **Elaine Llerena**, Arbitrator of the Commission, in the city of **Chicago**, on **October 5, 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, **March 16, 2018**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $**30,264.00**; the average weekly wage was $**600.35**.

On the date of accident, Petitioner was **57** years of age, ***married*** with **0** dependent children.

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

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

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

ORDER

Respondent shall pay reasonable and necessary medical services of $57,582.46, as provided in Sections 8(a) and 8.2 of the Act.

Respondent shall authorize and pay for prospective medical care as recommended by Dr. Howard Freedberg, including superior capsular reconstruction surgery for the right shoulder, and all reasonable and necessary postoperative treatment, as provided in Sections 8(a) and 8.2 of the Act.

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

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

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

Elaine Llerena **MAY 12, 2022**

Signature of Arbitrator

ICArbDec19(b)

STATEMENT OF FACTS:

18 WC 024060

On May 10, 2016, Petitioner was working for Respondent as a certified nursing assistant and emergency department technician. (T. 9-10)

Petitioner is right-handed. (T. 11) Prior to May 10, 2016, Petitioner had never had any medical care to her right shoulder. *Id.* In late April 2016, Petitioner was at church and when she went to sit down, missed the seat, and fell, hurting her right shoulder. (T. 26, 34-35)

On May 10, 2016, Petitioner was on duty in the psych unit at work when a male patient grabbed her right arm and twisted her into a lock. (T. 11-12; PX1) Petitioner was unable to get away. *Id.* At that time, Petitioner noticed that her right arm was in really bad pain. (T. 12)

Petitioner testified that she sought medical care at Metro South Medical Center. *Id.* Petitioner was treated with ice and referred to Respondent's occupational health facility. (T. 12-13)

Petitioner sought treatment with her primary care physician, Dr. Jerome Buster, on May 17, 2016. (PX1) Dr. Buster noted that Petitioner was status post fall two weeks prior, when she injured her right shoulder at church. *Id.* Dr. Buster also noted that at the time of the fall, she denied feeling or hearing a pop, and did not seek treatment. *Id.* Dr. Buster noted that the pain persisted, and worsened with movement and activities using the right shoulder. *Id.* Physical examination revealed joint tenderness and decreased range of motion about the right shoulder. *Id.* Dr. Buster diagnosed Petitioner with right shoulder joint pain and referred her to physical therapy. *Id.* Petitioner was also given prescriptions for Cyclobenzaprine and Ibuprofen 800 mg. *Id.* Petitioner was advised to return to work light duty. *Id.*

On May 20, 2016, Petitioner began physical therapy at Ingalls Memorial Hospital. (PX1) Her reported mechanism of injury was a fall at church three to four weeks prior when she misjudged her seat and fell back onto her right arm, which resulted in pain in her right shoulder. *Id.* It was noted that Petitioner had a history of falls. *Id.* She then reported she was floated to the psych floor at work on May 7, 2016, when a patient grabbed her right arm, and would not let go, which aggravated her pain. *Id.* She advised the therapist that she had gone to the emergency room, where she was told she had a tear. *Id.*

On follow-up with Dr. Buster on May 24, 2016, Petitioner reported continued right shoulder pain. *Id.* Dr. Buster noted that Petitioner was retuning for follow up evaluation after sustaining a fall, but that she had advised him that she had reinjured her shoulder while on duty when a client grabbed her right arm aggressively, injuring it more. *Id.* Petitioner reported some improvement in her right shoulder symptoms after completing two physical therapy sessions. *Id.* Dr. Buster opined Petitioner's right shoulder pain had been aggravated at work and recommended she continue with physical therapy. *Id.*

On June 21, 2016, Petitioner returned to Dr. Buster, who recommended an additional course of physical therapy. *Id.*

On August 2, 2016, Petitioner was discharged from physical therapy. Id. Petitioner reported that she was feeling 75% better, but that she still had pain with certain motions such as reaching backward. *Id.* Petitioner was advised to continue with her home exercises. *Id.*

On August 11, 2016, Petitioner saw Dr. Buster and reported doing much better, with some stiffness but no pain and full range of motion. *Id.* Dr. Buster released Petitioner to return to work without restrictions. *Id.*

Petitioner returned to work at full duty. (T. 13)

Between May 10, 2016, and March 16, 2018, Petitioner suffered no accidents of any sort. (T. 18) After March 16, 2018, Petitioner suffered no further accidents affecting her right shoulder. (T. 19)

18 WC 019974

On March 16, 2018, there was a new patient arrival at the medical center. (T. 14) Petitioner was pulling a scale into the patient's room, and as she pulled the scale, it became caught on the corner of the door and jerked Petitioner's right arm. (T. 14) Petitioner was in really bad pain. *Id.* Petitioner reported the incident to a nurse she was working with, and was told to fill out an accident report, which Petitioner did. *Id.*

Petitioner sought treatment at the Metro South Medical Center's immediate care facility, Physician's Immediate Care, on April 16, 2018. (PX2) Petitioner complained of constant aching pain in her right shoulder. *Id.* Petitioner described her history of injury as pulling a 20-pound scale into a room at work to when the scale got stuck in the side of the door, pulling her right arm backwards as she was moving forwards. *Id.* Petitioner reported that she felt a pop and sudden sharp pain. *Id.* Petitioner reported that she self-treated with ice and Ibuprofen after the accident, assuming that it was just a pulled muscle—however, weeks passed, and the pain did not improve. *Id.* On physical examination, Petitioner had tenderness and reduced range of motion in her right shoulder as well as a positive Neer test. Id. X-rays revealed only arthritic changes. Id. Petitioner was diagnosed as having pain in the right shoulder and was discharged with instructions to apply ice, rest, and take Tylenol. Id. Petitioner was released to return to work with restrictions, which Respondent accommodated. (T. 15; PX2)

Petitioner continued to treat at Physician's Immediate Care through June 14, 2018. (PX2) Petitioner continued to report throbbing pain and on April 23, 2018, an MRI was ordered. *Id.*

On April 30, 2018, Petitioner underwent an MRI of her right shoulder; however, the MRI was not completed. (T. 15-16; PX3) Petitioner testified that they put her inside the machine, and she started to panic; she could not remain inside the machine the whole time. (T. 16) Radiologist Dr. Samkyumar Reddy opined that the MRI was significantly limited by a motion artifact and Petitioner's refusal to continue, but that even so he was able to identify fluid in Petitioner's right subacromial bursa suspicious for rotator cuff full-thickness tear. (PX3) He recommended a repeat MRI of the shoulder after administration of pain medications. *Id.*

Physician's Immediate Care notes state that Petitioner contacted them about doing an open MRI, as the closed MRI "felt like she was being buried alive." (PX2) On May 4, 2018, Dr. Raja ordered a new MRI. Id. Petitioner made an appointment for a sitting MRI that didn't require Petitioner to be inside the machine. (T. 16-17)

On May 7, 2018, Petitioner returned to Physician's Immediate Care reporting that her shoulder pain was now mild, though it throbbed at night with pain. (PX2) On May 17, 2018, Petitioner reported that her right shoulder pain was still bad. Id. Dr. Raja released Petitioner back to work without restrictions. Id. Petitioner returned to work for Respondent, full duty. (T. 17-18)

On May 31, 2018, Petitioner reported that her right shoulder pain would come and go. (PX2) Dr. Raja characterized this as "feeling better." *Id.*

On June 6, 2018, Physician's Immediate Care notes stated that Respondent had not authorized an MRI pending investigation by the adjuster. *Id.* Petitioner testified that the MRI was ultimately not approved, and the appointment was canceled on the day it was to occur. (T. 16-17)

On June 14, 2018, Petitioner returned to Dr. Raja at Physician's Immediate Care and reported that her right shoulder pain would still come and go. *Id.* It was noted that Petitioner still felt discomfort with certain movements, but that her pain was much better due to the use of NSAIDs. *Id.* Dr. Raja declared Petitioner to be at maximum medical improvement and released her from care. *Id.*

On June 4, 2018, Petitioner saw Dr. Buster and complained of continued right shoulder pain. (PX1) Petitioner requested a referral for an open MRI. *Id.* Dr. Buster noted that Petitioner's MRI on April 30, 2018, had not been completed due to claustrophobia. *Id.*

On June 14, 2018, Petitioner returned to Dr. Raja at Physicians Immediate Care, reporting pain that still came and went and occasional discomfort. *Id.* Dr. Raja noted that Petitioner reported that she was "feeling much better." *Id.* Dr. Raja released Petitioner from care for her right shoulder condition and indicated that she was expected to reach full resolution in 30 days. *Id.* Dr. Raja advised Petitioner that she could continue to work full duty without restrictions. *Id.*

At trial, Petitioner testified that she was told by her doctor that there was nothing further that could be done for her. (T. 20) Petitioner did not recall telling Dr. Raja that her arm was feeling better. (T 29.) She testified that her arm was still in pain and that she was seeing him for something to help her. *Id.*

Petitioner again sought treatment for her right shoulder in December 2019. (T. 19) Petitioner testified that she didn't seek further treatment in the interim because the treaters had told her they couldn't do anything for her. (T. 19-20) Petitioner testified that she was still in pain during this period and self-medicating daily with over-the-counter medications. (T. 20) Petitioner continued to treat with Dr. Buster for her diabetes. (T. 32) Petitioner testified that she reported her ongoing shoulder pain to Dr. Buster. (T, 31-32) Dr. Buster's chart summary during this period dated September 17, 2018, notes right shoulder joint pain among Petitioner's active problems. (PX1)

On December 18, 2019, Petitioner sought treatment for her right shoulder with Dr. Howard Freedberg at Suburban Orthopaedics. (PX4) Petitioner complained of frequent sharp shooting pain in her right shoulder. *Id.* Petitioner related her history of injury as pulling a scale around a corner at work when she suddenly felt a pop in her right shoulder. *Id.* Petitioner reported that she had suffered a prior work injury to her right shoulder, but that she was doing well until this more recent accident. *Id.* On physical examination, Petitioner exhibited reduced range of motion and strength in her right shoulder compared to her left. *Id.* Her right acromioclavicular joint was positive for a cross-arm adduction test, and her right shoulder was positive for both Neer and Hawkin's signs. *Id.* X-rays taken that day revealed only mild to moderate degenerative changes in the shoulder. Id. Dr. Freedberg diagnosed Petitioner with a right shoulder rotator cuff tear and ordered Petitioner to undergo an MRI. *Id.* Dr. Freedberg prescribed Petitioner Tramadol, Protonix, Flexeril, and Mobic and released Petitioner to continue working full duty. *Id.*

On December 31, 2019, Petitioner underwent a right shoulder MRI at Suburban Orthopaedics, the result of which revealed that the supraspinatus and infraspinatus tendons were completely ruptured from their greater tuberosity insertion, joint fluid was leaking into the subacromial bursa, and there was moderate retraction of the ruptured tendons. *Id.* The radiologist noted mild muscular atrophy particularly involving the supraspinatus, as

well as mild degenerative arthrosis which would not be expected to cause significant impingement on an intact rotator cuff. *Id.*

On January 8, 2020, Petitioner returned to Dr. Freedberg, who reviewed the MRI and diagnosed Petitioner with a large-to-massive right rotator cuff tear. *Id.* Dr. Freedberg recommended that Petitioner undergo an arthroscopic right rotator cuff repair, subacromial decompression, right biceps tenotomy vs. tenodesis, and a possible open probable SCR. *Id.*

On April 22, 2020, Petitioner underwent an examination by Dr. Nikhil Verma pursuant to Section 12 of the Act at Respondent's request. (RX1) Dr. Verma reviewed some of Petitioner's medical records. *Id.* Dr. Verma did not review the MRI from April 30, 2018. *Id.* Physical examination revealed pain in Petitioner's anterior right shoulder, pain with terminal elevation, and reduced strength in the shoulder in the scapular plane. *Id.* Dr. Verma opined that Petitioner suffered from a chronic retracted rotator cuff tear. *Id.* He opined that Petitioner's subjective complaints matched the objective findings. *Id.* Dr. Verma noted that Petitioner stopped seeing doctors for a year and a half after the March 16, 2018, work injury before her condition was diagnosed. *Id.* He opined that neither the 2016 nor the 2018 accident had aggravated her condition. *Id.* He opined that Petitioner reached maximum medical improvement (MMI) on July 15, 2018. *Id.*

On August 20, 2020, Dr. Freedberg testified at an evidence deposition. (PX8) Dr. Freedberg opined that Petitioner's work accident of March 16, 2018, was a causal factor in Petitioner's right shoulder condition. *Id.* Dr. Freedberg based his opinion on the fact that Petitioner was doing okay prior to March 16, 2018, and that the March 16, 2018, mechanism of injury was culpable of producing a rotator cuff tear. *Id.* He further opined that even if the accident did not produce the rotator cuff tear, it certainly either extended a preexisting tear or materially exacerbated it. *Id.* Dr. Freedberg opined that Petitioner's gap in treatment was certainly explainable given that her treating physician had failed to catch her rotator cuff tear and given that he had told her there was nothing more that could be done for her shoulder. *Id.*

On November 6, 2020, Dr. Verma testified at an evidence deposition. (RX2) Dr. Verma opined that Petitioner's rotator cuff tear appeared degenerative and chronic in nature. *Id.* He opined that bone spurring in Petitioner's shoulder could have abraded the rotator cuff, leading to tearing. *Id.* Dr. Verma opined that Petitioner's work accident of March 16, 2018, did not aggravate her condition of ill-being in her shoulder. *Id.* Dr. Verma opined that Petitioner's rotator cuff tear appeared degenerative and chronic in nature, and that bone spurring in Petitioner's shoulder could have abraded the rotator cuff over time, leading to tearing. *Id.* Dr. Verma testified that he agrees with Dr. Freedberg's recommendation for right shoulder surgery, though he opined that Petitioner should try conservative treatment beforehand in the hope of avoiding the need for surgery. *Id.* Dr. Verma testified that he did not review any medical records from before May 10, 2016. *Id.* Dr. Verma opined that Petitioner suffered a sprain on May 10, 2016. *Id.*

Petitioner continued to treat with Dr. Freedberg on a more-or-less monthly basis. (PX4) She continued to report right shoulder pain that was off and on, usually worse with use, as well as occasional numbness down her right arm into her hand. *Id.* On September 22, 2021, Petitioner complained of right shoulder pain with tingling in her shoulder. *Id.* She continued to exhibit restricted right shoulder range of motion, reduced right shoulder strength, as well as a positive cross-arm adduction test, positive Neer and positive Hawkin's signs. *Id.*

Petitioner testified that she continues to treat with Dr. Freedberg. (T. 24) Petitioner testified that she would undergo the surgery recommended by Dr. Freedberg if it was approved. (T. 23)

Petitioner testified that her right shoulder still hurts from time to time because she is constantly having to use it. *Id.* Even just turning the steering wheel of her car causes her pain. *Id.* She continues to take pain killers every day to deal with her right shoulder symptoms. *Id.*

Petitioner stopped working for Respondent sometime in 2019 when the facility closed. (T. 9, 13) Petitioner is not currently working. (T. 8-9)

WITH RESPECT TO ISSUE (F), IS THE PETITIONER'S PRESENT CONDITION OF ILL-BEING CAUSALLY RELATED TO THE INJURY, THE ARBITRATOR FINDS AS FOLLOWS:

The law in Illinois is that when a work accident aggravates a preexisting condition, causation is established. *See Sisbro, Inc. v. Indus. Comm'n*, 207 Ill.2d 193, 215 (2003). "A chain of events which demonstrates a previous condition of good health, an accident, and a subsequent injury resulting in disability may be sufficient circumstantial evidence to prove a causal nexus between the accident and the employee's injury." *Int'l Harvester v. Indus. Comm'n*, 93 Ill. 2d 59, 63–64, 442 N.E.2d 908, 911 (1982). This causal inference applies even if the claimant was not in good health before the accident, provided that the claimant's health declines following an accident: "[I]f 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 v. Ill. Workers' Compensation Comm'n*, 2017 IL App (4th) 160192WC ¶ 26.

The Arbitrator notes that prior to March 16, 2018, Petitioner's shoulder was doing well. Although Petitioner subsequently went through an extended period of non-treatment between June 15, 2018, and December 18, 2019, Petitioner's credible and unrebutted testimony establishes that she was still in pain and self-medicating daily with over-the-counter medications during this period. Petitioner reported her ongoing shoulder pain to Dr. Buster. Petitioner's unrebutted testimony likewise establishes that after March 16, 2018, she suffered no further accidents affecting her right shoulder.

Petitioner credibly testified that she didn't seek further treatment between June 14, 2018, and December 2019, because Dr. Raja told her he couldn't do anything for her. This is supported by the Physicians Immediate Care records in evidence, which disclose that Dr. Raja released Petitioner at MMI on June 14, 2018, without ever obtaining a repeat MRI or diagnosing her full-thickness rotator cuff tear. The evidence indicates that Petitioner's right rotator cuff was already torn by this point and that Dr. Raja had simply failed to catch it. During Petitioner's MRI of April 30, 2018, Radiologist Dr. Samkyumar Reddy opined that he was able to identify fluid in Petitioner's right subacromial bursa suspicious for rotator cuff full-thickness tear. This same finding would appear once more in Petitioner's December 31, 2019, MRI at Suburban Orthopedics, which again revealed joint fluid leaking into the subacromial bursa—this time, the MRI confirmed Dr. Reddy's suspicions and established that the supraspinatus and infraspinatus tendons were completely ruptured. Given the above, the Arbitrator does not find Petitioner's gap in treatment for her shoulder determinative.

The Arbitrator further notes that Dr. Freedberg opined that Petitioner's work accident of March 16, 2018, was a causal factor in Petitioner's right shoulder condition. Dr. Freedberg based his opinion on the fact that Petitioner was doing okay prior to March 16, 2018, and that the March 16, 2018, mechanism of injury could produce a rotator cuff tear. Dr. Freedberg further opined that even if the accident did not produce the rotator cuff tear, it certainly either extended a preexisting tear or materially exacerbated it.

Dr. Verma disagreed with Dr. Freedberg on causation. Dr. Verma opined that Petitioner's rotator cuff tear appeared degenerative and chronic in nature, and that bone spurring in Petitioner's shoulder could have

abraded the rotator cuff over time, leading to tearing. However, these conclusions—even if correct—do not establish that there is no causal connection between the work accident and the injury. Petitioner presented with no complaints of pain in her shoulder between May 10, 2016. and March 16, 2018, and Petitioner's unrebutted testimony establishes that she suffered no accidents of any sort during this period. Immediately following Petitioner's work accident of March 16, 2018, Petitioner felt immediate pain. Even if the massive full-thickness tear in Petitioner's right rotator cuff was a preexisting degenerative condition that could have been caused without trauma, the medical and testimonial evidence indicates that Petitioner's right shoulder only became symptomatic again contemporaneously with the work accident on March 16, 2018.

The Arbitrator notes that Respondent does not appear to have provided Dr. Verma with Petitioner's April 30, 2018, MRI, as it was not among the records Dr. Verma listed in his report. Moreover, unlike Dr. Freedberg, Dr. Verma offered no testimony at all regarding whether the mechanism of injury could have aggravated an already-existing tear, as opposed to causing such a tear. Therefore, the Arbitrator finds Dr. Verma's causation opinions less persuasive than those of Dr. Freedberg in this matter.

Based on the above, the Arbitrator finds that Petitioner's right shoulder condition is causally related to her work accident of March 16, 2018.

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 Respondent agrees that it is liable for all related medical bills up until July 15, 2018, but disputes all bills thereafter based upon Dr. Verma's MMI determination. However, as discussed in Section F above, the Arbitrator finds that Petitioner's full-thickness right rotator cuff tear did not resolve during her gap in treatment.

Based on the above, the Arbitrator finds that all of Petitioner's treatment for her condition of ill-being was reasonable and necessary. Respondent shall pay reasonable and necessary medical services of $57,582.46, as provided in 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:

Based on the Arbitrator's finding as to causal connection in Section (F) and medical expenses in Section (J), and the findings and opinions of Dr. Freedberg, the Arbitrator finds that Petitioner is entitled to prospective medical care as recommended by Dr. Howard Freedberg, including superior capsular reconstruction surgery for the right shoulder, and all reasonable and necessary postoperative treatment, as provided in Sections 8(a) and 8.2 of the Act.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	20WC031553
Case Name	Nicolas Vazquez v. Paramount Staffing dba Prostar Staffing
Consolidated Cases	20WC031554;
Proceeding Type	Petition for Review under 19(b) Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	23IWCC0419
Number of Pages of Decision	23
Decision Issued By	Carolyn Doherty, Commissioner

Petitioner Attorney	Michelle Porro
Respondent Attorney	Victor P. Shane

DATE FILED: 9/26/2023

/s/Carolyn Doherty, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF KANE)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

NICOLAS VAZQUEZ,

Petitioner,

vs. NO: 20 WC 31553

PARAMOUNT STAFFING d/b/a
PROSTAR STAFFING,

Respondent.

DECISION AND OPINION ON REVIEW

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

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed July 8, 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 the Respondent pay to Petitioner interest under Section 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 is hereby fixed at the sum of $37,500.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

September 26, 2023

o: 09/07/23
CMD/kcb
045

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

/s/ *Marc Parker*
Marc Parker

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	20WC031553
Case Name	Nicolas Vazquez v. Paramount Staffing dba Prostar Staffing
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	20
Decision Issued By	Frank Soto, Arbitrator

Petitioner Attorney	Michelle Porro
Respondent Attorney	Victor P. Shane

DATE FILED: 7/8/2022

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

/s/Frank Soto, Arbitrator

Signature

STATE OF ILLINOIS)
)SS.
COUNTY OF Kane)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Nicolas Vazquez
Employee/Petitioner

v.

Paramount Staffing d/b/a Prostar Staffing
Employer/Respondent

Case # **20WC031553**

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 Frank Soto**, Arbitrator of the Commission, in the city of **Wheaton**, on 4/12/2022. 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 **prospective treatment as prescribed by Dr. Rerri and Dr. Ungar**

FINDINGS

On **11/23/2020**, 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.

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 $**27,290.64**; the average weekly wage was **$524.82**.

On the date of accident, Petitioner was **49** 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 $**0** for TTD, $**0** for TPD, $**0** for maintenance, and $**0** for other benefits, for a total credit of $**0**.

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

ORDER

Medical benefits

Respondent shall pay Petitioner the costs of the medical expenses incurred from 11/30/2020 for the next 6 weeks, pursuant to Sections 8 and 8.2 of the Act and subject to the fee schedule, as set forth in the Conclusions of Law attached hereto and incorporated herein.

Petitioner's claim for perspective medical care is denied, as set forth in the Conclusions of Law attached hereto and incorporated herein.

Temporary Total Disability

Respondent shall pay Petitioner temporary total disability benefits of **$ 349.88**/week for **12-6/7ths** weeks, commencing **12/1/2020** through **3/1/2021**, as provided in Section 8(b) of the Act, as set forth in the Conclusions of Law attached hereto and incorporated herein.

Penalties

Respondent shall pay Petitioner a penalty in an amount equal to 50% of the temporary total disability benefits due and unpaid medical benefits pursuant to Section 19(k) of the Act, attorney fees in amount equal to 20% of the temporary total disability benefits due and unpaid medical expenses due Petitioner pursuant to Section 16 of the Act and an amount of $30.00 per day, beginning 12/1/2020, for each day benefits were unreasonable delayed not to exceed $10,000.00 pursuant to Section 19(l), 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 **JULY 8, 2022**
Arbitrator

Procedural History

This matter was tried on April 10, 2022, pursuant to Sections 19(b), 8(a), 16, 19(k), 19(l) and 16 of the Act. The issues in dispute are unpaid medical bills, TTD benefits, prospective medical care involving Petitioner's back, and whether Petitioner is entitled to Penalties and Attorney's fees pursuant to Section 19(k), 19(l) and 16. This case proceeded to hearing pursuant to Sections 19(b) and 8(a) of the Act and Petitioner is seeking prospective medical treatment involving his cervical and lumbar spine conditions, payment of medical bills primarily involving his cervical an lumbar spine conditions, TTD benefits for being off work due to his spine conditions so the Arbitrator has address only whether Petitioner's lumbar and cervical spine conditions were causally related to a work injury and not whether Petitioner's other conditions (*i.e*. head, left hip, groin, bilateral shoulder, arm and hand) are causally related to his work accidents of 11/23/2020 and 11/30/2020.

Findings of Facts

Nicolas Vazquez (hereinafter referred to as "Petitioner") testified that on 11/23/2020 he was unloading product out of a trailer by picking it off of a pile of boxes and loading it onto a conveyor belt that extended from the loading dock into the trailer where Petitioner was working. (T 12-13) As he was doing this, he heard a scream from the forklift driver and heard the forklift accelerate before striking the conveyor belt which impacted his stomach. (T 14-16) Petitioner testified after the accident he had a stomachache and the area around his left hip was painful. (T 17) Petitioner did not seek medical care and continued to work until 11/30/20.

Petitioner testified on 11/30/2020 he sustained a second injury while working for Paramount staffing d/b/a Prostar Staffing (hereinafter referred to as "Respondent"). Petitioner testified a supervisor had instructed him to wrap pallets with plastic and while bending over wrapping plastic around a pallet he struck his forehead on the pallet of a moving forklift. (T 20-24) Petitioner testified he initially only felt the impact to his head. Petitioner testified he became dizzy, had a headache and his tongue became numb. (T 25) Petitioner testified after the accident he was taken by ambulance to the Emergency Room at Rush Copley Medical Center. Upon being released from the emergency room, Petitioner followed up at Physician's Immediate Care.

Petitioner testified after a few treatments at Physician's Immediate Care he decided to treat from Dr. Davis of Grandview Health Partners. Petitioner testified later he was referred to multiple physicians within their network including Dr. Ungar for headaches and Dr. Rerri for back and neck

pain. (T26) Petitioner testified he had been authorized off work by his physician's from 12/1/2020 through 4/12/2022, and that Respondent had not paid any TTD. (T 27-28) Petitioner testified surgery has been recommended by Dr. Rerri for his low back which he would like to undergo. (T 27)

Petitioner testified prior to the 11/23/2020 work injury, he underwent an abdominal hernia repair in 2009 and a mesh removal surgery in 2015. (T 28-29) Petitioner testified he did not have any other injuries to his abdomen between 2015 and his 11/23/2020 work injury. (T 29) Petitioner testified he did not have any injuries to his neck, low back, hips, or left shoulder prior to 11/23/2020. (T 30) Petitioner testified he underwent right shoulder surgery in 2018 but has not received any treatment since that time and has been working full duty until his 11/23/2020 accident. (T 30-31) Petitioner also testified he had no other injuries to abdomen, hips, shoulders, neck, back, or head after his 11/30/2020 injury. (Id)

At trial, Petitioner testified his abdominal pain increases when his low back pain levels increase and his low back pain increases if he is in one position too long. Petitioner testified he experiences pain if he sits too long or walks for more than 20 minutes. (T 31-32) Petitioner testified his pain increases after sitting, standing, walking, or laying down for more than 20 minutes. (T 31-32) Petitioner testified if he walks for 45 minutes, he needs to use a cane after about 20 to 30 minutes because the pain increases and his left leg gives out. (T 111)

Regarding his neck, Petitioner testified that if he looks up, his range of motion is limited and looking up increases his neck pain. (T 33) Petitioner also testified that looking side to side increases his pain. (Id) Petitioner further testified that looking down is also painful and causes cramping. Petitioner testified he has constant headaches which wake him up. (Id) Petitioner testified he now has numbness on his face, especially on the left side, and that he can't see color out of the left eye and he struggles to remember things since the blow to the head. (T 79) Petitioner also testified the vision in his left eye is still dark and blurry. (T 94-95)

Petitioner testified that he completed 6th grade in Mexico, and that he has taken about 8 months of ESL classes at Waubonsee Valley Community College, and he takes some classes at a Church as well.

Jennifer Arreola testified on behalf of Respondent. On the dates of accident, she had been employed by Fellowes, a company that makes office equipment. (T 118-119) She is an environmental safety and security officer, and part of her job is to document accidents, a position

that she has performed for about 6 years. (T 119) She testified after the 11/23/2020 accident she asked all 3 of the unloaders (including Petitioner) if they were injured and they all told her no. Ms. Arreola took photos of the scene with her cell phone. (T 127) Ms. Arreola testified that Petitioner said something came in contact with his lower belly area but he said the pain was minor and denied medical treatment. (T 140) Ms. Arreola testified that she received an accident report and spoke with Petitioner the following day, 11/24/2020, when he, again, denied needing medical treatment.

Ms. Arreola testified she saw Petitioner on 11/30/2020, the date of the second accident. (T 146) Ms. Arreola testified that Liliana was driving a forklift loaded with skids while Petitioner was wrapping a skid when the forklift apparently struck Petitioner in the forehead. (T 149) Ms. Arreola arrived at the location to question Liliana while Petitioner was wrapping a skid. Ms. Arreola testified when Petitioner saw her that his demeanor changed and he began to show signs of physical discomfort. (T 152)

Respondent called Monique Vazquez, no relationship to Petitioner, as it's next witness. Ms. Vazquez is an area director for Respondent. She oversees 4 offices in the west Chicagoland area. She testified on 11/25/2020 she called Petitioner because she had heard he was telling coworkers that he wanted to moved back to the rework area of the company. At that time, Petitioner told Ms. Vazquez that she should be calling him about his injury and not about wanting to return to the rework area. (T 176) Ms. Vazquez testified she told Petitioner that she didn't believe he was injured since he refused medical treatment on 2 occasions. (T 176) Ms. Vazquez testified Petitioner said he didn't know if he needed to go to the clinic because he wasn't sure if his foot pain was from being back at work. Ms. Vazquez testified, at that time, Petitioner also mentioned shoulder pain. (Id)

Ms. Vazquez testified she provided Petitioner her cell number in the event he wanted to go to the clinic because it was the end of her shift and the facilities would be for the next 2 days for the Thanksgiving holiday. Ms. Vazquez testified the next time she heard from Petitioner was when he was at Rush Copley and, at that time, Petitioner reported a head injury from an accident at work. During the phone conversation, Petitioner reminded her about the incident from the prior week. (T 178-9) Ms. Vazquez testified she instructed Petitioner to go to their clinic and she scheduled Petitioner an appointment and transportation. (T 185)

The Arbitrator finds the testimony of Ms. Vazquez and Ms. Arreola to be credible but the Arbitrator does not find the testimony of Petitioner to be credible regarding the onset of his symptoms nor extend of his symptoms.

Aurora Fire Department

The paramedic report dated 11/30/2020, states Petitioner, who sitting on a chair, reported neck pain after walking into a pallet on a forklift. Petitioner denied any other injuries and any numbness. (PX A)

Rush Copley Emergency Room

Petitioner was taken to the emergency room at Rush Copley Medical Center on 11/30/2020. The records indicate Petitioner report being struck in the head by a pallet on a forklift. Petitioner complained of headache left frontal, bilateral blurry vision and tingling in his right and left hands. The records indicate Petitioner could have post concussive symptoms with paresthesia and vision changes and headaches. The report further indicates there was some concern about possible central cord syndrome since the injury included hyperextension of the neck and Petitioner made subjective complaints involving numbness to the extremities.

At that time, Petitioner also reported being hit with a pallet in the abdomen the week before. Petitioner complained of lower abdominal pain and urinating in blood. A CT of the head and MRI of the cervical spine were ordered. (PX C).

The CT scan of the head was found to be normal and the cervical MRI identified the following:

i. Disc protrusion is noted at multiple levels, likely spondylotic/degenerative in nature. Sequala of trauma/traumatic disc protrusions would be difficult to exclude.
ii. No vertebral body fracture/compression deformity. No obvious post traumatic subluxation. No obvious spinal cord hemorrhage.
iii. Disc protrusion is noted at multiple levels, likely spondylotic/degenerative in nature. Sequela of trauma/traumatic disc protrusions would be difficult to exclude.
iv. Multilevel central canal stenosis, most pronounced at C5-C6 and C6-7.
v. Multilevel neural foraminal narrowing, most pronounced at C5-C6.
vi. Findings involving the spinal cord at C4-C5 through C6-C7 may be related to subtle spondylotic myelopathy, although subtle spinal cord edema/sequela of trauma may potentially demonstrate a similar appearance.
vii. Consider short-term follow-up MRI to ensure stability/resolution.

Physician's Immediate Care

Petitioner presented to Physician's Immediate Care on 11/30/2020. The medical history states 47-year-old male who presents with a head injury after being struck in the head by a pallet

on a forklift. At that time, Petitioner complained of headaches, blurry vision and tingling in both hands. An examination showed full range of strength on all extremities. Those medical records indicate Petitioner's MRI showed degenerative changes, foraminal narrowing, disc disease and canal stenosis which could be chronic or post traumatic. (PX D, RX 3).

At that time, Petitioner also reported left lower quadrant pain due to being struck by a forklift a week ago. The examination of that area showed some tenderness but no signs of trauma. Petitioner was diagnosed with a traumatic injury to the head, neck pain, paresthesia and pain of both upper extremities, blurred vision and left lower quadrant abdominal pain. (PX D, RX 3).

Petitioner returned to Physician's Immediate Care on two occasions before transferring his care to Dr. Davis. Petitioner was issued light duty work restrictions and physical therapy was prescribed.

Lakeshore Surgery Center and Grandview Health Partners

On 12/9/2020, Petitioner started treating with Dr. Davis, a chiropractor at Grandview Health Partners. Petitioner reported wrapping plastic around a pallet at work when he was struck in the head by a pallet on a forklift. At that time, Petitioner reported blacking out, he couldn't see for a while, and his head and face became numb. Petitioner also reported since the 11/30/2020 accident he has been having constant headaches, neck and midback pain with numbness bilaterally down to his fingers.

In addition to the 11/30/20 injury, Petitioner also reported another work injury that occurred on 11/23/2020 which involved a different area of his body. Petitioner complained of low back pain, left and right hip pain and bilateral numbness and pain radiating from lower back to toes. Dr. Davis recommended x-rays of lumbosacral and hip, MRIs of lumbar spine, right and left hips and an EMG/NCV.[1] Dr. Davis also recommended an orthopedic consult.

On December 18, 2020, Petitioner underwent MRIs of the cervical spine and lumbar spine at Lakeshore Open MRI.

[1] The MRI of the right hip showed a small joint effusion while the MRI of the left hip showed joint space narrowing and hypertrophic spurring as well as some subchondral cystic changes in the femoral head.

The cervical MRI showed:

i. At the C3-C4, C4-C5, C5-C6, C6-C7, and C7-T1 levels, there are 1-2 mm, 2-3 mm, 2-3 mm, 3-4 mm and 2-3 mm posterior disc protrusions/herniations respectively, which indent the ventral surfaces of the thecal sac.

ii. At the C3-C4 level, there is mild central stenosis. At the C4-C5 level, there is also mild central stenosis. At the C5-C6 level, there is broad-based generalized spinal stenosis and bilateral neuroforaminal narrowing, greater on the right. At the C6-C7 level, there is broad-based central stenosis and bilateral neuroforaminal narrowing, greater on the right. At the C7-T1 level, there is broad-based right-sided stenosis with some right lateral recess narrowing.

iii. The rest of the cervical spine appeared unremarkable.

The lumbar MRI showed:

i. At the L5-S1 level, there is a 5-6 mm subligamentous broad-based posterior disc herniation with an extruded nucleus pulposus, which elevates the posterior longitudinal ligament and indents the ventral and central portion of the thecal sac with generalized spinal stenosis and bilateral neuroforaminal narrowing seen, exacerbated by facet arthrosis and ligamentum flava hypertrophy, which appears slightly greater on the left.

ii. At the L4-L5 level, there is a 2-3 mm posterior disc protrusion which indents the thecal sac with some generalized broad-based bilateral neuroforaminal narrowing seen, exacerbated by ligamentum flava hypertrophy and facet arthrosis.

On January 15, 2021, Dr. A. Vargas of Lakeshore Surgery Center administered bilateral L4-L5 and L5-S1 transforaminal epidural steroid injections (TFESI) and selective nerve root blocks (SNB). On that same date, Dr. Ungar, also of Lakeshore Surgery Center, assessed radiculopathy, cervical region; radiculopathy, lumbar region; bicipital tendinitis, right shoulder; concussion and edema of cervical spinal cord. Dr. Ungar ordered an EMG/NCS and referred Petitioner to pain management and physical therapy.

Petitioner underwent a CT of the lumbar spine which showed:

i. At the L5-S1 level, there is a large subligamentous disc herniation measuring approximately 6-7 mm with an extruded nucleus pulposus, which elevates the posterior longitudinal ligament and indents the ventral surface of the thecal sac with significant generalized spinal stenosis and bilateral neuroforaminal narrowing seen, probably Dallas classification type III.

ii. At the L4-L5 level, there is a 3-4 mm broad-based posterior disc herniation with an extruded nucleus pulposus, which elevates the posterior longitudinal ligament and indents the ventral surface of the thecal sac with broad-based stenosis and generalized bilateral neuroforaminal, probably representing Dallas classification type III.

On February 5, 2021, Petitioner underwent a lumbar discography which showed concordant discogenic pain at L4-L5 and L5-S1 levels, with controls at L2-L3 and L3-L4 levels.

Petitioner continued to treat at Grandview Health Partners and Lakeshore Surgery Center. On March 24, 2021, Petitioner was examined by Dr. Rerri, an orthopedic physician at Lakeshore Surgery Center who believes the MRI shows a large extruded disk at L5-S1 and a small central disk herniation at the L4-L5. Dr. Rerri recommended surgery consisting of a left L4-L5 and L5-S1 transforaminal interbody fusion with cage graft and screws. (PX G).

Drs. Ungar and Rerri continued to keep Petitioner off work pending testing and surgery through the date of hearing.

Testimony of Dr. Rerri

Dr. Rerri testified that he is Canadian board certified in Orthopedic Spine surgery, fellowship trained, and has been since 1997. (PX B, p 6, 20) His practice is 90% spinal surgery and the rest is trauma surgery. (Id, p 6-7) Dr. Rerri testified he saw Petitioner only one time, on 3/24/2021. (PX B, p 22). Dr. Reffi testified Petitioner described experiencing back pain on 11/30/2020 after transferring some boxes onto a sliding roller. (PX B, p. 8). Dr. Reffi also testified Petitioner reported that one week after his back injury Petitioner experienced head and neck pain after bumping his head against a forklift. (PX B, p. 9).

Dr. Rerri testified his examination noted neck and lower extremity tenderness with evidence of nerve root irritation in his lower extremities. Dr. Reffi identified a mildly positive Laseque test in the left lower extremity. Dr. Rerri testified he reviewed a lumbar MRI, which he believes, shows a large extruded disc protrusion at L5-S1. (PX B, p. 10, 11).

Dr. Reffi testified he recommended fusion surgery based upon the history provided by Petitioner and his findings. (PX B, p. 11). Dr. Reffi testified that he based his opinions upon the history provided by Petitioner which, he believes, describes a competent mechanism of injury that could cause or aggravate Petitioner's condition resulting in disc herniations at L4-5 and L5-S1. Dr. Reffi testified Petitioner's back injury and progressive disability are a direct result of the injury sustained at work on November 23, 2020. (PX B, p. 18).

On cross examination, Dr. Reffi testified he does recall to reviewing the emergency room records. (PX B, p. 23). Dr. Reffi testified Petitioner reported feeling low back pain after bending and twisting while transferring boxes at work. Dr. Reffi testified Petitioner was clear about this activity as causing the onset of his symptoms. (PX B, p. 25). Dr. Reffi further testified Petitioner reported injuring his cervical spine after raising his head and bumping his neck and back on a forklift. (PX B, p. 26).

Dr. Reffi testified the lumbar MRI showed a large extruded disk which was not identified on the MRI report. (PX B, p. 30). Dr. Reffi was asked if he could determine whether a disk herniation was due to degenerative process or acute injury. Dr. Reffi responded that they look similar but, in some situations, one might be able to recognize an acute rupture over a chronic one. Dr. Reffi testified he believes Petitioner's condition happened more recently based upon the severe amount of extrusion and the history provided by Petitioner and his physical findings. (PX B, p. 33). Dr. Reffi agreed it was possible to have a large extrusion from degenerative process if there had been a long history of repetitive treatments and repetitive investigations leading up to that point. (PX B, p. 33).

Testimony of Dr. Patari

Dr. Patari examined Petitioner on April 15, 2021 pursuant to Section 12 of the Act. Dr. Patari is an orthopedic and upper extremity surgeon.

Dr. Patari testified Petitioner reported two accidents while unloading trucks. In one accident, Petitioner reported being inside an 18-wheel tractor trailer, at an unloading dock, when a forklift struck the conveyer belt causing the conveyor belt to strike Petitioner in the abdomen and pelvis area causing bilateral hip pain. Petitioner said he continued to work but the abdominal pain later developed into low back pain. (RX 5, p. 12, 13).

Dr. Patari testified Petitioner described the second accident occurred when he was wrapping skids in plastic and he hit his head on a forklift that was moving wrapped skids to another location. (Id, p. 15-16).

On the date of the exam Petitioner reported that he could not see colors out of his left eye, has numbness in the left side of his head, pain in his left ear, headaches, numbness in his entire face, abdominal pain which radiated into both anterior thighs. (Id, p. 17). Dr. Patari testified Petitioner did not report any cervical neck problems. (Id, p. 18).

Dr. Patari testified Petitioner reported severe low back pain when he barely touched Petitioner's shirt. (Id, p 27). Dr. Patari testified that touching Petitioner's skin just slightly, basically touching the hairs on the back of his neck, caused Petitioner to complain of pain in the posterior aspect of the spine. (Id, p 27).

Dr. Patari opined Petitioner's current cervical and lumbar conditions were not causally related to Petitioner's work. (Id, p 28). Dr. Patari testified Petitioner had a negative clinical examination, negative straight leg raise, and normal motor strength of both lower legs. (Id, p. 29). Dr. Patari testified 5 months after the accident one would not expect such severity of symptoms to light touch or palpation causing severe pain. Dr. Patari testified Petitioner's low back pain and cervical pain does not match a mechanism of being hit in the front or the abdomen area. (Id, p. 29). Dr. Patari testified it is possible the 11/30/20 accident, being hit in the head by a part of a forklift, to cause cervical pain but not low back pain. (Id, p. 30). Dr. Patari testified that he does not believe the mechanism of injuries for either the 11/23/20 or 11/30/20 accidents caused a low back injury and need for lumbar interbody fusion surgery. (Id, p. 32).

Dr. Patari opined, as of date of his examination, Petitioner could return to work full duty without restrictions. (Id, p. 31). Dr. Patari also opined that no future treatment or surgeries are related to Petitioner's two accidents. (Id, p. 32).

Testimony of Dr. Mekhail

Dr. Mekhail testified he a board-certified orthopedic surgeon who is also a teaching professor at University of Illinois at Chicago. (RX 6, p 6).

Dr. Mekhail examined Petitioner on 4/12/2021 pursuant to Section 12 of the Act. At that time, Petitioner complained of low back pain, burning in the low back and numbness in his legs. (Id, p. 8). Dr. Mekhail testified Petitioner reported that his low back pain and left hip pain were caused by a pallet pushing against his abdomen while unloading material from a conveyer belt. (Id, p. 8).

Dr. Mekhail testified Petitioner also reported being struck in the head by a forklift, on 11/30/20, 2020, which caused headaches, neck pain and aggravated his back pain. (Id, at 8). Petitioner complained of numbness in the front and back of both legs that extended from his groin to his ankles which was aggravated by standing, sitting, bending, and walking. (Id, p. 9). Petitioner reported to being in pain all the time and that he also suffers headaches in his forehead

and on his eyeballs. Petitioner further reported suffering hearing loss in his left ear and loss of color discrimination in his left eye from the accident. (Id, p. 9, 10).

Dr. Mekhail testified his examination noted a negative Sperling sign, negative bilateral straight leg raising test, completely neurologically in tack upper and lower extremities, normal sensation and normal motor power and reflexes. Dr. McKhail noted some pain and decreased range of motion in the left hip. (Id, p. 12).

Dr. Mekhail testified his exam showed signs of symptom magnification. Dr. Mekhail testified, " *So, I mean, these symptoms, when you're asking me if this is matching his symptoms, whenever we see someone who has generalized pains like that, with numbness and tingling everywhere, it really—regardless of whether it matches his symptoms of someone complaining everywhere, it doesn't match the anatomy of the spine.*" (Id, p. 14).

Dr. Mekhail testified he reviewed the MRIs and x-rays of the cervical and lumbar spine which only showed wear and tear. Dr. Mekhail testified the MRI showed degenerative changes which took a long time to occur based upon the decrease of the disk heights. Regarding distinguishing between an acute disk herniation or a degenerative condition, Dr. Mekhail testified it is obvious to distingue between them. Dr. Mekhail testified that an acute disk herniation looks healthy inside but for the piece of it that is outside. Dr. Mekhail testified one could also tell from the color changes in the disk because a disk is soft and the cushiony parts inside the disks have different colors due to the fluid or water in the disk. Dr. Mekhail testified a healthy disk is a light gray color while a disk with wear and tear becomes dark because it lost its water content. Dr. Mekhail testified Petitioner's disks showed degenerative changes. (Id, p. 16-17).

Dr. Mekhail opined Petitioner has a degenerative disk, not degenerative disk disease, and degenerative stenosis. (Id, p. 19). Dr. Mekhail testified Petitioner's MRIs don't show disk herniations. Dr. Mekhail also testified Petitioner's complaints don't match a herniated cervical disk because Petitioner's pain is mainly in the neck with only vague numbness in the hands which doesn't follow an atomic distribution. Dr. Mekhail testified Petitioner's complaints of neck and back pain with vague numbness in the upper and lower extremities do not follow any anatomic distribution and show symptom magnification. Dr. Mekhail testified a herniated disk follows an anatomic distribution. Dr. Mekhail opined Petitioner does not have herniated disks,

not by symptoms, not by mechanism of injury, not by physical exams and not by MRIs. (Id, p. 22, 23).

Dr. Mekhail opined Petitioner's objective testing was indicative of symptom magnification because Petitioner's symptoms don't not match an anatomic distribution of any medical condition. Dr. Mekhail testified that if one's symptom's don't match what you would expect for a diagnosis and you can't find anything, by physical exam or radiographic studies, it is basically not a medical condition you can treat, it's symptom magnification. (Id, p. 29).

Dr. Mekhail opined the MRIs show pre-existing degenerative changes with no evidence of herniated disks. (Id, p. 33). Dr. Mekhail testified Petitioner's has no pathology requiring surgery nor does Petitioner's symptoms match any herniated disk. Dr. Mekhail further testified Petitioner's back pain consists only of vague-like symptoms which do not match any anatomic distribution of neural irritation. (Id, p. 34).

Dr. Mekhail testified he doesn't understand the purpose for fusion surgery because fusion surgery is used to address instability and Petitioner doesn't have any instability. Dr. Mekhail opined Petitioner is not a candidate for spine surgery based upon his evaluation. (Id, p. 35). Dr. Mekhail testified, at best, Petitioner sustained a back sprain that would take 6 weeks to 3 months to heal. Dr. Mekhail opined Petitioner should have been able to return to work full duty within 3 months of his accident. Dr. Mekhail also opined the first 6 weeks of chiropractic and physical therapy was reasonable. (Id, p. 37).

Dr. Mekhail testified Petitioner reported the first injury caused his hip and back pain while the second accident caused his neck pain. Dr. Mekhail noted that Petitioner's medical records contain significant inconsistencies because the records from Drs. Dahl and Minardi never mention Petitioner's cervical and back symptoms while the records from Dr. Davis, the chiropractor, never mentioned Petitioner's cervical spine or upper extremity radicular symptoms or headaches. (Id, p. 32).

On cross examination, Dr. Mekhail was asked whether reviewing any additional medical records could change his opinion. Dr. Mehail responded

> *"…But if you asked me about aggravation, the question that you asked prior, which is aggravation of a degenerative condition, absolutely not. And the reason for that is when you have degenerative disk disease and you have pain from degenerative disk disease, as a clinician, we can tell what symptoms there are to cause degenerative disk disease. So if the cushion in our back, which is the disk, is incompetent, that is not functioning well*

as a cushion, which basically is degenerative disk disease, typically the pain is when you're doing certain activities.

So you move a certain way and it would hurt. You bend forward and it would hurt. But you don't have pain all the time. That's not degenerative disk disease, because all of us have degenerative disk and it hurts with certain movement.

It shouldn't cause numbness and tingling in your arms and legs because there's no pinching on a nerve. It shouldn't cause significant tenderness. So when I touch their back, it hurt because the disk, as I mentioned earlier, is very deep in our body. There's no way anyone can touch the back and reach the disk and basically elicit back pain as a result of degenerative disk disease.

So his symptoms are completely unlike degenerative disk disease presentation. And it's the clinician's job to discern whether someone has a back strain causing their back pain and – versus degenerative disk disease. So regardless of any medical records, my interpretation of his condition is not degenerative disk disease." (RX 6, p. 41-41).

Conclusions of Law

The Arbitrator adopts the above Findings of Fact in Support of the Conclusions of Law as set forth below. The claimant bears the burden of proving every aspect of his claim by a preponderance of the evidence. *Hutson v. Industrial Commission,* 223 Ill.App.3d 706 (1992)

An accidental injury need not be the sole causative factor, or even the primary causative factor, as long as it is a causative factor in the resulting condition of ill-being. *Sisbro, Inc. v. Industrial Commission*, 797 N.E.2d 665, 672 (2003). Employers are to take their employees as they find them *A.C.&S. v. Industrial Commission,* 710 N.E.2d 8347 (Ill.App. 1st Dist. 1999) citing *General Electric Co. v. Industrial Commission,* 433 N.E.2d 671, 672 (1982). Causal connection between work duties and an injured condition may be established by a claim of events including claimant's ability to perform duties before the date of an accident and inability to perform same duties following date of accident. *Darling v. Industrial Commission*, 176 Ill.App.3d 186, 530 N.E.2d 1135 (1st Dist. 1988) A claimant's prior condition need not be of a good health prior to the accident, 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 v. Illinois Workers Compensation Commission*, 4-16-0192WC (4th Dist. 2017)

With respect to (C) Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent, the Arbitrator finds as follows:

An accident arises out of and in the course of one's employment if the Petitioner is at work in a place that he can reasonably be expected to be, in the performance of his employment. The Arbitrator finds that Petitioner proved by the preponderance of the evidence that he sustained an accident that arose out of and in the course of his employment on 11/23/2020 and 11/30/2020. There was testimony from Petitioner, Jennifer Arreola and Monique Vazquez which shows both accidents were witnessed, documented and properly reported within the 45-day time limit under the Act.

With respect to (f) Is Petitioner's current condition of ill-being causally related to the injury, the Arbitrator finds as follows:

The Arbitrator carefully reviewed and considered all medical evidence along with all of the testimony. The Arbitrator finds that Petitioner proved by the preponderance of the credible evidence that his lumbar condition is, in part, causally related to Petitioner's work accident of 11/23/2020 but the condition resolved and Petitioner reached maximum medical improvement for his low back condition 3 months after the 11/23/2020 accident date, as more fully explained below.

The Arbitrator finds the opinions of Drs. Mekhail and Patari to be persuasive. The Arbitrator notes the histories Petitioner provided to Drs. Mekhail and Patari to be more consistent with Petitioner's testimony at trial than the history Petitioner provided to Dr. Rerri. Petitioner testified he was stuck in the stomach by a conveyer belt developing left hip pain. Petitioner told Dr. MeKhail that he was struck in the abdomen by a conveyer belt that caused left hip pain and low back pain. (RX 6, p. 8). Petitioner told Dr. Patari he was struck by a conveyer belt in the abdomen and pelvis that caused bilateral hip pain that developed into back pain but he continued to work. (RX 5, p. 12-13). Petitioner told Dr. Rerri that his back pain developed after bending and twisting and transferring boxes at work. (PX B, p.25). The Arbitrator does not find Petitioner's testimony to be credible regarding the onset of his symptoms nor extent of his symptoms.

The Arbitrator notes that Dr. Mekhail's examination found Petitioner's upper and lower extremities to be completely neurologically intact with intact sensation, normal motor power, normal reflexes and negative bilateral straight leg raising test and Sperlings signs. Dr. Mekhail

reviewed the MRIs and found that they show degenerative changes and not any disk herniations. Dr. Mekhail testified that herniated disks follow an atomic distribution which doesn't exist in this case. Dr. MeKhail testified no herniated disks exist, not by symptoms, not by mechanism of injury, not by physical exam and definitely not by MRI. (RX 6, p. 23).

Dr. Mekhail testified Petitioner's complaints show symptom magnification because Petitioner's complaints fail to show any anatomic distribution. The Arbitrator finds the testimony of Dr. Patari to support the testimony and opinions of Dr. Mekhail. Dr. Patari testified Petitioner reported severe low back pain when he barely touched Petitioner's shirt. (Id, p 27). Dr. Patari testified that touching Petitioner's skin just slightly, basically touching the hairs on the back of his neck, caused Petitioner to complain of pain in the posterior aspect of the spine. (Id, p 27). Dr. Patari opined Petitioner's current cervical and lumbar conditions were not causally related to Petitioner's work. (Id, p 28). Dr. Patari testified Petitioner had a negative clinical examination, negative straight leg raise, and normal motor strength of both lower legs. (Id, p. 29). Dr. Mekhail opined Petitioner sustained back strains which would have resolved within 3 months of the accident.

The Arbitrator finds Petitioner's lumbar conditions to be causally related to his 11/23/20 work accident and the lumbar condition resolved within 3 months after Petitioner's 11/23/2020 work accident and, at that time, Petitioner reached maximum medical improvement.

With Respect to Issue (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 Finds as Follows:

Pursuant to 8(a) of the Act, the employer shall pay all necessary first aid, medical and surgical services and all necessary medical, surgical and hospital services which are reasonable required to cure or relieve the employee from the effects of the accidental injury.

Based in part on the conclusions relating to causal connection above, the Arbitrator further finds the treatment that Petitioner received for 3 months following his 11/30/2020 accident to be reasonable, necessary, and causally related to the accidents of 11/23/2020 and 11/30/2020. As stated above, the Arbitrator found the opinions of Dr. MeKhail to be persuasive. Dr. MeKhail opined that the first 6 weeks of treatment was reasonable. (Rx 6, p. 37). As such, Respondent shall pay Petitioner the costs of the medical expenses incurred from 11/30/2020 for the next 6 weeks, pursuant to Sections 8 and 8.2 of the Act and subject to the fee schedule. The

Arbitrator awards 6 weeks of treatment after 11/30/2020 because Petitioner did not seek medical treatment until 11/30/2020.

With respect to Issue (K), Is Petitioner Entitled to Prospective Medical Care, the Arbitrator finds as follows:

Based in part on the conclusions relating to causal connection above, the Arbitrator further finds Petitioner is not entitled to prospective medical care as recommended by Dr. Rerri and Dr. Ungar. The Arbitrator finds that Petitioner failed to prove by the preponderance of the medical evidence that the treatment recommended by Dr. Rerri and Dr. Ungar to be supported by the objective medical evidence and reasonable, necessary, and related treatment intending to alleviate Petitioner's current state of ill-being.

With Respect to Issue (L) What Temporary Benefits, If Any, Is the Petitioner Entitled, The Arbitrator Finds as Follow:

A claimant is temporarily and totally disabled form the time an injury incapacitates her until such time as she is as far recovered or restored as the permanent character of her injury will permit. *Westin Hotel v. Industrial Commission*, 372 IllApp.3d 527 (200). In determining whether a claimant is no longer entitled to continue receiving TTD benefits, the primary consideration is whether the claimant's condition ahs stabilized and whether she is capable of retuning to the work force. I*nterstate Scaffolding, Inc. v. Illinois Workers' Compensation Commission,* 236 Ill.2d132 (2010) Once a claimant has reached MMI, her condition has become permanent, and she is no longer eligible for TTD benefits. *Archer Daniels Midland Co. v Industrial Commission*, 138 Ill.2d 107 (1990)

Petitioner claims to be entitled to temporary total disability benefits from 12/1/2020 through 4/12/2022 representing 72-6/7ths weeks.

Based in part on the conclusions relating to causal connection above, the Arbitrator further finds that Petitioner has proven that he was temporarily and totally disabled for 3 months from 12/1/2020 through 3/1/2021, representing 12 6/7th weeks. As such, the Respondent shall pay Petitioner TTD benefits from 12/1/2020 through 3/1/2021.

With Respect to Issue of Penalties Pursuant to Sections 19(k) and 19(l) and Section 16 Attorney Fees:

The Arbitrator notes that Petitioner was temporarily and totally disabled from 12/1/2020 through 3/1/2021, the date Respondent's Section 12 examiner opined Petitioner could return to work. The Respondent did not pay TTD benefits for this period of time despite the opinion of

their Section 12 examiner that Petitioner should have been off work for this period. Respondent also failed to pay medical treatment incurred for the 6 weeks after Petitioner's accident despite the opinion of their Section 12 examiner who opined that the treatment was reasonable.

The Respondent's failure and refusal to pay the TTD and pay the prescribed treatment after their Section 12 examiner determined Petitioner should have been off work for 6 weeks and the 3 months of medical treatment was reasonable constitutes an unreasonable and/or vexatious delay. Respondent also disputed accident at trial yet presented 2 witnesses who acknowledge the accidents had occurred and either created or reviewed the accident reports. See *McDonald's v. IWCC*, 2022 IL App (1st) 210928 WC-U, No 1-21-0928WC. The Respondent's unreasonable and/or vexatious delay required the Petitioner's attorneys to expend time and costs in securing and preparing the presentation of the trial and presenting the motion for penalties pursuant to Sections 19(k), 19(l) and Section 16.

The Arbitrator finds that the Petitioner is entitled to:

1. Assessment of penalty against the Respondent or its insurance carrier and in favor of the Petitioner in an amount equal to 50% of the temporary total disability benefits due and payable to the Petitioner and 50% of the unpaid medical benefits as identified above.

2. Assessment of penalties against the Respondent or its insurance carrier and in favor of the Petitioner in the amount of $30.00 per day for each day benefits were unreasonably delayed (up to $10,000.00) pursuant to Section 19(l). The $30 per day starts on 12/1/2020.

3. Assessment of attorney fees against the Respondent in favor of the Petitioner in an amount equal to 20% of the temporary total disability benefits due and payable to the Petitioner and 20% of the unpaid medical expenses due Petitioner as identified above pursuant to Section 16.

By: /o/ Frank J. Soto — July 7, 2022

Arbitrator — Date

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	20WC031554
Case Name	Nicolas Vazquez v. Paramount Staffing dba Prostar Staffing
Consolidated Cases	20WC031553;
Proceeding Type	Petition for Review under 19(b) Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	23IWCC0420
Number of Pages of Decision	23
Decision Issued By	Carolyn Doherty, Commissioner

Petitioner Attorney	Michelle Porro
Respondent Attorney	Victor P. Shane

DATE FILED: 9/26/2023

/s/Carolyn Doherty, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF KANE)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

NICOLAS VAZQUEZ,

Petitioner,

vs. NO: 20 WC 31554

PARAMOUNT STAFFING d/b/a
PROSTAR STAFFING,

Respondent.

DECISION AND OPINION ON REVIEW

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

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed July 8, 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 the Respondent pay to Petitioner interest under Section 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 is hereby fixed at the sum of $37,500.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

September 26, 2023

o: 09/07/23
CMD/kcb
045

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

/s/ *Marc Parker*
Marc Parker

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	20WC031554
Case Name	Nicolas Vazquez v. Paramount Staffing d/b/a Prostar Staffing
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	20
Decision Issued By	Frank Soto, Arbitrator

Petitioner Attorney	Michelle Porro
Respondent Attorney	Victor P. Shane

DATE FILED: 7/8/2022

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

/s/Frank Soto, Arbitrator

Signature

STATE OF ILLINOIS)
)SS.
COUNTY OF Kane)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Nicolas Vazquez
Employee/Petitioner

v.

Paramount Staffing d/b/a Prostar Staffing
Employer/Respondent

Case # **20WC031554**

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 Frank Soto**, Arbitrator of the Commission, in the city of **Wheaton**, on 4/12/2022. 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 **prospective treatment as prescribed by Dr. Rerri and Dr. Ungar**

FINDINGS

On **11/30/2020**, 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, in part,*** causally related to the accident.

In the year preceding the injury, Petitioner earned $**27,290.64**; the average weekly wage was **$524.82**.

On the date of accident, Petitioner was **49** 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 $**0** for TTD, $**0** for TPD, $**0** for maintenance, and $**0** for other benefits, for a total credit of $**0**.

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

ORDER

Medical benefits

Respondent shall pay Petitioner the costs of the medical expenses incurred from 11/30/2020 for the following 6 weeks, pursuant to Sections 8 and 8.2 of the Act and subject to the fee schedule, less a credit for amounts Respondent pays pursuant to the decision in *Nicolas Vazquez v. Paramount Staffing d/b/a/ Prostar Staffing* in Case #20WC031553, as set forth in the Conclusions of Law attached hereto and incorporated herein.

Petitioner's claim for perspective medical care is denied, as set forth in the Conclusions of Law attached hereto and incorporated herein.

Temporary Total Disability

Respondent shall pay Petitioner temporary total disability benefits of **$ 349.88**/week for **12-6/7ths** weeks, commencing **12/1/2020** through **3/1/2021**, as provided in Section 8(b) of the Act, less a credit for amounts Respondent pays pursuant to the decision in *Nicolas Vazquez v. Paramount Staffing d/b/a/ Prostar Staffing* in Case #20WC031553, as set forth in the Conclusions of Law attached hereto and incorporated herein.

Penalties

Respondent shall pay Petitioner a penalty in an amount equal to 50% of the temporary total disability benefits due and unpaid medical benefits pursuant to Section 19(k) of the Act, attorney fees in amount equal to 20% of the temporary total disability benefits due and unpaid medical expenses due Petitioner pursuant to Section 16 of the Act and an amount of $30.00 per day, beginning 12/1/2020, for each day benefits were unreasonable delayed not to exceed $10,000.00 pursuant to Section 19(l), less a credit for amounts Respondent pays pursuant to the decision in *Nicolas Vazquez v. Paramount Staffing d/b/a/ Prostar Staffing* in Case #20WC031553, 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

Arbitrator **JULY 8, 2022**

Procedural History

This matter was tried on April 10, 2022, pursuant to Sections 19(b), 8(a), 16, 19(k), 19(l) and 16 of the Act. The issues in dispute are unpaid medical bills, TTD benefits, prospective medical care involving Petitioner's back, and whether Petitioner is entitled to Penalties and Attorney's fees pursuant to Section 19(k), 19(l) and 16. This case proceeded to hearing pursuant to Sections 19(b) and 8(a) of the Act and Petitioner is seeking prospective medical treatment involving his back condition, payment of medical bills primarily involving his back condition, TTD benefits for being off work due to a back condition the Arbitrator shall only address whether Petitioner's back conditions are causally related to a work injury and not whether Petitioner's other conditions (*i.e*. head, left hip, groin, bilateral shoulder, arm and hand) are causally related to his work accidents of 11/23/2020 and 11/30/2020.

Findings of Facts

Nicolas Vazquez (hereinafter referred to as "Petitioner") testified that on 11/23/2020 he was unloading product out of a trailer by picking it off of a pile of boxes and loading it onto a conveyor belt that extended from the loading dock into the trailer where Petitioner was working. (T 12-13) As he was doing this, he heard a scream from the forklift driver and heard the forklift accelerate before striking the conveyor belt which impacted his stomach. (T 14-16) Petitioner testified after the accident he had a stomachache and the area around his left hip was painful. (T 17) Petitioner did not seek medical care and continued to work until 11/30/20.

Petitioner testified on 11/30/2020 he sustained a second injury while working for Paramount staffing d/b/a Prostar Staffing (hereinafter referred to as "Respondent"). Petitioner testified a supervisor had instructed him to wrap pallets with plastic and while bending over wrapping plastic around a pallet he struck his forehead on the pallet of a moving forklift. (T 20-24) Petitioner testified he initially only felt the impact to his head. Petitioner testified he became dizzy, had a headache and his tongue became numb. (T 25) Petitioner testified after the accident he was taken by ambulance to the Emergency Room at Rush Copley Medical Center. Upon being released from the emergency room, Petitioner followed up at Physician's Immediate Care.

Petitioner testified after a few treatments at Physician's Immediate Care he decided to treat from Dr. Davis of Grandview Health Partners. Petitioner testified later he was referred to multiple physicians within their network including Dr. Ungar for headaches and Dr. Rerri for back and neck pain. (T26) Petitioner testified he had been authorized off work by his physician's from 12/1/2020

through 4/12/2022, and that Respondent had not paid any TTD. (T 27-28) Petitioner testified surgery has been recommended by Dr. Rerri for his low back which he would like to undergo. (T 27)

Petitioner testified prior to the 11/23/2020 work injury, he underwent an abdominal hernia repair in 2009 and a mesh removal surgery in 2015. (T 28-29) Petitioner testified he did not have any other injuries to his abdomen between 2015 and his 11/23/2020 work injury. (T 29) Petitioner testified he did not have any injuries to his neck, low back, hips, or left shoulder prior to 11/23/2020. (T 30) Petitioner testified he underwent right shoulder surgery in 2018 but has not received any treatment since that time and has been working full duty until his 11/23/2020 accident. (T 30-31) Petitioner also testified he had no other injuries to abdomen, hips, shoulders, neck, back, or head after his 11/30/2020 injury. (Id)

At trial, Petitioner testified his abdominal pain increases when his low back pain levels increase and his low back pain increases if he is in one position too long. Petitioner testified he experiences pain if he sits too long or walks for more than 20 minutes. (T 31-32) Petitioner testified his pain increases after sitting, standing, walking, or laying down for more than 20 minutes. (T 31-32) Petitioner testified if he walks for 45 minutes, he needs to use a cane after about 20 to 30 minutes because the pain increases and his left leg gives out. (T 111)

Regarding his neck, Petitioner testified that if he looks up, his range of motion is limited and looking up increases his neck pain. (T 33) Petitioner also testified that looking side to side increases his pain. (Id) Petitioner further testified that looking down is also painful and causes cramping. Petitioner testified he has constant headaches which wake him up. (Id) Petitioner testified he now has numbness on his face, especially on the left side, and that he can't see color out of the left eye and he struggles to remember things since the blow to the head. (T 79) Petitioner also testified the vision in his left eye is still dark and blurry. (T 94-95)

Petitioner testified that he completed 6th grade in Mexico, and that he has taken about 8 months of ESL classes at Waubonsee Valley Community College, and he takes some classes at a Church as well.

Jennifer Arreola testified on behalf of Respondent. On the dates of accident, she had been employed by Fellowes, a company that makes office equipment. (T 118-119) She is an environmental safety and security officer, and part of her job is to document accidents, a position that she has performed for about 6 years. (T 119) She testified after the 11/23/2020 accident she

asked all 3 of the unloaders (including Petitioner) if they were injured and they all told her no. Ms. Arreola took photos of the scene with her cell phone. (T 127) Ms. Arreola testified that Petitioner said something came in contact with his lower belly area but he said the pain was minor and denied medical treatment. (T 140) Ms. Arreola testified that she received an accident report and spoke with Petitioner the following day, 11/24/2020, when he, again, denied needing medical treatment.

Ms. Arreola testified she saw Petitioner on 11/30/2020, the date of the second accident. (T 146) Ms. Arreola testified that Liliana was driving a forklift loaded with skids while Petitioner was wrapping a skid when the forklift apparently struck Petitioner in the forehead. (T 149) Ms. Arreola arrived at the location to question Liliana while Petitioner was wrapping a skid. Ms. Arreola testified when Petitioner saw her that his demeanor changed and he began to show signs of physical discomfort. (T 152)

Respondent called Monique Vazquez, no relationship to Petitioner, as it's next witness. Ms. Vazquez is an area director for Respondent. She oversees 4 offices in the west Chicagoland area. She testified on 11/25/2020 she called Petitioner because she had heard he was telling coworkers that he wanted to moved back to the rework area of the company. At that time, Petitioner told Ms. Vazquez that she should be calling him about his injury and not about wanting to return to the rework area. (T 176) Ms. Vazquez testified she told Petitioner that she didn't believe he was injured since he refused medical treatment on 2 occasions. (T 176) Ms. Vazquez testified Petitioner said he didn't know if he needed to go to the clinic because he wasn't sure if his foot pain was from being back at work. Ms. Vazquez testified, at that time, Petitioner also mentioned shoulder pain. (Id)

Ms. Vazquez testified she provided Petitioner her cell number in the event he wanted to go to the clinic because it was the end of her shift and the facilities would be for the next 2 days for the Thanksgiving holiday. Ms. Vazquez testified the next time she heard from Petitioner was when he was at Rush Copley and, at that time, Petitioner reported a head injury from an accident at work. During the phone conversation, Petitioner reminded her about the incident from the prior week. (T 178-9) Ms. Vazquez testified she instructed Petitioner to go to their clinic and she scheduled Petitioner an appointment and transportation. (T 185)

The Arbitrator finds the testimony of Ms. Vazquez and Ms. Arreola to be credible but the Arbitrator does not find the testimony of Petitioner to be credible regarding the onset of his symptoms nor extend of his symptoms.

Aurora Fire Department

The paramedic report dated 11/30/2020, states Petitioner, who sitting on a chair, reported neck pain after walking into a pallet on a forklift. Petitioner denied any other injuries and any numbness. (PX A)

Rush Copley Emergency Room

Petitioner was taken to the emergency room at Rush Copley Medical Center on 11/30/2020. The records indicate Petitioner report being struck in the head by a pallet on a forklift. Petitioner complained of headache left frontal, bilateral blurry vision and tingling in his right and left hands. The records indicate Petitioner could have post concussive symptoms with paresthesia and vision changes and headaches. The report further indicates there was some concern about possible central cord syndrome since the injury included hyperextension of the neck and Petitioner made subjective complaints involving numbness to the extremities.

At that time, Petitioner also reported being hit with a pallet in the abdomen the week before. Petitioner complained of lower abdominal pain and urinating in blood. A CT of the head and MRI of the cervical spine were ordered. (PX C).

The CT scan of the head was found to be normal and the cervical MRI identified the following:

i. Disc protrusion is noted at multiple levels, likely spondylotic/degenerative in nature. Sequala of trauma/traumatic disc protrusions would be difficult to exclude.
ii. No vertebral body fracture/compression deformity. No obvious post traumatic subluxation. No obvious spinal cord hemorrhage.
iii. Disc protrusion is noted at multiple levels, likely spondylotic/degenerative in nature. Sequela of trauma/traumatic disc protrusions would be difficult to exclude.
iv. Multilevel central canal stenosis, most pronounced at C5-C6 and C6-7.
v. Multilevel neural foraminal narrowing, most pronounced at C5-C6.
vi. Findings involving the spinal cord at C4-C5 through C6-C7 may be related to subtle spondylotic myelopathy, although subtle spinal cord edema/sequela of trauma may potentially demonstrate a similar appearance.
vii. Consider short-term follow-up MRI to ensure stability/resolution.

Physician's Immediate Care

Petitioner presented to Physician's Immediate Care on 11/30/2020. The medical history states 47-year-old male who presents with a head injury after being struck in the head by a pallet on a forklift. At that time, Petitioner complained of headaches, blurry vision and tingling in both

hands. An examination showed full range of strength on all extremities. Those medical records indicate Petitioner's MRI showed degenerative changes, foraminal narrowing, disc disease and canal stenosis which could be chronic or post traumatic. (PX D, RX 3).

At that time, Petitioner also reported left lower quadrant pain due to being struck by a forklift a week ago. The examination of that area showed some tenderness but no signs of trauma. Petitioner was diagnosed with a traumatic injury to the head, neck pain, paresthesia and pain of both upper extremities, blurred vision and left lower quadrant abdominal pain. (PX D, RX 3).

Petitioner returned to Physician's Immediate Care on two occasions before transferring his care to Dr. Davis. Petitioner was issued light duty work restrictions and physical therapy was prescribed.

Lakeshore Surgery Center and Grandview Health Partners

On 12/9/2020, Petitioner started treating with Dr. Davis, a chiropractor at Grandview Health Partners. Petitioner reported wrapping plastic around a pallet at work when he was struck in the head by a pallet on a forklift. At that time, Petitioner reported blacking out, he couldn't see for a while, and his head and face became numb. Petitioner also reported since the 11/30/2020 accident he has been having constant headaches, neck and midback pain with numbness bilaterally down to his fingers.

In addition to the 11/30/20 injury, Petitioner also reported another work injury that occurred on 11/23/2020 which involved a different area of his body. Petitioner complained of low back pain, left and right hip pain and bilateral numbness and pain radiating from lower back to toes. Dr. Davis recommended x-rays of lumbosacral and hip, MRIs of lumbar spine, right and left hips and an EMG/NCV.[1] Dr. Davis also recommended an orthopedic consult.

On December 18, 2020, Petitioner underwent MRIs of the cervical spine and lumbar spine at Lakeshore Open MRI.

The cervical MRI showed:

[1] The MRI of the right hip showed a small joint effusion while the MRI of the left hip showed joint space narrowing and hypertrophic spurring as well as some subchondral cystic changes in the femoral head.

i. At the C3-C4, C4-C5, C5-C6, C6-C7, and C7-T1 levels, there are 1-2 mm, 2-3 mm, 2-3 mm, 3-4 mm and 2-3 mm posterior disc protrusions/herniations respectively, which indent the ventral surfaces of the thecal sac.

ii. At the C3-C4 level, there is mild central stenosis. At the C4-C5 level, there is also mild central stenosis. At the C5-C6 level, there is broad-based generalized spinal stenosis and bilateral neuroforaminal narrowing, greater on the right. At the C6-C7 level, there is broad-based central stenosis and bilateral neuroforaminal narrowing, greater on the right. At the C7-T1 level, there is broad-based right-sided stenosis with some right lateral recess narrowing.

iii. The rest of the cervical spine appeared unremarkable.

The lumbar MRI showed:

i. At the L5-S1 level, there is a 5-6 mm subligamentous broad-based posterior disc herniation with an extruded nucleus pulposus, which elevates the posterior longitudinal ligament and indents the ventral and central portion of the thecal sac with generalized spinal stenosis and bilateral neuroforaminal narrowing seen, exacerbated by facet arthrosis and ligamentum flava hypertrophy, which appears slightly greater on the left.

ii. At the L4-L5 level, there is a 2-3 mm posterior disc protrusion which indents the thecal sac with some generalized broad-based bilateral neuroforaminal narrowing seen, exacerbated by ligamentum flava hypertrophy and facet arthrosis.

On January 15, 2021, Dr. A. Vargas of Lakeshore Surgery Center administered bilateral L4-L5 and L5-S1 transforaminal epidural steroid injections (TFESI) and selective nerve root blocks (SNB). On that same date, Dr. Ungar, also of Lakeshore Surgery Center, assessed radiculopathy, cervical region; radiculopathy, lumbar region; bicipital tendinitis, right shoulder; concussion and edema of cervical spinal cord. Dr. Ungar ordered an EMG/NCS and referred Petitioner to pain management and physical therapy.

Petitioner underwent a CT of the lumbar spine which showed:

i. At the L5-S1 level, there is a large subligamentous disc herniation measuring approximately 6-7 mm with an extruded nucleus pulposus, which elevates the posterior longitudinal ligament and indents the ventral surface of the thecal sac with significant generalized spinal stenosis and bilateral neuroforaminal narrowing seen, probably Dallas classification type III.

ii. At the L4-L5 level, there is a 3-4 mm broad-based posterior disc herniation with an extruded nucleus pulposus, which elevates the posterior longitudinal ligament and indents the ventral surface of the thecal sac with broad-based

stenosis and generalized bilateral neuroforaminal, probably representing Dallas classification type III.

On February 5, 2021, Petitioner underwent a lumbar discography which showed concordant discogenic pain at L4-L5 and L5-S1 levels, with controls at L2-L3 and L3-L4 levels.

Petitioner continued to treat at Grandview Health Partners and Lakeshore Surgery Center. On March 24, 2021, Petitioner was examined by Dr. Rerri, an orthopedic physician at Lakeshore Surgery Center who believes the MRI shows a large extruded disk at L5-S1 and a small central disk herniation at the L4-L5. Dr. Rerri recommended surgery consisting of a left L4-L5 and L5-S1 transforaminal interbody fusion with cage graft and screws. (PX G).

Drs. Ungar and Rerri continued to keep Petitioner off work pending testing and surgery through the date of hearing.

Testimony of Dr. Rerri

Dr. Rerri testified that he is Canadian board certified in Orthopedic Spine surgery, fellowship trained, and has been since 1997. (PX B, p 6, 20) His practice is 90% spinal surgery and the rest is trauma surgery. (Id, p 6-7) Dr. Rerri testified he saw Petitioner only one time, on 3/24/2021. (PX B, p 22). Dr. Reffi testified Petitioner described experiencing back pain on 11/30/2020 after transferring some boxes onto a sliding roller. (PX B, p. 8). Dr. Reffi also testified Petitioner reported that one week after his back injury Petitioner experienced head and neck pain after bumping his head against a forklift. (PX B, p. 9).

Dr. Rerri testified his examination noted neck and lower extremity tenderness with evidence of nerve root irritation in his lower extremities. Dr. Reffi identified a mildly positive Laseque test in the left lower extremity. Dr. Rerri testified he reviewed a lumbar MRI, which he believes, shows a large extruded disc protrusion at L5-S1. (PX B, p. 10, 11).

Dr. Reffi testified he recommended fusion surgery based upon the history provided by Petitioner and his findings. (PX B, p. 11). Dr. Reffi testified that he based his opinions upon the history provided by Petitioner which, he believes, describes a competent mechanism of injury that could cause or aggravate Petitioner's condition resulting in disc herniations at L4-5 and L5-S1. Dr. Reffi testified Petitioner's back injury and progressive disability are a direct result of the injury sustained at work on November 23, 2020. (PX B, p. 18).

On cross examination, Dr. Reffi testified he does recall to reviewing the emergency room records. (PX B, p. 23). Dr. Reffi testified Petitioner reported feeling low back pain after bending

and twisting while transferring boxes at work. Dr. Reffi testified Petitioner was clear about this activity as causing the onset of his symptoms. (PX B, p. 25). Dr. Reffi further testified Petitioner reported injuring his cervical spine after raising his head and bumping his neck and back on a forklift. (PX B, p. 26).

Dr. Reffi testified the lumbar MRI showed a large extruded disk which was not identified on the MRI report. (PX B, p. 30). Dr. Reffi was asked if he could determine whether a disk herniation was due to degenerative process or acute injury. Dr. Reffi responded that they look similar but, in some situations, one might be able to recognize an acute rupture over a chronic one. Dr. Reffi testified he believes Petitioner's condition happened more recently based upon the severe amount of extrusion and the history provided by Petitioner and his physical findings. (PX B, p. 33). Dr. Reffi agreed it was possible to have a large extrusion from degenerative process if there had been a long history of repetitive treatments and repetitive investigations leading up to that point. (PX B, p. 33).

Testimony of Dr. Patari

Dr. Patari examined Petitioner on April 15, 2021 pursuant to Section 12 of the Act. Dr. Patari is an orthopedic and upper extremity surgeon.

Dr. Patari testified Petitioner reported two accidents while unloading trucks. In one accident, Petitioner reported being inside an 18-wheel tractor trailer, at an unloading dock, when a forklift struck the conveyer belt causing the conveyor belt to strike Petitioner in the abdomen and pelvis area causing bilateral hip pain. Petitioner said he continued to work but the abdominal pain later developed into low back pain. (RX 5, p. 12, 13).

Dr. Patari testified Petitioner described the second accident occurred when he was wrapping skids in plastic and he hit his head on a forklift that was moving wrapped skids to another location. (Id, p. 15-16).

On the date of the exam Petitioner reported that he could not see colors out of his left eye, has numbness in the left side of his head, pain in his left ear, headaches, numbness in his entire face, abdominal pain which radiated into both anterior thighs. (Id, p. 17). Dr. Patari testified Petitioner did not report any cervical neck problems. (Id, p. 18).

Dr. Patari testified Petitioner reported severe low back pain when he barely touched Petitioner's shirt. (Id, p 27). Dr. Patari testified that touching Petitioner's skin just slightly,

basically touching the hairs on the back of his neck, caused Petitioner to complain of pain in the posterior aspect of the spine. (Id, p 27).

Dr. Patari opined Petitioner's current cervical and lumbar conditions were not causally related to Petitioner's work. (Id, p 28). Dr. Patari testified Petitioner had a negative clinical examination, negative straight leg raise, and normal motor strength of both lower legs. (Id, p. 29). Dr. Patari testified 5 months after the accident one would not expect such severity of symptoms to light touch or palpation causing severe pain. Dr. Patari testified Petitioner's low back pain and cervical pain does not match a mechanism of being hit in the front or the abdomen area. (Id, p. 29). Dr. Patari testified it is possible the 11/30/20 accident, being hit in the head by a part of a forklift, to cause cervical pain but not low back pain. (Id, p. 30). Dr. Patari testified that he does not believe the mechanism of injuries for either the 11/23/20 or 11/30/20 accidents caused a low back injury and need for lumbar interbody fusion surgery. (Id, p. 32).

Dr. Patari opined, as of date of his examination, Petitioner could return to work full duty without restrictions. (Id, p. 31). Dr. Patari also opined that no future treatment or surgeries are related to Petitioner's two accidents. (Id, p. 32).

Testimony of Dr. Mekhail

Dr. Mekhail testified he a board-certified orthopedic surgeon who is also a teaching professor at University of Illinois at Chicago. (RX 6, p 6).

Dr. Mekhail examined Petitioner on 4/12/2021 pursuant to Section 12 of the Act. At that time, Petitioner complained of low back pain, burning in the low back and numbness in his legs. (Id, p. 8). Dr. Mekhail testified Petitioner reported that his low back pain and left hip pain were caused by a pallet pushing against his abdomen while unloading material from a conveyer belt. (Id, p. 8).

Dr. Mekhail testified Petitioner also reported being struck in the head by a forklift, on 11/30/20, 2020, which caused headaches, neck pain and aggravated his back pain. (Id, at 8). Petitioner complained of numbness in the front and back of both legs that extended from his groin to his ankles which was aggravated by standing, sitting, bending, and walking. (Id, p. 9). Petitioner reported to being in pain all the time and that he also suffers headaches in his forehead and on his eyeballs. Petitioner further reported suffering hearing loss in his left ear and loss of color discrimination in his left eye from the accident. (Id, p. 9, 10).

Dr. Mekhail testified his examination noted a negative Sperling sign, negative bilateral straight leg raising test, completely neurologically in tack upper and lower extremities, normal sensation and normal motor power and reflexes. Dr. McKhail noted some pain and decreased range of motion in the left hip. (Id, p. 12).

Dr. Mekhail testified his exam showed signs of symptom magnification. Dr. Mekhail testified, " *So, I mean, these symptoms, when you're asking me if this is matching his symptoms, whenever we see someone who has generalized pains like that, with numbness and tingling everywhere, it really—regardless of whether it matches his symptoms of someone complaining everywhere, it doesn't match the anatomy of the spine.*" (Id, p. 14).

Dr. Mekhail testified he reviewed the MRIs and x-rays of the cervical and lumbar spine which only showed wear and tear. Dr. Mekhail testified the MRI showed degenerative changes which took a long time to occur based upon the decrease of the disk heights. Regarding distinguishing between an acute disk herniation or a degenerative condition, Dr. Mekhail testified it is obvious to distingue between them. Dr. Mekhail testified that an acute disk herniation looks healthy inside but for the piece of it that is outside. Dr. Mekhail testified one could also tell from the color changes in the disk because a disk is soft and the cushiony parts inside the disks have different colors due to the fluid or water in the disk. Dr. Mekhail testified a healthy disk is a light gray color while a disk with wear and tear becomes dark because it lost its water content. Dr. Mekhail testified Petitioner's disks showed degenerative changes. (Id, p. 16-17).

Dr. Mekhail opined Petitioner has a degenerative disk, not degenerative disk disease, and degenerative stenosis. (Id, p. 19). Dr. Mekhail testified Petitioner's MRIs don't show disk herniations. Dr. Mekhail also testified Petitioner's complaints don't match a herniated cervical disk because Petitioner's pain is mainly in the neck with only vague numbness in the hands which doesn't follow an atomic distribution. Dr. Mekhail testified Petitioner's complaints of neck and back pain with vague numbness in the upper and lower extremities do not follow any anatomic distribution and show symptom magnification. Dr. Mekhail testified a herniated disk follows an anatomic distribution. Dr. Mekhail opined Petitioner does not have herniated disks, not by symptoms, not by mechanism of injury, not by physical exams and not by MRIs. (Id, p. 22, 23).

Dr. Mekhail opined Petitioner's objective testing was indicative of symptom magnification because Petitioner's symptoms don't not match an anatomic distribution of any medical condition. Dr. Mekhail testified that if one's symptom's don't match what you would expect for a diagnosis and you can't find anything, by physical exam or radiographic studies, it is basically not a medical condition you can treat, it's symptom magnification. (Id, p. 29).

Dr. Mekhail opined the MRIs show pre-existing degenerative changes with no evidence of herniated disks. (Id, p. 33). Dr. Mekhail testified Petitioner's has no pathology requiring surgery nor does Petitioner's symptoms match any herniated disk. Dr. Mekhail further testified Petitioner's back pain consists only of vague-like symptoms which do not match any anatomic distribution of neural irritation. (Id, p. 34).

Dr. Mekhail testified he doesn't understand the purpose for fusion surgery because fusion surgery is used to address instability and Petitioner doesn't have any instability. Dr. Mekhail opined Petitioner is not a candidate for spine surgery based upon his evaluation. (Id, p. 35). Dr. Mekhail testified, at best, Petitioner sustained a back sprain that would take 6 weeks to 3 months to heal. Dr. Mekhail opined Petitioner should have been able to return to work full duty within 3 months of his accident. Dr. Mekhail also opined the first 6 weeks of chiropractic and physical therapy was reasonable. (Id, p. 37).

Dr. Mekhail testified Petitioner reported the first injury caused his hip and back pain while the second accident caused his neck pain. Dr. Mekhail noted that Petitioner's medical records contain significant inconsistencies because the records from Drs. Dahl and Minardi never mention Petitioner's cervical and back symptoms while the records from Dr. Davis, the chiropractor, never mentioned Petitioner's cervical spine or upper extremity radicular symptoms or headaches. (Id, p. 32).

On cross examination, Dr. Mekhail was asked whether reviewing any additional medical records could change his opinion. Dr. Mehail responded

> *"…But if you asked me about aggravation, the question that you asked prior, which is aggravation of a degenerative condition, absolutely not. And the reason for that is when you have degenerative disk disease and you have pain from degenerative disk disease, as a clinician, we can tell what symptoms there are to cause degenerative disk disease. So if the cushion in our back, which is the disk, is incompetent, that is not functioning well as a cushion, which basically is degenerative disk disease, typically the pain is when you're doing certain activities.*

So you move a certain way and it would hurt. You bend forward and it would hurt. But you don't have pain all the time. That's not degenerative disk disease, because all of us have degenerative disk and it hurts with certain movement.

It shouldn't cause numbness and tingling in your arms and legs because there's no pinching on a nerve. It shouldn't cause significant tenderness. So when I touch their back, it hurt because the disk, as I mentioned earlier, is very deep in our body. There's no way anyone can touch the back and reach the disk and basically elicit back pain as a result of degenerative disk disease.

So his symptoms are completely unlike degenerative disk disease presentation. And it's the clinician's job to discern whether someone has a back strain causing their back pain and – versus degenerative disk disease. So regardless of any medical records, my interpretation of his condition is not degenerative disk disease." (RX 6, p. 41-41).

Conclusions of Law

The Arbitrator adopts the above Findings of Fact in Support of the Conclusions of Law as set forth below. The claimant bears the burden of proving every aspect of his claim by a preponderance of the evidence. *Hutson v. Industrial Commission,* 223 Ill.App.3d 706 (1992)

An accidental injury need not be the sole causative factor, or even the primary causative factor, as long as it is a causative factor in the resulting condition of ill-being. *Sisbro, Inc. v. Industrial Commission*, 797 N.E.2d 665, 672 (2003). Employers are to take their employees as they find them *A.C.&S. v. Industrial Commission,* 710 N.E.2d 8347 (Ill.App. 1st Dist. 1999) citing *General Electric Co. v. Industrial Commission,* 433 N.E.2d 671, 672 (1982). Causal connection between work duties and an injured condition may be established by a claim of events including claimant's ability to perform duties before the date of an accident and inability to perform same duties following date of accident. *Darling v. Industrial Commission*, 176 Ill.App.3d 186, 530 N.E.2d 1135 (1st Dist. 1988) A claimant's prior condition need not be of a good health prior to the accident, 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 v. Illinois Workers Compensation Commission*, 4-16-0192WC (4th Dist. 2017)

With respect to (C) Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent, the Arbitrator finds as follows:

An accident arises out of and in the course of one's employment if the Petitioner is at work in a place that he can reasonably be expected to be, in the performance of his employment.

The Arbitrator finds that Petitioner proved by the preponderance of the evidence that he sustained an accident that arose out of and in the course of his employment on 11/23/2020 and 11/30/2020. There was testimony from Petitioner, Jennifer Arreola and Monique Vazquez which shows both accidents were witnessed, documented and properly reported within the 45-day time limit under the Act.

With respect to (f) Is Petitioner's current condition of ill-being causally related to the injury, the Arbitrator finds as follows:

The Arbitrator concludes that Petitioner proved by the preponderance of the credible evidence that his cervical spine condition is, in part, causally related to Petitioner's work accident of 11/30/2020 but that condition resolved and Petitioner reached maximum medical improvement for his cervical spine condition 3 months after his 11/30/2020 accident date, as more fully explained below.

The Arbitrator finds the opinions of Drs. Mekhail and Patari to be persuasive. The Arbitrator notes the histories Petitioner provided to Drs. Mekhail and Patari to be more consistent with Petitioner's testimony at trial than the history Petitioner provided to Dr. Rerri. Petitioner testified a supervisor had instructed him to wrap pallets with plastic and while bending over wrapping plastic around a pallet he struck his forehead on the pallet of a moving forklift. (T 20-24) Petitioner told Drs. Mekhail and Patari that he stuck his head on a pallet of a forklift. The medical records at Rush Copley Medical Center and Physician's Immediate Care indicate Petitioner reported striking his head on a pallet of a forklift. However, Petitioner told Dr. Reffi that he bumped his neck and back on a forklift after raising his head. (PX B, p. 26). The Arbitrator finds Petitioner provided Dr. Reffi a mechanism of injury that was inconsistent with his trial testimony and to the histories he provided to Drs. Mekhail and Patari. The Arbitrator does not find that Petitioner's lumbar spine condition is related to his 11/30/2020 work accident. The Arbitrator found that Petitioner's lumbar condition was, in part, causally related to Petitioner's 11/23/2020 work accident. See *Nicolas Vazquez v. Paramount Staffing d/b/a/ Prostar Staffing* in Case #20WC031553.

The Arbitrator does not find Petitioner's testimony to be credible regarding the onset of his symptoms nor extent of his symptoms. The Arbitrator notes that Dr. Mekhail's examination found Petitioner's upper and lower extremities to be completely neurologically intact with intact sensation, normal motor power, normal reflexes and negative bilateral straight leg raising test

and Sperlings signs. Dr. Mekhail reviewed the MRIs and found that they show degenerative changes and not any disk herniations. Dr. Mekhail testified that herniated disks follow an atomic distribution which doesn't exist in this case. Dr. MeKhail testified no herniated disks exist, not by symptoms, not by mechanism of injury, not by physical exam and definitely not by MRI. (RX 6, p. 23).

Dr. Mekhail testified Petitioner's complaints show symptom magnification because Petitioner's complaints fail to show any anatomic distribution. The Arbitrator finds the testimony of Dr. Patari to support the testimony and opinions of Dr. Mekhail. Dr. Patari testified Petitioner reported severe low back pain when he barely touched Petitioner's shirt. (Id, p 27). Dr. Patari testified that touching Petitioner's skin just slightly, basically touching the hairs on the back of his neck, caused Petitioner to complain of pain in the posterior aspect of the spine. (Id, p 27). Dr. Patari opined Petitioner's current cervical and lumbar conditions were not causally related to Petitioner's work. (Id, p 28). Dr. Mekhail opined Petitioner sustained back strains which would have resolved within 3 months of the accident.

With Respect to Issue (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 Finds as Follows:

Pursuant to 8(a) of the Act, the employer shall pay all necessary first aid, medical and surgical services and all necessary medical, surgical and hospital services which are reasonable required to cure or relieve the employee from the effects of the accidental injury.

Based in part on the conclusions relating to causal connection above, the Arbitrator further finds the treatment that Petitioner received for 3 months following his 11/30/2020 accident to be reasonable, necessary, and causally related to the accidents of 11/23/2020 and 11/30/2020. As stated above, the Arbitrator found the opinions of Dr. MeKhail to be persuasive. Dr. MeKhail opined that the first 6 weeks of Petitioner's treatment, after the 11/30/2020 accident to be reasonable. (Rx 6, p. 37). As such, Respondent shall pay Petitioner the costs of the medical expenses incurred from the 11/30/2020 accident date through the next 6 weeks, pursuant to Sections 8 and 8.2 of the Act and subject to the fee schedule, less a credit for any payments for medical care Respondent pays pursuant to the decision in *Nicolas Vazquez v. Paramount Staffing d/b/a/ Prostar Staffing* in Case #20WC031553.

With respect to Issue (K), Is Petitioner Entitled to Prospective Medical Care, the Arbitrator finds as follows:

Based in part on the conclusions relating to causal connection above, the Arbitrator further finds Petitioner is not entitled to prospective medical care as recommended by Dr. Rerri and Dr. Ungar. The Arbitrator finds that Petitioner failed to prove by the preponderance of the medical evidence that the treatment recommended by Dr. Rerri and Dr. Ungar to be supported by the objective medical evidence and reasonable, necessary, and related treatment intending to alleviate Petitioner's current state of ill-being.

With Respect to Issue (L) What Temporary Benefits, If Any, Is the Petitioner Entitled, The Arbitrator Finds as Follow:

A claimant is temporarily and totally disabled form the time an injury incapacitates her until such time as she is as far recovered or restored as the permanent character of her injury will permit. *Westin Hotel v. Industrial Commission*, 372 IllApp.3d 527 (200). In determining whether a claimant is no longer entitled to continue receiving TTD benefits, the primary consideration is whether the claimant's condition ahs stabilized and whether she is capable of retuning to the work force. I*nterstate Scaffolding, Inc. v. Illinois Workers' Compensation Commission,* 236 Ill.2d132 (2010) Once a claimant has reached MMI, her condition has become permanent, and she is no longer eligible for TTD benefits. *Archer Daniels Midland Co. v Industrial Commission*, 138 Ill.2d 107 (1990)

Petitioner claims to be entitled to temporary total disability benefits from 12/1/2020 through 4/12/2022 representing 72-6/7ths weeks.

Based in part on the conclusions relating to causal connection above, the Arbitrator further finds that Petitioner has proven that he was temporarily and totally disabled for 3 months from 12/1/2020 through 3/1/2021, representing 12 6/7th weeks. As such, the Respondent shall pay Petitioner TTD benefits from 12/1/2020 through 3/1/2021, less a credit for TTD benefits Respondent pays pursuant to the decision in *Nicolas Vazquez v. Paramount Staffing d/b/a/ Prostar Staffing* in Case #20WC031553.

With Respect to Issue of Penalties Pursuant to Sections 19(k) and 19(l) and Section 16 Attorney Fees:

The Arbitrator notes that Petitioner was temporarily and totally disabled from 12/1/2020 through 3/1/2021, the date Respondent's Section 12 examiner opined Petitioner could return to work. The Respondent did not pay TTD benefits for this period despite the opinion of their Section 12 examiner. Respondent failed to also pay medical treatment for the 6 weeks following

Petitioner's accident despite the opinion of their Section 12 examiner who opined the treatment was reasonable.

The Respondent's failure and refusal to pay the TTD and approve the prescribed treatment after their Section 12 examiner determined Petitioner should have been off work for 6 weeks following his work accident and the first 3 months of 3 medical treatment was reasonable constitutes an unreasonable and/or vexatious delay. Respondent also disputed accident at trial yet presented 2 witnesses who acknowledge the accidents occurred and created or reviewed the accident reports. See *McDonald's v. IWCC*, 2022 IL App (1st) 210928 WC-U, No 1-21-0928WC. The Respondent's unreasonable and/or vexatious delay required the Petitioner's attorneys to expend time and costs in securing and preparing the presentation of the trial and presenting the motion for penalties pursuant to Sections 19(k), 19(l) and Section 16.

The Arbitrator finds that the Petitioner is entitled to:

1. Assessment of penalty against the Respondent or its insurance carrier and in favor of the Petitioner in an amount equal to 50% of the temporary total disability benefits due and payable to the Petitioner and 50% of the unpaid medical benefits as identified above, less a credit for amounts Respondent pays pursuant to the decision in *Nicolas Vazquez v. Paramount Staffing d/b/a/ Prostar Staffing* in Case #20WC031553.
2. Assessment of penalties against the Respondent or its insurance carrier and in favor of the Petitioner in the amount of $30.00 per day for each day benefits were unreasonably delayed (up to $10,000.00) pursuant to Section 19(l). The $30 per day starts on 12/1/2020, less a credit for amounts Respondent pays pursuant to the decision in *Nicolas Vazquez v. Paramount Staffing d/b/a/ Prostar Staffing* in Case #20WC031553.
3. Assessment of attorney fees against the Respondent in favor of the Petitioner in an amount equal to 20% of the temporary total disability benefits due and payable to the Petitioner and 20% of the unpaid medical expenses due Petitioner as identified above pursuant to Section 16 less a credit for amounts Respondent pays pursuant to the decision in *Nicolas Vazquez v. Paramount Staffing d/b/a/ Prostar Staffing* in Case #20WC031553.

By: /o/ Frank J. Soto — July 7, 2022

Arbitrator — Date

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	20WC020092
Case Name	Douglas Price v. Fox & Austin Masonry & Concrete Construction Inc
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	23IWCC0421
Number of Pages of Decision	23
Decision Issued By	Kathryn Doerries, Commissioner

Petitioner Attorney	Benjamin Sgro
Respondent Attorney	Kelly Kamstra

DATE FILED: 9/28/2023

/s/Kathryn Doerries, Commissioner

Signature

23IWCC0421

STATE OF ILLINOIS)
) SS.
COUNTY OF)
CHAMPAIGN

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

DOUGLAS PRICE,

Petitioner,

vs. NO: 20 WC 020092

FOX & AUSTIN MASONRY & CONCRETE CONSTRUCTION, INC.,

Respondent.

DECISION AND OPINION ON CROSS REVIEW

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

The Commission affirms and adopts the Arbitrator's Decision in its entirety with the exception of two evidentiary rulings, which are not outcome determinative. The Commission agrees with Respondent that there was no foundation laid for admission of Petitioner's Exhibits nine and ten and thus both exhibits are inadmissible. Therefore, the Commission reverses the Arbitrator's evidentiary ruling allowing those documents to be admitted into evidence and they are stricken from the record.

All else is affirmed.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Arbitrator's Decision filed on May 9, 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 evidentiary ruling allowing admission of Petitioner's Exhibits nine and ten is reversed, thus Petitioner's Exhibits nine and ten are stricken from the record.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $552.71 per week for a period of 34-6/7 weeks, from July 2, 2020 to March 2, 2021, 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 $497.44 per week for a period of 87.5 weeks, as provided in §8(d)2 of the Act, for the reason that the injuries sustained caused 17.5% loss of use of the man as a whole.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay the following bills introduced into evidence that are related to Petitioner's June 30, 2020, injury, are reasonable and were necessitated to treat or cure Petitioner's injuries suffered in this accident and are to be paid by Respondent pursuant to the medical fee schedule: The bills contained In Petitioner's Exhibit 4 on pages 4, 6, 7, 8, 9, 10, 11, 14, 16, 20, 24, 29, 31, 33, 34, 35, 37, 39, 41, 43, and 47 under §8(a) and §8.2 of the Act. The following bills introduced into evidence are not awarded on account of Petitioner's June 30, 2020 injury for the following reasons: The following medical records introduced into evidence revealed some duplicative bills (Petitioner Exhibit 4 pages 26, 27, 40, 42, 44, 51,and 53), some bills which were duplicative but in different amounts (Petitioner's Exhibit 4 pages 45, 46, 50, and 52) and some bills for which no medical records were introduced and may be for unrelated medical treatment (Petitioner's Exhibit 4 pages 12, 13, and 18) Those bills are therefore not awarded.

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.

September 28, 2023

KAD/bsd
O090523
42

/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	20WC020092
Case Name	PRICE, DOUGLAS v. FOX & AUSTIN MASONRY & CONCRETE CONSTRUCTION, INC.
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	20
Decision Issued By	Dennis OBrien, Arbitrator

Petitioner Attorney	Benjamin Sgro
Respondent Attorney	Mark Dinos

DATE FILED: 5/9/2022

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

/s/ Dennis OBrien, Arbitrator

Signature

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

DOUGLAS PRICE
Employee/Petitioner

v.

FOX & AUSTIN MASONRY & CONCRETE CONSTRUCTION, INC.
Employer/Respondent

Case # **20** WC **020092**

Consolidated cases: _____

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Dennis O'Brien**, Arbitrator of the Commission, in the city of **Champaign**, on **March 17, 2022**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On **June 30, 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 $**43,111.68**; the average weekly wage was $**829.07**.

On the date of accident, Petitioner was **43** years of age, ***single*** with **2** 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 $**0.00** under Section 8(j) of the Act.

ORDER

Petitioner suffered an accident on June 30, 2020, which arose out of and in the course of his employment by Respondent.

Petitioner's medical condition, left shoulder massive rotator cuff tear, including the infraspinatus supraspinatus, and subscapularis with biceps instability, is causally related to the accident of June 30, 2020.

Petitioner was temporarily totally disabled as a result of the accident from July 2, 2020 to March 2, 2021, a period of 34 6/7 weeks at $552.71 per week.

The following bills introduced into evidence are related to Petitioner's June 30, 2020 injury, are reasonable and were necessitated to treat or cure Petitioner's injuries suffered in this accident and are to be paid by Respondent pursuant to the medical fee schedule: The bills contained In Petitioner's Exhibit 4 on pages 4, 6, 7, 8, 9, 10, 11, 14, 16, 20, 24, 29, 31, 33, 34, 35, 37, 39, 41, 43, and 47.

The following bills introduced into evidence are not awarded on account of Petitioner's June 30, 2020 injury for the following reasons: The following medical records introduced into evidence revealed some duplicative bills (Petitioner Exhibit 4 pages 26, 27, 40, 42, 44, 51,and 53), some bills which were duplicative but in different amounts (Petitioner's Exhibit 4 pages 45, 46, 50, and 52) and some bills for which no medical records were introduced and may be for unrelated medical treatment (Petitioner's Exhibit 4 pages 12, 13, and 18) Those bills are therefore not awarded.

Petitioner sustained permanent partial disability to the extent of 17 1/2% loss of use of the man as a whole pursuant to §8(d)(2) of the Act, 87.5 weeks of permanent partial disability at $497.44 per week.

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

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

MAY 9, 2022

Signature of Arbitrator

FINDINGS OF FACT:

TESTIMONY AT ARBITRATION

Petitioner

Petitioner testified that he was not working as of the date of arbitration, that he was a bricklayer who lays block, brick and stone, and his work was seasonal. He said the work was physical and he had done it for 25 years. He said that on June 30, 2020 he was employed by Respondent, having worked for them for three years. He said the work was in Paris, Illinois that day, they were laying brick on a hotel. He said they were using scaffolding that was about eight feet off of the ground, along a straight 60 foot wall, then turning a corner for another 16 feet. Petitioner said eight or nine others were working on the scaffold that day, including Ryan Gaugh and Blake Stevens.

Petitioner said he knew Eric Nohren, who also worked for Respondent as a bricklayer, as he had worked with him. He said Mr. Nohren had probably been back working with Respondent for three or four months at that time. He testified that prior to June 30,2020 he and Mr. Nohren had never had an issue, but they had an argument and physical altercation on that day at about 10 o'clock. Petitioner said he was putting a string line up on a story pole and had to pull the line tight to get the slack out of it. The line runs down the wall and shows where the brick is supposed to be laid so the bricks are straight. Petitioner said when he would pull the line tight it pulled Mr. Nohren's story pole off of the wall and Mr. Nohren started calling Petitioner a "dumbass," and said he was going to "kick his ass," or something along those lines. Petitioner said he just told Mr. Nohren to do whatever he had to do. He said there was no other reason for the argument with Mr. Nohren.

Petitioner said that Mr. Nohren then started coming toward Petitioner, coming down the scaffold, pushing people out of his way, saying he was going to kick Petitioner's "ass." Upon getting to Petitioner, Mr. Nohren swung at Petitioner and missed, but then Petitioner said he was grabbed by the throat by Mr. Nohren, at which point Petitioner said he tried to defend himself. He said they ended up falling onto the scaffold walkboards that they had previously been standing on. Petitioner said he then rolled off the scaffold, towards the ground below, but Mr. Nohren kept ahold of Petitioner's head with Petitioner's left arm up above shoulder length near the ear. He said Mr. Nohren had his head and neck in the crook of his arm, with Mr. Nohren's hands locked together in front of Petitioner. Petitioner said he did not remember exactly how he fell off the scaffold and landed, though he was lying on the ground.

Petitioner said he never swung at Mr. Nohren or touched him in any way, he was just trying to defend himself. He said he injured his left shoulder in the altercation, which he noticed after he walked over to talk to Zac Hankins, his supervisor. He said Mr. Hankins had not been at the scaffold when the altercation occurred, he had been around the corner on the other side of the building. Petitioner said that from where he was on the scaffold he could not see the location where Mr. Hankins was located, as the building walls were complete prior

to their laying brick on the building. He said Mr. Hankins wanted to know what Petitioner wanted when he walked up to him and that he, Petitioner, told him he was hurt and could not work, that Mr. Nohren had attacked him on the scaffold. Mr. Hankins said he would speak to Mr. Nohren and Petitioner said he would sit in the van to see if he could shake it off, as he could not work. A little while later Mr. Hankins came to the van and told him that if he could not work he could ride into town with Wes Ballinger. He said he did so, having Mr. Ballinger drop him off at his house.

Petitioner said he then went to the company shop after being dropped off at home, in hopes of finding Shane Fox, the owner of the company. Mr. Fox was not present, so he spoke to Heather Fox, the owner's wife, who worked for the company. He said he informed her of the incident and that his shoulder was hurt. He said she asked him if he could pass a drug test and he thought he said he did not know. He said he was offended. He said he did not believe he was asked to fill out an incident report. He said Abby Barringer may have been sitting in the area when this conversation occurred.

Petitioner said he was treated at Shelbyville Hospital emergency room on July 2, 2020, having waited two days to see if it was something he could shake off. From there he was referred to Dr. Painter at Orthopedic Clinic, where he was placed a light duty restriction of no lifting over five pounds and an MRI was ordered. Petitioner said he believed he either gave the work restriction to Mr. Hankins or he called him and told him of it. He said Respondent did not accommodate those restrictions.

Petitioner testified the MRI was performed on July 16, 2020 and it was his understanding it diagnosed a full thickness tear of the left rotator cuff tendons and left bicipital tenodesis with subluxation. He said he continued to be treated by Dr. Painter and that physician performed surgery to his rotator cuff and bicep on September 15, 2020. He said he then attended physical therapy through February 5, 2021, and that helped him.

Petitioner said Dr. Painter released him from his care on March 2, 2021 and told him that he would never achieve full strength in his left shoulder due to this injury.

Petitioner testified that he never received any temporary disability benefits while under work restrictions. He said he did not have medical insurance at the time of this accident but subsequently obtained medical insurance through Medicaid. He said Respondent had not paid any of his medical bills and there were medical bills outstanding.

Petitioner said he had never had any injuries to his left shoulder or arm or pain or limitations of the left arm prior to this accident. He said that as of the date of arbitration the arm was not as strong as it had been when he was lifting objects high. He said that when at rest he had no pain, but when active it would get sore. He said it bothered him to lift blocks up high, limiting his abilities while working.

Petitioner said he did not know if Mr. Nohren was disciplined at work as a result of this incident, and said he had not been disciplined. He said Respondent had not contacted him at any time after this incident, other than the conversations he had previously testified about.

On cross examination Petitioner said that while he had worked for Respondent for the three years prior to this accident, he had also worked with them on previous occasions. He said he had known Mr. Nohren for approximately 20 years as it was a small town, and they are distantly related. He said they only knew each other through work, not socially. Prior to the date of this accident they were just co-workers, and Petitioner said he

tried to get along with everybody. He said they would sometime razz each other as all co-workers do, but it was nothing personal.

Petitioner said the job was seasonal, it was governed by the weather, but they could sometimes work in the winter if it was a job they could cover up. He said in the year prior to this accident he would have worked the entire year except for those periods when weather did not permit them to work.

Petitioner said he had a good memory of the events of the day of the accident but he could not remember things like the weather, the day of the week, or what he had done the night before, as it had been two years. He said on June 30, 2020 they started at 6 or 7 o'clock, and he would have been on time as he had a full van of people. He said they were working on a hotel that day, a Hampton Inn. He said Mr. Nohren was doing the same job he was doing that day, putting up brick. Mr. Nohrens would put the line up, and then Petitioner would pull the tension on it and hook it at his end. Petitioner said he was not aware two other people had already put tension on the line, so whenever he pulled on the line Mr. Nohren's pole would pull loose from the wall. That is why Mr. Nohren became angry and began calling Petitioner names.

Petitioner said other people did not intervene to separate Petitioner and Mr. Nohren. He said he fell off the scaffold and Mr. Nohren did not. He said he was hanging off the scaffold when Mr. Nohren had him in the head lock and he thought he fell about 8 feet. He said they did not get on the scaffold until it was about chest high, it could have been 6 feet high. Petitioner said while Mr. Nohren was holding onto his head, he, Petitioner, was still partially on the scaffolding. At some point they broke apart and he went to the ground. He said the first thing he did after getting off the ground was to go and find Mr. Hankins. After talking to him, but before going to the van, he went back to the scaffolding and picked up a brick to see if he could, and he could hardly pick it up, so the then went to the van. He said he believed he went to the company shop and notified Mrs. Fox that same day. He said Mrs. Fox was in a room to the left of the entrance and he was in the doorway to the room when they spoke.

Petitioner said he did not go to the job site on July 1 or 2, he never went back there to try working. He said when he went to the emergency room on July 2 he did not believe the doctor there indicated he could return to work. He believed he was given a sling at that hospital visit. He believed the emergency room staff said he needed an MRI and he did not think they told him to return to work. He did not believe he gave anything about being off work to Respondent at that time as he said he did not talk to them then.

Petitioner said medical providers would not do anything for him when he had no insurance, that he got the MRI after he got insurance. He said Medicaid paid some of his bills, and Catholic Charities may have paid some of his bills, though he did not know which or how much was paid. He thought they might have paid Shelbyville Hospital and HSHS Good Shepard. They had not asked him for reimbursement, nor did he know if Medicaid had asked for reimbursement.

He said he was taken off work when he had surgery, and said that he did not think he gave off work notes to his employer. After the surgery he had physical therapy, and after building up some strength he was told he could try light duty. He said Respondent had not contacted him at any point and he did not contact them to provide the light duty restrictions. He said he was eventually released to return to full duty work in July of 2021. He said he did not notify Respondent of that release as they were no longer his employer, he was

unemployed. He said he never told them he quit, and they never told him he was terminated. He said the attorney's description of his just not working could also be an accurate description.

Petitioner said he did not work for a period of time, that he got his bricklayer's union card back and his first job was with CJ Masonry, almost exactly a year after the accident, in June or July of 2021, about three months after he finished treatment. He said he had not worked in the nine months he was receiving medical treatment, there were not many jobs that could be done one handed. He said he was not getting any income or benefits during that period of time.

Petitioner said the work he performed for CJ Masonry was journeyman bricklayer work, and he performed that work without restrictions. He said he had not been back to a doctor for his left shoulder since March 2, 2021, when he was released from care.

On redirect examination Petitioner said he might have taken the July 2, 2020 off work slip, Petitioner Exhibit 3, page 26, to Respondent's office. He said once he hired an attorney, he relied on the attorney to communicate with Respondent. He said he gave his attorneys copies of all off work slips as he received them, and he got copies of all correspondence from his attorneys to Respondent's attorney.

Ryan Gaugh

Mr. Gaugh was called as a witness for Petitioner. He testified that on June 30, 2020 he was employed by Respondent as a laborer stocking block on the scaffold and making sure the bricklayers had mortar to lay with. He said he had been working for Respondent for about a year at that time. He said he was working on the scaffold on that date, said it was about eight feet off of the ground. He said he was on the back of the scaffold stirring mud up in a tub and eight or nine people were working on the scaffold, including Petitioner and Mr. Nohren. He said Petitioner was right in front of him, and Mr. Nohren was on the other end of the scaffold. He became aware of an altercation between Petitioner and Mr. Nohren when he heard them talking to each other, they were arguing about the string line used to align bricks. He said Mr. Nohren said some rude things, such as "he was going to come down and kick Doug's A," to beat him up, and he attempted to approach Petitioner. Mr. Gaugh said Mr. Nohren did not have to pass him to get to Petitioner, but Mr. Nohren was moving other people out of the way on the scaffold, approached Petitioner, and swung at him. Mr. Gaugh said Petitioner had not made any move towards Mr. Nohren. He said Mr. Hankins at the time was on the lift moving materials on the other side of the building, where the building would have prevented him from seeing what was happening on the scaffold, and the sound of the forklift he was operating would have prevented him from hearing it, as it is loud and the engine is right next to the driver's seat.

Mr. Gaugh said he was not aware of any other reason for the altercation between Mr. Nohren and Petitioner other than the line being pulled. He said he had known Mr. Nohren for about 15 years and had seen him get upset with other employees in the past, about a couple times a week, saying rude things and throwing things. He said those arguments were usually work related.

On cross examination Mr. Gaugh said Petitioner and Mr. Nohren were initially about 60 feet apart, and both were working to secure the line properly, with four to six workers between the two of them on the scaffold. He said he could hear Mr. Nohren from that distance as Mr. Nohren was yelling in anger. He said when the

altercation took place he was probably four to five feet away. He said the other workers on the scaffold could probably see the altercation, too, though he did not know how well they would have seen it. He said the laborers were on a different part of the scaffold which was about two and a half to three feet higher than the scaffold walkway. He said he was one of three laborers who were working, and that Mr. Nohrens would have had to go past the other two laborers. He said they, too, should have been able to see the altercation.

Mr. Gaugh said he yelled at Petitioner and Mr. Nohren to break it up but he did not physically do anything to try to break it up, nor did the other workers. He said the altercation lasted for a minute or two, it was not very long. He said that after Petitioner was swung at by Mr. Nohren, Petitioner moved back to avoid getting hit and they then wrestled down to the bottom of the walkways and Petitioner fell underneath it, being held on to by his shoulder and neck. He said he saw him being held in that manner. Petitioner eventually fell off the scaffolding, landing on uneven feet, on stuff that was under the scaffold, block and brick. He said Petitioner fell down in an insecure manner, caught himself on one of the scaffold braces when he landed, and fell backwards. He did not see him completely, as Petitioner landed underneath him, and did not know if he fell completely onto the ground, that when he looked down Petitioner was standing up and was holding onto one of the braces.

Mr. Gaugh said he did not fill out an incident report about this, he was not asked to do so. He said Petitioner did not work any further that day as he was injured, and he never came back to the job site. He only knew Petitioner from the time he had worked with him, he did not know him outside of work. He said Petitioner contacted him about two or three weeks after the incident, and they discussed what had happened. He said he agreed to testify at the hearing and that he had not been subpoenaed and had not been paid to testify and had not been offered money to testify. He said all of the workers talked about it for a few minutes that day and then they all went back to work.

Mr. Gaugh testified that while Mr. Nohren had verbal altercations two or three times a week and would throw stuff and cuss, he did not know of any other fights Mr. Nohren might have had. He said he did not report those previous incidents to his employer as his boss was usually there when the other events occurred. He said he had personally made complaints to Mr. Hankins about matters getting out of hand, but he was not aware of any corrective actions being taken. Mr. Gaugh said profanity being used did not bother him, but getting into people's faces like you were going to do something, that was a problem for him. He said that had occurred between him and Mr. Nohren.

Zac Hankins

Mr. Hankins was called as a witness for Respondent. He said that in June of 2020 he was working for Respondent as a foreman of the masonry crew. He noted that at the time of arbitration he had worked for Respondent a total of 18 years, having worked his way up to the foreman position. His responsibilities were scheduling of jobs, insuring materials were at the work site, keeping track of the employees under his supervision, and making sure jobs were completed on time. He said he was a working foreman, so he would also lay brick or do just about anything else that needed to be done.

Mr. Hankins said he was at the Paris, Illinois Hampton Inn work site on June 30, 2020 and recalled there was an incident between Petitioner and Mr. Nohren before lunch that day, probably about 11 o'clock. He said

he did not hear the incident or see it, becoming aware of it when Petitioner walked over to him and they talked about the fight. It was his understanding that the fight was about the story poles they use for brick coursing getting pulled out of the wall. He explained how the brackets were screwed into the wall. He said it was his understanding that an issue with the line is what led to the fight. He said after talking to Petitioner it was decided Petitioner would go to the company van and see if he could "shake it off." He said he then spoke with Mr. Nohren and the rest of the crew and everyone said the fight was because of the pole being pulled out of the wall. He said he was going to send Mr. Nohren, home but Petitioner could not continue to work, so he went home instead.

Mr. Hankins said that the walkboards the employees were standing on at the time of the incident was no more than 18 inches off of the ground. He said the brick masons work on a lower level of the scaffold and the laborers work on a platform where the material is that is 30 inches higher, so it would have been 48 inches high. He said the working area Mr. Nohren and Petitioner were on would not have been eight feet above the ground.

Mr. Hankins said he had worked with Petitioner on a number of occasions in the past and that they had worked together on this occasion for about two years. He said he had actually known him most of his life, as Petitioner was friends with Mr. Hankins's aunt, but he worked with him for five or six years. He said Petitioner was a good worker and a good employee who showed up every day.

On cross examination Mr. Hankins said he wrote down his testimony so it would be accurate. He said he did not believe he filled out an incident report. He said neither Petitioner nor Mr. Nohren were disciplined in relation to this incident. He said when Petitioner reported that he had been hurt he noted it was his shoulder that had been injured, but he was not sure which shoulder it was that had been injured.

Blake Stevens

Mr. Stevens was called as a witness by Respondent. He testified that in June of 2020 he was employed by Respondent as a laborer, providing whatever the bricklayers needed. He said he had been working for Respondent for a year at that point, and he was still employed by Respondent as of the date of arbitration, so he had worked for them for three years. He said he was at work on June 30, 2020 in Paris, Illinois when there was an altercation between Petitioner and Mr. Nohren. He said he heard the verbal altercation and he saw the physical altercation. He said the verbal altercation was due to a story pole being pulled out of the wall by a line which was too tight. He said when this occurred he was on the backboards, which were about 30 inches above where the bricklayers worked. He said the area he was working on was about 30 inches off the ground, not on the ground or eight feet above the ground. He said after they yelling took place the other worker approached Petitioner. He said he did not really see the fight take place, but he did see them rolling on the front boards and rolling between a little scaffold part. He said one of them may have rolled out of there and fallen to the ground. He said the two men went their separate ways and the rest of the crew kept working. He said the entire crew spoke with Mr. Hankins later and told him there had been an argument and they got into it. He said the "tusseling" may have lasted 30 seconds.

Mr. Stevens when asked what kind of a relationship he had with either Petitioner or Mr. Nohren, Mr. Stevens said Mr. Nohren was usually mean to him.

On cross examination Mr. Stevens said he did not see who swung first, when he saw the fight the two men were already on the ground.

Heather Fox

Ms. Fox was called as a witness by Respondent. She said she was employed by Respondent as bookkeeper/office manager, and her husband was co-owner of the company. She said her responsibilities were basically anything having to do with the business dealing with employees, jobs, insurance receivables and payables. She said she handled almost all of the paperwork that came in or went out. Ms. Fox said she was aware of the incident which happened on June 30, 2020, though she was not at the job site. She said Petitioner came to the office and reported the incident to her the day after it occurred, and that was the first time she was aware of it. She said she did not speak to Petitioner on June 30, 2020. She said she spoke to Petitioner in her office which was in a building adjacent to the shop. She said her assistant, Abby, was also in the office that day.

Ms. Fox said Petitioner came into the office and asked what his options were, and she did not know what he was talking about. When she told him that Petitioner told her that he and Mr. Nohren had been involved in an altercation on the job site the day before, and he probably described the problem with the line and the argument, and of Mr. Nohren coming down the scaffolding, their being involved in a tussle and Petitioner injuring his shoulder. Ms. Fox said she asked Petitioner if he had been to the emergency room or seen his doctor yet and he said he had not. She asked him why and asked him if he could pass a drug test. Petitioner kind of laughed or chuckled, and said, "no." She said they did not talk any further in regard to his going to a doctor's office. She told him she would have to talk to Shane, the other owner to see what he knew about it or wanted her to do about it, and Petitioner left. She said she never spoke to him again after that day, Petitioner never contacted the office again and did not bring her any kind of doctor forms.

Ms. Fox said Respondent always made light duty work available, such as operating the lift, which was entirely powered and like driving a car. They also have shop cleaning, such as sweeping. In the past they have kept injured workers on doing small jobs, property development, painting, what they would do would depend on what the injury was. The worker wouldn't have to just lay block, they have things to do to keep them busy. She said Petitioner never provided the company with light duty notes from his providers or records from his providers saying he was done with treatment and could return to work full duty. She said Petitioner was not terminated.

Ms. Fox said no accident report was prepared when Petitioner came to her office on July 1 as she had to wait to talk to the owner, and she did not know if Petitioner was working or not working, or if he was going to the doctor. She said she did eventually fill out an accident report and reported it to the insurance carrier but she did not know the exact date she did that.

Ms. Fox said she thought Petitioner had worked for Respondent for two years in this period of employment. She said she had known him prior to his working for the company as it was a small town and everyone grew up around each other. She said she had not spoken with Petitioner since he came into her office on July 1.

On cross examination Ms. Fox said she had no reason not to believe Petitioner was injured as a result of the fight he told her of. She said she believed she reported the accident to the insurance company in August. She said she spoke with the company's registered agent and attorney, Elizabeth Nohren, about this incident, seeking direction on what they should do, and were told to get affidavits from her and Abby. She could not recall if Ms. Nohren told her she received legal mail relating to the accident. She said all further communications would have gone through Ms. Nohren or the insurance company, as she never spoke with Petitioner again. She said she did receive doctor reports which reflected Petitioner had been released for light duty, but she did not know which attorney that would have come from, and she did not know when. She said she also got copies of doctor and hospital bills as well. She said she did not recall if she got a letter from the office of Petitioner's attorney dated August 18, 2020 which had been sent to Ms. Nohren stating Petitioner had been released to light duty work by his doctor.

Ms. Fox said Petitioner was offered light duty work by Respondent a month after the accident by his supervisor, and the supervisor reported to her that he had declined it. She said she was not the person who offered the light duty work to him.

Abby Barringer

Ms. Barringer was called as a witness for Respondent. She testified that in June of 2020 she was employed as an office assistant/secretary for Respondent, handling subcontracting and answering the phones. She said that as of the date of arbitration she had worked for Respondent for three years. She said she was not at the job site when this accident occurred, as she works in the office in Shelbyville. She said she remembered Petitioner coming to the office, but did not remember what day that occurred, though she believed it was the day after the event. She said he did not talk to her he went to Ms. Fox's office, which was about 15 feet from where she worked. She said she heard part of the conversation between Petitioner and Ms. Fox, and heard Ms. Fox ask Petitioner if he could pass a drug test, and Petitioner saying, "no." She said she had no conversation with him after that date.

On cross examination Ms. Barringer said her job did not include employee management. She said they did get calls about Petitioner's hospital bills, but she just sent that to Ms. Fox. Other than that, she said she did not deal with Petitioner's injury or the incident.

MEDICAL EVIDENCE

Petitioner was seen in the emergency room of HSHS Good Shepherd Hospital on July 2, 2020, complaining of left shoulder pain following an assault by a co-worker two days earlier. He said his left arm was pulled over his head as he was dangling from scaffolding, about four feet above the ground. He advised them he was unable to lift his arm above the shoulder. X-rays revealed no abnormalities. Physical examination revealed decreased range of motion of the left arm with an inability to elevate it above his head. It was Dr. Filipov's impression that Petitioner had a left rotator cuff injury. A sling was applied and Petitioner was referred to Nurse Practitioner Massey for orthopedic care, with an appointment made for the same day. He was advised not to work until released by orthopedics. (PX 3 p.8,13,14,16-18,21,22; PX 8 p.1)

Petitioner was seen by Advanced Practice Registered Nurse (APRN) Massey at HSHS Good Shepherd Orthopedic Center on July 2, 2020 on referral of the emergency room. He complained of a left shoulder injury following a fight with a coworker on June 30, 2020 and advised that he had not previously had an injury, history of injections or physical therapy for his left shoulder. Her physical examination revealed bicep tenderness with palpation and limited range of motion of the left shoulder, weak rotator cuff strength and a positive Popeye's sign. She was suspicious of a rotator cuff tear and a proximal biceps tendon tear, recommended an MRI of the left shoulder and ordered physical therapy for range of motion. Petitioner was to return after the MRI was performed. A release to work with a five pound lifting restriction and no reaching above the shoulder was given by APRN Massey. (PX 3 p.1,4; PX 8 p.2)

An MRI of the left shoulder was performed on July 16, 2020. It was interpreted as showing a full-thickness tears with tendon retraction of the supraspinatus, infraspinatus and subscapularis. Mild, early atrophy of those muscle groups was also seen. The long head of the biceps tendon was found to be subluxed out of the bicipital groove, now being located in the anterior glenohumeral joint space. Degenerative type tears of the anterior and posterior labrum were also seen, there was joint effusion, as well as subacromial and subdeltoid bursitis and AC joint arthritis with impingement on the intact rotator cuff. (PX 3 p.26)

Petitioner saw Dr. Painter on July 21, 2020 with continued complaints. He was found to have mild reduction in his range of motion, weakness with abduction external rotation, and positive liftoff, Hawkins, and Speeds tests/signs. After reviewing the MRI images Dr. Painter diagnosed a traumatic tear of the left rotator cuff, a full thickness tear of the left subscapularis tendon and left bicipital tenosynovitis. He took a history of no previous shoulder pain prior to the altercation at work. He stated in his report of that date that with a massive rotator cuff tear with a subscapularis tear and biceps tendon dislocation, a person performing manual work had no other treatment option other than performing a repair, and surgery was scheduled. The surgery was delayed and rescheduled as workers' compensation had denied authorization, and other alternative payment was investigated. (PX 3 p.28,31,37)

Dr. Painter performed surgery on September 15, 2020. The surgery, a left shoulder arthroscopic biceps tenotomy, labral debridement, subacromial decompression, 3 cm rotator cuff repair and biceps tenodesis, resulted in a post-operative diagnosis of left shoulder massive rotator cuff tear, including the infraspinatus supraspinatus, and subscapularis with biceps instability. (PX 3 p.47,48)

Dr. Painter followed Petitioner post-operatively on September 29, 2020, October 20, 2020, and November 17, 2020. During that period of time Petitioner's complaints decreased and his range of motion and activity tolerance increased. By November 17, 2020 he was being seen by physical therapy three times a week and was performing a home exercise program, but was not returned to work. (PX 3 p.62-78; PX 8 p.3)

Petitioner received physical therapy at HSHS Good Shepherd Hospital from October 21, 2020 through December 14, 2020. By December 14, 2020 Petitioner was found to have increased his range of motion but still needed cues to do so. All short term range of motion goals had been met, but long term range of motion and strength goals had not. While Petitioner also introduced what appeared to be physical therapy records from HSHS St. Francis Hospital in Litchfield, those records actually are from HSHS Good Shepherd Hospital and appear to have just been sent to Dr. Painter at the Litchfield facility, with the exception of an Assessment for

Restricted Return to Work dated January 21, 2021, issued by Dr. Painter, which notes Petitioner is to perform no work as he was recovering from surgery. (PX 3 p.86-131)

By December 15, 2020 Petitioner was showing very minimal range of motion restrictions, but while his rotator cuff strength was improving, he was still demonstrating weakness with abduction. Dr. Painter gave him a 10 pound lifting restriction at that time, and had him return to physical therapy for strengthening. (PX 3 p.79-82; 132-143)

Petitioner then received strengthening physical therapy from January 22, 2021 through February 9, 2021. During that period of time Petitioner denied pain at the beginning and the end of each therapy session, and he was showing increased strength, though he needed to be cued on used proper form and he fatigued easily. Petitioner did not appear for his last three scheduled sessions. (PX 3 p.144-158)

Petitioner was seen by Dr. Painter on March 2, 2021 and advised the doctor that he was doing well and planned to return to work in the near future as a union brick layer. He denied pain and was taking no medication for pain. He told the doctor that he had completed physical therapy and was exercising on his own for strengthening. Physical examination revealed full range of motion of the left shoulder, but continued residual mild abduction weakness. Dr. Painter felt Petitioner had done well after a massive rotator cuff tear. He felt he would still see some increase in his strength but would never achieve full strength. He was at that time released to return to work with no restrictions and was to return if he failed to improve or his symptoms worsened. (PX 3 p.159,161,162)

ARBITATOR CREDIBILITY ASSESSMENT

All of the witnesses appeared to be testifying honestly. All answered all questions posed to them by both attorneys in a forthright manner with no apparent attempt to avoid answering the questions. All also appeared to admit the limits of their knowledge and what was seen or heard by them. The only real discrepancy between the witnesses was the description of the height of the scaffold Petitioner fell off of, with Mr. Hankins saying the scaffold walkboards were eighteen inches above the ground, Mr. Stevens saying his work area was about 30 inches above the ground, and that one of the combatants may have rolled off the scaffold and fallen to the ground, but not giving an estimation of the distance, Mr. Gaugh saying the scaffold Petitioner fell off of was approximately eight feet off the ground, and Petitioner testifying the scaffold he fell off of was six or eight feet high, but telling the hospital two days later that it was four feet high. The Arbitrator does not believe any of these individuals were intentionally lying, that they were all trying to tell the truth as they remembered it nearly two years later. The only difference in testimony between Petitioner and Ms. Fox and Ms. Barringer was in regard to which day Petitioner went to the office, with Petitioner believing it was on the day of the accident and Ms. Fox and Ms. Barringer believing it was the day after the accident. That minor discrepancy is of no import and, again, consistent with the events occurring nearly two years prior to the arbitration hearing. The Arbitrator finds all of the witnesses were credible.

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 June 30, 2020, the Arbitrator makes the following findings:

The findings of fact, above, are incorporated herein.

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

"To obtain compensation under the Act, a claimant bears the burden of showing, by a preponderance of the evidence, that he has suffered a disabling injury which arose out of and in the course of his employment." Sisbro, Inc. v. Industrial Commission, 797 N.E.2d 665, 671 (2003). If the injury coincides with these definitions and is traceable to a definite time, place, and cause, then said injury is accidental within the meaning of the Act. Laclede Steel Co. v. Indus. Commission, 128 N.E.2d 718, 720 (Ill. 1955).

"In the course of employment" refers to the time, place and circumstances surrounding the injury. *Lee v. Industrial Comm'n,* 656 N.E.2d 1084 (1995); Scheffler Greenhouses, Inc. v. Industrial Commission, 362 N.E.2d 325 (1977). For an injury to be compensable, it generally must occur within the time and space boundaries of the employment. Sisbro *supra.* An injury arises out of one's employment if its origin is in a risk connected with or incidental to the employment so that there is a causal relationship between the employment and the accidental injury. Orsini v. Industrial Commission, 509 N.E.2d 1005 (1987). In order to meet this burden, a claimant must prove that the risk of injury is peculiar to the work ***or*** that he or she is exposed to the risk of injury to a greater degree than the general public.

In the case of injuries resulting from assaults, it has been consistently held that "injuries suffered by employees resulting from assaults were not compensable if there was evidence to sustain a finding by the Industrial Commission that the motive was personal to the victim rather than work related or if claimant could not demonstrate a reason for the assault." Schultheis v. Industrial Commission, 96 Ill.2d 340,346,347 (1983). If the reason for the attack is not personal but is related to the work, however, injuries are compensable if the claimant was not the initial aggressor, compensation is not to go to the assailant in a work-related assault. "Injuries compensable are those arising out of the conditions under which the employee is required to work and may properly include injuries arising out of a fight in which the injured employee was not the aggressor, when the fight was about the employer's work in which the employees were then engaged, but it is not within the intent of the act that an employee be protected against the consequences of a fight in which he was the aggressor though the fight be over matters of his employer's work in which such employees are then engaged." Triangle Auto Painting & Trimming Co. v. Industrial Commission, 346 Ill. 609,618 (1931).

Here, Petitioner testified that Mr. Nohren was angry about a work issue, the tightening of the string which was used to assure brick was laid evenly, and Mr. Nohren was angered that the string was pulled out of the wall by him, exchanged angry words with Petitioner and then angrily came a considerable distance down the scaffold to Petitioner, pushing other employees out of the way. Petitioner said Mr. Nohren said he was going to kick Petitioner's "ass." Petitioner said that once Mr. Nohren got to him, Mr. Nohren swung at Petitioner and missed, but then grabbed Petitioner by the throat, at which point Petitioner said he tried to defend himself. He said they ended up falling onto the scaffold walkboards that they had previously been standing on. Petitioner

said he then rolled off the scaffold, towards the ground below, but Mr. Nohren kept ahold of Petitioner's head with Petitioner's left arm up above shoulder length near the ear. He said Mr. Nohren had his head and neck in the crook of his arm, with Mr. Nohren's hands locked together in front of Petitioner.

No witness contradicted any portion of that testimony.

Mr. Gaugh said the line coming out of the wall was the only reason for the altercation, that Mr. Nohren had yelled threats at Petitioner as he came down the scaffold toward him, and that Petitioner had not made any move towards Mr. Nohren. He said Mr. Nohren too a swing at Petitioner, Petitioner moved back to avoid getting hit, and they then wrestled down to the bottom of the walkways and Petitioner fell underneath it, being held on to by his shoulder and neck.

Mr. Stevens corroborated part of Petitioner's testimony of what led up to the fight and did not contradict any of it. He said he heard the verbal altercation and he saw the physical altercation. He said the altercation was due to a story pole being pulled out of the wall by a line which was too tight. He said after the yelling took place Mr. Nohren approached Petitioner. Mr. Stevens said he did not really see the fight take place, but he did see Petitioner and Mr. Nohren rolling on the boards and one of them may have rolled out and fallen to the ground.

There was no evidence introduced indicating that anything but a work-related issue caused this fight. The only evidence is that Mr. Nohren was the aggressor, verbally, then in his aggressive approach to Petitioner, and finally in throwing the first punch, which missed, and in grabbing Petitioner around the neck with Petitioner's left arm being pulled up next to his head. The work-related issue was the cause of the fight, and Petitioner was not the aggressor in the physical fight.

While Respondent asked questions about drug use and drug testing at arbitration, there was no testimony from any witness indicating Petitioner was under the influence of any drugs on the date of the accident and was incapable of performing his work as a brick layer. Petitioner had been working his duties as a brick layer for several hours before this assault and there was no testimony that he was doing a poor job of brick laying. Ms. Fox asked Petitioner if he would pass a drug test, and he said he would not, but that, per her testimony and the testimony of Ms. Barringer, was the next day, July 1, 2020, not on the day of the incident, and his ability to pass a drug test on that day is irrelevant as to his condition on the date of the accident. There is no testimony from any witness indicating the Petitioner was specifically asked to submit to a test of his blood, breath or urine on the day of the accident, or even on the day following the accident. Merely asking a day after the accident if he would pass a drug test does not constitute a request to submit to a testing of blood, breath or urine sufficient to invoke the rebuttable presumption of Section 11 of the Act that intoxication was the proximate cause of Petitioner's injury.

The Arbitrator finds that Petitioner suffered an accident on June 30, 2020, which arose out of and in the course of his employment by Respondent.

In support of the Arbitrator's decision relating to whether Petitioner's current condition of ill-being, left shoulder massive rotator cuff tear, including the infraspinatus supraspinatus, and subscapularis with

biceps instability, is causally related to the accident of June 30, 2020, the Arbitrator makes the following findings:

The findings of fact, above, are incorporated herein.

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

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

No evidence was introduced indicating Petitioner had prior left shoulder problems or had received prior treatment to his left shoulder. Petitioner denied having any prior left shoulder problems.

Petitioner immediately reported this altercation and his injury to his supervisor, Mr. Hankins, reporting a left shoulder injury. He ceased working at that time and was driven back to town in the company van. He reported the incident again that day or the next day to Ms. Fox. Two days after the accident he sought medical care at HSHS Good Shepherd Hospital and gave a consistent history of a fight, and that his left arm was pulled over his head as he was dangling from scaffolding, about four feet above the ground. Again, the distance of the fall from the scaffolding may not be agreed on by the witnesses, but the action causing the injury would appear to be the pulling of the arm over the head, not the fall to the ground, so the actual distance is immaterial. Two days after the accident the emergency room physician, Dr. Filipov, felt Petitioner had a left rotator cuff injury

Petitioner that same day, July 2, 2020, saw APRN Massey, who again received a consistent history of accident and complaints, and after her physical examination of Petitioner showed bicep tenderness with palpation and limited range of motion of the left shoulder, weak rotator cuff strength and a positive Popeye's sign, she noted she was suspicious of a rotator cuff tear and a proximal biceps tendon tear. A subsequent MRI of the left shoulder showed full-thickness tears with tendon retraction of the supraspinatus, infraspinatus and subscapularis, mild, early atrophy of those muscle groups, and the long head of the biceps tendon was found to be subluxed out of the bicipital groove, now being located in the anterior glenohumeral joint space.

Petitioner was treated and subsequently underwent left shoulder surgery by Dr. Painter. Dr. Painter after examining Petitioner and reviewing the MRI of the left shoulder diagnosed a traumatic tear of the left rotator cuff, a full thickness tear of the left subscapularis tendon and left bicipital tenosynovitis. He took a history of no previous shoulder pain prior to the altercation at work. He stated in his report of that date that with a massive rotator cuff tear with a subscapularis tear and biceps tendon dislocation, a person performing manual work had no other treatment option other than performing a repair. Surgery was performed on September 15, 2020. The surgery, a left shoulder arthroscopic biceps tenotomy, labral debridement, subacromial decompression, 3 cm rotator cuff repair and biceps tenodesis, resulted in a post-operative diagnosis of left shoulder massive rotator cuff tear, including the infraspinatus supraspinatus, and subscapularis with biceps instability.

The Arbitrator finds that Petitioner's medical condition, left shoulder massive rotator cuff tear, including the infraspinatus supraspinatus, and subscapularis with biceps instability, is causally related to the accident of June 30, 2020. This finding is based upon the chain-of-events**.** This finding is based upon Petitioner's unrebutted testimony to a pre-accident state of asymptomatic good health in the left shoulder, his having an accident on June 30, 2020, his immediately after said accident having sudden pain, prompt medical treatment and new diagnoses based on MRI diagnostic testing, physical examinations by Dr. Filipov, APRN

Massey, and Dr. Painter, and surgical findings of Dr. Painter. Certi-Serve, Inc. vs. Industrial Commission, 101 Ill.2d 236,244 (1984).

In support of the Arbitrator's decision relating to what temporary benefits Petitioner is entitled to as a result of the accident of June 30, 2020, the Arbitrator makes the following findings:

The findings of fact, above, are incorporated herein.

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

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

The Arbitrator finds that Petitioner was temporarily totally disabled as a result of the accident from July 2, 2020 to March 2, 2021, a period of 34 6/7 weeks. This finding is based upon the medical records summarized above. Dr. Filipov on July 2, 2020 restricted Petitioner until he was released by orthopedics. Petitioner was under orthopedic care of APRN Massey and Dr. Painter from that date until March 2, 2021, when Dr. Painter released him to full duty work. A release to work with a five pound lifting restriction and no reaching above the shoulder had been given by APRN Massey on that same date. Petitioner testified that he either gave that restriction note to Mr. Hankins or called and told him of the restriction. Mr. Hankins was not asked if he had ever gotten notice of a work restriction from Petitioner. Petitioner testified that Respondent did not accommodate those restrictions. Petitioner had an MRI two weeks later which revealed extensive tearing of three ligaments. Dr. Painter performed surgery on September 15, 2020 on what he described as a massive rotator cuff tear. On November 17, 2020 Dr. Painter noted Petitioner was not returned to work. Dr. Painter gave him a 10 pound lifting restriction on December 15, 2020. An Assessment for Restricted Return to Work dated January 21, 2021, issued by Dr. Painter, noted Petitioner was to perform no work as he was recovering from surgery. While Ms. Fox testified that Respondent always accommodated restrictions, she also noted that she had received medical records regarding restrictions, yet had never spoken to Petitioner since July 2, 2020. Respondent was aware of restrictions, said it had restricted work for employees, but did not attempt to contact Petitioner and offer him restricted work. Respondent appeared to be far more sophisticated in handling workers' compensation matters than Petitioner.

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 June 30, 2020, the Arbitrator makes the following findings:

The findings of fact, above, are incorporated herein.

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

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

The Arbitrator finds that the following bills introduced into evidence are related to Petitioner's June 30, 2020 injury, are reasonable and were necessitated to treat or cure Petitioner's injuries suffered in this accident and are to be paid by Respondent pursuant to the medical fee schedule: The bills contained In Petitioner's Exhibit 4 on pages 4, 6, 7, 8, 9, 10, 11, 14, 16, 20, 24, 29, 31, 33, 34, 35, 37, 39, 41, 43, and 47.

The Arbitrator further finds that the following bills introduced into evidence are not awarded on account of Petitioner's June 30, 2020 injury for the following reasons: The following medical records introduced into evidence revealed some duplicative bills (Petitioner Exhibit 4 pages 26, 27, 40, 42, 44, 51,and 53), some bills which were duplicative but in different amounts (Petitioner's Exhibit 4 pages 45, 46, 50, and 52) and some bills for which no medical records were introduced and may be for unrelated medical treatment (Petitioner's Exhibit 4 pages 12, 13, and 18) Those bills are therefore not awarded.

This finding is based upon the causal connection decision, above, a review of the medical records summarized above, and a review of the medical bills contained in Petitioner's Exhibit 4.

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, 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 union brick layer at the time of the accident and that he *is* able to return to work in his prior capacity as a result of said injury. The Arbitrator notes Petitioner may have difficulties in said profession as it appears to be a physically stressful job and Dr. Painter states Petitioner would never achieve full strength. Because of his diminished strength and physical occupation, the Arbitrator therefore gives *greater* weight to this factor.

With regard to subsection (iii) of §8.1b(b), the Arbitrator notes that Petitioner was 43 years old at the time of the accident. Because of his having numerous remaining work years, the Arbitrator therefore gives *greater* weight to this factor.

With regard to subsection (iv) of §8.1b(b), Petitioner's future earnings capacity, the Arbitrator notes no evidence was introduced regarding any change in Petitioenr's earning capacity other than the fact he is a union member. 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 Petitioner had what Dr. Painter described as a massive rotator cuff tear, involving three tendons and biceps instability. Dr. Painter noted Petitioner had regained range of motion but would never achieve full strength. Petitioner testified that as of the date of arbitration the arm was not as strong as it had been when he was lifting objects high. He said that when at rest he had no pain, but when active it would get sore. He said it bothered him to lift blocks up high, limiting his abilities while working. These statements appear to be consistent with the surgical findings and Dr. Painter's medical records as well as the physical therapy records. Because of Petitioner's complaints as of the date of arbitration and their corroboration in the medical records, 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 17 1/2% loss of use of the man as a whole pursuant to §8(d)(2) of the Act.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	20WC028997
Case Name	Richard Suddoth v. Unistaff
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	23IWCC0422
Number of Pages of Decision	19
Decision Issued By	Marc Parker, Commissioner, Christopher Harris, Commissioner

Petitioner Attorney	Jill Wagner
Respondent Attorney	Michael Latz

DATE FILED: 9/29/2023

/s/Marc Parker, Commissioner
Signature

DISSENT: /s/Christopher Harris, Commissioner
Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Richard Suddoth,

Petitioner,

vs. NO: 20 WC 28997

Unistaff,

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 occupational disease, causal connection, temporary total disability, and permanent partial disability, and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed December 29, 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 $19,000.00. 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.

September 29, 2023

/s/ *Marc Parker*
Marc Parker

MP:dk
o 9/7/23
68

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

DISSENT

The circumstances surrounding this case are tragic. Notwithstanding, Petitioner did not prove by the preponderance of the evidence that he contracted Covid-19 at work.

The timeline of events surrounding the alleged date of accident reflect that Petitioner visited the home of his mother and brother every day. Petitioner testified that he saw his brother on October 25, 2020 and as of this date, Petitioner and his mother were asymptomatic. On October 27, 2020, Petitioner was contacted by Respondent and informed that there was a possible Covid exposure at work. Respondent's witness, Ms. Matre, testified that she informed Petitioner that the exposure had occurred the week prior, and since Petitioner had been asymptomatic for the last week, that it has hopeful he would remain so. On November 2, 2020, Petitioner reported to Lawndale Christian Health complaining of Covid symptoms and subsequently tested positive.

These facts alone are arguably insufficient to prove that Petitioner had been exposed and eventually contracted Covid-19 from his workplace – particularly when noting Petitioner's additional testimony that after seeing his brother on October 25, and prior to Petitioner's own positive Covid-19 test on November 2, his brother had tested positive for Covid-19 and was hospitalized.

The majority and Arbitrator acknowledge that this fact was sufficient to overcome the rebuttal presumption, but insufficient to prove fatal to Petitioner's claim of a workplace accident. The Arbitrator and the majority place too much weight on Petitioner's testimony that while there were some masking polices in place, there was no comprehensive Covid-19 training procedures and work protocols that would have made a workplace Covid-19 exposure less likely for Petitioner. While it cannot be denied that the alleged absence of such procedures could have increased the likelihood of Petitioner having been exposed to someone with Covid at work, it pales in comparison to being directly exposed to his brother who was symptomatic before he was during

the same period. Further, there is no evidence in the record as to whom Petitioner was exposed to at work with Covid-19 or the amount of time he spent being exposed to the supposed person.

Additionally, Petitioner testified that he worked the overnight shift in a large facility, took his breaks alone in his car, and denied having prolonged interaction with his co-workers. Petitioner also testified that he did not interact with the public at work, that he was the only janitor on the third shift, and the approximate number of workers on the overnight shift was notably less than the first two shifts. The facts in this case and timeline simply do not cross the preponderance of the evidence threshold required for Petitioner to prevail in this case. I therefore respectfully dissent.

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	20WC028997
Case Name	RICHARD SUDDOTH v. UNISTAFF
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	15
Decision Issued By	Rachael Sinnen, Arbitrator

Petitioner Attorney	Jill Wagner
Respondent Attorney	Michael Latz

DATE FILED: 12/29/2022

THE INTEREST RATE FOR THE WEEK OF DECEMBER 28, 2022 4.60%

/s/ Rachael Sinnen, Arbitrator

Signature

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Richard Suddoth
Employee/Petitioner

v.

Unistaff
Employer/Respondent

Case # **20** WC **028997**

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 **October 25, 2022.** After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On **November 2, 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 $***30,534.40***; the average weekly wage was $***587.20***.

On the date of accident, Petitioner was ***57*** years of age, ***single*** with ***0*** dependent children.

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

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

Respondent shall be given a credit of $***0*** for TTD, $***0*** for TPD, $***0*** for maintenance, and $***587.20*** for other benefits, for a total credit of $***587.20***.

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

ORDER

Respondent shall pay Petitioner directly for the following outstanding medical services contained in Petitioner's Exhibit 1, pursuant to the medical fee schedule and Sections 8(a) and 8.2 of the Act.

Respondent shall pay Petitioner temporary total disability benefits of $391.47/week for 12 2/7 weeks, commencing 11.2.20 through 1.27.21 as provided in Section 8(b) of the Act.

The Arbitrator makes an award of 8% loss of use of the person as a whole under Section 8d2 which corresponds to 40 weeks of permanent partial disability benefits at a weekly rate of 352.32. See Conclusions of Law for Arbitrator's considerations under §8.1b(b) of the Act.

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

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

Signature of Arbitrator

December 29, 2022

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

ILLINOIS WORKERS' COMPENSATION COMMISSION

Richard Suddoth,	)	
	)	
Petitioner,	)	
	)	
v.	)	
	)	Case No. 20WC028997
Unistaff,	)	
	)	
	)	
Respondent.	)	

FINDINGS OF FACT

This matter proceeded to hearing under the Occupational Disease Act "ODA" on October 25, 2022 in Chicago, Illinois before Arbitrator Rachael Sinnen on Petitioner's Request for Hearing. Issues in dispute include accident, causation, average weekly wage "AWW," unpaid medical bills, temporary total disability "TTD" benefits, and nature and extent of the alleged injury. Arbitrator's Exhibit "Ax" 1.

The Petitioner, Richard Suddoth (hereinafter referred to as the "Petitioner") is a 58-year-old man who worked for Respondent, Unistaff (hereinafter referred to as the "Respondent"), a staffing company, and was placed at Sloan Valve Company in housekeeping. Transcript of Arbitration, hereinafter referred to as "R." at 9. In that capacity, the Petitioner would perform janitorial duties and clean and sanitize the plant. R. at 10. He worked 40 hours per week on the third shift. R. at 9. His schedule was Monday through Friday 10:00 pm to 6:30 am, Sunday from 12:00 am to 8:30 am, and off Friday and Saturday. R. at 9. He was the only janitor / housekeeper working during that shift. R. at 10. While working for Respondent, he only ever worked at Sloan Vale Company. R. at 8. The Petitioner was specifically required to clean the men's and women's bathrooms as well as the locker rooms. R. at 14. He needed to walk the entire length of the facility in order to complete his tasks. R. at 14. While he was cleaning the facilities, men and women would be coming in and out of the bathroom. R. at 17.

The Petitioner testified that during the Covid pandemic Sloan Value Company stayed open and fully operational during the entire time he worked there and did not shut down for any period of time. R. at 12. Further, his hours never changed and he worked his normal hours throughout his employment with Respondent. R. at 12.

The Petitioner testified that he never received any specific Covid information from the Respondent. R. at 18. He never received any training or instructions on how to keep distance

between co-workers. R. at 24. No new sick policies were implemented. R. at 39. There was no training on cough etiquette, return to work protocols after testing positive, how to take care of PPE, or Covid generally at all. R. at 39-40.

The Petitioner testified regarding the practices of the facility during the Covid pandemic. There were two doors that employees used to enter and exit the plant. R. at 16. Once someone entered the plant, his temperature was taken by the guard at the front door desk by a handheld thermometer. R. at 19. He then had to fill out and sign a paper from the guard station regarding Covid symptoms and return it signed. R. at 18. This was a requirement to enter the facility. R. at 19. There was one guard taking everyone's temperatures. R. at 19. If employees arrived at the same time, a line would form and people would be congregate near one another. R. at 19-21.

After the employees would enter, they would go to the locker room, put his/her stuff away, and then gather for the team meeting. R. at 27. At the beginning of the third shift at 10:00 pm, the employees would gather in a circle for a team meeting as a group. R. at 13. The Petitioner estimated approximately 12-15 people at each meeting. R. at 29 and 31. The employees did not stand six feet apart during this meeting. R. at 28. The Petitioner estimated that they were between two and four feet apart. R. at 28. At that meeting, the supervisor would take attendance, assign tasks, and hand out masks. R. at 13. This meeting was held inside by the supervisor's office next to the mechanic's area. R. at 13. Employees on the second shift were still at the plant finishing up their shifts while the meeting was taking place. R. at 30.

The Petitioner testified that he never received a Covid test on site. R. at 32. Employees were given plastic gloves and a blue face surgical mask, not an N95 mask, by the supervisor at the beginning of each shift. R. at 21-22. The masks were discarded after every shift, but the employees were not told where to dispose them. R. at 22-23. They were not given goggles or face shields. R. at 23. The Petitioner testified he witnessed his co-workers not wearing masks "all the time." R. at 24. He saw people grouped up in the bathrooms, not wearing masks. R. at 42. Employees were not given uniforms and their clothes were not cleaned by the Respondent. R. at 31. Employees shared tools and equipment throughout the shifts. R. at 42.

The Petitioner testified that he saw other coworkers socializing and interacting during their shifts. R. at 25. During this time, they were not six feet apart. R. at 25. There were not any limitations on lunch gatherings. R. at 35. The Petitioner testified he witnessed gatherings in the locker rooms among employees. R. at 36. No new workstations were added to the plant during Covid. R. at 18. There was not any air ventilation system put in. R. at 21. Cones or barrier were not placed in the plant to show six-foot distance. R. at 24. Sloan never installed any plastic dividers in the facility. R. at 31. The Petitioner testified that there was not a recommended social distancing policy. R. at 24. They did have 4-5 hand washing stations with soap and water and were required to wear masks. R. at 36. The Respondent did not have any travel bans on employee or limitations on how they arrived and left work. R. at 38.

The Petitioner testified that he was not responsible for any additional Covid cleaning procedures. R. at 26. He witnessed the plant being disinfected "once or twice…in the mechanic area where the outbreak had started." R. at 26. There were not any deep cleans done throughout his shift.

R. at 33. Further, he never saw deep cleaning done between shifts. R. at 33. The Petitioner testified there were no additional cleaning procedures such as wiping down counters throughout the shift. R. at 37. He testified he would spray door handles or counters occasionally, once, or twice per shift. R. at 37. He did not think it was done on the shifts prior because they were dirty by the time he arrived. R. at 37. The Petitioner testified that there was not a time gap between shifts and the shifts were not staggered either. R. at 38-39. If there was a Covid positive employee, the facility did not shut down. R. at 33. In one instance, the Petitioner was directed to clean up the women's bathroom after a female employee tested positive. R. at 33.

The Petitioner testified that on November 2, 2020, a representative from Unistaff called him and informed him he was exposed to Covid-19 at work and needed to get tested and quarantine. R. at 41. He testified he worked closely with a co-worker who tested positive for Covid-19 at that time. R. at 41. He worked with him by taking out the garbage together, cleaning the coffee machines and restocking them, and talking in close proximity in the locker room. R. at 40-41. This co-worker told the Petitioner he was not feeling well and was later sent home by the Respondent. R. at 40-41.

The Petitioner went to Lawndale Christian Health on November 2, 2020 for a Covid-19 test and was positive and was directed to the emergency room. Pet. Ex. #1 at 10. When he presented to Lawndale Christian Health, the history from that date states, "Male presented for covid testing following c/o HA, sore throat. Covid outbreak at work last week." Pet. Ex. #1 at 11. The Petitioner testified that several people at Sloan Valve Company tested positive at this same time. R. at 45. He reported his positive test to the Respondent immediately and indicated he was going to the hospital. R. at 46. Lawndale Christian Health took him off work until the following "three criteria are met: At least 20 days from his positive test result date and afebrile for 24 hours without use of antipyretics and other symptoms such as cough, shortness of breath, vomiting, diarrhea, etc. are all improving." Pet. Ex. #1 at 12-13.

The Petitioner arrived at John Stroger Hospital emergency room on November 2, 2020 but was turned away and told to quarantine at home. R. at 47. The Petitioner's Covid-19 symptoms began as shortness of breath, inability to walk long distances, headaches, dizziness, and little energy. R. at 46. His symptoms became progressively worse and he returned back to the emergency department at John Stroger Hospital on November 6, 2020. Pet. Ex. #2. The history notes from this visit state, "Male with history of diabetes with a few days worth of shortness of breath. One of his coworkers tested positive for Covid last Friday so he went in to get tested. As a result, came back positive on Tuesday, after which he developed symptoms." Pet. Ex. #2 at 86. Another history entry notes, "Patient was told 4 days ago that he had a covid exposure at work. He was asymptomatic at that time, but a screen test came back positive for covid-19. He began developing symptoms later that evening. Symptoms have been progressively worsening since onset." Pet. Ex. #2 at 92. He became oxygen dependent, could not walk short distances without oxygen, lost his sense of taste and smell, and lost 30 pounds. R. at 49. The Petitioner was admitted to John Stroger Hospital from November 6, 2020 through November 15, 2020 for the first hospital stay. Pet. Ex. #2. The Petitioner was admitted for severe Covid-19 infection after another positive test and bilateral pulmonary embolism and acute hypoxic respiratory failure with underlying conditions of diabetes type two, hyperlipidemia, and mild asthma. Pet. Ex. #2 at

22. While there, he completed 5 days of Remdesivir, 2 units of convalescent plasma, and 10 days of Dexamesthasone. Pet. Ex. #2.

The Petitioner left the hospital on November 15, 2020 against medical advice in order to attend his mother's funeral, who passed away due to her own Covid-19 infection. Pet. Ex. #2 at 22-23. It was noted that she was admitted to the hospital on November 7, 2020 and died on November 10, 2020. Pet. Ex. #2 at 32. Specifically, he testified that, "I am janitor and I got it at work. They had outbreak there and so many people were sick. I gave Covid to my mother and she passed away and I could not even see her." Pet. Ex. #2 at 109. He later stated he "needed closure at his mother's funeral, especially since he felt responsible for her death diagnosis of covid." Pet. Ex. #2 at 41. The Petitioner was referred to psychiatry. Pet. Ex. #2. In a phone call with the Lawndale Christian Health staff, it was noted that he "reports self-guilt regarding his mother's passing." Pet. Ex. #1 at 19.

The Petitioner returned to John Stroger Hospital and was readmitted from November 19, 2020 through November 25, 2020 as hypoxic with increased oxygen requirement secondary to his severe Covid-19 pneumonia. Pet. Ex. #2. The x-rays taken on November 21, 2020 show progressing patchy bilateral airspace opacities, consideration of multifocal pneumonia involving Covid-19. Pet. Ex. #2 at 23. After his release from John Stroger Hospital, he was transferred to Symphony of Midway nursing home where he was admitted from November 25, 2020 through January 27, 2021. Pet. Ex. #3. He was treated here for his Covid related pneumonia. Pet. Ex. #3.

The Petitioner testified that at the time around his Covid-19 diagnosis, he was living in a four-bedroom apartment with his cousin and her 13-year-old son. R. at 52. The Petitioner's cousin is a stay-at-home mom. R. at 53. The Petitioner testified that in the two weeks prior to his Covid-19 diagnosis, they did not have any visitors in their home. R. at 54. The Petitioner testified that when the Covid pandemic began, he followed all of the recommended guidelines. R. at 55. Specifically, he said, "I knew that you had to like, be off to yourself, keep a mask on. I didn't have nobody in my car. I didn't go see nobody. I didn't really have no company like I said. Plus, I'm a loner anyway. So, I was really trying to protect myself being non-sociable." R. at 55.

The Petitioner testified that the two weeks prior to his positive test, from October 19, 2020 through November 2, 2020, he did not work from home at all. R. at 45. He further testified that he did not come in contact with anyone who was Covid positive in the two weeks prior to November 2, 2020. R. at 45. In the two weeks prior to his diagnosis, neither the Petitioner's cousin nor her son tested positive for Covid-19. R. at 55. During the two weeks prior to his diagnosis, he did not travel, attend concerts, attend large gatherings, and would limit his time in public. R. at 56. When he did need to be in public, he would always wear his mask. R. at 56. He testified that he was not exposed to Covid-19 by anyone else outside of work. R. at 57. He drove himself to work in his own vehicle and never took public transportation. R. at 57.

The Petitioner testified that he would visit his mother periodically for breakfast. R. at 64. When he would visit her, he would just stay for breakfast and would not stay at her house for the entire

day. R. at 75. He testified she had masks and hand sanitizer that she would give him and he would stay as socially distant as possible during his visits. R. at 76. He testified that before he tested positive for Covid-19, his mother was not exhibiting any symptoms of her own. R. at 75. She did later test positive for Covid-19, but not until after the Petitioner already tested positive. R. at 58. He testified that she was in a wheelchair and could not go anywhere by herself. R. at 57. The Petitioner testified that his brother also lived with his mother. R. at 75. His brother also contracted Covid-19 and was hospitalized. R. at 58. The last time the Petitioner saw his brother was around October 25, 2020. R. at 58. The exact date of his brother's Covid-19 diagnosis and timeline of his symptoms was not entered into evidence.

The Respondent called Jill Matre to testify, the Vice President of Unistaff. R. at 78-79. Sloan Valve Company is one customer of Unistaff. R. at 79. She testified that at Sloan Valve Company specifically, she had placed approximately 100 people between the second and third shift to work there. R. at 94. She testified that she was the one who called the Petitioner and informed him of his Covid exposure at work. R. at 87. Specifically, she said, "I called him up and I said, I've received information that you'll need to quarantine for 14 days from the possible contact tracing. The good news was the contact had been a week prior, so he was already a week – he was already done." R. at 87. She further explained that Sloan told her he needs to quarantine, but that "he only had to quarantine for another seven days" since it was a week since he has been exposed. R. at 89.

On cross-examination, Ms. Matre testified that she worked physically at the Unistaff office during the entire time of the Petitioner's employment with Respondent. R. at 96. She did not spend any time at Sloan Valve Company and was not allowed on the premises during the Covid pandemic and Petitioner's employment. R. at 96-98. She further testified that Unistaff was not involved in developing Sloan Valve Company's Covid-19 protocols. R. at 98. Lastly, she admitted she had no idea how the Covid-19 protocols were administered or enforced at Sloan Valve Company because she was never there physically. R. at 99-100. She also did not know who the Petitioner interacted with while working at the facility. R. at 100-101. She did not know how many people tested positive for Covid-19 at the Sloan Valve Company. R. at 101.

The Petitioner testified that his medical bills were paid through his group health carrier. R. at 59. For the time that he was off work and in treatment, he did not receive any benefits from the Respondent. R. at 59. The Petitioner testified that since he has been released from care, he still has difficulty breathing. R. at 60. He has since developed asthma and had a blood transfusion as a result of his Covid-19 infection. R. at 60.

CONCLUSIONS OF LAW

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

Issue C, whether the accident arose out of and in the course of Petitioner's employment by Respondent, the Arbitrator finds as follows:

In order to obtain compensation under the Act, a claimant must show by a preponderance of the evidence that he has suffered a disabling injury arising out of and in the course of his employment. Both elements must be present at the time of the claimant's injury in order to justify compensation. *IL Bell Telephone Co. v. Indust. Comm'n*., 131 Ill.2d 478, 483 (1989). "The Occupational Disease Act provides benefits for employees who establish that they have contracted an occupational disease while working. An 'occupational disease' is a disease arising out of the course of employment which has become aggravated and rendered disabling as a result of the exposure employment. Such aggravation must arise out of a risk 'peculiar to or increased by employment and not common to the general public." *Edgar Lucero v. Focal Point, LLC*, 22 IWCC 0231; 2022 Ill. Wrk. Comp. LEXIS 218 (June 22, 2022).

The Illinois Legislature created a presumption to the Occupational Diseases Act that created a rebuttable presumption around front line workers who contracted Covid-19 while working from March 9, 2020 through June 30, 2021. Governor Pritzker signed section (g)(1) on June 5, 2020 and it reads:

> Rebuttal presumption: in any proceeding before the Commission in which the employee is a Covid-19 first responder or front line worker, if the employee's injury or occupational disease resulted from exposure to and contraction of Covid-19, the exposure and contraction shall be rebuttably presumed to have arisen out of and in the course of the employee's employment; and the injury or occupational disease shall be rebuttably presumed to be causally connected to the hazards or exposure of the employee's employment.

Further, section (g)(2) defines covered employees as any "Covid-19 first responder or front-line worker," which includes any individuals employed by essential businesses and operations as defined by the Executive Order 2020-10 on March 20, 2020. Section 1, paragraph 12(2) of the Executive Order 2020-10 defines front line workers, which in relevant part here, includes employees who work for businesses that "supplies for essential business and operations – businesses that sell, manufacture, or supply other essential businesses and operations with the support or materials necessary to operate including, hardware, plumbing material, household appliances, among others." Section 1, paragraph 12(n). Any front-line worker who contracted Covid-19 after June 15, 2020 must provide a positive laboratory test for Covid-19 or for Covid-19 antibodies. Section (g)(3) allows for evidence that can rebut the presumption with evidence of:

1) Employee working from home or outside workplace (or some combination) for at least 14 consecutive days prior to injury, occupational disease, or period of incapacity.
2) Employer strictly adhered to industry-specific workplace sanitation, social distancing & CDC or IDPH safety practice guidelines.
3) Employee exposed to Covid-19 by alternative source.

If rebutted, the presumption is eliminated and the Petitioner must prove by a preponderance of the evidence that the Covid-19 was contracted at work.

First, the Arbitrator finds that Petitioner was a front-line worker entitled to a rebuttable presumption pursuant to Section (g)(1) of the ODA and provided proof of a positive Covid-19 test. The Petitioner worked for the Respondent and was placed at Sloan Valve Company, a company which manufactures faucets and fixtures for sinks and toilets. R. at 80. He worked for Sloan Valve Company for the entirety of his time with the Respondent, in housekeeping. R. at 9. In this position, he was responsible for sanitizing and cleaning the facility. R. at 10. He testified that Sloan Valve Company never shut down during the Covid pandemic and his hours never changed. R. at 12. As such, this is an essential business because the company manufactures materials for hardware and plumbing. Because the Petitioner worked at Sloan Valve company, he is therefore considered a front-line worker entitled to the Covid-19 presumption. After Petitioner was informed about an outbreak at work, he presented to Lawndale Christian Health on November 2, 2020 and took a Covid-19 laboratory test, which was positive. Pet. Ex. #1 at 10.

Next, the Arbitrator addresses any rebuttable evidence presented by Respondent pursuant to Section (g)(3) of the ODA.

The Petitioner credibly testified that during the two weeks before his positive Covid-19 diagnosis, he did not work from home at all. R. at 45. He worked at Sloan Valve Company for the entire two weeks prior to his Covid-19 diagnosis. R. at 13. The Arbitrator finds that Petitioner did not work from home or outside workplace (or some combination) for at least 14 consecutive days prior to injury, occupational disease, or period of incapacity. See Section (g)(3) of the ODA.

Additionally, Respondent's witness, Ms. Matre, testified about the different procedures and protocols Sloan Valve Company had in place during the pandemic. However, the Arbitrator does not find Ms. Matre's testimony convincing as she does not work for the Sloan Valve Company. She is the VP of Unistaff (Respondent) and Sloan Valve Company is their client. Ms. Matre's knowledge is limited and relies heavily on Respondent's Exhibit C which contains a list of Covid-19 policies implemented by Sloan. She admitted that she was not allowed to be physically present at Sloan Valve Company during the Covid pandemic. R. at 100. She also admitted that she did not know how any of Sloan's polices were enforced or adhered to at any time. R. at 100.

Petitioner, however, had firsthand experience about how such policies were put in practice. The Petitioner testified that he never received any specific Covid information from the Respondent. R. at 18. He never received any training or instructions on how to keep distance between co-

workers. R. at 24. No new sick policies were implemented. R. at 39. There was no training on cough etiquette, return to work protocols after testing positive, how to take care of PPE, or Covid generally at all. R. at 39-40.

Petitioner's testimony regarding cleaning procedures was convincing as he was the janitor and the only one in housekeeping on the third shift. Petitioner testified that he was not responsible for any additional Covid cleaning procedures. R. at 26. He witnessed the plant being disinfected "once or twice…in the mechanic area where the outbreak had started." R. at 26. There were not any deep cleans done throughout his shift or between shifts. R. at 33. The Petitioner testified there were no additional cleaning procedures such as wiping down counters throughout the shift. R. at 37. He testified he would spray door handles or counters occasionally, once, or twice per shift. R. at 37.

Petitioner credibly testified that there were no social distancing efforts put in place at the company. R. at 24. There was not a time gap between shifts and the shifts were not staggered. R. at 38-39. They did not rearrange workstations, have shields installed, or cones or tape indicating how far apart people should stand. R. at 24. In fact, the Respondent continued to hold team meetings as a group at the beginning of each shift, with 12-15 people attending. R. at 29 and 31. The employees would congregate together in a circle while the supervisor took attendance and handed out masks to the employees. R. at 13. While they were in this circle, they were not six feet apart and not masked until they were given theirs at that time. R. at 28. Employees were given masks, but no shields or gowns. R. at 23. Employees would also congregate while getting their daily temperatures taken as their entered the facility and in the locker rooms where they would often times be without masks. R. at 42. The employees also continued to share equipment and tools. R. at 42. The Petitioner testified that he saw other coworkers socializing and interacting during their shifts. R. at 25. During this time, they were not six feet apart. R. at 25. There were not any limitations on lunch gatherings. R. at 35. The Respondent did not have any travel bans on employee or limitations on how they arrived and left work. R. at 38.

Based on the above, the Arbitrator finds that Respondent did not strictly adhere to industry-specific workplace sanitation, social distancing & CDC or IDPH safety practice guidelines. See Section (g)(3) of the ODA.

Lastly, Respondent did present evidence of exposure by an alternative source. Although the Petitioner described himself as a "loner" and took extra precautions to avoid social interaction during the Covid pandemic, he did visit his mother at her home regularly. R. at 74. The Petitioner's brother also lived with their mother. R. at 75. Petitioner testified he tried to stay as socially distant as possible during these visits and would stay for a limited amount of time. R. at 75. His mother would provide him masks and hand sanitizer while he was visiting her at her home. R. at 76. Although, the Petitioner's mother did test positive for Covid, this did not until after the Petitioner had already tested positive. R. at 58. The Petitioner's brother also tested positive for Covid, but the date of which is unknown. R. at 58. However, Petitioner did confirm that he saw his brother on October 25, 2020 and that his brother was hospitalized for Covid before he was. R. at 59.

The Arbitrator finds Petitioner's admission of visiting his brother on October 25, 2020 material as Petitioner testified that his brother was hospitalized for Covid before Petitioner was hospitalized for Covid on November 2, 2020. Although the Arbitrator finds such evidence sufficient to eliminate Petitioner's rebuttable presumption, the Arbitrator finds that Petitioner still proved by a preponderance of the evidence that his Covid-19 was contracted at work.

On November 2, 2020, a representative from Unistaff called the Petitioner and informed him he was exposed to Covid-19 at work and needed to get tested. R. at 41. The Petitioner testified that around that time he interacted with a co-worker who tested positive for Covid-19. R. at 41. He worked closely with him by taking out the garbage together, cleaning and restocking the coffee machines, and talking in close proximity in the locker room. R. at 40-41. This co-worker told the Petitioner he was not feeling well and was later sent home by the Respondent. R. at 40-41. The Respondent's witness, Jill Matre, corroborated this testimony and said she was the one who called the Petitioner and told him he was exposed to Covid-19 at work. R. at 87.

Petitioner presented to Lawndale Christian Health on November 2, 2020 and received a positive Covid-19 laboratory test. Pet. Ex. #1 at 10. The history from that visit states that a male presented for Covid-19 test following a "Covid outbreak at work last week." Pet. Ex. #1 at 11. He was directed to a hospital and was later admitted to John Stroger Hospital. Pet. Ex. #2. Similarly, the history at John Stroger Hospital states, "One of his coworkers tested positive for Covid last Friday so he went in to get tested." Pet. Ex. #2.

Petitioner credibly testified that he barely went out in public besides going to work and visiting his mother. R. at 55. When he did, he followed the CDC guidelines and wore a mask and stayed socially distant. R. at 55-56. He drove himself to work in his own vehicle and did not take public transportation. R. at 57. He lived in a four-bedroom apartment with his cousin, who was a stay-at-home mom, and her 13-year-old son. R. at 53-54. Neither his cousin nor her son tested positive for Covid-19. R. at 55-54. Further, he worked the third shift and had little interaction with them. R. at 54. He did not have visitors, travel, or attend large gatherings. R. at 55-56.

While Petitioner's testimony regarding his brother's Covid was enough to eliminate Petitioner's rebuttable presumption, it is insufficient to defeat his claim. The timeline of events is unclear of when symptoms began, when Petitioner's brother was tested, and when he was hospitalized. The nature of Petitioner's work, the lack of strict adherence to Covid policies, and the undisputed outbreak that occurred at work all show by a preponderance of the evidence that the Petitioner was exposed to Covid-19 at work. As a result, the Arbitrator finds that Petitioner's accidental exposure arose out of and in the course and scope of the Petitioner's employment with the Respondent.

Issue F, whether Petitioner's current condition of ill-being is causally related to the injury, the Arbitrator finds as follows:

The Arbitrator finds that the Petitioner's current condition of ill-being is causally related to his work exposure. A causal connection between work duties and a condition may be established by

a chain of events including Petitioner's ability to perform the duties before the date of the accident, and inability to perform the same duties following that date. *Pulliam Masonry v. Industrial Comm'n*., 77 Ill.2d 469, 471 (1979).

The Petitioner testified that he was in close proximity and working with a co-worker who later was known to be Covid positive. R. at 40-41. This was corroborated by the Respondent's witness, Ms. Matre, who testified that she called the Petitioner to tell him he was exposed to Covid-19 at work and needed to quarantine. R. at 87. When the Petitioner presented to Lawndale Christian Health, it was noted that there was an outbreak at work, necessitating the Petitioner's need to get tested. Pet. Ex. #1. Further, when he presented to John Stroger Hospital, it similarly noted a Covid outbreak at work as the cause of his infection. Pet. Ex. #2.

After the Petitioner had a positive Covid-19 test, he was hospitalized shortly thereafter. Pet. Ex. #1 and #2. All of the medical record histories indicate a Covid-19 outbreak at work. Further, all doctors causally relate his Covid-19 diagnosis to his work injury.

Thus, the Arbitrator finds that Petitioner's current condition of ill-being is causally related to his Covid 19 exposure at work.

Issue G, Petitioner's earnings, the Arbitrator finds as follows:

The Respondent entered into evidence the Petitioner's Application for Employment with Respondent. Resp. Ex. #A. On the Application for Employment, it states that the Petitioner will earn $14.68 per hour, working 40 hours per week. Resp. Ex. #A at 6. The Respondent also introduced a wage statement that showed only one week worked prior to his accident on November 2, 2020, where he earned $587.20. The Petitioner corroborated these documents and earnings in his testimony. R. at 9.

As such, the Arbitrator finds that Petitioner's average weekly wage is $587.20.

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 finds that the medical services provided to the Petitioner have been reasonable and necessary. Due to the Petitioner's work injury, he has required treatment in the form of lengthy hospital stays, medications, oxygen, and subsequent nursing home rehabilitation. Pet. Ex. #1, #2, #3.

After contracting Covid-19, the Petitioner sought treatment at Lawndale Christian Health, where he tested positive and was directed to the emergency room department. Pet. Ex. #1. He was eventually admitted to John Stroger Hospital from November 6, 2020 through November 25, 2020. Pet. Ex. #2. After his discharge there, he was sent to Symphony Midway nursing home where he was admitted from November 26, 2020 through January 27, 2021. Pet. Ex. #3. He was treated for his severe Covid-19 infection and pneumonia. Pet. Ex. #3.

The Respondent did not submit an Independent Medical Examination or Utilization Review disputing the reasonableness and necessity of the Petitioner's treatment. Respondent disputes payment of unpaid medical bills based on its denial of causation. See Ax 1.

Overall, the Arbitrator finds Petitioner's treatment to be reasonable and necessary and finds that Respondent has not paid for said treatment. As such, the Arbitrator orders Respondent to pay Petitioner directly for the outstanding medical services contained within Petitioner's Exhibit 1, pursuant to the medical fee schedule and Sections 8(a) and 8.2 of the Act.

Issue K, whether Petitioner is entitled to temporary total disability benefits, the Arbitrator finds as follows:

The Arbitrator finds that the Petitioner is entitled to TTD benefits from November 2, 2020 through January 27, 2021, a period of 12 2/7 weeks. The Petitioner was initially placed in quarantine and off work by Lawndale Christian Health after his positive Covid-19 test on November 2, 2020. Pet. Ex. #1. He was then admitted to John Stroger Hospital from November 6, 2020 through November 25, 2020. Pet. Ex. #2. After his discharge, he was admitted to Symphony Midway nursing home through January 27, 2021. Pet. Ex. #3. Petitioner's medical records establish that has been off of work since the date of injury and continuing through his release date of January 27, 2021. Pet. Ex. #2 and #3.

Based on the above, the Arbitrator finds Respondent liable for 12 2/7 weeks of TTD benefits (11.2.20 – 1.27.21) at a weekly rate of $391.47.

Issue L, the nature and extent of the injury, the Arbitrator finds as follows:

In determining PPD benefits, Section 8.1b(b) of the Act directs the Commission to consider: "(i) the reported level of impairment pursuant to subsection (a); (ii) the occupation of the injured employee; (iii) the age of the employee at the time of the injury; (iv) the employee's future earning capacity; and (v) evidence of disability corroborated by the treating medical records." 820 ILCS 305/8.1b(b); Con-Way Freight, Inc. v. Illinois Workers' Compensation Comm'n, 2016 IL App (1st) 152576WC, ¶ 22, 67 N.E.3d 959. "No single enumerated factor shall be the sole determinant of disability." 820 ILCS 305/8.1b(b).

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

Under Section 8.1b(b)(ii), the occupation of the injured employee, the Arbitrator notes that Petitioner worked in housekeeping as a janitor and was medically able to return in that capacity. Petitioner did return to work for Respondent after his release from treatment. Because of his

ability to return to his prior occupation, the Arbitrator therefore gives moderate weight to this factor in favor of Respondent.

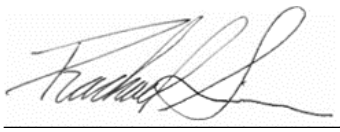
With regard to subsection (iii) of §8.1b(b), the Arbitrator notes that Petitioner was 57 years old at the time of the accident. Because of his increased age and diminished ability to recover, the Arbitrator therefore gives moderate weight to this factor in favor of Petitioner.

With regard to subsection (iv) of §8.1b(b), Petitioner's future earnings capacity, the Arbitrator notes he was able to return to his prior employment earning the same amount. Because of his future earnings capacity did not change, the Arbitrator therefore gives moderate weight to this factor in favor of Respondent.

Under Section 8.1b(b)(iv), evidence of disability corroborated by the treating medical records, the Arbitrator gives great weight to this factor in favor of Petitioner. Petitioner was admitted to John Stroger Hospital for severe Covid-19 infection and bilateral pulmonary embolism and acute hypoxic respiratory failure with underlying conditions of diabetes type two, hyperlipidemia, and mild asthma. Pet. Ex. #2 at 22. The x-rays taken on November 21, 2020 show progressing patchy bilateral airspace opacities, consideration of multifocal pneumonia involving Covid-19. Pet. Ex. #2 at 23. After his release from John Stroger Hospital, he was transferred to Symphony of Midway nursing home where he was treated his Covid related pneumonia for approximately 2 months. Pet. Ex. #3. The Petitioner testified that since he has been released from care, he still has difficulty breathing. R. at 60. He has since developed asthma and had a blood transfusion as a result of his Covid-19 infection. R. at 60.

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 8% person as a whole pursuant to §8d2 of the Act which corresponds to 40 weeks of permanent partial disability benefits at a weekly rate of $352.32.

It is so ordered:



Arbitrator Rachael Sinnen

December 29, 2022

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC031786
Case Name	Tony Berkemeier v. A.D.T. Security Services
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b) Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	23IWCC0423
Number of Pages of Decision	14
Decision Issued By	Amylee Simonovich, Commissioner

Petitioner Attorney	Nathan Maudlin
Respondent Attorney	Taylar Young

DATE FILED: 9/29/2023

/s/ Amylee Simonovich, Commissioner

Signature

23IWCC0423

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

Tony Berkemeier,

Petitioner,

vs. NO: 21 WC 31786

A.D.T. Security Services,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under Section 19(b) having been filed by Respondent herein and notice given to all parties, the Commission, after considering the issues of causal connection, prospective medical treatment, and temporary total disability benefits, and being advised of the facts and law, modifies the Decision of the Arbitrator as stated below. The Commission 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 Comm'n*, 78 Ill.2d 327, 399 N.E.2d 1322, 35 Ill.Dec. 794 (1980).

The Commission solely seeks to correct a scrivener's error in the Arbitration Decision. On page seven (7) of the Decision, the Arbitrator mistakenly wrote that on March 8, 2021, Dr. **Lieber** opined that Petitioner's symptoms were due to arthritic changes. This is a clerical error. The Commission thus modifies the above-referenced sentence to read as follows:

> Surgery was performed on 1/25/21 and Dr. **Czaplicki** opined on 3/8/21 that Petitioner's residual symptoms were due to arthritic changes and conservative treatment would not relieve his symptoms.

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 September 27, 2022, is modified as stated herein.

IT IS FURTHER ORDERED that Respondent shall pay Petitioner temporary total disability benefits of $777.17/week for 89-3/7 weeks, commencing November 8, 2020, through July 26, 2022, as provided in Section 8(b) of the Act. Pursuant to stipulation by the parties, Respondent shall receive a credit in the amount of $25,400.65 for temporary total disability benefits it has already paid.

IT IS FURTHER ORDERED that Respondent shall authorize and pay for prospective medical treatment in the form of the left knee total arthroplasty recommended by Dr. Czaplicki. Respondent shall also authorize and pay for reasonable and necessary care related to the left knee surgery.

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.

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $44,200.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

September 29, 2023

o: 9/5/23
AHS/jds
51

/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	21WC031786
Case Name	Tony Berkemeier v. A.D.T. Security Services
Consolidated Cases	
Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	11
Decision Issued By	Linda Cantrell, Arbitrator

Petitioner Attorney	Nathan Maudlin
Respondent Attorney	Kristin Lechowicz

DATE FILED: 9/27/2022

THE INTEREST RATE FOR THE WEEK OF SEPTEMBER 27, 2022 3.85%

/s/Linda Cantrell, Arbitrator

Signature

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

Tony Berkemeier Case # **21** WC **031786**
Employee/Petitioner

v.

A.D.T. Security Services
Employer/Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Linda J. Cantrell**, Arbitrator of the Commission, in the city of **Collinsville**, on **July 26, 2022**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below and attaches those findings to this document.

DISPUTED ISSUES

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

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 $**60,619.52**; the average weekly wage was $**1,165.76.**

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 $**25,400.65** for TTD, $**0** for TPD, $**0** for maintenance, and $**0** for other benefits, for a total credit of $**25,400.65,** pursuant to the stipulation of the parties.

Respondent is entitled to a credit of $**TBD and any paid** under Section 8(j) of the Act, pursuant to the stipulation of the parties.

ORDER

The Arbitrator finds that Petitioner has not reached maximum medical improvement and is entitled to receive the additional care recommended by Dr. Czaplicki. Respondent shall authorize and pay for prospective medical treatment, including, but not limited to, a left knee total arthroplasty and post-operative care until Petitioner reaches maximum medical improvement.

Respondent shall pay Petitioner temporary total disability benefits of $**777.17**/week for **89-3/7th** weeks, for the period **11/8/20 through 7/26/22**, as provided in Section 8(a) of the Act. Respondent shall receive credit for temporary total disability benefits paid in the amount of $25,400.65 as stipulated by the parties.

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.

Linda J. Cantrell

SEPTEMBER 27, 2022

Arbitrator Linda J. Cantrell
ICArbDec19(b)

STATE OF ILLINOIS)
) SS
COUNTY OF MADISON)

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

TONY BERKEMEIER,	)	
	)	
Employee/Petitioner,	)	
	)	
v.	)	**Case No.: 21-WC-031786**
	)	
A.D.T. SECURITY SERVICES,	)	
	)	
Employer/Respondent.	)	

FINDINGS OF FACT

This claim came before Arbitrator Linda J. Cantrell for trial in Collinsville on July 26, 2022, pursuant to Section 19(b) of the Act. The parties stipulate that Petitioner sustained accidental injuries that arose out of and in the course of his employment with Respondent on November 7, 2020. The parties stipulate that Petitioner's left knee meniscus injury and meniscectomy is causally connected to the work accident and Respondent is liable for medical bills related to such treatment. Respondent disputes liability for prospective medical care related to a left total knee arthroplasty. The parties stipulate that Respondent is entitled to a credit for any and all medical bills paid through its group medical plan pursuant to Section 8(j) of the Act.

Petitioner claims entitlement to temporary total disability benefits from 11/8/20 through the date of arbitration, 7/26/22, representing 89-3/7th weeks. Respondent disputes liability for the period of TTD benefits claimed and stipulates to liability for TTD benefits from 11/8/20 through 6/7/21, representing 30-2/7th weeks. The parties stipulate that Respondent is entitled to a credit for TTD benefits paid in the amount of $25,400.65 The issues in dispute are causal connection with regard to a left total knee arthroplasty, TTD benefits, prospective medical care, whether Petitioner has reached maximum medical improvement, and if so, the nature and extent of Petitioner's injuries. All other issues have been stipulated.

TESTIMONY

Petitioner was 60 years old, married, with no dependent children at the time of the accident. Petitioner was employed by Respondent for 30 years installing security products in homes and businesses in the tri-state area. On 11/7/20, Petitioner injured his left knee when he stepped on a stair to exit a customer's garage. He testified he heard a loud snap and felt severe pain in his knee. He fell to the ground and was able to reposition himself into a chair. Petitioner called his supervisor to report the accident who offered to send an ambulance. Petitioner testified

he did not want to go to the emergency room in Harrisburg, Illinois and he drove himself home from Carmi to Wadesville, Illinois which took 50 minutes. He stated he could not bend his knee and had difficulty getting out of his truck when he arrived home. His wife drove him to a hospital in Evansville, Illinois the next day. Petitioner testified that the customer assisted him with loading his tools into his truck and he was not able to finish the job assignment. He testified he was at the customer's house for a couple of hours before the accident occurred. There were no witnesses to his fall.

Petitioner testified he underwent x-rays in the emergency room and a full cast was applied that went from his shoulders down to both of his legs. Petitioner testified that he saw Dr. Czaplicki on 11/12/20 and told him he twisted his knee when he stepped on the stair. Dr. Czaplicki administered a left knee injection that provided relief for a couple of days. Petitioner underwent an MRI that showed a left medial meniscus tear and patella femoral osteoarthritis. He underwent surgery on 1/25/21 and continued to have pain and difficulty walking. He continued to take Tylenol with Codeine prescribed by Dr. Czaplicki and a total knee replacement has been recommended. Petitioner testified he takes 3 to 4 pills of over-the-counter Tylenol to manage his current symptoms.

Petitioner testified that he saw Dr. Lieber at Respondent's request and the examination lasted a maximum of ten minutes. Petitioner stated he had no issues with his left knee and never received treatment for a left knee condition prior to 11/7/20. He has pain sitting for long periods of time and he has to keep his leg straight to alleviate his symptoms. He sits in a recliner often because he has pain with walking. He cannot mow his yard, carry laundry, or garden. His son frequently drives him where he needs to go because his knee pain increases when his leg is bent for prolonged periods.

On cross-examination, Petitioner testified he told the emergency room personnel he stepped up onto a stair and felt a pop in his left knee. He testified that his knee was at an angle when he stepped up onto the 8-inch stair and his knee twisted to the right causing him to fall forward and land on his left knee. Petitioner agreed that Dr. Czaplicki told him he had arthritis that was not caused by his work injury, and it was difficult to tell how much pain was coming from the meniscus tear and how much was coming from the arthritis. He agreed that Dr. Czaplicki told him a surgical repair of the tear would not fix the arthritis under his kneecap. He agreed he has ongoing pain due to arthritis. Petitioner denied that Dr. Czaplicki told him his residual symptoms were likely due to osteoarthritis. He admitted he did not garden in the years leading up to his work accident and his son was responsible for mowing the yard prior to his accident. He admitted he did not do laundry in his home prior to his accident.

Petitioner testified that prior to his work accident he did not have any pain in his left knee from arthritis. He testified that he would still be employed by Respondent if his accident had not occurred.

MEDICAL HISTORY

No medical records were admitted into evidence from Petitioner's emergency room visit at Deaconess Gateway Hospital on 11/8/20.

On 11/12/20, Petitioner was examined by orthopedic surgeon Dr. Anthony Czaplicki. X-rays of Petitioner's left knee revealed minimal degenerative changes. Examination revealed a small amount of swelling and crepitus. Dr. Czaplicki diagnosed left knee pain with mild osteoarthritis and synovitis, with suspected meniscus tear. Dr. Czaplicki administered an injection to decrease inflammation.

On 12/3/20, Dr. Czaplicki noted a positive McMurray test and ordered an MRI. The MRI was performed on 12/10/20 and revealed a full thickness tear of the posterior horn of the medial meniscus with mild extrusion, soft tissue swelling and edema along the posterior medial knee, and patellofemoral arthritis. Dr. Czaplicki recommended a partial meniscectomy which he opined would not resolve the patella arthritis which was not causally related to Petitioner's work injury.

On 1/25/21, Dr. Czaplicki performed a left knee arthroscopy and found Grade I and II changes in the tibia, some Grade II changes in the femur, and Grade IV changes on the trochlea.

On 2/25/21, Dr. Czaplicki noted Petitioner was doing okay if he kept his knee straight and he had pain with prolonged bending.

On 3/8/21, Dr. Czaplicki noted Petitioner had persistent pain particularly with ascending/descending stairs. He felt that Petitioner's residual symptoms were due to arthritic changes and conservative treatment would not relieve his symptoms. Dr. Czaplicki recommended a total knee replacement.

On 6/21/21, Petitioner was examined by Dr. Lawrence Lieber pursuant to Section 12 of the Act. Dr. Lieber noted that Petitioner stepped up onto a 6-inch step and felt a snap with pain. He noted that Petitioner did not fall, and he presented to the emergency room the day of the accident. Dr. Lieber noted Petitioner had no history of left knee problems prior to the work accident. He diagnosed chondromalacia and degenerative changes of the "left knee area". He opined that Petitioner's subjective complaints were out of proportion to objective findings and Petitioner showed evidence of minor degenerative changes of the left knee.

Dr. Lieber opined that Petitioner's present knee condition is not causally connected to his work accident but is caused by pre-existing abnormalities. He did not believe that the MRI or surgery were related to the work injury. Dr. Lieber opined that Petitioner reached MMI as of the initial evaluation by Dr. Czaplicki on 11/12/20, as there was no objective evidence of any abnormality related to the work injury. He opined there is no objective evidence to support the need for a total knee replacement. Dr. Lieber opined that Petitioner could return to full duty work without restrictions as it relates to the work accident. Dr. Lieber assigned a 3% impairment rating of the left knee.

On 8/27/21, Dr. Czaplicki authored a narrative report outlining Petitioner's reported accident, treatment, and proposed left knee arthroscopy. Dr. Czaplicki noted that the x-rays taken in the emergency room showed mild degenerative changes and he administered the presurgical injection due to an aggravation of arthritic changes or synovitis. Petitioner continued to complain

of clicking, catching, and medial tenderness and pain. Dr. Czaplicki opined that the accident could have caused the meniscus tear and aggravation of osteoarthritis. He stated that intraoperatively he observed Grade IV changes of the trochlea, Grade II changes of the patella, and Grade 1 and II changes of the medical compartment, and a complex tearing of the posterior medial meniscus.

Dr. Czaplicki reported that Petitioner's tear was repaired, and his residual symptoms are likely due to osteoarthritis which was preexisting. Dr. Czaplicki noted intraoperatively much more significant degenerative changes than noted on radiograph and though not caused by his injury, could have been aggravated by his work injury. Petitioner stated he desired to undergo the recommended total knee replacement. Dr. Czaplicki informed Petitioner that if the procedure was not approved by worker's compensation, he would have been at MMI at his last visit.

Dr. Czaplicki testified by way of deposition on 2/21/22. Dr. Czaplicki is a board-certified orthopedic surgeon who specializes in knee and hip replacements. Dr. Czaplicki's testimony was consistent with his records and narrative report. Dr. Czaplicki testified that Petitioner reported he had no issues with his left knee prior to 11/7/20 and that Petitioner likely aggravated his pre-existing asymptomatic arthritic knee condition as a result of the work accident.

Dr. Czaplicki disagreed with Dr. Lieber's opinion that the meniscectomy was not appropriate because Petitioner had mechanical symptoms of pain and the most common cause of meniscal tears is a twisting injury. He testified that Petitioner's medial knee had mild arthritis and he sustained an acute tear and not a degenerative tear. He testified that he last treated Petitioner on 4/5/21 at which time he continued to recommend a total knee replacement. He opined that if worker's compensation did not approve the surgery, he would deem Petitioner at MMI on 4/5/21 as he did not expect Petitioner's condition to improve dramatically without a total knee replacement. Dr. Czaplicki testified that his office refilled Petitioner's prescriptions for Tylenol 3 on 5/2/21 and 6/22/21.

Dr. Lawrence Lieber testified by way of deposition on 4/25/22. Dr. Lieber is a board-certified orthopedic surgeon. He testified that his physical examination revealed tenderness about the medial lateral joint line and patella tendon. Petitioner had a positive McMurray's and Steinmann's test suggesting joint line abnormalities related to either degeneration, meniscal pathology, or bony injury to the joint. He noted that Petitioner walked with an antalgic gait. Dr. Lieber testified that Petitioner had abnormality about the patella which could consist of cartilage damage, arthritis, or bony injury. His review of the 12/10/20 MRI revealed evidence of a degenerative medial meniscal tear with degeneration of the articular cartilage.

Dr. Lieber testified that the left knee x-rays taken in his office on 6/7/21 showed moderate osteoarthritis and no evidence of bone-on-bone changes or significant bony scoliosis. Dr. Lieber opined that based on his physical examination, review of the 12/10/20 MRI and the 1/25/21 arthroscopic pictures Petitioner had internal derangement chondromalacia of the left knee. He felt that Petitioner's subjective complaints were out of proportion with his diagnosis because he felt Petitioner had a successful arthroscopy and he should have better functional abilities and minimal complaints.

Dr. Lieber testified that any treatment after Petitioner's first visit with Dr. Czaplicki on 11/12/20 was not reasonable, necessary, or causally related to the work accident. He testified that Petitioner's accident was not consistent with a traumatic meniscal tear but was a degenerative tear based on the mechanism of injury and diagnostic and operative findings. He testified there was no evidence that Petitioner's accident aggravated his osteoarthritic condition or accelerated the need for a total knee replacement. He opined that Petitioner reached MMI on 11/12/20 and could return to work without restrictions.

On cross-examination, Dr. Lieber testified he had no evidence that Petitioner complained of left knee pain or treated for any condition related to his left knee prior to 11/7/20. He testified that he did not evaluate Petitioner to determine if the meniscectomy was medically necessary but to determine whether his condition was causally related to the work accident. Dr. Lieber testified that he believed Petitioner that his left knee condition did not cause pain until after his work incident but testified there was no objective evidence that the accident caused an aggravation of a preexisting condition. Dr. Lieber testified that he would need to see and examine a patient prior to surgery to determine whether the patient required surgery. He provided a 3% impairment rating of Petitioner's left leg based on the AMA Guides to the Evaluation of Impairment, 6th Edition.

CONCLUSIONS OF LAW

Issue (F): Is Petitioner's current condition of ill-being causally related to the injury?
Issue (O): Has Petitioner reached maximum medical improvement?

In addition to or aside from expert medical testimony, circumstantial evidence, especially when entirely in favor of the Petitioner, is sufficient to prove a causal nexus between an accident and the resulting injury, such as a chain of events showing a claimant's ability to perform manual duties before accident but decreased ability to still perform immediately after accident. *Pulliam Masonry v. Indus. Comm'n*, 77 Ill. 2d 469, 397 N.E.2d 834 (1979); *Gano Electric Contracting v. Indus. Comm'n*, 260 III.App.3d 92, 96-97, 631 N.E.2d 724 (1994); *International Harvester v. Indus. Comm'n*, 93 111.2d 59, 442 N.E.2d 908 (1982).

In addition, the employee is entitled to benefits where a second injury occurs due to treatment for the first. See *Shell Oil Co. v. Indus. Comm'n*, 2 Ill. 2d 590, 119 N.E.2d 224 (1954); *International Harvester Co. v. Indus. Comm'n*, 46 Ill.2d 238, 263 N.E.2d 49 (1970); *Lincoln Park Coal & Brick v. Indus. Comm'n*, 317 Ill. 302, 148 N.E. 79 (1925); *Harper v. Indus. Comm'n*, 24 Ill.2d 103, 180 N.E.2d 480 (1962), *Brookes v. Indus. Comm'n*, 78 Ill.2d 150, 399 N.E.2d 603 (1979); *Tee Pak, Inc. v. Indus. Comm'n*, 141 Ill.App.3d 520, 490 N.E.2d 170 (1986). 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. *Vogel v. Indus. Comm'n*, 354 Ill. App. 3d 780, 786, 821 N.E.2d 807, 812 (2005). "Every natural consequence that flows from an injury that arose out of and in the course of the claimant's employment is compensable unless caused by an independent intervening accident that breaks the chain of causation between a work-related injury and an ensuing disability or injury." *Vogel*, 354 Ill. App. 3d 780, 786, 821 N.E.2d 807,

812 (2005). Where the second injury occurs due to treatment for the first, there is no break in the causal chain. *International Harvester supra*.

In addition, a claim is not denied simply because a claimant suffers from a preexisting condition. 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*, 207 Ill. 2d 193, 205, 797 N.E.2d 665, 672-673 (2003). [Emphasis added]. "Petitioner need only show that some act or phase of the employment was a causative factor of the resulting injury." *Fierke v. Indus. Comm'n*, 309 Ill. App. 3d 1037, 723 N.E.2d 846 (2000). Employers are to take their employees as they find them. *A.C. & S. v. Indus. Comm'n*, 304 Ill. App. 3d 875, 710 N.E.2d 837 (1999) citing *General Electric Co. v. Indus. Comm'n*, 89 Ill. 2d 432, 434, 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), 37 Ill. 2d 123; see also *Illinois Valley Irrigation, Inc. v. Indus. Comm'n*, 66 Ill. 2d 234, 362 N.E.2d 339 (1977).

Based upon the evidence, the Arbitrator finds that Petitioner's current condition of ill-being is causally related to his undisputed work accident. Respondent stipulated that Petitioner's left medial meniscus tear and resulting arthroscopy are causally connected to the work accident, despite its Section 12 examiner Dr. Lieber's testimony that any treatment after Petitioner's first visit with Dr. Czaplicki on 11/12/20 was not reasonable, necessary, or causally related to the work accident, and that Petitioner reached MMI on 11/12/20.

Respondent disputes that the recommended total knee replacement is causally connected to Petitioner's work accident. The Arbitrator finds the opinions of Dr. Czaplicki more persuasive than those of Dr. Lieber. Dr. Lieber did not examine Petitioner until over four months after Petitioner underwent the meniscectomy on 1/25/21. Dr. Lieber testified that he would need to see and examine a patient prior to surgery to determine whether the patient required surgery. Dr. Lieber believed Petitioner that his left knee condition did not cause pain until after his work incident and he had no evidence that Petitioner received medical treatment for his left knee prior to 11/7/20. However, Dr. Lieber concluded there was no objective evidence that Petitioner's accident caused an aggravation of a preexisting condition.

Dr. Lieber's examination revealed tenderness about the medial lateral joint line and patella tendon. Petitioner had a positive McMurray's and Steinmann's test suggesting joint line abnormalities related to either degeneration, meniscal pathology, or bony injury to the joint. He noted that Petitioner walked with an antalgic gait. Dr. Lieber testified that Petitioner had abnormality about the patella which could consist of cartilage damage, arthritis, or bony injury. His review of the 12/10/20 MRI revealed evidence of a degenerative medial meniscal tear with degeneration of the articular cartilage. He diagnosed internal derangement chondromalacia of the left knee. He felt that Petitioner's subjective complaints were out of proportion with his diagnosis because he believed Petitioner had a successful arthroscopy and he should have better functional abilities and minimal complaints. He testified there was no evidence that Petitioner's accident aggravated his osteoarthritic condition or accelerated the need for a total knee replacement. Similar to Dr. Lieber's opinion with regard to the meniscectomy, he did not address

whether the total knee replacement is medically necessary, but only opined as to whether the need for such procedure is causally related to Petitioner's work accident.

The Arbitrator finds the testimony of Dr. Czaplicki more persuasive, as it is in harmony with both circumstantial evidence, which demonstrates a clear chain of events establishing an asymptomatic condition prior to the accident with an instantaneous and persistent decline in Petitioner's left knee subsequent thereto. The MRI performed on 12/10/20 revealed a full thickness tear of the posterior horn of the medial meniscus, soft tissue swelling and edema along the posterior medial knee, and patellofemoral arthritis. Dr. Czaplicki advised that a repair of the meniscus tear would not resolve the preexisting patella arthritis. Dr. Czaplicki noted intraoperatively much more significant degenerative changes than noted on radiograph. He testified that Petitioner's accident aggravated a preexisting degenerative condition, and his condition would not likely improve dramatically without a total knee replacement.

Petitioner's well-being prior to the accident is unrebutted, as is the evidence showing that Petitioner's degenerative knee condition was aggravated by a chain of events that followed as a natural consequence from the injury. As a result, the Arbitrator finds Petitioner's current condition of ill-being in his left knee is causally connected to his work injury of 11/7/20.

Respondent alleges that Petitioner reached maximum medical improvement. Respondent stipulates that Petitioner is entitled to TTD benefits through 6/7/21, the date of Dr. Lieber's Section 12 examination. Dr. Lieber testified that any treatment after Petitioner's first visit with Dr. Czaplicki on 11/12/20 was not reasonable, necessary, or causally related to the work accident, that Petitioner reached MMI on 11/12/20, and Petitioner could return to work without restrictions. However, the parties stipulated that Petitioner's meniscus tear and meniscectomy are causally connected to the work accident. Surgery was performed on 1/25/21 and Dr. Lieber opined on 3/8/21 that Petitioner's residual symptoms were due to arthritic changes and conservative treatment would not relieve his symptoms. He recommended a total knee replacement at that time. Dr. Czaplicki testified that if worker's compensation did not approve the surgery, he would deem Petitioner at MMI on 4/5/21 as he did not expect Petitioner's condition to improve dramatically without a total knee replacement. Dr. Czaplicki clarified in his deposition that the MMI recommendation related to Petitioner's meniscectomy, and if Petitioner did not undergo a total knee replacement for whatever reason, then Petitioner would be at MMI. Dr. Czaplicki continued to recommend a total knee replacement that he opined was causally connected to Petitioner's work accident.

The factors to be considered in determining whether a claimant has reached MMI include: a release to return to work with restrictions or otherwise; medical testimony or evidence concerning claimant's injury; the extent of the injury; and, most importantly, whether the injury has stabilized. *Westin Hotel v. Indus. Comm'n*, 372 Ill. App. 3d 527, 542 (2007).

Based on the Arbitrator's findings as to causal connection, Dr. Czaplicki's recommendation for a total knee replacement, and evidence that Petitioner's left knee condition has not stabilized, the Arbitrator finds that Petitioner has not reached maximum medical improvement.

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

Based on the Arbitrator's findings as to causal connection and that Petitioner has not reached maximum medical improvement, prospective medical care is awarded herein. Respondent shall authorize and pay for prospective medical care recommended by Dr. Czaplicki, including, but not limited to, a left total knee arthroplasty and post-operative care until Petitioner reaches MMI.

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

The law in Illinois holds that "[a]n employee is temporarily totally incapacitated from the time an injury incapacitates him 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, 561 N.E.2d 623 (Ill. 1990). The ability to do light or restricted work does not preclude a finding of temporary total disability. *Archer Daniels Midland Co. v. Indus. Comm'n*, 138 Ill.2d 107, 561 N.E.2d 623 (Ill., 1990) citing *Ford Motor Co. v. Indus. Comm'n*, 126 Ill. App. 3d 739, 743, 467 N.E.2d 1018, 1021 (1984).

Based upon the above findings as to causal connection and the reasonableness and necessity of Petitioner's need for a left total knee replacement, the Arbitrator awards Petitioner temporary total disability from 11/8/20 through 7/26/22, representing 89-3/7th weeks. Respondent shall receive credit for temporary total disability benefits paid in the amount of $25,400.65, pursuant to the stipulation of the parties.

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 Date

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	17WC030971
Case Name	James Depkon v. City of Park Ridge
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b) Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	23IWCC0424
Number of Pages of Decision	23
Decision Issued By	Stephen Mathis, Commissioner

Petitioner Attorney	Michael Scanlon
Respondent Attorney	Katrina Robinson

DATE FILED: 9/29/2023

/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

James Depkon,

Petitioner,

vs. NO. 17WC030971

City of Park Ridge,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19b having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of accident, medical expenses, causal connection, prospective medical, 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 July 25, 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.

No bond is required for the removal of this cause to the Circuit Court. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

September 29, 2023

SJM/sj
o-9/20/2023
44

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

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

/s/ *Amylee H. Simonovich*
Amylee H. Simonovich

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	17WC030971
Case Name	James Depkon v. City of Park Ridge
Consolidated Cases	
Proceeding Type	19(b) Petition
Decision Type	Corrected Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	20
Decision Issued By	Joseph Amarilio, Arbitrator

Petitioner Attorney	David Huber
Respondent Attorney	Katrina Robinson

DATE FILED: 7/25/2022

THE INTEREST RATE FOR THE WEEK OF JULY 19, 2022 2.91%

/s/ Joseph Amarilio; Arbitrator

Signature

STATE OF ILLINOIS)
)SS.
COUNTY OF COOK)

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

THE ILLINOIS WORKERS' COMPENSATION COMMISSION
CORRECTED ARBITRATION DECISION
19(B)

James Depkon Case # **17 WC 030971**
Employee/Petitioner

v.
City of Park Ridge
Employer/Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Joseph Amarilio**, Arbitrator of the Commission, in the city of **Chicago**, on **March 17, 2021 and April 25, 2022**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On **April 6, 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 $**71,542.59**; the average weekly wage was $**1,375.82**
On the date of accident, Petitioner was **44** years of age, ***single*** with **1** dependent children
Petitioner ***has*** **not** received all reasonable and necessary medical services.
Respondent ***has not*** paid all appropriate charges for all reasonable and necessary medical services.
Respondent ***has not*** paid all temporary total disability benefits related to Petitioner's injury.
Respondent shall be given a credit of **$ 0** for TTD, **$ 0** for TPD, $ **0** for maintenance, and **$ 0** for other benefits, for a total credit of **$ 0**.
Respondent is entitled to a credit of **$ 0** under Section 8(j) of the Act.

ORDER

Medical Bills: Respondent shall pay reasonable and necessary medical services in the amount of $196,137.07, as provided in Section 8(a) and 8.2 of the Act and shall hold Petitioner harmless for any medical bills paid by group insurance.

TTD: Respondent shall pay Petitioner temporary total disability benefits in the amount of $917.21/week for the period of December 12, 2019 through February 25, 2020 representing 10-6/7th weeks pursuant to section 8(b) of the Act.

Penalties: Respondent shall pay to Petitioner attorney fees of **0**, as provided in Section 16 of the Act; $ **0** as provided in Section 19(k) of the Act; and $ 0, as provided in Section 19(1) of the Act

Prospective Medical: Respondent shall pay for Petitioner's prospective medical care pursuant to section 8(a) of the Act.

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

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

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

/S/ *Joseph D. Amarilio* **JULY 25, 2022**

Signature of Arbitrator JOSEPH D. AMARILIO

IN THE WORKERS' COMPENSATION COMISSION OF THE STATE OF ILLINOIS
CHICAGO, ILLINOIS

ATTACHMENT TO ARBITRATION DECISION
19(b)

JAMES DEPKON,	)	
	)	
Petitioner,	)	
	)	
v.	)	**Case No: 17 WC 030971**
	)	
CITY OF PARK RIDGE,	)	
	)	
Respondent.	)	

FINDINNGS OF FACT AND CONCLUSIONS OF LAW

Findings of Fact – April 6, 2017 Accident

I. Procedural History

Mr. James Depkon (Petitioner) filed an Application For Adjustment of Claim for benefits under the Illinois Workers' Compensation Act under case number 17 WC 014991 alleging that he sustained accidental injuries to his head and neck on March 14, 2017 and that these accidental injuries arose out of and in the course of his employment with Respondent (City of Park Ridge). Petitioner filed a second Application For Adjustment of Claim for benefits under the Illinois Workers' Compensation Act (Act) under case number 17 WC 030971 alleging that he sustained accidental injuries to his hip on April 6, 2017 that arose out of an in the course of his employment. The two claims were consolidated and proceeded to hearing on March 17, 2022 and on April 25, 2022. The parties submitted a completed Request For Hearing form for each claim as a joint exhibit.

As to the April 6, 2017 accident, the parties stipulated that Petitioner was 44 years old, single with one dependent child. The parties further stipulated that he sustained accidental injuries that arose out of and in the course of his employment and that Respondent was given notice with the time limits stated in the Act. Respondent disputed liability for unpaid medical bills, disputed that Petitioner's current condition of ill-being is causally

connected to his injury, disputed Petitioner's entitlement to temporary total disability benefits, disputed liability to penalties, and disputed Petitioner's claimed entitlement to prospective medical care.

I. Background

On April 6, 2017 Petitioner, James Depkon, was employed by the City of Park Ridge. (TR. P. 17). He worked as a maintenance worker II for the ground maintenance division. (TR. P. 18). His duties included garbage pickup, flower planting, grass mowing, forestry, and other tasks around the uptown area. (TR. P. 18-19). In order to carry out his tasks, Petitioner was required to operate small dump trucks, large dump trucks, front loaders, bobcats, and woodchippers. (TR. P. 19). Petitioner operated woodchippers to remove trees and fallen branches. (TR. P. 44).

II. April 6, 2017 Hip Injury

A. Hip Treatment Before April 6, 2017

Petitioner had left hip issues prior to April 6, 2017. (TR. P. 45). Petitioner had a left hip resurfacing surgery in March of 2014. (TR. P. 45). In April of 2016 Petitioner underwent a revision surgery for his left hip because his femoral component was loose. (TR. P. 45). In February of 2017 Petitioner underwent an injection to his left hip. (TR. P. 45). Petitioner's hip never felt 100% prior to his April 6, 2017 injury, but he did continue to work full duty. (TR. P. 46). Petitioner was able to get in and out of vehicles, walk around, bend over, crawl, and carry weights prior to April 6, 2017. (TR. P. 46). Petitioner was able to flex his hip up to 60 degrees prior to April 6, 2017. (TR. P. 46-47) (PEX 6). After the April 6, 2017 accident, he felt a popping in his groin area when he lifted his leg. (T 52). He confirmed that the terms "popping" and "snapping" mean the same thing. (T 66). On cross-examination, Petitioner admitted that his left hip was never "totally feeling well" following the March 2014 surgery. (T 74).

Seven years before his April 6, 2017 accident, Petitioner presented to Dr. Gordon at Illinois Bone & Joint Institute on October 28, 2009. (PX 7 pg 23). He reported years of right hip and groin pain. Dr. Gordon performed a right hip resurfacing on November 19, 2009. (PX 7 pg 81). A December 14, 2009 physical therapy evaluation

documented that Petitioner had intermittent groin pain since playing sports in high school, and that his prior medical history included osteoarthritis. (PX 7 pg 134). The May 7, 2010 physical therapy discharge note stated that Petitioner had resumed riding his bicycle and had returned to full duty work. (PX 7 pg 131).

Petitioner returned to see Dr. Gordon on November 17, 2010. (PX 7 pg 19). He had no right hip complaints, but did report groin pain in his left hip, similar to the pain he experienced on his right side. Left hip x -rays revealed mild degenerative changes in the joint. Petitioner returned to see Dr. Gordon on November 16, 2011. (PX 7 pg 18, 57). He complained of left hip discomfort and had a positive Stinchfield test at the left hip on examination. Left hip x-rays revealed moderate osteoarthritic changes. On November 20, 2013, Petitioner returned to see Dr. Gordon and reported increasing pain in his left hip. (PX 7 pg 16, 55). Petitioner had a mild limp favoring the left side as well as pain with flexion and internal rotation. X-rays of the left hip demonstrated moderate to severe arthritic changes. Dr. Gordon noted that Petitioner's left hip was becoming more symptomatic and that Petitioner was going to consider resurfacing arthroplasty next year.

On March 24, 2014, Dr. Gordon performed a left hip surface replacement arthroplasty. (PX 7 pg 76-77). The indication for surgery documented Petitioner's significant pain and associated debilitation secondary to advanced osteoarthritis of the left hip. On April 21, 2014, Petitioner completed a Medical History form, wherein he indicated that he was experiencing arthritis and low back/hip/leg pain. (PX 7, pg 158). On May 6 and 20, 2014, Petitioner complained to Dr. Gordon of tightness and pain in his groin. (PX 7 pg 12, 13). On June 17, 2014, Petitioner complained to Dr. Gordon of left hip pain, left groin pain, limited mobility, overall dysfunction, problems lifting his leg, and mechanical symptoms. (PX 7, pg 11). On examination, Petitioner had painful hip flexion and abduction as well as a positive Stinchfield test. Dr. Gordon diagnosed hip dysfunction status post resurfacing arthroplasty. He recommended a CT scan and dynamic ultrasound.

A June 18, 2014, CT Screening Form documented that Petitioner had pain, clicking, and soreness in his left hip. (RX 2, pg 13). The June 23, 2014 left hip CT scan revealed post-operative changes; several areas of heterotopic ossification about the hip joint, and along the inferior margin and adjacent to the cortex of the left femoral head; and a collection of linear foci adjacent to the lateral margin of the acetabulum. (PX 7, pg 49).

On July 3, 2014, Petitioner was evaluated by Dr. Shah, another orthopedic surgeon at Illinois Bone & Joint Institute. (PX 7, pg 9-10). Petitioner complained of left hip clicking and groin pain as well as pain with lifting. On examination, he had pain in his anterior groin, pain with internal rotation and flexion, and a positive Stinchfield test. Dr. Shah assessed iliopsoas tendonitis, iliopsoas bursitis, and hip impingement. Petitioner returned to see Dr. Gordon on July 28, 2014. (PX 7, pg 8). He complained of left hip stiffness, groin pain, and pain with flexion and internal rotation. Dr. Gordon discussed an impingement phenomenon that might require a revision, but wanted to try physical therapy first. Petitioner received physical therapy through August 27, 2014. (PX 7, pg 120-125).

Petitioner returned to see Dr. Gordon on January 8, 2016 for evaluation of his left hip. (PX 7, pg 4-5). He reported intermittent sharp pains in his groin and occasional limping for the last couple of months. He took Naproxen for his pain. On examination, left hip range of motion reproduced pain with flexion and internal rotation. X-rays revealed a radiolucent line around the stem of the left hip resurfacing with some periosteal reaction at the inferior aspect of the femoral neck. Dr. Gordon discussed revision surgery.

On February 29, 2016, Petitioner presented to another orthopedic physician, Dr. Finn. (RX 3 pg 1). He complained of left hip pain following a hip resurfacing for early arthritis. Petitioner reported that his groin pain never resolved. He reported that Dr. Gordon had advised that he would likely need a revision surgery. On physical examination, Petitioner demonstrated an antalgic gait. He had pain with internal rotation and resisted forward flexion. (RX 3 pg 1). Dr. Finn recommended revision surgery to convert Petitioner to a dual articular attached to a standard femoral component to avoid a complete acetabular revision. (RX 3, pg 2). On March 8, 2016, Petitioner underwent an MRI of the bilateral hips. (RX 3 pg 3). Per the radiologist, fluid collection in the left hip was suspicious for particle wear disease.

Dr. Finn performed a revision of the femoral component of the left total hip arthroplasty on April 21, 2016. (PX 7 pg 69-72). Dr. Finn's post-operative diagnosis was loosening of the femoral component of the left hip resurfacing. Per Dr. Finn’s April 23, 2016 hospital discharge note, Petitioner had complained that his left groin pain had not resolved following his 2009 surgery. (PX 7 pg 147-148). He described that he had revised

the femoral component to convert to a dual-articular standard femoral component, leaving the acetabular component. Dr. Finn noted that Petitioner preferred this procedure as opposed to a complete acetabular revision.

On June 1, 2016, left hip x-rays revealed a small amount of heterotopic bone adjacent to the hip, and Dr. Finn recommended physical therapy. (RX 3 pg 4-5). On July 13, 2016, Petitioner complained to Dr. Finn of lateral pain over the greater trochanter. (RX 3 pg 6-7). X-rays revealed ectopic bone elements superior to the greater tuberosity. Dr. Finn administered an injection to the left greater trochanter, which provided immediate relief of Petitioner's symptoms. On October 24, 2016, Petitioner complained to Dr. Finn of two months of groin pain. (RX 3 pg 8). On examination, external rotation reproduced Petitioner's pain and he was tender over the adductor tendon and the greater trochanter. Dr. Finn believed Petitioner was experiencing adductor tendinitis. He administered a trochanteric injection and prescribed medication.

Petitioner returned to see Dr. Finn on February 8, 2017, complaining of almost-daily moderate groin pain. (RX 3 pg 9). He also complained of a snapping sensation in his left hip from about 60 degrees of flexion moving into extension. Resisted flexion reproduced Petitioner's pain. Dr. Finn noted that the acetabular component was not ideally forward flexed, but "was not bad enough" to consider acetabular revision at the time the hip was converted to a total hip replacement. Dr. Finn's impression was most likely snapping psoas tendon syndrome over the anterior lip of the acetabular component. He recommended a cortisone injection. If the same did not provide Petitioner with long-lasting relief, Dr. Finn recommended a psoas recession or cup repositioning. At the time, Petitioner rated his pain at 5/10. (RX 3 pg 10). Dr. Finn's hand-written note indicated that Petitioner had started to have sharp left hip pain (RX 3 pg 11).

Dr. Finn administered a left psoas injection on February 21, 2017. (RX 3 pg 12-13). His post-operative diagnosis was left snapping psoas tendon syndrome and left hip pain. The operative indication documented that Petitioner reported groin pain as well as pain and snapping with flexion. Petitioner reported pain with range of motion since his prior left hip surgery. (RX 3 pg 14). On cross-examination, Petitioner admitted that he was supposed to return to see Dr. Finn to see if surgery was indicated depending on his response to the injection. (T 76). Petitioner testified that the injection provided relief for one to two days. (T 82). He admitted that Dr. Finn

had recommended surgery if the injection failed to provide long-term relief, and that the surgery being considered was the same surgery he ended up undergoing in 2019. (T 76).

B. April 6, 2017 Hip Injury

On April 6, 2017 Petitioner was instructed to remove a large tree that was on top of a vehicle. (TR. P. 47). Petitioner was working with his supervisor, Matt Gaber, and a co-worker, Brad Anderson. (TR. P. 47). Petitioner arrived at the scene, 132 Merrill Street in Park Ridge, at about 7:45 a.m. (TR. P. 48) (PEX 3). Traffic was busy on Merrill Street, so Petitioner was instructed to direct traffic while Mr. Gaber and Mr. Anderson positioned a woodchipper that they would use to cut the tree. (TR. P. 48). While Petitioner was directing traffic, Mr. Gaber backed the woodchipper up and hit Petitioner. (TR. P. 48). The woodchipper hit Petitioner above his left knee, causing his body to jerk to the left. (TR. P. 49). Petitioner's knee turned inward and collapsed. (TR. P. 49). Petitioner felt pulls in his muscles in his groin area and above his left knee. (TR. P. 39). The woodchipper that hit Petitioner weighed about 6,000 to 7,000 pounds. (TR. P. 49). The truck that the woodchipper was attached to weighted about 8,000 to 9,000 pounds. (TR. P. 50). The truck and woodchipper were moving at about 3-4 mph when they hit Petitioner. (TR. P. 50). Following the injury, Petitioner filled out an incident report and provided it to Mr. Gerber. (TR. P. 51) (PEX 3).

C. Medical Treatment for April 6, 2017 Hip Injury

Following the incident, Petitioner started to feel pain in his groin area whenever he lifted his left leg. (TR. P. 52). Petitioner went to Advocate Occupational Health Clinic on April 7, 2017. (TR. P. 53) (PEX 9). At the Clinic, Dr. Lauren McLean noted Petitioner was experiencing pain in his inner left hip and popping in his hip. (PEX 9). She diagnosed Petitioner with a strain to adductor muscle, fascia, and tendon in his left thigh. (PEX 9). She instructed Petitioner to "consult ortho – Dr. Finn for exacerbation of pre-existing problem." (PEX 9).

Petitioner presented to Dr. Henry Finn at Weiss Memorial Hospital on May 1, 2017. (TR. P. 53) (PEX 6). Dr. Finn noted that since the April 6, 2017 incident, Petitioner had increased left groin pain and a snapping feeling at about 50 degrees of hip flexion. (PEX 6). Dr. Finn instructed Petitioner to undergo an injection in his left hip. (PEX 6) (TR. P. 55).

Dr. Finn authored a letter on May 1, 2017. (PEX 6, P. 4). In the letter, Dr. Finn noted the relief that Petitioner had following his February of 2017 injection. Dr. Finn noted that since the woodchipper incident, Petitioner's pain had returned. Dr. Finn then opined that there were two possible surgeries to relieve Petitioner of his symptoms: a cup repositioning surgery or an iliopsoas tendon recission. (PEX 6, P. 4). Dr. Finn stated, "before we consider either, given that his symptoms are now worse after his work-related injury, I thought we should do another injection to see if it gives him immediate and significant relief that would prognosticate that this procedure would be necessary." (PEX 6, pg. 4).

On May 23, 2017 Petitioner returned to Dr. Finn's office for the injection. (TR. P. 56) (PEX 6). Dr. Finn's records state that primary coverage should be workers' compensation. (PEX 6, P. 15). Dr. Finn wrote that Petitioner underwent an Iliopsoas injection in February of 2017 which gave him significant relief. He then went on to state that "on 4/7/17, [Petitioner] was at work and he was struck on the left leg by a chipper and his symptoms have returned. He can make his psoas tendons snap at approximately 50-60 degrees of flexion, which causes some pain." (PEX 6, P. 46). Petitioner testified that the injection he received on May 23rd helped temporarily. (TR. P. 56).

On August 25, 2017 Petitioner went to Dr. Alexander Gordon at Illinois Bone and Joint for further hip treatment. (TR. P. 56) (PEX 7). Petitioner's pain had returned since the injection performed on May 23, and he was experiencing a constant ache and sharp pain with certain movements. (TR. P. 57). Dr. Gordon ordered an ultrasound of Petitioner's left hip. (PEX 7).

Petitioner's ultrasound was completed, and he returned to Dr. Gordon on August 28, 2017 for review. (PEX 7). Dr. Gordon noted that Petitioner's ultrasound showed thickening of the capsule region of his left hip arthroplasty, indicating synovial thickening/fluid buildup. (PEX 7).

On November 21, 2017 Dr. Gordon noted that "we discussed and incident which occurred with him in 04/2017, while at work, he was hit in the left leg by a tipper (sic) vehicle that backed into him and it caused and uncontrolled torque to the left hip. This is described in the notes from Dr. Henry Finn on 05/01/2017. It does

appear to have exacerbated his groin symptoms and has remained worse since then." (PEX 4, P. 19). Dr. Gordon ordered an MRI and discussed surgery with Petitioner, which would be an acetabular revision surgery. (PEX 4).

Petitioner received the MRI on April 25, 2018, which confirmed fluid collection in Petitioner's femur and fluid collection in the anterior iliopsoas bursal region with complex fluid, which was noted on the August 2017 ultrasound. (PEX 4, P. 29).

Petitioner continued to follow up with Dr. Gordon throughout 2018 and 2019 to monitor his condition. Petitioner elected to move forward with the suggested surgery in late 2019 as his symptoms were still not resolved. (PEX 4). Petitioner originally attempted to get his surgery approved through Respondent's carrier, but it was denied so his bills were sent to his group health insurance. (TR. P. 58).

On December 12, 2019 Petitioner underwent an acetabular revision surgery with Dr. Gordon. (PEX 4, P. 33). During the surgery Petitioner's femoral implant and his acetabular implant were removed in a labor-intensive process. (PEX 4, P. 33). The implants were then replaced and tested before the surgical site was closed. (PEX 4, P. 33). Unfortunately, following the surgery, Petitioner's surgical wound would not heal, and he ended up developing a hematoma. (TR. P. 59).

Petitioner underwent an irrigation and debridement and complex wound closure procedure on December 21, 2019. (PEX 4, P. 31). The surgery was performed by Dr. Gordon. (PEX 4, P. 31). During the procedure, Dr. Gordon used multiple devices including a cauterizing device to stop the deep bleeding in Petitioner's wound. (PEX 4, P. 32). Unfortunately, even after the second surgery, Petitioner still had infections and blood clots. (TR. P. 59). Petitioner ended up with two pulmonary embolisms. (TR. P. 59) (PEX 4). Petitioner was admitted to Lutheran General Hospital from December 21 to December 26. (TR. P. 60) (PEX 4).

Petitioner continued to treat with Dr. Gordon, who monitored Petitioner's wound over the following months. (TR. P. 60). Unfortunately, the surgery did not relieve Petitioner of his hip symptoms. (TR. P. 61). In May of 2021 Dr. Gordon noted that although he would not recommend any more open surgeries to Petitioner's hip, he would recommend consideration for another injection and an arthroscopic recission of Petitioner's

iliopsoas tendon. (PEX 4). Dr. Gordon referred Petitioner to Dr. Michael Chiu for arthroscopic consideration. (PEX 4).

Petitioner presented to Dr. Chiu on June 28, 2021. (PEX 4). Dr. Chiu recommended an ultrasound guided iliopsoas tendon sheath injection. (PEX 4). Petitioner testified that future procedures, including an injection and an arthroscopic procedure, are still in consideration, although he has not yet elected to proceed with them. (TR P. 64).

Petitioner testified that his hip was still sore on the date of trial. (TR. P. 64). He does not have the mobility that he used to have. (TR. P. 65).

D. Temporary Total Disability - April 6, 2017 Injury

Petitioner testified that he stopped working on December 12, 2019 for the initial surgery. (TR. P. 63). Petitioner was given a return to work note by Dr. Gordon on February 25, 2020. (TR. P. 64) (PEX 4). Petitioner was not paid any benefits during this period. (TR. P. 64).

E. Outstanding Medical Bills Related to the April 6, 2017 Injury

Petitioner testified that Respondent did not pay for medical bills related to his left hip treatment. (TR. P. 56). Petitioner has incurred the following medical bills with respect to his left hip: Weiss Memorial Hospital $13,019.06 (PEX 12); Illinois Bone and Joint $27,917.01 (PEX 17); and Advocate Lutheran General Hospital $155,201.00 (PEX 18). Petitioner's total bills for his hip related treatment amount to $196,137.07.

F. Section 12 Examination of Dr. Troy Karlsson

On May 8, 2018, Dr. Troy Karlsson performed a Section 12 medical examination at Respondent's request and authored a report dated May 21, 2018. (RX 1 DepX 2). Petitioner reported that he had some groin pain in the weeks prior to the chipper incident, but his pain increased and worsened afterwards. (RX 1 DepX 2 pg 1). He complained of sharp groin pain and some lateral aching and stated that nothing made the pain better or worse. (*Id*.). Petitioner was taking over-the-counter Advil for his symptoms approximately twice per week. (*Id*.). He was working in a full duty capacity at his same job. (*Id*.).

On physical examination, Petitioner had a normal gait, mild tenderness over the bilateral greater trochanters, and could easily flex to 90 degrees on both hips. He could bilaterally extend to 10 degrees, abduct to 45 degrees, and internally and externally rotate to 30 degrees. (RX 1 DepX 2 pg 2-3). Petitioner expressed minor discomfort in the left groin at the extremes of all motions. (RX 1 DepX 2 pg 3). Dr. Karlsson reviewed four CDs of diagnostic images and 2.5 inches of additional medical records. (RX 1 DepX 2 pg 3-9). He noted that the post-accident left hip MRIs showed no structural changes to the femoral stem, acetabulum, or any other bony structures. (RX 1 DepX 2 pg 9).

Dr. Karlsson diagnosed a prominent acetabular shell with possible iliopsoas impingement that was caused by the prior hip resurfacing and "not in any way related to the claimed April 6, 2017 work incident." (*Id*.). He explained that Petitioner had ongoing complaints following his initial left hip surgery, that his issues with the acetabular prosthesis were pre-existing, and that acetabular revision surgery was considered prior to the work incident. (RX 1 DepX 2 pg 9-10). Dr. Karlsson highlighted the pre- and post- work incident diagnostics, showing no change in positioning of the left hip components. (RX 1 DepX 2 pg 10). Dr. Karlsson opined that revision surgery was a reasonable consideration but was not related to the work incident. (*Id*.). He opined that Petitioner had reached maximum medical improvement, and that any further treatment would not be related to the work injury. (*Id*.). Dr. Karlsson opined that Petitioner was capable of continuing to work in a full duty capacity. (RX 1 DepX 2 pg 11).

G. Deposition Testimony of Section 12 Examiner Dr. Karlsson

Dr. Karlsson then testified via evidence deposition on October 22, 2018. (RX 1). Dr. Karlsson is a board-certified orthopedic surgeon and a member of the American Academy of Orthopedic Surgeons. (RX 1, pg 5-6 & 26; RX 1 DepX 1). Dr. Karlsson's practice is focused on knees, hips, and shoulders.

Dr. Karlsson testified that he examined Petitioner on May 8, 2018 and authored a report thereafter. (RX 1, pg 7-8; RX 1 DepX 2). Dr. Karlsson explained that the psoas muscle and adductor muscle are located near the hip joint; the psoas muscle is responsible for hip flexion and rotation and the adductor muscle brings the leg inwards. (RX 1, pg 10). He described that a hip surface replacement is a resurfacing or recapping of the ball

portion of the ball-and-socket of the hip joint. (RX 1 pg 11). Dr. Karlsson testified as to Petitioner March 24, 2014 and April 1, 2016 surgeries. (RX 1 pg 11-12). He described that the acetabular shell is the socket portion of the joint, and that Petitioner's shell was prominent over the bony portion of the acetabulum or sticking out from the bone itself. (RX 1 pg 12-13). The March 24, 2014 surgery was the only time anything was done to the acetabulum on the left hip, and subsequent imaging showed no change in position, no shifting, and no breakage. (RX 1 pg 16). He concluded that the shell was prominent since the first surgery. (*Id*.). He testified that x-rays dating back to April 15, 2014 and x-rays on multiple dates thereafter revealed no change whatsoever in the position of the shell. (RX 1, pg 16-17).

Dr. Karlsson explained that iliopsoas impingement refers to the psoas muscle being pinched or rubbed against. (RX 1, pg 13). He testified that the psoas muscle passes directly adjacent to the hip joint, and it could rub up against a prominent acetabular shell. (RX 1, pg 13-14). He opined that this likely accounted for Petitioner's symptoms, especially as injections to the psoas sheath provided Petitioner with temporary relief. (RX 1, pg 14). He explained that Petitioner's symptoms of catching, clicking, and pain are further evidence that the prominence of the acetabular shell was the source of irritation as it impinged on the iliopsoas tendon and surrounding sheath. (RX 1, pg 27-28).

Dr. Karlsson testified that he diagnosed a prominent acetabular shell and possible iliopsoas impingement. (RX 1, pg 17). He concluded that Petitioner's condition was not caused by the April 6, 2017 work injury. (RX 1, pg 17-18). Dr. Karlsson pointed to the medical records documenting consistent groin pain after the original resurfacing as well as snapping prior to the work injury, and that there was no change in the position of the components. (RX 1, pg 18). He thought it was reasonable for Petitioner to consider revising the acetabular component if his symptoms warranted the same but testified that the surgery would not be related to the work accident. (RX 1, pg 19-20). He explained that the work incident did not change the position of the components or the components themselves, that Petitioner had similar symptoms before and after the work incident, and that Petitioner's symptoms prior to the incident were significant enough to warrant deep injections. (RX 1, pg 20). Dr. Karlsson testified that Petitioner could continue working in a full duty capacity. (RX 1, pg 20).

Dr. Karlsson admitted that trauma can loosen an acetabular shell implant and cause an impingement of a tendon. (REX 1, P. 31). Dr. Karlsson also stated that trauma can loosen femoral implants in a hip. (REX 1, P. 32). Dr. Karlsson testified that a future revision surgery would be reasonable and necessary (as of the date of his deposition, October 22, 2018). (REX 1, P. 33). As noted above, Petitioner received the revision surgery in December of 2019.

Dr. Karlsson testified on behalf of Respondent. (REX 1). He testifies for respondents 95% of the time he is retained to conduct Section 12 examinations. (REX 1, P. 35). He performs multiple Section 12 examinations per week for 48 weeks a year. Dr. Karlsson performs section 12 examinations for $1,200.00, testifies for $1,200.00 /hour, and does pre-dep meetings with Respondent attorneys for $300.00/hour. (REX 1, P 36).

III. CONCLUSIONS OF LAW

The Arbitrator adopts the above Findings of Fact in support of the Conclusions of Law set forth below. Section 1(b)3(d) of the Act provides that, in order to obtain compensation under the Act, the employee bears the burden of showing, by a preponderance of the evidence, that he or she has sustained accidental injuries arising out of and in the course of the employment. *820 ILCS 305/1(b)3(d)*. To obtain compensation under the Act, Petitioner has the burden of proving, by a preponderance of the evidence, all of the elements of his claim *O'Dette v. Industrial Comm'n*, 79 Ill. 2d 249, 253 (1980) including that there is some causal relationship between his employment and his injury. *Caterpillar Tractor Co. v. Industrial Comm'n*, 129 Ill. 2d 52, 63 (1989) It is well established that the Act is a humane law of remedial nature and is to be liberally construed to affect the purpose of the Act - that the burdens of caring for the casualties of industry should be borne by industry and not by the individuals whose misfortunes arise out of the industry, nor by the public. *Shell Oil v. Industrial Comm'n,* 2 Ill.2nd 590, 603 (1954). Decisions of an Arbitrator shall be based exclusively on evidence in the record of proceeding and material that has been officially noticed. *820 ILCS 305/1.1(e)*.

Credibility Finding: The Arbitrator, as a trier of fact in this case, has the responsibility to observe the witnesses testify, judge their credibility, and determine how much weight to afford their testimony and the other evidence presented. *Walker v. Chicago Housing Authority*, 2015 IL App (1st) 133788, ¶ 47 The Arbitrator viewed Petitioner's demeanor under direct examination and under cross-examination. The Arbitrator considered the testimony of Petitioner with the other evidence in the record. Petitioner's testimony is found to be credible. The Arbitrator finds that Petitioner appeared to be candid and sincere. He did not attempt to conceal or downplay is pre-existing hip issues. The Arbitrator finds that any inconsistencies in his testimony were not intended to deceive but consistent with the nature of Petitioner's condition of ill-being and the time that has elapsed since his accident.

WITH RESPECT TO ISSUE (F), WHETHER PETITIONER'S CURRENT CONDITION OF ILBEING IS CAUSALLY RELATED TO THE INJURY, THE ARBITRATOR FINDS AS FOLLOWS:

The Arbitrator finds that Petitioner's current condition of ill being is causally related to his April 6, 2017 injury. The Arbitrator notes that Petitioner did testify truthfully that his hip was never 100% prior to the injury. (TR. P. 45-47). However, Petitioner noted that following the April 6, 2017 injury he experienced increased hip pain and that he experienced a frequent snapping feeling at about 50 degrees flexion. (TR. P. 53) (PEX 6).

The Arbitrator finds that the accident of April 6, 2017 was a cause of his current condition of ill-being. The accident aggravated and accelerated his current condition of ill-being and need for surgery. The Arbitrator finds the his pre-existing condition of ill-being to his left hip predisposed him and made him more vulnerable to injury.

The Arbitrator notes that Dr. Lauren McLean from Advocate Occupational Health suspected an aggravation of Petitioner's prior hip condition. (PEX 9). The Arbitrator finds that Dr. Henry Finn noted that Petitioner's "symptoms are worse after his work-related injury." (PEX 6, P. 4). Dr. Finn also stated Petitioner had significant relief of his symptoms following the February of 2017 injection, two months prior to the incident at

issue here, but Petitioner's pain returned after the incident. (PEX 6, P. 46). The Arbitrator further notes that Dr. Alexander Gordon stated that the woodchipper incident "does appear to have exacerbated [Petitioner's] groin symptoms and has remained worse since then" on November 21, 2017, seven months after the incident. (PEX 4, P. 19).

Respondents' Section 12 examiner, Dr. Karlsson acknowledged that Petitioner suffered from a prominent acetabular shell and an iliopsoas impingement. (REX 1, P. 17). However, Dr. Karlsson held the opinion that these diagnoses were not related to a work incident. (REX 1, P. 18). This opinion is contrary to the opinion of three of Petitioner's treating physicians, two of whom are orthopedic hip surgeons. Nonetheless, Dr. Karlsson did admit that trauma can loosen an acetabular shell implant and can cause an impingement of a tendon. (REX 1, P. 32).

It is well-settled that an employee need only show that some act of employment was a causative factor, not the sole or principal cause, of his injury. *Alderson v. Select Beverage, Inc.*, 06 I.W.C.C. 0095, 01 W.C. 33435 (2006). The fact that the employee had a preexisting condition, even though the same result may not have occurred had the employee been in normal health, does not preclude a finding that the employment was a causative factor. *Id.* The question is whether the evidence supports an inference that the accident aggravated or accelerated the process which led to the employee's current condition of ill-being. *Id.* "Every natural consequence that flows from an injury that arose out of and in the course of one's employment is compensable under the Act absent the occurrence of an independent intervening accident that breaks the chain of causation between the work-related injury and an ensuing disability or injury." *Dunteman v. Illinois Workers' Comp. Comm'n*, 2016 IL App (4th) 150543WC, ¶ 42. A work-related injury "need not be the sole causative factor, nor even the primary causative factor, as long as it was a causative factor in the resulting condition of ill-being." *Id.* ¶ 43.

The Arbitrator notes that three treating physician, Dr. McLean, Dr. Finn, and Dr. Gordon all opined that Petitioner suffered from an aggravation of his prior hip condition. The Arbitrator finds that the records and statements of these doctors are unbiased and credible. The statements were made in the regular course of Petitioner's treatment. The Arbitrator finds that the opinions of Dr. Karlsson are not persuasive. The Arbitrator

agrees with Dr. McLean, Dr. Finn, and Dr. Gordon and finds that Petitioner's current condition of ill being to his left hip is causally related to his April 6, 2017 work injury.

WITH RESPECT TO ISSUE (J), WERE THE MEDICAL SERVICES THAT WERE PROVIDED TO PETITIONER REASONABLE AND NECESSARY AND HAS RESPONDENT PAID ALL APPROPRIATE CHARGES FOR ALL REASONABLE AND NECESSARY MEDICAL SERVICES, THE ARBITRATOR FINDS AS FOLLOWS:

The Arbitrator finds that all of the treatment that was rendered to Petitioner was reasonable and necessary. Indeed, even Dr. Karlsson agreed that all of Petitioner's treatment was reasonable and necessary. (REX 1, P. 33). However, Respondent did not pay for treatment related to Petitioner's hip. (TR. P. 56). Petitioner has incurred the following medical bills with respect to his left hip: Weiss Memorial Hospital $13,019.06 (PEX 12); Illinois Bone and Joint $27,917.01 (PEX 17); and Advocate Lutheran General Hospital $155,201.00 (PEX 18). Petitioner's total bills for his hip related treatment come out to $196,137.07.

Section 8(a) of the Act (820 ILCS 305/8(a) (West 2002)) states, in relevant part: "The employer shall provide and pay 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." 820 ILCS 305/8(a) (West 2002).

The Arbitrator finds that Respondent failed to pay for the above noted reasonable and necessary medical bills pursuant to section 8(a) of the Act. Respondent shall pay reasonable and necessary medical services in the amount of $196,137.07, as provided in Section 8(a) and 8.2 of the Act and shall hold Petitioner harmless for any medical bills paid by group insurance.

WITH RESPECT TO ISSUE (K), IS PETITIONER ENTITLED TO TTD, THE ARBITRATOR FINDS AS FOLLOWS:

The Arbitrator finds that Petitioner was totally temporarily disabled from December 12, 2019 through February 25, 2020. (TR. P. 63-64) (PEX 4). The Arbitrator finds that Respondent did not pay for Petitioner's temporary total disability benefits during this time period. (TR. P. 64).

"TTD compensation is provided for in section 8(b) of the Workers' Compensation Act, which provides, '[W]eekly compensation … shall be paid … as long as the total temporary incapacity lasts,' which [Illinois courts have] 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." *Interstate Scaffolding, Inc. v. Illinois Workers' Comp. Comm'n*, 236 Ill. 2d 132, 142 (2010).

The Arbitrator finds that Respondent should pay Petitioner temporary total disability benefits, pursuant to section 8(b) of the Act, for the period of December 12, 2019 through February 25, 2020 representing 10-6/7th weeks of TTD at the TTD rate of $917.21

WITH RESPECT TO ISSUE (M), SHOULD PENALTIES AND ATTORNEY FEES BE IMPOSED UPON RESPONDENT, THE ARBITRATOR FINDS AS FOLLOWS:

Penalties and Fees should not be imposed upon Respondent. Although the Arbitrator was not persuaded by the findings and opinions of Dr. Troy Karlsson, Respondent reasonably relied on Petitioner's medical records as well as the opinions of Section 12 examiner Dr. Karlsson in its denial of liability for benefits under the Workers' Compensation Act. The Arbitrator is mindful that the Section 12 examination was over one year after the accident. However, the Arbitrator notes that Petitioner had continual access to medical care through his group carrier. The Arbitrator further notes Respondent timely filed its Response to Petitioner's Petition for Penalties and Fees. (RX 4).

The Worker's Compensation Act allows for discretionary penalties under Section 19(k) where there has been a delay in compensation that is unreasonable, frivolous, or vexatious. Section 19(l) allows for discretionary

penalties in the nature of a late fee where there has been a lack of good and just cause for a delay in compensation. Penalties may not be imposed if nonpayment was based on a reasonable and good faith challenge to liability. *Swift Co. v. Industrial Com*, 150 Ill. App. 3d 216, 222 (Ill. App. Ct. 1986). When an employer relies upon a reasonable medical opinion or where there are conflicting medical opinions, penalties ordinarily are not imposed. *Matlock v Industrial Comm'n,* 321 Ill. App. 3d 167, 173 (2001).

There is no evidence that Respondent's conduct has been unreasonable, frivolous, or vexatious. Therefore, penalties and fees are not appropriate in this matter. Petitioner's request for penalties are denied.

WITH RESPECT TO ISSUE (O), IS PETITIONER ENTITLED TO ANY PROSPECTIVE MEDICAL CARE, THE ARBITRATOR FINDS AS FOLLOWS:

As noted above, the Arbitrator finds that Petitioner's hip injury is causally related to his April 6, 2017 work injury. The Arbitrator notes that Petitioner continues to suffer from hip pain and iliopsoas impingement despite his December of 2019 surgery and despite multiple injections. The Arbitrator finds that prospective medical care, as recommended by his treating surgeon consisting of injections and an arthroscopic recission of Petitioner's iliopsoas tendon, is reasonable and necessary and causally related to Petitioner's work injury. The Arbitrator orders the Respondent to authorize and pay for that surgery and its sequelae.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	08WC035714
Case Name	Stefan Szalpczynski v. Andreas R. Vassilos d/b/a Clean & Brite Floor Corp; Clean & Brite Floor Corp; Andreas R. Vassilos; Employco USA, Inc.; Employco Group, Ltd., and IWBF
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	23IWCC0425
Number of Pages of Decision	32
Decision Issued By	Marc Parker, Commissioner

Petitioner Attorney	Peter Wachowski
Respondent Attorney	David Poulos, David Christensen

DATE FILED: 9/29/2023

/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 Choose direction	☐ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Stefan Szlapczynski,

Petitioner,

vs. NO: 08 WC 35714

Andreas Vassilos d/b/a Clean & Brite Floor Corp.; Clean & Brite Floor Corp.; Andreas R. Vassilos; Employco USA; Employco Group, Ltd.; and State Treasurer as *Ex-Officio* Custodian of the Injured Workers' Benefit Fund,

Respondents.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by one Respondent, Illinois Workers' Benefit Fund (IWBF), herein and notice given to all parties, the Commission, after considering the issues of employment relationship, notice, and liability of the IWBF, 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 clarifies that, while it affirms the Arbitrator's findings of fact and conclusions of law regarding Respondent Employco, directed verdict motions are not proper in Workers' Compensation cases.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed November 15, 2022, is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent Clean & Brite Floor Corp. d/b/a Brite Site pay to Petitioner interest under §19(n) of the Act, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent Clean & Brite Floor Corp. d/b/a Brite Site shall have credit for all amounts paid, if any, to or on behalf of the Petitioner on account of said accidental injury.

The Illinois State Treasurer as *ex-officio* custodian of the Injured Workers' Benefit Fund was named as a co-Respondent in this matter. The Treasurer was represented by the Illinois Attorney General's office. This award is hereby entered against the Fund to the extent permitted and allowed under §4(d) of the Act in the event Respondent Clean & Brite Floor Corp. d/b/a Brite Site fails to pay the benefits due and owing the Petitioner. Respondent Clean & Brite Floor Corp. d/b/a Brite Site shall reimburse the injured Workers' Benefit Fund for any compensation obligations of said Respondent that are paid to the Petitioner from the Injured Workers' Benefit Fund.

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.

September 29, 2023

MP:dk
o 9/7/23
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	08WC035714
Case Name	Stefan Szalpczynski v. Andreas R. Vassilos d/b/a Clean & Brite Floor Corp; Clean & Brite Floor Corp; Andreas R. Vassilos; Employco USA, Inc.; Employco Group, Ltd., and State Treasurer as Ex-Officio Custodian of the Injured Workers" Benefit Fund
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	29
Decision Issued By	Antara Nath Rivera, Arbitrator

Petitioner Attorney	Peter Wachowski
Respondent Attorney	David Christensen, David Poulos

DATE FILED: 11/15/2022

THE INTEREST RATE FOR THE WEEK OF NOVEMBER 15, 2022 4.44%

/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

Stefan Szlapczynski
Employee/Petitioner

v.

Case # **08** WC **035714**

Consolidated cases: **N/A**

Andreas R. Vassilos, d/b/a Clean & Brite Floor Corp; Clean & Brite Floor Corp; Andreas R. Vassilos; Employco USA, Inc.; Employco Group, Ltd., and State Treasurer as Ex-Officio Custodian of the Injured Workers' Benefit Fund
Employer/Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was initially heard by the **Honorable Douglas Steffenson**, Arbitrator of the Commission, in the city of Chicago, on **01/24/2020** and subsequently by **Honorable Antara Nath Rivera**, Arbitrator of the Commission, in the city of Chicago, on **08/24/2022**. 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 **Insurance and liability of the Injured Workers' Benefit Fund.**

FINDINGS

On **07/23/2008**, Respondent, Clean and Brite Floor Corporation d/b/a Brite Site, ***was*** operating under and subject to the provisions of the Act.

On this date, an employee-employer relationship ***did*** exist between Petitioner and Respondent, Clean and Brite Floor Corporation d/b/a Brite Site.

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

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

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

In the year preceding the injury, Petitioner earned $**35,355.15**; the average weekly wage was $**679.91**.

On the date of accident, Petitioner was **52** 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

It should be noted that, on January 24, 2020, Arbitrator Steffenson dismissed Respondent Walgreens from the proceeding.

It should be noted that, on August 24, 2022, after hearing all the evidence, Arbitrator Nath Rivera dismissed Respondent Employco as a named respondent.

Respondent Brite Site shall pay all reasonable and necessary medical services, of $52,594.29, and reimburse Petitioner for the medical payments he made out of pocket, pursuant to the medical fee schedule and as outlined in PX 1, PX 2, PX 3, PX 4, PX 5, PX 6, PX 7, PX 8, PX 9, PX 10, PX 11, PX 12, and PX 13, as provided in Sections 8(a) and 8.2 of the Act.

Respondent Brite Site shall pay TTD benefits to Petitioner commencing on July 23, 2008, through February 5, 2009, representing 28 1/7 weeks, at rate of $440.00/week, as provided in Section 8(b) of the Act.

Respondent shall pay Petitioner permanent partial disability ("PPD") benefits of $407.95 per week for 58.45 weeks, because the injuries sustained caused the 35% loss of use of the right foot as provided in Section 8(d)2 of the Act.

The Illinois State Treasurer, as ex-officio custodian of the IWBF, was named as a co-Respondent in this matter. The IWBF was represented by the Illinois Attorney General's Office. This finding is hereby entered as to the IWBF to the extent permitted and allowed under §4(d) of the Act. If Petitioner is awarded benefits and if Respondent-Employer fails to pay same, the Petitioner may submit a claim to the IWBF pursuant to §4(d). Respondent-Employer shall reimburse the IWBF for any benefits paid pursuant to this award. Such reimbursement includes but is not limited to the full award in this matter, the amounts of any medical bills paid, temporary total disability paid and/or permanent partial disability paid. The Respondent-Employer's obligation

to reimburse the IWBF, as set forth above, in no way limits or modifies its independent and separate liability for fines and penalties set forth in the Act for its failure to be properly insured.

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 15, 2022

Signature of Arbitrator
ICArbDec p. 2

STATE OF ILLINOIS)
) ss
COUNTY OF COOK)

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Stefan Szlapczynski, Employee/Petitioner, vs. Andreas R. Vassilos, d/b/a Clean & Brite Floor Corp; Clean & Brite Floor Corp; Andreas R. Vassilos; Employco USA, Inc.; Employco Group, Ltd., and State Treasurer as Ex-Officio Custodian of the Injured Workers' Benefit Fund, Employer/Respondent	)	Case No. 08 WC 035714

PROCEDURAL BACKGROUND

An Application for Adjustment of Claim was filed by Stefan Szlapczynski ("Petitioner") on August 14, 2008, seeking relief under the Illinois Workers' Compensation Act from Respondent/Employer, Andreas R. Vassilos ("Respondent Vassilos"), d/b/a Brite Site ("Respondent Brite Site"). Petitioner subsequently amended the Application six times, naming the following additional respondents: Clean & Brite Floor Corp, Walgreens Corporation ("Respondent Walgreens"), Employco USA, Inc. ("Respondent Employco"), and State Treasurer as the Ex-Oficio Custodian of the Injured Workers' Benefit Fund ("Respondent IWBF"). The application listed a date of accident of July 23, 2008, and listed the right leg and right foot as the injured body parts.

The Honorable Douglas Steffenson, a former arbitrator of the Commission, conducted an initial hearing on January 24, 2020, in Chicago, Illinois. At that time the following individuals appeared:

- Peter C. Wachowski, of Bellas & Wachowski, appeared on behalf of Petitioner;
- Andreas R. Vassilos, *Pro Se* appeared on behalf of the Respondent, Andreas R. Vassilos, Clean & Brite Floor Corp.;
- Ryan M. Regan, of Gildea, Cochlan, & Regan, Ltd., appeared on behalf of Respondent Walgreens.[1]
- Assistant Attorney General, David Christensen, of the Illinois Attorney General's Office, appeared on behalf of Respondent IWBF;
- David T. Poulos, of Poulos & Di Benedetto Law, P.C., appeared on behalf of Respondent Employco and Employco Group, Ltd.

[1] At the initial hearing, On January 24, 2020, Arbitrator Steffenson dismissed Walgreens from the case, over Respondent Vassilos' and Respondent IWBF's objections. (Transcript from January 24, 2020 "T.2020" at 10)

- Ms. Magda Balz, Polish Interpreter for Petitioner.

This matter proceeded to hearing on January 24, 2020. At this hearing, Arbitrator Steffenson addressed all issues, at the beginning, and put on the record that all parties agreed to conduct Petitioner's direct examination and cross examination only and bifurcate the proceedings for further testimonial and documentary evidence. (Transcript from January 24, 2020, "T.2020" at 33) At that same time, Arbitrator Steffenson heard Petitioner's motion to dismiss Respondent Walgreens from the proceedings. After hearing everyone's responses, and over Respondent Vassilos' and Respondent IWBF's objection, Arbitrator Steffenson allowed the dismissal of Respondent Walgreens from the proceeding. (T.2020 at 9)

There were three separate Request for Hearing forms submitted as to each respective Respondent and admitted into evidence by Arbitrator Steffenson. In all Request for Hearing forms, the issues in dispute included whether there was an employee-employer relationship; whether the injuries arose out of and in the course of employment; whether there was valid notice; causal connection; earnings/average weekly wage; Petitioner's age, marital status, and dependent children; unpaid medical bills; temporary total disability ("TTD"); Respondent's credit; nature and extent; and whether Petitioner was a subcontractor or independent contractor. (Arbitrator's Exhibit ("AX") 1A (Respondent Vassilos); AX 1B (Respondent Employco); and AX 1C (Respondent IWBF)

Due to the Covid-19 pandemic, the trial was continued. In the interim, Arbitrator Steffenson left the Commission. The Honorable Antara Nath Rivera, the Arbitrator authoring this decision, conducted a second and final hearing on August 24, 2022. [2] The following individuals appeared before Arbitrator Rivera:

- Peter C. Wachowski, of Bellas & Wachowski appeared on behalf of Petitioner[3];
- Andreas R. Vassilos, *Pro Se* appeared on behalf of the Respondent, Andreas R. Vassilos, Clean & Brite Floor Corp.;
- David T. Poulos & Adam Wilhelm, of Poulos & Di Benedetto Law, P.C., appeared on behalf of Respondent Employco and Employco Group, Ltd.
- Assistant Attorney General Rachel Peter & Assistant Attorney General Charlene Copeland, of the Illinois Attorney General's Office appeared on behalf of Respondent IWBF;
- Lucas Mroz, Polish Interpreter, for Petitioner's witness, Ryszard Sieszputowski.

The August 24, 2022, hearing began with Petitioner's witness, Ryszard Sieszputowski. It was followed by Respondent Vassilos' case in chief; Respondent Employco's closing statement; Respondent IWBF's closing statement; and Petitioner's closing statement.

EMPLOYCO LIABILITY

The Arbitrator finds that Respondent Employco and Petitioner did not have an employer-employee

[2] Arb. Nath Rivera was not involved in the January 24, 2020, hearing and did not have an opportunity to observe Petitioner.
[3] Petitioner was not present at the August 24, 2022, hearing. Mr. Wachowski, who was present at the hearing on behalf of Petitioner, informed Arb. Nath Rivera, prior to the hearing that Petitioner moved to Poland.

relationship. Petitioner testified that he had no knowledge of any company called Employco. (T. 2020 at 121) He testified that he never received a check from Employco, nor did he ever submit any medical bills or records to Employco. (T.2020 at 121-122)

The Arbitrator notes that Respondent Vassilos testified that he did not provide documentation to Respondent Employco from any of his companies showing that Petitioner was either an employee or a subcontractor. (Transcript from August 24, 2022, "T.2022" at 164) The Arbitrator notes that Respondent Vassilos testified that Petitioner's name was not included among the employees in a list provided to Respondent Employco for payroll purposes, (T.2022 at 144)

The Arbitrator notes that while there was evidence that Respondent Employco provided workers' compensation insurance for employees of Respondent Brite Site, there was no such insurance provided for Petitioner. (Respondent's Exhibit "RX" Employco 2) The Arbitrator notes that Petitioner was not on Respondent Employco's payroll. *Id*. Thus, while the Arbitrator kept Respondent Employco as a respondent throughout the pendency of the hearing, the Arbitrator finds that Respondent Employco is not liable per the Act, and should be dismissed as a named respondent.

FINDINGS OF FACT

Employee-Employer relationship

Petitioner testified that on the date of the accident, July 23, 2008, he was 52 years old, married, with no dependent children. (T.2020 at 25-26; AX 1A) Petitioner testified that his date of birth is August 19, 1955. (T.2020 at 25; AX 1A) Petitioner testified that he was familiar with Respondent Brite Site because he worked exclusively for Brite Site from 1989 to 2014. (T.2020 at 28, 52, 124, 126-127) Petitioner testified that his job title was cleaner. (T.2020 at 102) He further testified that Respondent Brite Site was in the business of washing floors and he used a special type of machinery, which included washing machines and buffers. (T.2020 at 26-27) Petitioner testified that he recognized the name Brite Site as well as UBM Industries, Inc., as that was the name when he began working for Respondent Brite Site. (T.2020 at 103) Petitioner testified that he also recognized the name Respondent Brite Site Franchising, Inc. as they would sometimes refer to the business as such. *Id.*

Petitioner testified that, in 2014, he went to the Respondent Brite Site office located at 4616 West Fullerton and discussed the terms of employment with Marek Jaczynski ("Jaczynski") and was subsequently hired by him and told to report for work in two days. (T.2020 at 28-30) Petitioner testified that he understood that Jaczynski was his only supervisor and could fire him at any time. (T.2020 at 28, 56-58, 123, 146-147) Petitioner testified that Jaczynski would make the schedule and would call Petitioner. (T.2020 at 59) Petitioner testified that Jaczynski would call him almost every day to let him know what location to go to.

Id. Petitioner further testified that Jaczynski would give detailed instructions as to what to do at that job site. *Id*. Petitioner testified that his supervisor, Jaczynski, told Petitioner that he would be paid $55.00 for the night. (T.2020 at 34)

Petitioner testified that he was told by coworkers that Respondent Vassilos was the owner, and president, of Respondent Brite Site. (T.2020 at 35) Petitioner testified that he met Respondent Vassilos approximately two weeks after being hired by Respondent Brite Site. *Id*.

Petitioner testified that he had no prior floor maintenance experience whatsoever prior to be hired at Respondent Brite Site. Petitioner testified that he was not paid for training, but after the two days he was asked to stay on. Petitioner testified that he reported for work to a store named Eagle in Elgin to be trained. (T.2020 at 33, 96, 102)

Petitioner testified that his duties while working for Respondent Brite Site entailed going to the store, sweeping the floors, washing the floors, and polishing the floors using the buffers, and also waxing the floor if needed. (T.2020 at 36) Petitioner testified that he drove a Brite Site vehicle for the first three years of the 25 years he worked for Brite Site. (T.2020 at 37-38, 41, 43-44, 128) Petitioner testified that the company car had a Brite Site logo and phone number on it. (T.2020 at 44) Petitioner testified that at the time of his injury he drove his own van because the Respondent Brite Site's vehicle was "broken up." (T.2020 at 38, 41-42, 61, 117)

Petitioner testified that Respondent Brite Site owned the washing and buffing machines he used and that these machines had stickers stating "Brite Site" affixed to them. (T.2020 at 38, 42, 46) Petitioner testified that he kept the equipment in his own van. (T.2020 at 62) Petitioner testified that he would load/unload equipment with a ramp owned by Respondent Brite Site. (T.2020 at 61) Petitioner testified that he was requested by Respondent Brite Site to wear their shirt most of the time. (T.2020 at 45) Petitioner testified that the washing machine had a motor and battery, but it needed help and needed to be pushed up the ramp (T.2020 at 61)

Petitioner testified that he worked at two Walgreens a night, seven nights a week, 12 to 14 jobs a week. (T.2020 at 40, 49, 131) Petitioner also testified that he worked six nights a week. (T.2020 at 49, 60) Petitioner testified that he would work at the first store from 9:00pm. to midnight and then at a second store until 4:00am-6:00am. (T.2020 at 50, 105) Petitioner testified that the hours varied based on the tasks performed. (T.2020 at 46) Petitioner testified that he did not work for anyone else while working for Respondent Brite Site. (T.2020 at 52-53)

Petitioner testified that the materials he used, specifically the wax and soap, were kept at the Walgreens stores. (T.2020 at 42, 110) Petitioner testified that Walgreens had a supply cabinet with

Walgreens supplies and directions regarding how much wax, stripping materials, or soap to use. (T.2020 at 135-136) Petitioner testified that he would normally use Walgreens' supplies. (T.2020 at 111) Petitioner testified that if Walgreens did not have materials, Jaczynski would bring supplies or Petitioner could take supplies from Respondent Brite Site's office. (T.2020 at 110, 42)

Petitioner testified that it was always his belief that he was hired to do these jobs on behalf of Respondent Brite Site. (T.2020 at 57) Petitioner testified that he considered his work at Respondent Brite Site a full-time job and during the time period he worked for Respondent Brite Site, he never worked for anyone else from 1989 until his last day of work (T.2020 at 52-53)

Petitioner testified that Jaczynski set the schedule and told Petitioner exactly what jobs to do. (T.2020 at 59-60, 122-123) Petitioner testified that Walgreens set the time frame within which he could work at the store and that Petitioner had to check in with a Walgreens manager's assistant and ask whether he could wax or buff. (T.2020 at 97, 106-107, 132) Petitioner testified that Walgreens stores sometimes turned him away. (T.2020 at 131) Petitioner testified that Jaczynski told him that in order to get paid, Petitioner was required to have a Walgreens manager stamp and sign the paperwork, provided by Jaczynski, after the job was done. (T.2020 at 98, 107, 132, 136, 147-148) Petitioner testified that if Walgreens felt the job was not performed well, they would not stamp the paperwork, Walgreens would not pay for the job, and Petitioner would not be paid by Respondent Brite Site. (T.2020 at 133) Petitioner testified that one copy of the paperwork stayed at Walgreens, and one went to Jaczynski. (T.2020 at 136) Petitioner testified that Jaczynski, and a few times Respondent Vassilos, would come to the job site, after he finished, to check his work. (T.2020 at 58) Petitioner testified that Jaczynski and Respondent Vassilos would tell him things that were to be done. *Id*. Petitioner testified that he would give the slip of paper to Jaczynski, and he would be paid based on that. (T.2020 at 99) Petitioner testified that he never gave quotes to Walgreens. (T.2020 at 99-100) Petitioner testified that he knew that Jaczynski had the "power to fire" Petitioner. (T.2020 at 146-147)

Accident and Medical

Petitioner testified that he suffered an injury on July 23, 2008, at approximately 12:30am, in the parking lot of Walgreens located at 3302 West Belmont Avenue, Chicago, while loading the equipment into his van. (T.2020 at 62-64) Petitioner testified that as he was going back down on the ramp, he fell down after his foot got stuck in the ramp and twisted his foot to the right and outside. (T.2020 at 64-67) Petitioner testified that he immediately experienced "horrible, terrible pain" and that his foot was swollen (T.2020 at 68-69)

Petitioner testified that the night of the accident, he was working with Ryszard Sieszputowski[4]. and that Mr. Sieszputowski witnessed the accident. (T.2020 at 69) Petitioner testified that right after the accident happened, Mr. Sieszputowski quickly ran towards the Walgreens manager, who was locking up the store, and told the manager to call for the ambulance. *Id.* Petitioner testified that he remained on the ground lying down on the right side of his body. (T.2020 at 70) Petitioner testified that the Chicago Fire Department took him to Swedish Covenant Hospital. (T.2020 at 70-71) Petitioner reported to the Chicago Police that he injured his right ankle when he "had fallen off a ramp loading his equipment on to his work truck." (PX 17 at 2)

On July 23, 2008, Petitioner was seen by Dr. Teng Liang Huang at Swedish Covenant Hospital. (PX 2 at 3) Petitioner was diagnosed with a 1 cm laceration of the right shin, a Talus fracture, and a proximal fibula fracture. (PX 2 at 21; T.2020 at 73) Petitioner immediately underwent surgery. *Id.* Petitioner was at the hospital for three days. (T.2020 at 73)

On July 24, 2008, Petitioner presented to Swedish Covenant Hospital for a physical therapy evaluation. According to the hospital notes, Petitioner's son was at the hospital with Petitioner and interpreted for Petitioner. (PX 2 at 33)

On August 8, 2008, Petitioner underwent a second surgery to loosen the screw that was placed in Petitioner's right ankle and right tibial wound debridement. (PX 2; T.2020 at 73-74)

On August 14, 2008, Petitioner's sutures were removed. (PX 2) From August 2008 to December 2008 Petitioner underwent physical therapy at the request of Uptown Orthopedic Surgeons. (PX 4; T.2020 at 74-75) On January 28, 2009, the records indicated that Petitioner had the screw fully removed. (PX 4 at 6)

On February 5, 2009, the records indicated that a follow up visit revealed there was no pin and all was clear. (PX 4 at 5)

Petitioner testified that he while he was not released back to work by his doctor, he testified that his doctor "told me that really I shouldn't continue the treatment because he cannot help me anymore." (T.2020 at 78) Petitioner testified that he understood that to mean that he could return to work at Respondent Brite Site. *Id*. Petitioner testified that when he returned to work for Respondent Brite Site, in February of 2009, his duties did not change. (T.2020 at 116) He continued to work two stores per night, but it took him longer. When he initially went back to work, he cleaned one store and later on he went back to two. *Id*. It took him approximately three to three and a half hours to clean one store. *Id*.

[4] This witness was identified as Richard Seszput at the 2020 hearing, by Petitioner. In the 2022 hearing, the witness testified and identified himself as Rysard Siezputowski.

Notice

Petitioner testified that Mr. Sieszputowski called the manager and told the manager what happened over at Walgreens. (T.2020 at 72, 114) Petitioner testified that Mr. Sieszputowski also called Petitioner's son. (T.2020 at 72) Petitioner testified that he called Jaczynski after he was discharged from the hospital and told him that he broke his ankle and about the accident. (T.2020 at 72, 115) Petitioner testified that Jaczynski was already aware of the accident. (T.2020 at 72-73)

Current condition of ill-being

Petitioner testified that he never injured, or had treatment to his right leg, ankle, or foot prior to the date of accident. (T.2020 at 71-72) Petitioner testified that he never injured said body parts subsequent to the accident date. (T.2020 at 71)

Petitioner testified that he still experiences symptoms in his right foot, ankle, and leg. (T.2020 at 91) Petitioner testified that his right foot, ankle, and leg swell up when he walks for longer periods of time. (T.2020 at 91-92) Petitioner testified that he experiences pain in his ankle and swelling, he does not walk the same, he limps on his right leg (T.2020 at 92)

Petitioner testified that he believes that he has at least 30 percent less strength in that ankle as compared to prior to the accident. (T.2020 at 95) He also testified that he has much less mobility and range of motion as before the accident. *Id*. Petitioner testified that he cannot ride a bicycle as he used to do prior to the accident. Petitioner testified that he experiences pain in the ankle at least two times a week when he walks "a little bit more." *Id*. Petitioner testified that he limps all the time due to the pain and mobility. (T.2020 at 96) He believes all of this is caused from the accident that he had sustained on July 23, 2008. *Id.*

Average Weekly Wage

Petitioner testified that he was paid $55 per store and that he received paychecks biweekly. (T.2020 at 34, 50-52, 56, 82-83, 106, 112) Petitioner testified that he was never paid by Walgreens. (T.2020 at 52) Petitioner testified that he was given the paycheck, dated July 25, 2008, in the amount of $1,573.39 from Brite Site, by hand from Jaczynski. (T.2020 at 82, Petitioner's Exhibit "PX" 18) Petitioner testified that, at the time of the accident, he was paid $55.00 per store, thus his weekly pay amounted to $55.00 times 12 stores for a total of $660.00 (T.2020 at 50) Petitioner testified that he received a 1099 each year from Brite Site, from Jaczynski. (T.2020 at 87-88, 127; PX 19)[5] Petitioner also testified that the first time he saw the

[5] It should be noted that the paychecks made out to Petitioner bore the name "Brite Site." Petitioner's 1099 forms all bore the

name "Clean & Brite Floor Corporation" was at the hearing because he did not pay attention to such detail. (T.2020 at 105) Petitioner testified that, even after going back to work after his injury, his pay remained based upon how many stores he cleaned (T.2020 at 117)

Additionally, Petitioner testified that he was not familiar with Respondent Employco, and that he never received a check from a company by the name of 'Employco.' (T.2020 at 121) Petitioner testified that he never submitted any medical bills or records to Respondent Employco. (T.2020 at 122)

Unpaid medical bills

Petitioner testified that he received bills for his medical treatment and had to pay many of the bills out-of-pocket (T.2020 at 73-74) Petitioner testified that he had to pay $2,500.00 out-of-pocket for the first surgery and $2,500.00 for the second surgery. He also paid $75.00 per hour for physical therapy out-of-pocket.

Petitioner testified that he attended physical therapy at Physical Therapy Practice every other day for three months and every time had to pay out-of-pocket (T.2020 at 77-78) Petitioner testified that the receipts from Walgreens were for when he had to take his medication or purchase a supportive boot for his foot - a hard prosthetic boot for his foot. (PX 14; T. 2020 at 80) Petitioner testified that these were out-of-pocket expenses he had to pay. Petitioner testified that the exhibit contained a receipt for money he had to prepay before the surgery so that both of his surgeries would be performed, $2,500.00 each (PX 14; T.2020 at 79-81)

Petitioner further testified that he received bills from Swedish Covenant Hospital and Uptown Orthopaedic. (T.2020 at 90) Petitioner testified that all the bills that he received arose from the treatment for the injury that he sustained at work on the date of accident of July 23, 2008 (T.2020 at 91)

Temporary Total Disability

Petitioner testified that he was in treatment for several months and went back to work in the middle of February 2009. (T.2020 at 76-77) Petitioner testified that he was off of work from the date of accident, July 23, 2008, through the middle of February 2009. (T.2020 at 77) The records indicated that the last treatment note was February 5, 2009[6]. (PX 4) Petitioner testified that he was off work because of his leg pain. (T.2020 at 77) Petitioner testified that he was not working pursuant doctor's orders. (T.2020 at 78) Petitioner testified that he was released back to work by his doctor after his doctor told him that he could

name "Clean and Brite Floor Corporation" or "Clean & Brite Floor Corp."

[6] The Arbitrator relied on the February 5, 2009, date in ending the award, as this was the doctor's last note.

not help Petitioner anymore. *Id*. Petitioner testified that he was not paid any money while he was off of work during that time period. (T.2020 at 77)

TESTIMONY OF RYSZARD SIESZPUTOWSKI[7]

Mr. Sieszputowski testified that he worked full-time for a cleaning company, named Brite Site, located on Fullerton. (T.2022 at 14, 20, 38) Mr. Sieszputowski testified that he worked for Respondent Brite Site for eight to nine years. (T.2022 at 14-16, 37) He testified that he did not work anywhere else while working at Respondent Brite Site. (T.2022 at 33) Mr. Sieszputowski testified that his supervisor was Jaczynski. (T.2022 at 15) Mr. Sieszputowski testified that his boss was Respondent Vassilos, whom he knew as "Andreas." (T.2022 at 17) Mr. Sieszputowski testified that he knew Respondent Vassilos to be "main boss." *Id.* Mr. Sieszputowski testified that he was hired by both Jaczynski and Respondent Vassilos and knew that he could be fired from the job by either of them. (T.2022 at 23-24)

Mr. Sieszputowski testified that the equipment they used belonged to Respondent Brite Site. (T.2022 at 19) Mr. Sieszputowski testified that he was paid by check, issued by Respondent Brite Site, from Jaczynski, every other week. (T.2022 at 21) Mr. Sieszputowski testified that the way he would find out about a job was from Petitioner who got directions from Jaczynski. (T.2022 at 22, 38-39) Mr. Sieszputowski testified that he never spoke to Jaczynski; Jaczynski gave all instructions to Petitioner, including what store to go to and what job needed to be done. (T.2022 at 39) Mr. Sieszputowski testified that "[e]verything, everything, everything was done through Jarczynski. Szlapczynski would never tell me specifically what to do. That was all from Jarczynski, which store we were supposed to go to and what we were supposed to do over there." (T.2022 at 39) Mr. Sieszputowski testified that he and Petitioner worked together at Brite Site cleaning only Walgreens stores. (T.2022 at 15, 18, 20, 44) Mr. Sieszputowski testified that Petitioner kept the machines in his own van, but that the machines belonged to Respondent Brite Site and that the machines and buffers had "Brite Site" stickers on them. (T.2022 at 18-19, 32) Mr. Sieszputowski testified that they were not given shirts to wear, but were given papers which indicated which company he worked for. (T.2022 at 31-32)

Mr. Sieszputowski testified that he witnessed Petitioner's accident, at the Walgreens, on July 23, 2008. (T.2022 at 14, 25-28, 45) Mr. Sieszputowski testified that after Petitioner loaded the machines into the van and was leaving the van, down the ramp, Petitioner got his leg caught and "his foot fell in between the planks and the floor and he ended up falling onto the ground." (T.2022 at 25, 45) Mr. Sieszputowski testified that he observed Petitioner's ankle "twisted all the way around" and heard Petitioner immediately started complaining of pain. *Id*. Mr. Sieszputowski testified that the Walgreens manager saw what had happened, ran towards them, and then he called for an ambulance. (T.2022 at 26) Mr. Sieszputowski testified

[7] Mr. Sieszputowski testified with the assistance of a Polish interpreter.

that he drove the van back to his home. (T.2022 at 27) Mr. Sieszputowski testified that the next day, Petitioner's son called him. (T.2022 at 28) Mr. Sieszputowski testified that he did not call Jaczynski or Respondent Vassilos to tell them what happened. (T.2022 at 27-28)

TESTIMONY OF RESPONDENT ANDREAS VASSILOS

Respondent Vassilos testified *pro se*.[8] Respondent Vassilos testified that he disputed that there was an employee-employer relationship because "the relationship was one of general contractor and subcontractor, not employee and employer." (T.2022 at 58)

Respondent Vassilos testified that he disputed that Petitioner did not suffer injuries in the course of employment with Respondent Brite Site because he was as subcontractor. *Id*.

Respondent Vassilos testified that he disputed that notice was given within the time limits because he "was never informed of this accident by either Mr. Szlapczynski or his witness." (T.2022 at 59) Respondent Vassilos testified that he found out that Petitioner had an accident from the store manager calling his office but did not speak to him directly. (T.2022 at 141) Respondent Vassilos testified that he believed that he provided documentation of notice to Respondent Employco of Petitioner's accident. (T.2022 at 141)

Respondent Vassilos testified that he disputed that Petitioner's claim that the condition of ill-being is causally connected to the injury because Respondent Vassilos had "no knowledge of his condition of ill-being or well-being." *Id*.

Respondent Vassilos testified that he disputed that Petitioner's earnings were $35,355.15 because as a subcontractor, Respondent Vassilos stated that he had no knowledge of his total earnings, his insurance, or his W-2. *Id*.

Respondent Vassilos testified that he could neither agree or dispute the issue of Petitioner's age, marital status, or dependents because he had no knowledge of that. *Id*.

Respondent Vassilos testified that he disputed that he is liable for any claims due to the injury or unpaid medical bills because Petitioner was a subcontractor and did not know if Petitioner paid his bills or not. (T.2022 at 59-60)

[8] The Arbitrator notes that, on several occasions prior to proceeding with the August 24, 2022, hearing, she advised Respondent Vassilos to obtain counsel, but he declined.

Respondent Vassilos testified that he disputed that Petitioner was entitled to any TTD benefits because he was not Petitioner's employer. (T.2022 at 60)

Respondent Vassilos testified that he agreed that the issue of credits due to Respondent were agreed upon in Request for Hearing form. (T.2022 at 61)

Respondent Vassilos testified that he did not dispute the nature and extent of Petitioner's injuries. *Id*.

Respondent Vassilos testified that he had no knowledge of any petition for attorney's fees being filed. *Id*.

Respondent Vassilos testified that he had no knowledge of whether a previous attorney filed a petition for fees. *Id*.

Respondent Vassilos testified that he disputed the issue that Petitioner was a subcontractor or independent contractor, as listed as number 13 in AX 1A. *Id.* Respondent Vassilos testified that "Petitioner worked with his own equipment, his own van, at retail stores that determined the hours of the start time, the completion time." (T.2022 at 62) He further testified that Petitioner did not wear a uniform and did not have "logoed equipment." *Id*. Respondent Vassilos testified that Petitioner worked at will for years and that Petitioner had the ability to choose to work or not work. *Id*.

Respondent Vassilos testified that he had payroll sheets that indicated that Petitioner "worked at a variety of stores for a variety of pay rates and could turn down work at will, contradicting his prior testimony." (T.2022 at 63) Respondent Vassilos further testified that Petitioner rented his equipment to other subcontractors when Petitioner left the country. *Id*. Respondent Vassilos testified that Petitioner sold his equipment and supplies to another cleaning company after Petitioner completed "his subcontractor work at Brite Site,…" (T.2022 at 64) Respondent Vassilos further testified that Petitioner testified that he did not return anything to Respondent Brite Site upon leaving the company. *Id*.

Respondent Vassilos testified that Petitioner on occasion, and it is reflected in his pay, would purchase supplies and sell them to other people. (T.2022 at 72) Respondent Vassilos testified Petitioner's claim of a flat rate of $55.00 per service did not make any sense "because there is no way you can divided the amount of the one check from Clean & Brite for a period that is not even covered by the accident." *Id*. Respondent Vassilos testified that Petitioner's testimony that Jaczynski told Petitioner about jobs, job sites, and job duties was incorrect because Walgreens had a chart with the services that listed the services to be performed. (T.2022 at 75)

Respondent Vassilos further testified that Walgreens was in control of the firing and hiring of anyone who was allowed in their store. (T.2022 at 116) Respondent Vassilos testified that it was not his, nor Jaczynski's decision to determine if someone could not go back to work due to poor performance. *Id*. Respondent Vassilos testified that that he is a general contractor and Petitioner was a subcontractor. *Id*. Respondent Vassilos testified that he contracted with Walgreens to provide Walgreens subcontractors to do work, including cleaning floors, however, Respondent Vassilos did not control Petitioner's time or pay. (T.2022 at 117) Respondent Vassilos acknowledged that the ramp Petitioner fell on belonged to Respondent Brite Site. *Id*.

Respondent Vassilos sought to introduce the following exhibits into evidence:

- Respondent Vassilos Exhibit No. 1—certificate of liability insurance, for coverage from January 1, 2006, to January 1, 2007, from Employco Corp, Inc. and Respondent Brite Site for a job at Walgreens, 4817 West Fullerton Avenue. Respondent Vassilos testified that this certificate covered a period of "over a year of Workers' Compensation coverage from Employco," and would still be in 2007. (T.2022 at 80, 88)
- Respondent Vassilos Exhibit No. 2—certificate of liability insurance, for coverage from January 1, 2002, to January 1, 2003, from Employco Company, Ltd. and Respondent Brite Site companies for Eagle Foods. Respondent Vassilos testified that this exhibit was proof that Respondent Brite Site had workers' compensation insurance. (T.2022 at 85)
- Respondent Vassilos Exhibit No. 3—one year subcontractor agreement between Clean & Brite Floor Corp. and Petitioner, dated January 25, 2016 (T.2022 at 88)
- Respondent Vassilos Exhibit No. 4—memo from Brite Site's accounting department, dated September 21, 2010, to Respondent Vassilos addressing a request by Petitioner to separate paychecks. Respondent Vassilos testified that this was an unusual request and "another indication of his subcontractor status." (T. 2022 at 90)
- Respondent Vassilos Exhibit No. 5—one paycheck (#72972) for Stefan Szlapczynski, dated September 20, 2010, and one paycheck for Sebastian Szlapczynski, (#72990) dated September 20, 2010. Both checks were issued by Respondent Brite Site. Respondent Vassilos testified that the checks were issued to Petitioner, "at the direction of Stefan Szlapczynski for work that Stefan Szlapczynski did." Respondent Vassilos testified that this was proof of Petitioner's subcontractor status "as an independent business person before and after the date of the accident." (T.2022 at 91-93)
- Respondent Vassilos Exhibit No. 6—Subcontractor Payroll Sheet SC ID Number: 2878/886, for the week of August 15, 2010, to August 28, 2010. Respondent Vassilos testified that this was the pay summary for "Walgreens, Country Squire, and for a number of jobs that were done by Stefan Szlapczynski and paid to his son or the checks were divided." (T.2022 at 93)
- Respondent Vassilos Exhibit No. 7— Subcontractor Payroll Sheet SC ID Number:886 for jobs that

were done by Stefan Szlapczynski, for the week of January 12, 2014, to January 25, 2014. Respondent Vassilos testified that this "demonstrates his subcontractor status by being assigned work, which he turned down, and being assigned work which was paid over $55.00." (T.2022 at 94-95)

- Respondent Vassilos Exhibit No. 8—Blank form entitled "Check Distribution: Third Party Pick-up Verification" which contained Petitioner's name. Respondent Vassilos testified that this was "a blanket form, no date, that my accounting department and the lawyer that worked in my office had in their files, which is a third-party pick up verification form that we made up for Mr. Stefan Szlapczynski to have other people accept his checks on his behalf. The purpose of this check is to demonstrate his subcontractor status,…." (T.2022 at 97)
- Respondent Vassilos Exhibit No. 9—handwritten note dated December 1, 2014. Respondent Vassilos testified that this note was "from Stefan Szlapczynski saying that he was paid for three people, equipment and van, to do work, signed by a CPA and myself as a witness, dated 12/1/14 for a strip job done that was done on 11/18/14." (T.2022 at 100) Respondent Vassilos testified that this proved Petitioner's subcontractor status. *Id*. Respondent Vassilos testified that this document was written in front of Respondent Vassilos. (T.2022 at 102)
- Respondent Vassilos Exhibit No. 10—undated photograph of a Ford Econoline van. Respondent Vassilos testified that he took this picture the day Petitioner went to buy chemicals from Respondent Vassilos. (T.2022 at 105)
- Respondent Vassilos Exhibit No. 1—undated photograph of a Chevy van. Respondent Vassilos testified that this was "driven by Stefan Szlapczynski on the same that he purchased chemicals earlier in the day from me." (T.2022 at 109) Respondent Vassilos testified that he took the picture on the same day Petitioner came with the Ford van. (T.2022 at 110)

On cross-examination, Respondent Vassilos testified that he was the president of a corporation by the name of Clean & Brite Floor Corp. on July 23, 2008. (T.2022 at 124) Respondent Vassilos testified that he had a separate company by the name of Respondent Brite Site which wrote checks to Petitioner from the Respondent Brite Site's account. (T.2022 at 122-124)

Respondent Vassilos testified that Petitioner handed in service verification forms. Respondent Vassilos testified that he did not know whether those forms had an amount that Petitioner was supposed to be paid because the forms were not submitted to him. (T.2022 at 128-129)

Respondent Vassilos testified that he would sometimes go to the job sites to check up on Petitioner's work to perform random quality control, and random surveys, as part of his contract with Walgreens and other retailers. (T.2022 at 129) Respondent Vassilos testified that Jaczynski would also go to the job sites that Petitioner worked at and he would check on him to see the quality of the work being done (T.2022 at 130)

Respondent Vassilos testified that Jaczynski was a supervisor with his company, but could not recall which company. *Id*. On or about the date of accident, Respondent Vassilos had two different companies that were doing cleaning work. He claims that Petitioner was paid from the Respondent Brite Site account as he was a subcontractor and that is the account subcontractors were paid from. (T.2022 at 30)

Respondent Vassilos also testified that at the time of this accident, on July 23, 2008, there was a subcontractor agreement signed with Petitioner, but that he could not produce a copy because those records were destroyed by a roof leak. (T.2022 at 130-131)

Respondent Vassilos testified that that the people that he considered his employees got paid from Respondent Employco and the people that he considered subcontractors got paid from Respondent Brite Site. In order for them to have to get paid through Respondent Employco, he would have to notify Respondent Employco to get them paid through Respondent Employco within 30 days of them starting work (T.2022 at 135-136) Respondent Vassilos testified that he has records that show he worked subsequent to that date of the accident for years. He did not recall Petitioner working for him before the accident (T.2022 at 136)

Respondent Vassilos testified that "[b]ack in the '70s, '80s, and '90s, we had some logoed vans." (T.2022 at 139) Respondent Vassilos testified that after they franchised, the franchisees had logoed vans, but they did not. *Id*.

Respondent Vassilos testified that to the best of his knowledge, Petitioner was and still is, paid directly by Walgreens. (T.2022 at 139-140) Respondent Vassilos testified that he did not know whether Walgreens ever wrote checks directly to Petitioner. Respondent Vassilos then testified that the checks for the work performed by Petitioner at Walgreens were cut to one of his companies as a general contractor. Respondent Vassilos would then turn around and cut the checks over to Petitioner or his designees (T.2022 at 140)

Respondent Vassilos testified that Petitioner was not on Respondent Employco's payroll ledger (T.2022 at 142-143; RX Employco 2) Respondent Vassilos testified that he did not recall whether he gave Respondent Employco notice of the accident. (T.2022 at 145) Respondent Vassilos testified that he was aware that as part of stipulation of insurance being conferred and compensability under the insurance being conferred, he would have to give notice of an accident to Respondent Employco (T.2022 at 145-146)

Respondent Vassilos testified that he was aware that he was required to have workers' compensation insurance for his employees, and that he had coverage for his employees at the time of this accident (T.2022 at 152) Respondent Vassilos testified that Respondent Employco provided workers' compensation insurance

for all of his companies. (T.2022 at 153) Respondent Vassilos testified that subcontractors were paid as vendors, and that they had to supply their own workers' compensation insurance (T.2022 at 155-156)

Respondent Vassilos testified that as a result of the report from the State of Illinois, Illinois Workers' Compensation Commission, an investigator, Frank Capri, came to his office. (PX 16; T.2022 at 158) Respondent Vassilos testified that Mr. Capri found that Respondent Brite Site was in compliance with workers' compensation coverage from 2005 to 2012 with Respondent Employco. (PX 16; T.2022 at 159)

Respondent Vassilos testified that he was not sure whether Respondent Employco provided workers' compensation coverage to people that he treated as independent contractors performing work for any of his companies because he believed there was a 30-day or 60-day clause where he could turn a person from a contractor or a temporary employee to an employee. (T.2022 at 162) Respondent Vassilos testified that he never turned Petitioner into an employee and treated Petitioner as an independent contractor. (T.2022 at 163)

ADMITTED EXHIBITS

Petitioner's exhibits 1-19 were admitted into evidence.[9] Respondent Employco's exhibits 2 and 3 were admitted into evidence. Respondent IWBF's exhibits 1, 2, 6, and 7 were admitted into evidence. Respondent Vassilos' exhibits 1, 8, 10, and 11 were admitted into evidence.[10]

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

[9] All objections to exhibits were noted for the record.
[10] Respondent Vassilos' exhibits 2-7 and 9 were not admitted into evidence due to lack of relevancy with respect to the date of the accident.

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, Arbitrator Nath Rivera did not observe Petitioner during the January 24, 2020, hearing because Arbitrator Steffenson presided over the hearing, and this was a bifurcated trial. The Arbitrator finds that Petitioner's testimony was corroborative of Mr. Sieszputowski and found Mr. Sieszputowski to be a credible witness. The Arbitrator compared Petitioner's testimony with the totality of the evidence submitted and did not find any material contradictions that would deem the witness unreliable.

WITH RESPECT TO ISSUE (A), WAS RESPONDENT OPERATING UNDER AND SUBJECT TO THE ILLINOIS WORKERS' COMPENSTATION OR OCCUPATIONAL DISEASES ACT, THE ARBITRATOR FINDS AS FOLLOWS:

The Arbitrator finds that Respondent was operating under the Act, §3(15), "[a]ny business or enterprise in which electric, gasoline or other power driven equipment is used in the operation thereof." The Arbitrator notes that Petitioner testified that he worked in stores cleaning and waxing floors using special type of machinery, which included washing, buffing, and polishing machines. (T.2020 at 26-27, 46, 61) Based on these facts, the Arbitrator finds that Respondent Brite Site, operated under the Act on July 23, 2008, and was subject to the Illinois Workers' Compensation and Occupational Diseases Act on the date of accident.

WITH RESPECT TO ISSUE (B), WAS THERE AN EMPLOYEE-EMPLOYER RELATIONSHIP, THE ARBITRATOR FINDS AS FOLLOWS:

The existence of an employment relationship is a prerequisite for any award of benefits under the Act. Under Illinois law, distinguishing an employer-employee relationship from that of an independent contractor is a fact-specific determination based on multiple factors. See *Ware v. Indus. Comm'n*., 318 III. App. 3d 1117, 1122 (1st Dist. 2000); *Roberson v. Industrial Comm'n*, 225 Ill.2d 159, 174-75 (2007). The seven factors the courts have relied on to determine whether an employee-employer relationship exist are as follows: (1) whether the employer may control the manner in which the person performs the work; (2) whether the employer dictates the person's schedule; (3) whether the employer pays the person hourly; (4) whether the employer withholds income and social security taxes from the person's compensation; (5) whether the employer may discharge the person at will; (6) whether the employer supplies the person with materials and

equipment; and (7) whether the employer's general business encompasses the person's work. See *Roberson*, Ill. 2d at 175. No single factor is determinative and finding an employer-employee relationship rests upon the totality of the circumstances. *Id*.

In Illinois, "the most important factor in determining if a person is an employee or an independent contractor is the amount of direction and control exercised by the employer." *Rozmyslowicz v. Tony & Krystyna Cleaning Service*, 98 IL.W.C.31232 (111.lndus.Com'n 2003) at 3. To establish whether in-home housekeepers were employees, the Commission has considered many factors beyond that of direction and control, such as how the employee first heard of the job, who set the schedule of houses to be cleaned, the provision of transportation, who provided the cleaning supplies, and who determined the rate of payment. See generally *Rozmylowicz*, 98 IL.W.C.31232; Mazurek, 10 I.W.C.C. 1295; *Dratewska-Zator v. Iwona Wielonek*, et al., 11 I.W.C.C. 0549 (Ill.Indus.Com'n 2011); *Maziarz v. Alicja Cleaning Service, Inc.*, 07 LW.C.C. 0292 (Ill.Indus.Com'n 2007) The fact that taxes are rarely withheld from the housekeepers' paychecks in these situations does not necessarily disclaim an employer-employee relationship. *Rozmylowicz*, 98 IL. WC. 31232 at 3.

In *Dratewska-Zator*, the Commission found that the Petitioner qualified as an employee of Respondent-Employer's housekeeper-providing service. Crucial to the Commission's decision were the facts that Respondent-Employer directed Petitioner to the homes in which Petitioner worked and set the rate of pay for each job, receiving a "cut" of the pay from each job. *Dratewska-Zator*, 11 I.W.C.C. 0549 at 2. Likewise, in *Maziarz*, the Commission held that the housekeeper worked as Respondent-Employer's employee where "[t]he respondent told her what houses to clean and provided her with a list of houses to clean... and respondent communicated with the homeowners and also gave them parameters as to how much money should be paid to the Petitioner for cleaning said houses." *Maziarz*, 07 I.W.C.C. 0292 at 2. The Commission held that these facts sufficiently established Petitioner as an employee rather than an independent contractor.

In *Mazurek*, the Commission upheld the Arbitrator's determination that the housekeeper in that case was an employee. *Mazurek*, 10 I.W.C.C. 1295. Respondent obtained the specific job sites, assigning housekeepers when contacted by customers for a cleaning person. Petitioner was told the schedule of cleaning for the day when she was picked up in the morning by Respondent for transport to the job site. Respondent determined the rate of pay and received a "cut" of what was paid to Petitioner. Cleaning supplies were sometimes provided by the homeowner, sometimes by Respondent. *Mazurek*, 10 I.W.C.C. 1295 at 11. The Commission held these facts sufficient to establish an employer-employee relationship, despite the fact that Respondent did not control the manner in which the Petitioner cleaned homes or withheld any taxes or social security. *Id*.

Based on Petitioner's testimony and the Mr. Sieszputowski's testimony, the Arbitrator finds that an employee-employer relationship existed between Petitioner and Respondent Vassilos and Respondent Brite-

Site. The Arbitrator notes that although Petitioner and Mr. Sieszputowski testified two years apart, they both testified consistently and were corroborative of each other.

In considering the seven factors, the Arbitrator finds as follows:

With respect to the first factor, whether the employer may control the manner in which the person performs the work, the Arbitrator notes that both Petitioner and Mr. Sieszputowski testified that Jaczynski gave them directions regarding the location of the job, the job duties, and the date and time. Mr. Sieszputowski credibly testified that Petitioner would get directions from Jaczynski and then Petitioner would tell him. The Arbitrator notes that Petitioner and Mr. Sieszputowski testified that they both thought they could be fired by Jaczynski because Jaczynski was their supervisor. Petitioner testified that Jaczynski would make the schedule and would call Petitioner. (T.2020 at 59) Petitioner further testified that Jaczynski would give detailed instructions as to what to do at that job site. *Id*. The Arbitrator further notes that if Petitioner were an independent contractor, he would have taken the lead on which jobs to take and where to go, however, Petitioner and Mr. Sieszputowski testified that they took the lead from Jaczynski.

With respect to the second factor, whether the employer dictates the person's schedule, the Arbitrator notes that Petitioner testified that Respondent Brite Site was in the business of washing floors and that he used a special type of machinery, which included washing machines and buffers. (T.2020 at 26-27) Petitioner testified that Jaczynski would make the schedule and would call Petitioner and would tell Petitioner exactly what to do at the job site, including whether to wax, or wash, the floors. (T.2020 at 59) Petitioner testified that Jaczynski would call him almost every day to let him know what location to go to. *Id*. Petitioner further testified that Jaczynski would give detailed instructions as to what to do at that job site. *Id*. In essence, Jaczynski prioritized Petitioner's assignment.

With respect to the third factor, whether the employer pays the person hourly, the Arbitrator notes that Petitioner testified that he was paid for each job that was completed. (T.2020 at 34, 50, 106) Petitioner testified that Jaczynski told him that in order to get paid, Petitioner was required to have a Walgreens manager stamp and sign the paperwork, provided by Jaczynski, after the job was done. (T.2020 at 98, 107, 132, 136, 147-148) Petitioner testified that if Walgreens felt the job was not performed well, they would not stamp the paperwork, Walgreens would not pay for the job, and Petitioner would not be paid by Respondent Brite Site. Petitioner further testified that he was never paid by Walgreens. (T.2020 at 52) Petitioner testified that he was given the paycheck, issued by Respondent Brite Site, and given by hand from Jaczynski. (T.2020 at 82, 133; PX 18)

With respect to the fourth factor, whether the employer withholds income and social security taxes from the person's compensation, the Arbitrator notes that Petitioner testified that he received a 1099 each year from Brite Site, from Jaczynski, however, taxes were not withheld by Respondent Brite Site. (T.2020 at 87-

88, 127; PX 19)

With respect to the fifth factor, whether the employer may discharge the person at will, the Arbitrator notes that Petitioner and Mr. Sieszputowski testified that they both thought they could be fired by Jaczynski because Jaczynski was their supervisor and Jaczynski gave them directions.

With respect to the sixth factor, whether the employer supplies the person with materials and equipment, the Arbitrator notes that Petitioner testified that he drove a Brite Site vehicle for the first three years of the 25 years he worked for Brite Site. (T.2020 at 37-38, 41, 43-44, 128) Petitioner testified that the company car had a Brite Site logo and phone number on it. (T.2020 at 44) Petitioner testified that Respondent Brite Site owned the washing and buffing machines Petitioner used and that they had Brite Site stickers on them. (T.2020 at 38, 42, 46) Petitioner testified that he would load/unload equipment with a ramp owned by Respondent Brite Site. (T.2020 at 61) Petitioner testified that he was requested by Respondent Brite Site to wear their shirt most of the time. (T.2020 at 45) The Arbitrator notes that Petitioner testified that the materials used, wax and soap, were kept at the Walgreens stores. (T.2020 at 42, 110) Petitioner testified that he would normally use Walgreens' supplies, but if Walgreens did not have materials, Jaczynski would bring supplies or Petitioner could take supplies from Brite Site's office. (T.2020 at 110-111, 42)

With respect to the seventh factor, whether the employer's general business encompasses the person's work, the Arbitrator notes that Petitioner testified that he worked exclusively for Brite Site from 1989 to 2014. (T.2020 at 28, 52, 124, 126-127) Petitioner testified that his job title was cleaner, and that Respondent Brite Site was in the business of washing floors. (T.2020 at 26-27, 102) The Arbitrator notes that there was no evidence to the contrary.

The Arbitrator notes that Petitioner reported his employer as "Brite Site" to Swedish Covenant Hospital. (PX 1 at 35, 78, 80) The Arbitrator further notes that Petitioner testified that it was always his belief that he was hired to do these jobs on behalf of Respondent Brite Site. (T.2020 at 57) Petitioner testified that he considered his work at Respondent Brite Site a full-time job and during the time period he worked for Respondent Brite Site, he never worked for anyone else from 1989 until his last day of work (T.2020 at 52-53) The Arbitrator notes that there was no evidence to the contrary.

WITH RESPECT TO ISSUE (C), DID AN ACCIDENT OCCUR THAT AROSE OUT OF AND IN THE COURSE OF PETITIONER'S EMPLOYMENT BY RESPONDENT, THE ARBITRATOR FINDS AS FOLLOWS:

To be compensable under the Act, an injury must "arise out of" and be "in the course of" the employee's employment. *Kochilas v. Industrial Comm'n*, 274 Ill.App.3d 1088, 1090 (1995) The burden of

establishing that the injury "arose out of" and was "in the course of the employment" rests with the applicant. *Rockford Cabinet Co. v. Industrial Comm'n*., 295 III. 332, 335 (1920)

The Arbitrator notes that Petitioner was assigned to perform a job at Walgreens located at 3302 West Belmont Avenue, Chicago. The Arbitrator notes that Petitioner testified that after he completed his job, he pushed a machine up the ramp into the van. Petitioner testified that as he was going back down on the ramp, he fell down after his foot got stuck in the ramp and twisted his foot to the right and outside. (T.2020 at 62-69) The Arbitrator notes that both Petitioner and Mr. Sieszputowski testified that the Walgreens manager was still there when the accident happened and called an ambulance. The Arbitrator notes that Chicago Fire Department records and medical records corroborate Petitioner's testimony that the accident was work-related. The Arbitrator notes that there is no evidence suggesting that the accident occurred at home or while Petitioner was performing a recreational activity.

Based on the Petitioner's testimony, Mr. Sieszputowski's testimony, the ambulance records, and medical records, the Arbitrator finds that the accident arose out of and in the course of Petitioner's employment by Respondent Brite Site on July 23, 2008.

WITH RESPECT TO ISSUE (D), WHAT WAS THE DATE OF THE ACCIDENT, THE ARBITRATOR FINDS AS FOLLOWS:

Based on the Petitioner's testimony, Mr. Sieszputowski's testimony, the ambulance records, and medical records, the Arbitrator finds that the date of the accident was July 23, 2008. (T. 19, 23)

WITH RESPECT TO ISSUE (E), WAS TIMELY NOTICE OF THE ACCIDENT GIVEN TO RESPONDENT, THE ARBITRATOR FINDS AS FOLLOWS:

Section 6(c) of the Act provides that notice of an accident must be provided to the employer not later than 45 days after the accident. 820 ILCS 305/6.

The Arbitrator notes that Petitioner testified that he notified Jaczynski after he was discharged from the hospital. (T.2020 at 72) Petitioner testified that he was in the hospital for three days. The Arbitrator notes that Petitioner testified that Jaczynski already knew about his accident. *Id.* Based on the evidence presented, as well as, Respondent Vassilos' testimony, the Arbitrator notes that Jaczynski was Petitioner's supervisor. The Arbitrator notes that Respondent Vassilos testified that he was informed of the accident when the Walgreens store called his office regarding this incident. The Arbitrator notes that there was no evidence or testimony was presented to the contrary that timely notice of the accident was given to Respondent Vassilos and Respondent Brite Site within 45 days.

WITH RESPECT TO ISSUE (F), IS PETITIONER'S CURRENT CONDITION OF ILL-BEING

CASUALLY RELATED TO THE INJURY, THE ARBITRATOR FINDS AS FOLLOWS:

Petitioner bears the burden of proving, by a preponderance of the evidence, every element of the claim. *O'Dette v. Industrial Comm'n*, 79 Ill. 2d 249, 253 (1980). To obtain compensation under the Illinois Workers' Compensation Act, a claimant must prove that some act or phase of his employment was a causative factor in his ensuing injuries. A work-related injury need not be the sole or principal causative factor, as long as it was *a* causative factor in the resulting condition of ill-being. Causation between the work-related accident and condition of ill-being can be established by showing prior history of good health, followed by a work-related accident in which petitioner is unable to perform his physical duties. *Kawa v. Illinois Workers' Comp. Comm'n*, 991 N.E.2d 430, 448 (2013).

The Arbitrator notes that, on July 23, 2008, Petitioner was diagnosed with a 1 cm laceration of the right shin, a Talus fracture, a Proximal fibula fracture. (PX 2 at 21; T.2020 at 73) Petitioner immediately underwent surgery. *Id.* The Arbitrator notes that, on August 8, 2008, Petitioner underwent a second surgery to loosen the screw that was placed in Petitioner's right ankle and right tibial wound debridement. (PX 2; T.2020 at 73-74) From August 2008 to December 2008 Petitioner underwent physical therapy at the request of Uptown Orthopedic Surgeons. (PX 4; T.2020 at 74-75)

The Arbitrator notes that Petitioner testified that when he returned to work for Respondent Brite Site, in February of 2009, he continued to work two stores per night, but it took him longer. (T.2020 at 116) The Arbitrator notes that Petitioner testified that he still experiences symptoms in his right foot, ankle, and leg. (T.2020 at 91) Petitioner testified that he experiences pain in his ankle and swelling, he does not walk the same, he limps on his right leg (T.2020 at 92) The Arbitrator notes that Petitioner testified that he believes that he has at least 30 percent less strength in that ankle as compared to prior to the accident. (T.2020 at 95) He also testified that he has much less mobility and range of motion as before the accident. *Id*. Petitioner testified that he limps all the time due to the pain and mobility. (T.2020 at 96) The Arbitrator notes that Petitioner believed all of this is caused from the accident that he had sustained on July 23, 2008. *Id.*

After hearing the testimony of Petitioner and reviewing Petitioner's medical records, the Arbitrator finds Petitioner's current condition of ill-being, with respect to his ankle, is causally related to the accident of July 23, 2008.

WITH RESPECT TO ISSUE (G), WHAT WERE PETITIONER'S EARNINGS, THE ARBITRATOR FINDS AS FOLLOWS:

The Arbitrator notes that Petitioner testified that, at the time of the accident, he was paid $55.00 per store, thus his weekly pay amounted to $55.00 times 12 stores for a total of $660.00 (T.2020 at 50) Petitioner testified that he worked at least six days per week, cleaned two stores per night.

The Arbitrator finds that Petitioner's average weekly wage at the time of accident was $660.00.

WITH RESPECT TO ISSUE (H), WHAT WAS PETITIONER'S AGE AT THE TIME OF THE ACCIDENT, THE ARBITRATOR FINDS AS FOLLOWS:

The Arbitrator notes that Petitioner testified that on the date of the accident, July 23, 2008, he was 52 years old, and that his date of birth is August 19, 1955. (T.2020 at 25-26)

The Arbitrator finds that based on Petitioner's testimony and medical records that Petitioner was 52 years old at the time of the accident.

WITH RESPECT TO ISSUE (I), WHAT WAS PETITIONER'S MARITAL STATUS AT THE TIME OF THE ACCIDENT, THE ARBITRATOR FINDS AS FOLLOWS:

The Arbitrator notes that Petitioner testified that on the date of the accident, July 23, 2008, he was married. (T.2020 at 25) No evidence or testimony having been presented to the contrary, the Arbitrator finds that Petitioner was married at the time of the 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:

As the Arbitrator found that Petitioner's current condition of ill-being was causally connected to the work-related accident, the Arbitrator finds that the following medical treatment and services Petitioner received were reasonable and necessary. (PX 1, PX 2, PX 3, PX 4, PX 5, PX 6, PX 7, PX 8, PX 9, PX 10, PX 11, PX 12, and PX 13)

The Arbitrator notes that immediately following the accident, Petitioner was transported by the Chicago Fire Department to Swedish Covenant Hospital where he underwent emergency surgery on his ankle. Petitioner had to undergo subsequent surgery on his ankle as well extensive orthopedic and physical therapy treatment. There was no evidence of a prior injury. (PX 1, PX 2, PX 3, PX 4, and PX 5)

The Arbitrator notes that Petitioner tendered to the court several exhibits for medical bills incurred as a result of the July 23, 2008, accident. The Arbitrator notes that Petitioner did not have health insurance at the time of the accident, which would cover his medical bills. The Arbitrator further notes that Petitioner testified that he received bills for his medical treatment and prescriptions and had to pay many of the bills out-of-pocket (T.2020 at 73-74) Petitioner testified that all the bills that he received arose from the treatment for the injury that he sustained at work on the date of accident of July 23, 2008 (T.2020 at 91)

The Arbitrator notes that the evidence presented was that Respondent has not paid any of these bills. With no contrary evidence having been presented, the Arbitrator finds that Respondent Brite Site shall pay all reasonable and necessary medical services, of $52,594.29, and reimburse Petitioner for the medical payments he made out of pocket, pursuant to the medical fee schedule and as outlined in PX 1, PX 2, PX 3, PX 4, PX 5, PX 6, PX 7, PX 8, PX 9, PX 10, PX 11, PX 12, and PX 13, as provided in Sections 8(a) and 8.2 of the Act.

WITH RESPECT TO ISSUE (K), WHAT TEMPORARY BENEFITS ARE IN DISPUTE, THE ARBITRATOR FINDS AS FOLLOWS:

The Arbitrator notes that Petitioner testified that he was off of work from the date of accident, July 23, 2008, through the middle of February 2009. (T.2020 at 77) Petitioner testified that he was not working pursuant doctor's orders. (T.2020 at 78) Petitioner testified that he was not paid any money while he was off of work during that time period. (T.2020 at 77) The Arbitrator previously found that Petitioner's average weekly wage at the time of accident was $660.00.

Thus, the Arbitrator concludes that Respondent Brite Site, shall pay TTD benefits to Petitioner commencing on July 23, 2008, through February 5, 2009,[11] representing 28 1/7 weeks, at rate of $440.00/week, as provided in Section 8(b) of the Act.

WITH RESPECT TO ISSUE (L), WHAT IS THE NATURE AND EXTENT OF THE INJURY, THE ARBITRATOR FINDS AS FOLLOWS:

Pursuant to §8.1b of the Act, the following criteria and factors must be weighed in determining the level of permanent partial disability for accidental injuries occurring on or after September 1, 2011: [12]

(b) In determining the level of permanent partial disability, the Commission shall base its determination on the following factors:

(i) the reported level of impairment pursuant to subsection (a);
(ii) the occupation of the injured employee;
(iii) the age of the employee at the time of the injury;
(iv) the employee's future earning capacity; and
(v) evidence of disability corroborated by the treating medical records. No single enumerated factor shall be the sole determinant of disability. In determining the level of disability, the relevance and weight of any factors used in addition to the level of impairment as reported by the physician must be explained in a written order.

[11] The Arbitrator relied on the doctor's last note dated February 5, 2009, in ending the award on that date.

[12] The Arbitrator acknowledges that the "five factors" do not apply to this case because the accident occurred before September 1, 2011. However, the Arbitrator analyzed the factors to properly assess permanency.

With regard to subsection (i) of §8.1b(b), the Arbitrator notes that an American Medical Association ("AMA") impairment rating was not performed in this case. As such, the Arbitrator relies on the other four factors of PPD.

With regard to subsection (ii) of §8.1b(b), the occupation of the employee, the Arbitrator notes that the record reveals that Petitioner was employed as a cleaner at the time of the accident. Petitioner's injuries did not result in any permanent work restrictions. Petitioner was capable of returning to his employment he was able to perform prior to the accident. As such, the Arbitrator gives no weight to this factor.

With regard to subsection (iii) of §8.1b(b), the Arbitrator notes that Petitioner was 52 years old at the time of the accident. the Arbitrator gives less weight to this factor.

With regard to subsection (iv) of §8.1b(b), Petitioner's future earnings capacity, the Arbitrator notes that Petitioner sustained injuries and was able to return to his prior line of employment and did not sustain any loss of future earning capacity. Therefore, 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 sustained a 1 cm laceration of the right shin, a Talus fracture, a proximal fibula fracture. (PX 2 at 21; T.2020 at 73) Petitioner immediately underwent surgery. *Id.* The Arbitrator notes that, on August 8, 2008, Petitioner underwent a second surgery to loosen the screw that was placed in Petitioner's right ankle and right tibial wound debridement. (PX 2; T.2020 at 73-74) From August 2008 to December 2008 Petitioner underwent physical therapy at the request of Uptown Orthopedic Surgeons. (PX 4; T.2020 at 74-75) The Arbitrator finds that Petitioner's testimony is corroborative of the ambulance and medical records which indicated that Petitioner sustained these injuries as a result of the July 23, 2008, work related accident. Per the operative report dated August 8, 2008, Petitioner sustained a Maisonneuve-type fracture of the right ankle. The revision surgery at Swedish Covenant Hospital consisted of a syndesmosis screw insertion in the right ankle as well as debridement of the right anterior tibial wound. (PX 2) Therefore, the Arbitrator gives greater weight to this factor.

Based on the above factors, and the record taken as a whole, the Arbitrator finds that Respondent shall pay Petitioner permanent partial disability ("PPD") benefits of $407.95 per week for 58.45 weeks, because the injuries sustained caused the 35% loss of use of the right foot as provided in Section 8(d)2 of the Act.

WITH RESPECT TO ISSUE (M), SHOULD PENALTIES OR FEES BE IMPOSED UPON RESPONDENT, THE ARBITRATOR FINDS AS FOLLOWS:

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

WITH RESPECT TO ISSUE (N), IS RESPONDENT DUE ANY CREDIT, THE ARBITRATOR FINDS AS FOLLOWS:

As the Arbitrator previously found that Respondent Brite Site has not paid any medical bills or TTD, Respondent Brite Site is not due any credit.

WITH RESPECT TO ISSUE (O), THE LIABILITY OF THE INJURED WORKERS' BENEFIT FUND, THE ARBITRATOR FINDS AS FOLLOWS:

The Illinois State Treasurer, as ex-officio custodian of the IWBF, was named as a co-Respondent in this matter. The IWBF was represented by the Illinois Attorney General's Office. This finding is hereby entered as to the IWBF to the extent permitted and allowed under §4(d) of the Act. If Petitioner is awarded benefits and if Respondent-Employer fails to pay same, the Petitioner may submit a claim to the IWBF pursuant to §4(d). Respondent-Employer shall reimburse the IWBF for any benefits paid pursuant to this award. Such reimbursement includes but is not limited to the full award in this matter, the amounts of any medical bills paid, temporary total disability paid and/or permanent partial disability paid. The Respondent-Employer's obligation to reimburse the IWBF, as set forth above, in no way limits or modifies its independent and separate liability for fines and penalties set forth in the Act for its failure to be properly insured.

The Arbitrator finds that the NCCI certification tendered by Petitioner, as PX 16, demonstrated that on July 23, 2008, all Respondents, specifically, Clean and Brite Floor Corporation d/b/a Respondent Brite Site, lacked workers' compensation insurance. The Arbitrator found that Clean and Brite Floor Corporation d/b/a Respondent Brite Site was the statutory employer of Petitioner and that there was an employee-employer relationship between them. Thus, the Arbitrator find that there was no evidence presented indicating that Petitioner's accident was covered by any policy of Workers' Compensation insurance.

Arbitrator Antara Nath Rivera