

ILLINOIS WORKERS' COMPENSATION COMMISSION
DECISION SIGNATURE PAGE

Case Number	21WC004904
Case Name	Mallorie Walliker v. Denny's
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b) Remand Arbitration
Decision Type	<i>Corrected Decision</i>
Commission Decision Number	CORRECTED-23IWCC0341
Number of Pages of Decision	21
Decision Issued By	Deborah Simpson, Commissioner

Petitioner Attorney	Warren Danz
Respondent Attorney	Robert M. Harris

DATE FILED: 9/1/2023

/s/ Deborah Simpson, Commissioner

Signature

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23 IWCC 341
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STATE OF ILLINOIS)
) SS.
COUNTY OF PEORIA)

<input type="checkbox"/> Affirm and adopt (no changes)	<input type="checkbox"/> Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/> Affirm with explanation	<input type="checkbox"/> Rate Adjustment Fund (§8(g))
<input type="checkbox"/> Reverse	<input type="checkbox"/> Second Injury Fund (§8(e)18)
<input checked="" type="checkbox"/> Modify: Down	<input type="checkbox"/> PTD/Fatal denied
	<input checked="" type="checkbox"/> None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

MARJORIE WALLIKER KRAMER,

Petitioner,

vs.

NO: 21 WC 4904
23 IWCC 341

DENNY'S,

Respondent.

CORRECTED 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 and temporary total disability benefits and being advised of the facts and law, affirms and adopts with explanation 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 was working for Respondent as a server. The parties stipulated that on February 3, 2021, Petitioner sustained a work-related accident/injury when hot water sprayed on her from a coffee machine. Petitioner alleged that the accident/injury aggravated a pre-existing psychological condition of PTSD. The Arbitrator found that Petitioner sustained her burden of proving that her work accident/injury did exacerbate her psychological condition. He relied in part on the opinions of Respondent's §12 medical examiner, psychologist Steven Rothke, Ph.D. He opined that the work accident exacerbated her PTSD, currently she had psychological symptoms related to the work injury, she needed prospective psychological treatment, and she was restricted from working for the three-month period he recommended she receive such treatment. The Commission concludes that Petitioner's current psychological condition of ill-being was aggravated by the stipulated accident.

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The Arbitrator awarded Petitioner 60 weeks of temporary total disability benefits, medical associated with treatment of burns/psychiatric treatment though he deferred a specific medical award based on request from the parties, and awarded Respondent stipulated credit of \$2,747.38 in paid temporary total disability benefits. Based on our affirmation of the Arbitrator's finding of causation of Petitioner's PTSD, we concur in the Arbitrator's award of medical and temporary total disability benefits. However, the Arbitrator awarded temporary total disability benefits from February 3, 2021 through March 30, 2022 the date of arbitration, without explanation. We believe a brief explanation is appropriate here.

Initially, Petitioner was unable to work due to the burns she sustained. She treated for her burns for a couple of weeks. Thereafter, she returned to see Ms. Milhoan on February 24, 2021. She is a Psychiatric Advanced Practical Nurse, with whom Petitioner treated for PTSD prior to the instant accident. At that time, Ms. Milhoan noted Petitioner had re-emergence of PTSD and was not able to return to work. Petitioner continued to treat with Ms. Milhoan and last saw her prior to arbitration on September 13, 2021. At no time prior to arbitration did Ms. Milhoan ever release Petitioner to work, even with restrictions. In addition, when Petitioner saw Dr. Rothke, Respondent's psychological §12 medical examiner, on January 11, 2022, he opined that Petitioner was still suffering PTSD symptoms from her work accident and could not return to work until she had prospective psychological treatment. Dr. Rothke opined that Petitioner needed three-months of psychological treatment before she could return to work. Three months of treatment after January 11, 2022 would be April 11, 2022, which was after the date of arbitration. Based on the opinions of Ms. Milhoan and Dr. Rothke, the Commission finds the Arbitrator's award of temporary total disability benefits to be appropriate and that award is affirmed. However, the Commission notes that the Arbitrator awarded temporary total disability benefits from February 3, 2021, which was the date of the accident. Because the period of temporary total disability benefits begins the day after the disabling accident/injury, the Commission modifies the temporary total disability award from 60 weeks to 59&6/7 weeks, representing total temporary disability benefits from February 4, 2021 through April 11, 2022.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed August 23, 2022 is hereby affirmed and adopted, with the explanation specified above.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of \$298.11 a week for a total of 59&6/7 weeks, that being the period of her inability to work pursuant to §8(b) 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 the medical award is deferred to hearing upon remand.

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IT IS FURTHER ORDERED BY THE COMMISSION that this Decision is not a bar to the award of additional temporary total disability benefits or for permanency, if any, upon hearing upon remand.

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

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

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

September 1, 2023

O-7/26/23
DLS/dw
046

/s/Deborah L. Simpson
Deborah L. Simpson

/s/Stephen J. Mathis
Stephen J. Mathis

ILLINOIS WORKERS' COMPENSATION COMMISSION
DECISION SIGNATURE PAGE

Case Number	21WC004904
Case Name	Mallorie Walliker v. Denny's
Consolidated Cases	
Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	17
Decision Issued By	Bradley Gillespie, Arbitrator

Petitioner Attorney	Warren Danz
Respondent Attorney	Robert M. Harris

DATE FILED: 8/23/2022

/s/ Bradley Gillespie, Arbitrator

Signature

INTEREST RATE WEEK OF AUGUST 23, 2022 3.11%

STATE OF ILLINOIS)
)SS.
COUNTY OF Peoria)

<input type="checkbox"/>	Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/>	Rate Adjustment Fund (§8(g))
<input type="checkbox"/>	Second Injury Fund (§8(e)18)
<input checked="" type="checkbox"/>	None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
19(b) ARBITRATION DECISION

Mallorie Walliker
Employee/Petitioner

Case # 21 WC 004904

v.

Consolidated cases: _____

Denny's
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 **Gillespie**, Arbitrator of the Commission, in the city of **Bloomington**, on **March 30, 2022**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On **February 3, 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 **\$1,371.31**; the average weekly wage was **\$298.11**, **minimum rate**.

On the date of accident, Petitioner was **34** years of age, *single* with **2** dependent children.

Petitioner *has not* received all reasonable and necessary medical services, which is deferred to a future hearing.

Respondent *has not* paid all appropriate charges for all reasonable and necessary medical services, which is deferred to a future hearing.

Respondent shall be given a credit of **\$2,747.38** for TTD, **\$0.00** for TPD, **\$0.00** for maintenance, and **\$0.00** for other benefits, for a total credit of **\$2,747.38**.

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

ORDER

Medical benefits

Respondent shall pay reasonable and necessary medical services of \$0.00, as provided in Section 8(a) of the Act.

Temporary Total Disability

Respondent shall pay Petitioner temporary total disability benefits of \$298.11/week for 60 weeks, commencing 02/03/21 through 03/30/22, as provided in Section 8(b) of the Act.

Respondent shall pay Petitioner the temporary total disability benefits that have accrued from 02/03/21 through 03/30/22, and shall pay the remainder of the award, if any, in weekly payments.

Respondent shall be given a credit of \$2,747.38 for temporary total disability benefits that have been paid.

This decision is not a bar to future hearing on TTD and permanency.

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

MALLORIE WALLIKER,)	
)	
Petitioner,)	
vs.)	No. 21 WC 004904
)	
DENNY'S,)	
)	
Respondent.)	

19(b) DECISION OF ARBITRATOR

FINDINGS OF FACT

This claim proceeded to hearing on March 30, 2022, in Bloomington, Illinois pursuant to 19(b) of the Act. (Arb. Ex. 1) The following issues were in dispute at arbitration:

- Causal Connection;
- Medical Expenses;
- and TTD.

Petitioner was the sole witness at arbitration. There is no dispute that Petitioner sustained accidental injuries while working for Respondent Denny's on February 3, 2021. The parties stipulated that Petitioner provided timely notice of the accident. There is no dispute that Petitioner had pre-existing psychological conditions for which she had been treating prior to the accident that are relevant to a determination of the disputed issues in this claim.

Petitioner testified that, on the date in question, she was a server who was training for management. (Tr. pp. 20-21) Petitioner was pouring hot water into a coffee carafe for a customer when the machine malfunctioned, and hot water sprayed onto her. (Tr. p. 22) Petitioner testified that she sustained burns from the top of her ear all the way down her right arm. *Id.* Petitioner testified she "jerked back" after she was sprayed (Tr. pp. 22-23) Petitioner testified she was burnt "from the tip of my right ear, all the way down to my right arm, my whole right side was burnt" (Tr. pp. 23-24). This included Petitioner's right chest. Petitioner further testified that "everything started hurting immediately. I mean, my shoulder, my neck, my arm..." (Tr. p. 23). Petitioner further testified she "blacked out." (Tr. pp. 24-25).

Petitioner testified that she went to the emergency room approximately an hour later. (Tr. pp. 25-26) She claimed that she was required to speak with the insurance company before seeking treatment. *Id.* Petitioner presented to the emergency room at Pekin Hospital. (PX #3) Petitioner reported a consistent history of accident. *Id.* She was noted to have burns to her torso, shoulder and forearm. *Id.* Her burns were described as a 5cm x 8 cm superficial partial thickness burn to

the right chest with three small blisters as well as a 1 cm x 1 cm burn to the right forearm. *Id.* Petitioner received Morphine for pain as well as Neosporin. (PX #3) She was prescribed Bacitracin ointment and Norco for pain. *Id.*

Subsequently, Petitioner followed up with her primary care provider, Dr. Farhana Khan on February 5, 2021. (PX #4). Petitioner provided a consistent history of injury. *Id.* She reported chest wall pain and was diagnosed with partial thickness burn of the chest wall. (PX #4 p. 6). Petitioner was taken off work and was allowed to return to work on February 15, 2021. (PX #4 p. 99) Petitioner next saw Dr. Khan on February 10, 2021. (PX #4 p. 11) She reported the burns were very painful still and had been oozing yellow drainage. *Id.* A referral was made to a Wound Clinic. (PX #4 p. 15). No notes from the Wound Clinic were placed into evidence. Petitioner was taken off work until re-evaluated on 2/18/2021. (PX #4 p. 100)

On February 19, 2021, Petitioner had a telephonic follow up with Dr. Khan (PX #4 p. 18) Petitioner reported that she may have strained a muscle when jerking her arm away from the hot water. *Id.* On February 22, 2021, Petitioner received a physical therapy referral from Dr. Khan and a prescription for Flexeril for muscle spasms. (PX #4 p. 23) The diagnosis was acute pain of right shoulder. *Id.* Petitioner presented to the office on February 22, 2021, requesting an off work note. (PX #4 p. 24) Her previous work status from February 10, 2021, was provided to her and she was taken off work until March 4, 2021. *Id.* No physical therapy notes were admitted into evidence.

On March 3, 2021, Petitioner had another telephonic visit with Dr. Khan. (PX #4 p. 25) Dr. Khan noted that Petitioner was following up with the Wound Clinic for burn care. Her assessment was acute pain of right shoulder. (PX #4 p. 29) Petitioner was taken off work. (PX #4 p. 102)

On April 13, 2021, Petitioner was evaluated by Viviane Miranda Santos, APN. (PX #4 p. 34) The notes indicate that Petitioner's burns have now been healed. *Id.* Petitioner reported right shoulder joint pain that had an onset the day of her burns. *Id.* X-rays of her shoulders were taken. Nurse Practitioner Santos noted a limited range of motion as well as a positive Hawkins test. (PX #4 p. 35) Petitioner was diagnosed with shoulder impingement syndrome. (PX #4 p. 36)

Petitioner was next assessed via telephone by Dr. Khan on May 6, 2021. (PX #4 p. 39) Petitioner reported that physical therapy was doing more harm than good, so she stopped. *Id.* Petitioner was provided a pain referral due to her chronic right shoulder pain. (PX #4 p. 42) Petitioner was taken off work. No pain referral records were admitted into evidence. Petitioner next visited Dr. Kahn on May 18, 2021. (PX #4 p. 47) A physical therapy referral was issued along with an order for an MRI of the right shoulder. (PX #4 p. 50) Trigger point injections were to be scheduled for Petitioner's upper back and neck. *Id.* at 51. Petitioner was taken off work. (PX #4 p. 103)

On May 26, 2021, Petitioner received trigger point injections for "myofascial pain." (PX #4 pp. 55-56) Petitioner visited Dr. Khan on June 23, 2021. (PX #4 p. 61) Dr. Khan's note indicates the trigger point injections did help for Petitioner's neck pain. *Id.* An off work note was issued which indicated that Petitioner will be evaluated by Arlington Orthopedics who will

determine her restrictions. (PX #4 p. 104) The Arbitrator notes that this refers to Petitioner's appointment with Respondent's Section 12 expert Dr. Neal on June 28, 2021.

On July 21, 2021, Petitioner received additional trigger point injections for "myofascial pain." (PX #4 p. 70) A referral note was issued for occupational therapy. (PX #4 p. 106) Those records were not admitted into evidence. On this date, Dr. Khan issued a note releasing Petitioner to "Regular Duty." (PX #4 p. 107)

On July 27, 2021, Petitioner had an MRI of the right shoulder. (PX #5 p. 2) The impression was: (1) Tendinosis of the supraspinatus and infraspinatus conjoined tendon insertion, no tear demonstrated; (2) and, mild degenerative changes of the acromioclavicular joint. *Id.*

On August 13, 2021, Petitioner had an MRI of the cervical spine. (PX #5 p. 4) The Impression was: (1) Mild degenerative changes most apparent is C5-C6. No significant cord/foraminal impingement. *Id.*

Petitioner returned to Dr. Khan on September 14, 2021. (PX #4 p. 80) This note indicates that Petitioner was evaluated by an "independent ortho" who recommended light duty use of the right arm. *Id.* This is a reference to Respondent's Section 12 expert, Dr. Neal. Dr. Khan did not note that Dr. Neal opined that Petitioner's shoulder condition was not causally related to the work accident. On this date, Dr. Khan issued a work note releasing Petitioner to light duty use of the right arm effective that date. (PX #4 p. 108) Petitioner testified that on September 14, 2021, Dr. Khan placed a "permanent" restriction on her (Tr. p. 32) The return to work note does not indicate that these restrictions are permanent.

Petitioner testified she continues to see Dr. Khan after September 14, 2021 (Tr. p. 33) No records were admitted into evidence for any date of service after September 14, 2021.

Petitioner testified that, immediately after she was burnt in the work accident, she started having "flashbacks" of a burn incident that occurred when she was younger. (Tr. p. 35) Petitioner further testified that after the accident she was experiencing "anxiety, depression, I could not get out of bed, just terrified to go out...Hell" (Tr. p. 37). Petitioner testified about a week later she called "Renaë" (Tr. p. 35) "Renaë" refers to Petitioner's treating psychiatric nurse practitioner Renaë Milhoan. Petitioner had been seeing Milhoan since October 11, 2017 (RX #11). On October 17, 2017, Nurse Practitioner Milhoan diagnosed Petitioner with post-traumatic stress disorder ("PTSD") and generalized anxiety disorder ("GAD"). Petitioner had been continuously diagnosed with these conditions since she first visited Nurse Practitioner Milhoan on October 11, 2017.

Petitioner first saw Nurse Practitioner Milhoan after the accident on February 24, 2021 (Tr. p. 35) Petitioner testified she also sees a counselor (Tr. p. 38) The records of her counselor were not admitted into evidence.

Petitioner testified that Nurse Practitioner Milhoan has continued to keep her off work (Tr. p. 39). Petitioner testified that she continues to see Nurse Practitioner Milhoan (Tr. p. 41). The most recent treating record from Nurse Practitioner Milhoan admitted into evidence involves a date of service of September 13, 2021. (PX #6 pp. 14-19)

Petitioner further testified regarding her emotional complaints, “It’s not getting any better. I am getting worse.” (Tr. pp. 39) Petitioner testified regarding her physical complaints that “My strength is completely at a 0... My strength, it’s a 0 for me... and this has literally put me to nothing” (Tr. pp. 40-41).

Petitioner testified “I don’t know” regarding whether treating family physician Dr. Khan referred her to an orthopedic specialist for treatment (Tr. p. 67). Petitioner acknowledged that she has not tried on her own to visit an orthopedic specialist for treatment (Tr. 68) In her evidence deposition, Nurse Practitioner Milhoan testified, “I don’t remember” to whether she has ever made a recommendation for a referral to a psychologist or psychiatrist for either new or additional treatment for Petitioner (PX #7 p. 53) Nurse Practitioner Milhoan’s records do not indicate any such referral was made. (See PX #6)

Petitioner was examined pursuant to Section 12 of the Act at her attorney’s request by orthopedic specialist Dr. Lawrence A. Nord on August 11, 2021, and September 2, 2021. (PX #8). A report was generated for each of these two examination dates, and they were admitted into evidence. (See PX #8) Dr. Nord’s evidence deposition was taken on November 15, 2021. (PX #9). Dr. Nord retired from his orthopedic surgery practice approximately four years ago and operates a business known as “Nord Med Evals, LLC,” a medical/legal consulting business. (PX #9, pp. 48-50). Dr. Nord testified that 90% of his business is done for Plaintiff attorneys and 90% of his Plaintiff work comes from Petitioner’s attorney, in other words, 90% of his business comes from Petitioner’s attorney. (PX #9, p. 49-50).

Dr. Nord testified that he specifically answered Petitioner’s attorney’s questions that were proposed to him. Dr. Nord did not write up a specific IME but only responded to the questions presented to him by Petitioner’s counsel. Dr. Nord did that because that is what Petitioner’s attorney asked him to do. (PX #9, pp. 55-58) Dr. Nord testified that he goes through all the records with the patient and then goes through the questions with the patient and tells her how he is going to answer the questions. (PX #9, p. 58) Dr. Nord testified that he went over the questions Petitioner’s attorney sent him with Petitioner. (PX #9, p. 58) Dr. Nord testified that Petitioner’s right shoulder condition would be considered permanent unless she receives further medical treatment. (PX #9, 24-25)

Dr. Nord testified that Petitioner’s complaints and history were consistent with a diagnosis of right shoulder impingement. (PX #9, p. 32) Dr. Nord testified that his review of the records, history and his physical examination support his opinion that Petitioner’s right shoulder condition was either caused by or aggravated by the work accident. (PX #9, pp. 40-41)

Dr. Nord testified that the work accident caused a new PTSD not related to the first PTSD (PX #9, p. 44). Regarding Petitioner’s PTSD, Dr. Nord further testified that Petitioner told him that she was having nightmares and flashbacks from her childhood trauma and she is having nightmares and flashbacks from the burn injury (PX #9, pp. 65-66) Dr. Nord further testified that Petitioner has had PTSD ever since her childhood trauma and still has it today. She has flashbacks and nightmares from her childhood experiences. She is also having nightmares and flashbacks regarding the hot water incident at work that is ongoing today. (PX #9, pp. 66-67) Lastly, Dr. Nord

testified that based on the statements in the records and Petitioner's history, she has a new episode of PTSD that alone was the basis for Dr. Nord to independently diagnose PTSD. (PX #9, p. 67)

Dr. Nord testified that it is not surprising that trigger point injections did not work, because there was no indication it was even needed for Petitioner's diagnosis. (PX #9, p. 80) Dr. Nord confirmed that there was no indication that the injections were needed and that an orthopedic surgeon would not do those injections. (PX #9, pp. 82-83)

Dr. Nord testified that the results of the physical examination Dr. Khan performed on June 23, 2021, indicate a "normal exam." (PX 9, pp. 84-87) Dr. Nord testified, however, that "the physical exam is inaccurate." (PX #9, p. 85) Dr. Nord agreed that according to the medical records we do not have an explanation as to why Petitioner did not offer complaints regarding her neck or shoulder until February 19, 2021. (PX #9, p. 110) Dr. Nord agreed that a review of Dr. Khan's notes from June 23, 2021, indicates that "it sounds like she is getting better." Dr. Nord testified that he recommended to Petitioner that she be evaluated and treated by an orthopedic surgeon. (PX #9, p. 112) There is no evidence in the record that Petitioner followed this recommendation.

The evidence deposition of Respondent's Section 12 examining orthopedic expert, Dr. M. Bryan Neal, was held on September 17, 2021. (RX #9) Dr. Neal performed a Section 12 examination on June 28, 2021. Dr. Neal produced three separate reports as result of this Section 12 examination and all three reports were admitted into evidence.

After taking a history from Petitioner, reviewing the records and performing his examination Dr. Neal formulated his diagnoses: medically unexplainable right shoulder girdle, trapezius, and lateral neck pain of unknown etiology. (RX #9, p. 34) Based upon Petitioner's subjective complaints during her examination, Dr. Neal explained why Petitioner's symptoms were of an unknown etiology because he did not know of any single organic musculoskeletal diagnosis to explain all of her subjective symptoms. (RX #9, p. 34) Dr. Neal's other diagnosis was "confounding biopsychosocial undercurrents" which included her past medical history as found in the medical records. (RX #9, 35)

Dr. Neal offered his opinion that he did not find a causal connection between Petitioner's shoulder and neck symptoms and the work accident. (RX #9, pp. 35-36) Dr. Neal opined that Petitioner has a condition for which there is no orthopedic condition or musculoskeletal diagnosis to explain it and the cause of her complaints are not orthopedic and are more grounded in her intrinsic biopsychosocial confounders which are independent of her occupational events. (RX #9, pp. 36-37) Dr. Neal further opined that Petitioner's subjective symptoms were not supported by the evidence and make no anatomic sense because her symptoms were disproportional to the objective findings and were medically unexplainable and non-physiological. (RX #9, pp. 37)

Dr. Neal commented on the right shoulder MRI which had some observations but none that are necessarily significant in and of themselves. (RX #9, p. 45) Dr. Neal opined there was nothing of clinical significance on the cervical spine MRI. (RX #9, p. 47)

Dr. Neal opined that the shoulder MRI had no clinical significance. (RX #9, pp. 48-49) Dr. Neal did not find that Petitioner's history was consistent with the shoulder joint pathologic state, and he did not find Petitioner's physical examination consistent with the shoulder joint pathologic

condition. (RX #9, p. 49) Dr. Neal opined that Petitioner does not have a clinical rotator cuff problem, nor would you expect one from the events, as there was no significant rotator cuff abnormality. *Id.* Dr. Neal stated that there was certainly no evidence of any acute fracture, any acute fluid collection, edema or inflammation. (PX #9 pp. 49-50) He went on to state that mild capsular hypertrophy is not an uncommon finding and probably much more often normal than not normal. *Id.* at 50. Dr. Neal felt the fact that there was a specific comment about there being no mass effect into the subacromial space leads one to strongly suspect that there should be no impingement. *Id.* Impingement by definition is a process involving the subacromial space. *Id.*

Dr. Neal testified that “acromioclavicular joints are notorious for having subtle technical abnormalities and imaging which are frequently called mild but yet of no clinical significance.” (RX #9, p. 66) Dr. Neal testified that the findings of the cervical MRI showed some disc desiccation at C6-C7 but, the disc height was preserved so that may have no relevance or clinical significance in his opinion. (RX #9, p. 67) Dr. Neal testified that he did not diagnose Petitioner with impingement. (RX #9, p. 69) Dr. Neal did not expect to find impingement from the burn event. *Id.* Dr. Neal opined that the accident would not have aggravated any pre-existing condition. (RX #9, pp. 70-71)

Dr. Neal testified that impingement syndrome is almost always more of a chronic process. (PX #9 p. 79) The most common cause of extrinsic impingement is arthritis producing bony spurs which impinge into the subacromial space. *Id.* Petitioner does not have that based upon her MRI imaging or x-rays. (PX #9 p. 80) An impingement is a condition where there is soft tissue irritation, inflammation, abrasion, of the soft tissues that transit the subacromial space, namely, the rotator cuff, the bursa, and the biceps tendon and is usually a chronic process which is a progressive process over time. (RX #9, pp. 79-80) Dr. Neal lastly testified that when he saw the Petitioner’s body movements in the accident video, those body movements would not have been a competent cause for any of the conditions that Petitioner currently has. (RX #9, p. 80)

The evidence deposition of treating Psychological Nurse Practitioner Renae Milhoan (“Milhoan”) was taken on February 22, 2022. (PX #7) Nurse Practitioner Milhoan testified that on September 28, 2020, Petitioner was employable and was able to work. (PX #7, p. 7) Nurse Practitioner Milhoan was asked whether she began to treat Petitioner for her PTSD condition on February 24, 2021, and she answered, “I’m unsure what you’re asking.” Petitioner’s attorney asked Nurse Practitioner Milhoan whether at this visit she had an opinion whether this work accident had aggravated her post-traumatic stress disorder to cause it to become increasingly symptomatic and she answered, “Yes.” (PX #7, p. 10) Nurse Practitioner Milhoan was asked whether Petitioner told her about the physical injury she had, which was the “scalding burn on her chest and her shoulder” and she answered, “She told me about the injury” and that it was painful. (PX #7, p. 12). Nurse Practitioner Milhoan answered “Yes” that the accident both aggravated and exacerbated her posttraumatic stress that may have been pre-existing. (PX #7, pp. 18-19).

Nurse Practitioner Milhoan was asked about the IME report from Dr. Rothke and she testified “I did not review it.” (PX #7, p. 19) Nurse Practitioner Milhoan was asked about the psychological tests Dr. Rothke administered to Petitioner. She testified, “I don’t use these tests. That is outside what I do, you could ask Dr. Rothke, the doctor.” (PX #7, p. 19) Nurse Practitioner Milhoan was asked whether she relied upon Dr. Rothke’s report to support her opinion that this

burn accident aggravated her posttraumatic stress disorder. She answered, “This is not -- you would have to ask Dr. Rothke.” (PX #7, p. 22) Nurse Practitioner Milhoan was asked if she relied on Dr. Rothke for her own causation opinion and she answered, “I don’t rely upon this to support my opinion. This is a doctor’s work that I have never met and that you would have to speak to him about his opinion.” (PX #7, p. 23) Regarding Dr. Rothke, Nurse Practitioner Milhoan testified, “I’m not going to speak to his opinion. You’ll have to ask him.” (PX #7, p. 23)

Nurse Practitioner Milhoan would not answer whether or not Petitioner’s “pain or burns” could be a component of the continuation of her posttraumatic stress disorder. She answered, “That’s outside my scope. I don’t treat pain or burns.” (PX #7, p. 24)

Nurse Practitioner Milhoan testified that on February 24, 2021, when she first saw Petitioner after the accident, she did not know whether Petitioner told her that she had hurt her neck or right shoulder in the work accident. (PX #7, p. 34) She did not know if Petitioner told her anything further about her work accident other than getting burned during the June 15, 2021, visit. (PX #7, p. 35) Nurse Practitioner Milhoan acknowledged that her prior notes indicate that Petitioner had PTSD and GAD before the date of accident. (PX #7, pp. 36-37) She acknowledged that during this continuous period of time she was consistently diagnosing PTSD and GAD. (PX #7, p. 37). Nurse Practitioner Milhoan testified she was “not sure who Dr. Kahn is.” (PX #7, p. 37)

Nurse Practitioner Milhoan testified she did not rely upon any treating medical records from any other healthcare professional (PX #7, p. 43) She testified that she recognized Petitioner had diagnosed mental conditions prior to their meeting. (PX #7, p. 46) Nurse Practitioner Milhoan was unable to remember whether or not in the three and a half years she has been treating Petitioner if she ever made a recommendation for a referral to a psychologist or psychiatrist for either new or additional treatment. (PX #7, p. 53)

Nurse Practitioner Milhoan was asked whether through all of her visits Petitioner has ever complained to her or talked to her about her neck or her right shoulder pain symptoms or problems related to the accident. Milhoan answered, “I don’t know.” (PX #7, p. 81) Nurse Practitioner Milhoan testified that she remembered that Petitioner specifically told her about the burns but she does not recall Petitioner ever saying anything about her other physical injuries or complaints to her neck and especially her shoulder. (PX #7, p. 85) Nurse Practitioner Milhoan testified that what she wrote regarding causation in her June 15, 2021, notes was not her intended to offer a causation opinion and she was doing “medical documentation” (PX #7, pp. 89-90).

Respondent’s Section 12 psychological examination with licensed clinical psychologist Dr. Steven Rothke, Ph.D., was performed on January 11, 2022. Dr. Rothke issued his report dated January 18, 2022, and a slightly revised version on February 2, 2022. (RX #8) Dr. Rothke reviewed records, conducted a clinical interview, and performed psychological testing. The PCL-5 test indicated Petitioner’s score of 66/85 “falls in the clinical range of PTSD.” (RX #8 p. 4) Petitioner’s score on the PCS test of 44/52 falls at the 96th percentile of injured workers. *Id.* Dr. Rothke opined that Petitioner’s MMPI-3 score indicated a “significant sense of demoralization, somatic/physical complaints, depression, ideas of persecution, anxiety, agitation, and feeling ineffective at what she does.” *Id.* Lastly, Dr. Rothke opined that the SIMS test score exceeded the

cutoff scores for raising concerns about exaggeration in all areas except for the intelligence scale. (RX #8 p. 5)

Dr. Rothke indicated his impressions in response to referral questions. In summary, Dr. Rothke opined that the work accident “exacerbated” Petitioner’s long-standing PTSD. (RX #8 p. 5)

Dr. Rothke opined that, “The extent of over-statement of symptoms on all current psychological tests administered raises questions about the actual severity of her psychological conditions, level of distress, and any limitations in daily or occupational functioning she has from a psychological perspective. *Id.* Most likely, the severity of her 2021 injury-related symptoms is milder than she reports.” *Id.* Dr. Rothke opined that Petitioner needs weekly psychological care for three months and should then reach MMI from a psychological standpoint. (RX #8 p. 6) Petitioner is likely to require ongoing medication management for anxiety even after eventual return to work in some capacity in order to prevent relapse. *Id.*

Regarding Petitioner’s work restrictions, Dr. Rothke opined that Petitioner “has a temporary restriction for three months (while obtaining the psychological treatment recommended) from working in food service settings that involve direct contact with hot beverage dispensers similar to the one that injured her. (RX #8 p. 6) There are no other restrictions from a psychological standpoint. *Id.* With brief vocational counseling, she should be able to find a line of work with fewer physical demands and without exposing her to the potential to become burned again.” *Id.*

On February 2, 2022, Dr. Rothke slightly revised his prior report and issued the following Addendum paragraph: “In my opinion, the 02/03/2021 work-related accident resulted in an exacerbation of her earlier life traumas, not an aggravation of those earlier life events. In my opinion, she has a very good prognosis for a full recovery (from a psychological perspective) of this exacerbation and her psychological response to the 02/03/21 event with the treatment outline response to the questions above” (PX #8 p. 7)

Finally, the Arbitrator notes that he has reviewed the CD of the video recording of the accident admitted into evidence. (RX #10). The video is brief but does confirm Petitioner’s account of the accident and shows that she drew her arm back quickly upon the machine malfunctioning and spraying water.

CONCLUSIONS OF LAW

In support of the Arbitrator's decision relating to ("F"), is Petitioner’s current condition of ill-being causally related to the injury, the Arbitrator finds the following:

The parties agreed that Petitioner sustained accidental injuries on February 3, 2021, arising out of and in the course of her employment with Respondent. The parties also agreed that Petitioner reported the accident in a timely matter. The Arbitrator incorporates by reference the findings of fact as set forth in the paragraphs above. Reiteration of those factual findings will only be made to clarify the conclusions set forth below.

Burn Injuries

Petitioner credibly testified that she was working at Respondent's restaurant when a Bunn coffee maker malfunctioned while she was trying to obtain hot water for a customer's tea. (Tr. pp. 20-26) The video, which was submitted by both parties, appears to show this incident and confirms Petitioner's account of the accident. (PX #1; RX # 10) Petitioner presented to the emergency room at Pekin Hospital. (PX #3) Petitioner reported a consistent history of accident. *Id.* She was noted to have burns to her torso, shoulder and forearm. *Id.* Her burns were described as a 5cm x 8 cm superficial partial thickness burn to the right chest with three small blisters as well as a 1 cm x 1 cm burn to the right forearm. *Id.* Petitioner received Morphine for pain as well as Neosporin. (PX #3) She was prescribed Bacitracin ointment and Norco for pain. *Id.*

The foregoing chain of events and medical records support the finding that Petitioner's burn injuries to her torso, shoulder and forearm are causally connected to her February 3, 2021, work injury. Therefore, the Arbitrator finds and concludes that Petitioner's burn injuries are causally connected to her workplace accident on February 3, 2021.

Right Shoulder and Cervical Injuries

The factual findings and causal connection determination above are incorporated herein by reference. Following her evaluation and treatment at the Pekin Hospital Emergency Department, Petitioner followed up with her primary care physician, Dr. Farhana Khan on February 5, 2021. (PX #4). Petitioner again reported a consistent history of injury and her doctor placed her off work. She returned to her doctor's office on February 10, 2021, reporting that her burns were still painful and were oozing yellow drainage. (PX #4 p. 11) A referral was made to a Wound Clinic. (PX #4 p. 15). No notes from the Wound Clinic were placed into evidence. Petitioner was taken off work until re-evaluated on 2/18/2021. (PX #4 p. 100) The Arbitrator notes for the record that the COVID-19 pandemic was in full swing, so medical offices were offering telemedicine appointments. Petitioner's next appointment was done telephonically.

On February 19, 2021, Petitioner had a telephonic follow up with Dr. Khan (PX #4 p. 18) Petitioner reported that she may have strained a muscle when jerking her arm away from the hot water. *Id.* On February 22, 2021, Petitioner received a physical therapy referral from Dr. Khan and a prescription for Flexeril for muscle spasms. (PX #4 p. 23) The diagnosis was acute pain of right shoulder. *Id.* Petitioner presented to the office on February 22, 2021, requesting an off work note. (PX #4 p. 24) Her previous work status from February 10, 2021, was provided to her and she was taken off work until March 4, 2021. *Id.* No physical therapy notes were admitted into evidence.

On April 13, 2021, Petitioner was evaluated by Viviane Miranda Santos, APN. (PX #4 p. 34) The notes indicate that Petitioner's burns have now been healed. *Id.* Petitioner reported right shoulder joint pain that had an onset the day of her burns. *Id.* X-rays of her shoulders were taken. Nurse Practitioner Santos noted a limited range of motion as well as a positive Hawkins test. (PX #4 p. 35) Petitioner was diagnosed with shoulder impingement syndrome. (PX #4 p. 36) Petitioner continued to follow up with Dr. Khan's office.

Eventually, an MRI of the right shoulder was ordered by Dr. Khan. Before the MRI was obtained, Petitioner was sent to Dr. Neal for a Section 12 examination on June 28, 2021. (RX #9) His initial report was issued on July 7, 2021. (RX #9, Depo Exhibit 2) On July 27, 2021, Petitioner

had an MRI of the right shoulder. (PX #5 p. 2) The impression was: (1) Tendinosis of the supraspinatus and infraspinatus conjoined tendon insertion, no tear demonstrated; (2) and, mild degenerative changes of the acromioclavicular joint. *Id.* On August 13, 2021, Petitioner had an MRI of the cervical spine. (PX #5 p. 4) The Impression was: (1) Mild degenerative changes most apparent is C5-C6. No significant cord/foraminal impingement. *Id.* Petitioner was subsequently examined by Dr. Nord at the behest of Petitioner's counsel on August 11, 2021, and again on September 2, 2021. (PX #8)

Dr. Nord testified that Petitioner's complaints and history were consistent with a diagnosis of right shoulder impingement. (PX #9, p. 32) Dr. Nord testified that his review of the records, history and his physical examination support his opinion that Petitioner's right shoulder condition was either caused by or aggravated by the work accident. (PX #9, pp. 40-41) Dr. Nord retired from his orthopedic surgery practice approximately four years ago and operates a business known as "Nord Med Evals, LLC," a medical/legal consulting business. (PX #9, pp. 48-50). Dr. Nord testified that 90% of his business is done for Plaintiff attorneys and 90% of his Plaintiff work comes from Petitioner's attorney, in other words, 90% of his business comes from Petitioner's attorney. (PX #9, p. 49-50).

After taking a history from Petitioner, reviewing the records and performing his examination Dr. Neal formulated his diagnoses: medically unexplainable right shoulder girdle, trapezius, and lateral neck pain of unknown etiology. (RX #9, p. 34) Dr. Neal offered his opinion that he did not find a causal connection between Petitioner's shoulder and neck symptoms and the work accident. (RX #9, pp. 35-36) Dr. Neal opined that Petitioner has a condition for which there is no orthopedic condition or musculoskeletal diagnosis to explain it and the cause of her complaints are not orthopedic and are more grounded in her intrinsic biopsychosocial confounders which are independent of her occupational events. (RX #9, pp. 36-37) Dr. Neal further opined that Petitioner's subjective symptoms were not supported by the evidence and make no anatomic sense because her symptoms were disproportional to the objective findings and were medically unexplainable and non-physiological. (RX #9, pp. 37)

Petitioner could not recall whether Dr. Khan had made a referral for her to an orthopedic specialist. (Tr. p. 67). Petitioner acknowledged that she has not tried on her own to visit an orthopedic specialist for treatment (Tr. 68) Although Petitioner discussed how her right shoulder and neck felt at certain times throughout her treatment, she did not provide any specific testimony as to any ongoing symptoms to her right shoulder or cervical spine. The Arbitrator finds Dr. Neal's opinions to be more credible than those of Dr. Nord. While Dr. Nord did see Petitioner on two occasions, the Arbitrator finds that his method of conducting an Independent Medical Examination not conducive to an accurate evaluation of an injured worker. Going over the questions provided by Petitioner's attorney with Petitioner and telling her how he will answer said questions would seem to influence how the doctor answers those questions. (PX #9, p. 58) Moreover, the fact that 90% of Dr. Nord's Petitioner IME's are done at the behest of Petitioner's counsel leads the Arbitrator to question the independence of his opinions.

Wherefore, based on the foregoing, the Arbitrator finds and concludes that Petitioner has failed to prove that her right shoulder and cervical complaints are causally connected to her February 3, 2021 accident.

Psychological Injuries

Petitioner alleges that her psychological condition was made worse by the work accident of February 3, 2021. Respondent disputes that assertion. Petitioner testified that, immediately after she was burnt in the work accident, she started having “flashbacks” of a burn incident that occurred when she was younger. (Tr. p. 35) Petitioner further testified that after the accident she was experiencing “anxiety, depression, I could not get out of bed, just terrified to go out...Hell” (Tr. p. 37). Petitioner testified about a week later she called “Renae” (Tr. p. 35) “Renae” refers to Petitioner’s treating Psychiatric Nurse Practitioner Renae Milhoan. Petitioner had been seeing Nurse Practitioner Milhoan since October 11, 2017 (RX #11). On October 17, 2017, Nurse Practitioner Milhoan diagnosed Petitioner with post-traumatic stress disorder (“PTSD”) and generalized anxiety disorder (“GAD”). Petitioner had been continuously diagnosed with these conditions since she first visited Nurse Practitioner Milhoan on October 11, 2017.

Petitioner first saw Nurse Practitioner Milhoan after the accident on February 24, 2021 (Tr. p. 35) Petitioner testified she also sees a counselor (Tr. p. 38) Those records were not admitted into evidence. Petitioner testified that Nurse Practitioner Milhoan has continued to keep her off work (Tr. p. 39). Petitioner testified that she continues to see Nurse Practitioner Milhoan (Tr. p. 41). The most recent treating record from Nurse Practitioner Milhoan admitted into evidence involves a date of service of September 13, 2021. (PX #6 pp. 14-19)

Petitioner further testified regarding her emotional complaints, “It’s not getting any better. I am getting worse.” (Tr. pp. 39) Petitioner testified regarding her physical complaints that “My strength is completely at a 0... My strength, it’s a 0 for me... and this has literally put me to nothing” (Tr. pp. 40-41).

The evidence deposition of treating Psychological Nurse Practitioner Renae Milhoan (“Milhoan”) was taken on February 22, 2022. (PX #7) Nurse Practitioner Milhoan testified that on September 28, 2020, Petitioner was employable and was able to work. (PX #7, p. 7) Nurse Practitioner Milhoan was asked whether she began to treat Petitioner for her PTSD condition on February 24, 2021, and she answered, “I’m unsure what you’re asking.” Petitioner’s attorney asked Nurse Practitioner Milhoan whether at this visit she had an opinion whether this work accident had aggravated her post-traumatic stress disorder to cause it to become increasingly symptomatic and she answered, “Yes.” (PX #7, p. 10)) Nurse Practitioner Milhoan answered “Yes” that the accident both aggravated and exacerbated her posttraumatic stress that may have been pre-existing. (PX #7, pp. 18-19).

Later in her deposition, Nurse Practitioner Milhoan testified that what she wrote regarding causation in her June 15, 2021, note was not her intended to offer a causation opinion and she was doing “medical documentation” (PX #7, pp. 89-90). Clearly, Nurse Practitioner Milhoan’s opinions are less reliable based upon her retracting her “causation” opinion at this point in the deposition. The Arbitrator observes that Nurse Practitioner Milhoan did not appear to understand the purpose of her deposition and that she was being asked to provide psychiatric causation

opinions therein. While she does appear competent to provide opinions, Nurse Practitioner Milhoan is less qualified and credentialed than Dr. Rothke.

Dr. Nord testified that the work accident caused a new PTSD not related to the first PTSD. (PX #9, p. 44) Regarding Petitioner's PTSD, Dr. Nord further testified that Petitioner told him that she was having nightmares and flashbacks from her childhood trauma and she is having nightmares and flashbacks from the burn injury. (PX #9, pp. 65-66) Dr. Nord further testified that Petitioner has had PTSD ever since her childhood trauma and still has it today. She has flashbacks and nightmares from her childhood experiences. She is also having nightmares and flashbacks regarding the hot water incident at work that is ongoing today. (PX #9, pp. 66-67) Lastly, Dr. Nord testified that based on the statements in the records and Petitioner's history, she has a new episode of PTSD that alone was the basis for Dr. Nord to independently diagnose PTSD. (PX #9, p. 67) As noted above, Dr. Nord is a retired orthopedic surgeon. He is not a psychologist or psychiatrist. Therefore, his opinion regarding PTSD is less credible than Dr. Rothke.

Respondent's Section 12 psychological examination with licensed clinical psychologist Dr. Steven Rothke, Ph.D., was performed on January 11, 2022. Dr. Rothke issued his report dated January 18, 2022, and a slightly revised version on February 2, 2022. (RX #8) Dr. Rothke reviewed records, conducted a clinical interview, and performed psychological testing.

Dr. Rothke indicated his impressions in response to referral questions. In summary, Dr. Rothke opined that the work accident "exacerbated" Petitioner's long-standing PTSD. (RX #8 p. 5) Dr. Rothke opined that Petitioner needs weekly psychological care for three months and should then reach MMI from a psychological standpoint. (RX #8 p. 6) Petitioner is likely to require ongoing medication management for anxiety even after eventual return to work in some capacity in order to prevent relapse. *Id.*

Regarding Petitioner's work restrictions, Dr. Rothke opined that Petitioner "has a temporary restriction for three months (while obtaining the psychological treatment recommended) from working in food service settings that involve direct contact with hot beverage dispensers similar to the one that injured her. (RX #8 p. 6) There are no other restrictions from a psychological standpoint. *Id.* With brief vocational counseling, she should be able to find a line of work with fewer physical demands and without exposing her to the potential to become burned again." *Id.*

On February 2, 2022, Dr. Rothke slightly revised his prior report and issued the following Addendum paragraph: "In my opinion, the 02/03/2021 work-related accident resulted in an exacerbation of her earlier life traumas, not an aggravation of those earlier life events. In my opinion, she has a very good prognosis for a full recovery (from a psychological perspective) of this exacerbation and her psychological response to the 02/03/21 event with the treatment outline response to the questions above" (PX #8 p. 7) No explanation was offered as to why Dr. Rothke added the addendum to his previous IME report. The Arbitrator finds Dr. Rothke's opinions to be more credible and well-reasoned than those of Petitioner's treating Nurse Practitioner or Dr. Nord.

Wherefore, based on foregoing and the entire record on arbitration, the Arbitrator finds and concludes that Petitioner's underlying psychological condition was exacerbated by her February

3, 2021, work accident. Thus, her psychologic injury is causally related to her February 3, 2021 injury.

In support of the Arbitrator's decision relating to ("J"), were the medical services provide to Petitioner reasonable and necessary, the Arbitrator finds the following:

The findings of fact and conclusions regarding the causal connection or Petitioner's various injuries are incorporated by reference. Therefore, the Arbitrator finds and concludes as follows:

Burn Treatment

As the Petitioner's burn injuries were found to be causally related to her workplace injuries on February 3, 2021, the medical treatments relating to such burn injuries are found to be reasonable and necessary.

However, the Arbitrator was asked not to make an award of medical bills and that the bills be addressed in a future hearing of this matter. It should be noted that the Arbitrator could not have awarded specific treatments as the record on arbitration is missing some of the treatment records and necessary billing statements.

Right Shoulder and Cervical Treatment

As set forth above, the Arbitrator did not find Petitioner's right shoulder and cervical condition to be causally related to her workplace injuries on February 3, 2021. Therefore, the Arbitrator finds that the treatment related to the right shoulder and cervical complaints is not reasonable and necessary.

Psychological Treatment

As discussed in the paragraphs above, the Arbitrator found that Petitioner's psychological condition had been exacerbated by the February 3, 2021 workplace accident. The Arbitrator finds and concludes that the psychological treatment incurred following the workplace accident on February 3, 2021 to be reasonable, necessary and causally related to her work injuries.

In support of the Arbitrator's decision relating to ("K"), What temporary benefits are in dispute, the Arbitrator finds the following:

The Arbitrator's findings of fact and conclusions of law set forth in the above paragraphs are incorporated by reference. The Arbitrator finds that Petitioner is entitled to Temporary Total disability benefits from February 3, 2021 through March 30, 2022 at the minimum rate of \$298.11.

ILLINOIS WORKERS' COMPENSATION COMMISSION
DECISION SIGNATURE PAGE

Case Number	20WC024436
Case Name	John Tigar v. West Liberty Foods
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b) Remand Arbitration
Decision Type	<i>Corrected Decision</i>
Commission Decision Number	[23IWCC0387]
Number of Pages of Decision	17
Decision Issued By	Marc Parker, Commissioner

Petitioner Attorney	Patrick Shifley
Respondent Attorney	Kevin Luther

DATE FILED: 9/11/2023

/s/ Marc Parker, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
 COUNTY OF KANKAKEE)

<input type="checkbox"/> Affirm and adopt (no changes)	<input type="checkbox"/> Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/> Affirm with changes	<input type="checkbox"/> Rate Adjustment Fund (§8(g))
<input type="checkbox"/> Reverse	<input type="checkbox"/> Second Injury Fund (§8(e)18)
<input checked="" type="checkbox"/> Modify up	<input type="checkbox"/> PTD/Fatal denied
	<input checked="" type="checkbox"/> None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

John Tigar,

Petitioner,

vs.

NO: 20 WC 024436

West Liberty Foods,

Respondent.

CORRECTED DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by both Petitioner and Respondent herein and notice given to all parties, the Commission, after considering the issues of accident, causal connection, medical expenses, prospective medical care, temporary total disability,¹ and penalties and fees, as well as evidentiary issues, and being advised of the facts and law, modifies the Arbitrator's award to include §19(l) penalties 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 filed his Application for Adjustment of Claim on October 14, 2020. On July 13, 2022, Petitioner filed a Petition for Penalties, alleging *inter alia* that Respondent failed to comply with §19(l) and Commission Rule 9110.70 by failing to provide a written explanation for its refusal to pay TTD benefits. Petitioner's attorneys had emailed Respondent on October 14, 2020, October 19, 2020, October 21, 2020, November 5, 2020, November 6, 2020, November 18, 2020, December 29, 2020, and May 11, 2021, providing medical records, off-work slips, and demands for payment of TTD. No written response was ever received from Respondent.

¹ Respondent included PERMANENT DISABILITY as an issue on its Petition for Review. As this case was tried under §19(b), permanent disability was not at issue at arbitration and will not be addressed on review.

Section 19(l) states:

If the employee has made written demand for payment of benefits under Section 8(a) or Section 8(b), the employer shall have 14 days after receipt of the demand to set forth in writing the reason for the delay. In the case of demand for payment of medical benefits under Section 8(a), the time for the employer to respond shall not commence until the expiration of the allotted 30 days specified under Section 8.2(d). In case the employer or his or her insurance carrier shall without good and just cause fail, neglect, refuse, or unreasonably delay the payment of benefits under Section 8(a) or Section 8(b), the Arbitrator or the Commission shall allow to the employee additional compensation in the sum of \$30 per day for each day that the benefits under Section 8(a) or Section 8(b) have been so withheld or refused, not to exceed \$10,000. A delay in payment of 14 days or more shall create a rebuttable presumption of unreasonable delay.

820 ILCS 305/19(l). In *McMahan v. Industrial Commission*, 183 Ill. 2d 499 (1998), the Illinois Supreme Court addressed the issue of the appropriate fact situation for the imposition of §19(l) penalties.

The additional compensation authorized by section 19(l) is in the nature of a late fee. The statute applies whenever the employer or its carrier simply fails, neglects, or refuses to make payment or unreasonably delays payment ‘without good and just cause.’ If the payment is late, for whatever reason, and the employer or its carrier cannot show an adequate justification for the delay, an award of the statutorily specified additional compensation is mandatory.

McMahan, 183 Ill. 2d at 515.

The Commission finds that Respondent was without good or just cause to delay the payment of TTD benefits. Petitioner’s attorney repeatedly issued written demands and requests for explanation of the denial of benefits. Respondent failed to provide a written explanation of the basis for its denial. Petitioner sent his first demand for payment of benefits on October 14, 2020. From that date to the date of hearing on July 25, 2022, is 441 days. The §19(l) penalty is \$30/day, not to exceed \$10,000. Penalties calculated at the daily rate would exceed the \$10,000 cap.

Accordingly, the Commission awards Petitioner \$10,000.00, the maximum allowed for §19(l) penalties.

All else is affirmed and adopted.

20 WC 024436

Page 3

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed September 2, 2022, is modified as stated herein. The Commission otherwise affirms and adopts the Decision of the Arbitrator.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay Petitioner \$10,000.00 in penalties, pursuant to §19(l) of the Act.

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

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

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

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

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

September 11, 2023

MP:dk

o 8/24/23

68

/s/ Marc Parker

Marc Parker

/s/ Maria E. Portela

Maria E. Portela

/s/ Christopher A. Harris

Christopher A. Harris

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	20WC024436
Case Name	TIGAR, JOHN v. WEST LIBERTY FOODS
Consolidated Cases	
Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	13
Decision Issued By	Roma Dalal, Arbitrator

Petitioner Attorney	Patrick Shifley
Respondent Attorney	Kevin Luther

DATE FILED: 9/2/2022

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

/s/ Roma Dalal, Arbitrator

Signature

STATE OF ILLINOIS)
)SS.
 COUNTY OF Kankakee)

<input type="checkbox"/>	Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/>	Rate Adjustment Fund (§8(g))
<input type="checkbox"/>	Second Injury Fund (§8(e)18)
<input checked="" type="checkbox"/>	None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

JOHN TIGAR

Employee/Petitioner

v.

WEST LIBERTY FOODS

Employer/Respondent

Case # **20 WC 024436**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 **Roma Dalal**, Arbitrator of the Commission, in the city of **Kankakee**, on **7/25/22**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On the date of accident, **10/05/20**, Respondent *was* operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned **\$29,379.40**; the average weekly wage was **\$564.99**.

On the date of accident, Petitioner was **60** 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 **\$3,011.68** for other benefits, for a total credit of **\$3,011.68**.

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

ORDER

The Arbitrator finds Petitioner sustained an accident arising out of or occurring in the course of his employment on October 5, 2020.

Respondent shall pay reasonable and necessary medical services, pursuant to the medical fee schedule regarding Petitioner's right knee condition as provided in Sections 8(a) and 8.2 of the Act. Respondent shall receive credit for amounts paid.

Pursuant to Section 8(a) of the Act, the Respondent shall authorize and pay for, pursuant to the fee schedule, the treatment recommended by Dr. Somalli, including, but not limited to a right knee total arthroplasty and all necessary ancillary care.

Respondent shall pay Petitioner temporary total disability benefits of **\$376.66/week** for 94 1/7 weeks, commencing October 5, 2020 through July 25, 2022, as provided in Section 8(b) of the Act. Respondent shall receive credit for amounts paid.

Petitioner's request for penalties and fees 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.

A handwritten signature in black ink, appearing to read "Roma Dab", with a large, sweeping flourish extending to the right.

SEPTEMBER 2, 2022

Signature of Arbitrator

ICArbDec19(b)

STATE OF ILLINOIS)
) SS
COUNTY OF)

ILLINOIS WORKERS’ COMPENSATION COMMISSION

John Tigar,)
)
 Petitioner,)
)
 v.)
) Case No. 20 WC 024436
 West Liberty Foods,)
)
)
 Respondent.)

FINDINGS OF FACT

This matter proceeded to hearing on July 25, 2022 in Kankakee, Illinois before Arbitrator Roma Dalal on Petitioner’s Request for Hearing. Issues in dispute include accident, causation, disputed medical, TTD benefits, prospective medical, and penalties. (Arb. Ex. 1).

John Tigar (hereinafter referred to as the “Petitioner”) was a 60-year-old single male. He testified he worked at West Liberty Foods (hereinafter referred to as the “Respondent”) in housekeeping. His job responsibilities were to pick up all the cardboard and meat that hit the floor. Petitioner explained that Respondent made meat for Subway and sandwiches for Walmart. As it was producing meat, some would fall on the floor. Contaminated meat that dropped on the floor would be brought to the garbage room and dyed to prevent it from being accidentally ingested. It was then placed into a 6ft tall white plastic container. Petitioner identified that the floor of the garbage room would be hosed down with water when meat had been dropped on its floor and was prone to being wet and greasy. He testified he would take the garbage, weigh it, and dump it. He would weigh the garbage in a different room than the garbage room.

On October 5, 2020 he was working a normal day. Petitioner testified he was picking up garbage and meat from all the departments, doing his regular duties. He was taking a garbage full of meat into the garbage room. The existing disposal container for the meat was full and he had to move the container. While moving the container his foot slipped out from under him, and his legs went in opposite directions. His legs went wide, and he felt his right knee pop. He said the floor was wet, a mixture of water and grease on the floor. He felt a burning sensation in his knee. He never experienced anything like that in his right knee and denied pain in his left knee.

After his injury, Petitioner reported the incident to the security station and completed an accident report. He was given permission to transport himself to the emergency room. He then went to the Hospital.

On October 5, 2020 Petitioner presented to Adventist Bolingbrook Hospital. Petitioner presented stating he slipped on a wet floor while at work and felt a popping his right knee. He is now complaining of right

knee pain. (PX1, p.10). X-rays revealed a possible nondisplaced fracture of the medial tibial plateau. *Id.* at 22. Petitioner was discharged with crutches and was to follow up with orthopedics. *Id.* at 12.

On October 6, 2020 Petitioner presented to Stephen Mizera, PA. Petitioner noted he slipped and twisted his knee while at work and was now experiencing right knee pain. (PX2, p.5). Petitioner was diagnosed with a possible nondisplaced fracture of the medial tibial plateau and a small suprapatellar effusion of the right knee and arthritis of the right knee. *Id.* at 6. Petitioner was to undergo a right knee MRI. *Id.* at 7.

Petitioner testified he then proceeded with treatment on his own and proceeded to treat at Associated Medical Centers of Illinois.

On October 9, 2020 Petitioner presented to Associated Medical Centers of Illinois (AMCI). (PX3). Petitioner was a 54-year-old male who was on duty as a housekeeper. He was walking through the garbage room when he slipped on a drain cover which caused his right leg to shoot out in front of him and his knee twisted. (PX3, p.6). Petitioner noted a motorcycle accident 30 years ago resulting in an injury to his left knee. *Id.* Petitioner was diagnosed with a right knee sprain. Petitioner was placed off work, ordered an MRI and recommended physical therapy. *Id.* at 7.

On October 13, 2020 Petitioner underwent an MRI at Preferred Open MRI. The MRI revealed a small effusion, chondromalacia patella with tricompartment osteoarthritis most severely affecting the medial compartment; complex multidirectional tear posterior horn medial meniscus with a prominent free edge/radial component and a Baker's cyst measuring 5cm in length. (PX6, p.3).

Petitioner followed up at AMCI on October 19, 2020. Petitioner rated his knee pain an 8 out of 10. Petitioner felt like he was unable to perform his regular work duties. (PX3, p.9). Petitioner was provided an orthopedic consultation and kept off work. *Id.* at 10.

On November 3, 2020 Petitioner first presented to Dr. Chandrasekhar Sompalli. Petitioner was a 59-year-old male who complained of right knee pain. Petitioner stated he was working in housekeeping. Petitioner was pushing a bin of raw meat and slipped on water and twisted his right knee. When he twisted his right knee, he heard a pop in the right knee outward and then inward. Petitioner complained of a pain of 8 out of 10. (PX5, p.3). Petitioner was diagnosed with severe tricompartment arthritis, chondromalacia, medial compartment effusion, bone marrow edema and medial meniscal tear due to the arthritis. Petitioner had a preexisting severe arthritis that was aggravated by the work injury. Petitioner was given an injection into the right knee to alleviate the pain. Petitioner was to also begin with therapy. Petitioner remained off work. *Id.* at 6-7.

Petitioner began physical therapy at AMCI on November 16, 2020. (PX3, p.11).

Petitioner followed up with Dr. Sompalli on December 1, 2020. Petitioner noted the injection helped for four weeks. Petitioner was to continue with therapy and remained off work. (PX5, p. 11). In a December 29, 2020 follow up, Petitioner noted a pain of a 10 out of 10. Petitioner had completed six weeks of therapy with no improvement. *Id.* at 21. Petitioner was to continue with therapy. The Doctor also recommended another Synvisc injection and surgery. Petitioner remained off work. *Id.* at 24.

Petitioner underwent physical therapy through January 5, 2021. At that visit Petitioner was to continue with therapy. (PX3). This is the last medical record provided.

On September 15, 2021, Petitioner underwent a Section 12 examination with Dr. Ryon Hennessy. (PX7, RX1). Dr. Hennessey reviewed medical records and examined Petitioner. Petitioner advised on October 5, 2020 he slipped on a wet floor at work, twisting his right knee and felt a pop. He went to the ER that day. *Id.* at 2. Dr. Hennessy diagnosed Petitioner with osteoarthritis of right greater than left knee. He also noted mild patellofemoral chondromalacia. *Id.* at 7. He noted Petitioner's right knee osteoarthritis predated the accident. Dr. Hennessy noted that with the assumption of the video provided capturing the time of the alleged injury, there was no evidence of the video of activity that would have caused the right knee arthritis to become symptomatic. The video contradicts Petitioner's recollection of events at the time of the injury. Therefore, Dr. Hennessy did not find causation. *Id.* at 7. Dr. Hennessy further indicated Petitioner would benefit from a right total knee arthroplasty. With regard to causation, if it is determined that an injury took place, the right total knee arthroplasty would be causally related by aggravation of a previously asymptomatic condition. At the present time, however, Dr. Hennessy found no causal relationship. *Id.* at 8. Dr. Hennessy further opined that if an accident occurred, the Petitioner was not at MMI. *Id.* at 8. He would reach MMI 6 months after treatment. Petitioner was found to be capable of working with restrictions of lifting no more than 30lbs and climbing no ladders. *Id.* at 9. Finally, Dr. Hennessy opined the treatment to date had been reasonable and necessary but wished for Petitioner to transition to a lower dose of Ibuprofen due to health risks related to his diabetic condition. *Id.* at 10.

Evidence Deposition of Dr. Sompalli

The parties proceeded with the evidence deposition of Dr. Chandrasekhar Sompalli on March 10, 2022. (PX8). Dr. Sompalli is an orthopedic surgeon specializing in sports, shoulders, and knee scopes. He does about 20 percent joint replacements. *Id.* at 7-10. Dr Sompalli went over his medical records beginning on November 3, 2020. *Id.* at 12. Dr. Sompalli testified he had treated Petitioner on three occasions. Upon physical examination and review of the imaging studies, he diagnosed him with right knee pain, severe arthritis, chondromalacia, and medial meniscal tear. *Id.* at 14. A Synvisc injection was eventually recommended to attempt to alleviate pain, and Petitioner was placed off work. *Id.* at 16. At the final visit on December 29, 2020, Dr. Sompalli prescribed a surgical knee replacement for Petitioner's injured knee. *Id.* at 18. Dr. Sompalli noted Petitioner never received authorization for the surgery. Dr. Sompalli opined Petitioner had pre-existing severe arthritis that was asymptomatic. This became symptomatic after his twisting injury. Based on the same, this was an aggravation of a pre-existing asymptomatic condition. *Id.* at 19. Dr. Sompalli testified that after the knee replacement there would be a 6-month period of conservative care before Petitioner reached MMI. *Id.* at 21.

Dr. Sompalli agreed that it was possible that Petitioner would have had symptoms prior to the accident. (PX8 at 25). He further testified that he did not review any reports or videos from the accident. *Id.* Dr. Sompalli further testified it takes decades for arthritis to develop. *Id.* at 26. Dr. Sompalli testified that 30 percent of his patients are referrals from the Petitioner's attorney's office. *Id.* at 26.

At trial, Petitioner testified he had not returned to work or received any type of benefits. Petitioner testified that his medical care was terminated because of non-approval by the Respondent. Petitioner stated, if approved, he would pursue ongoing care, including his recommended knee replacement.

Petitioner testified he had reviewed the video imaging introduced as Respondent's Exhibit 3. Petitioner noted the room depicted was not the garbage room and was not the site of his accident.

Respondent called Tyrell Watson as a witness. Mr. Watson testified on October 5, 2020 he was working for West Liberty Foods as the head of the security team. He currently does not work with Respondent any longer. Mr. Watson recalled the accident. He noted he prepared the Security Incident report. (RX2). Mr. Watson testified Petitioner was seen limping as he walked to the security station. Because no other HR staff were present, Petitioner and Mr. Watson, walked an additional 15 seconds to the reporting office, during which time Petitioner did not limp.

Mr. Watson testified he had downloaded a copy of the video introduced as Respondent's Exhibit 3. Mr. Watson testified the video was from the same facility and time of the accident. The video showed the hallway to the maintenance room and garbage room. In reviewing the video, he did not see Petitioner entering or leaving the garbage room at the time of the reported accident. The video was between 8:30 PM and 8:50 PM.

On Cross-Examination, Mr. Watson was shown the first of the six videos contained in Respondent's Exhibit 3. Mr. Watson testified the videos were recorded by a system named Milestone, which worked on a motion sensing basis. Absent motion, the system would not record video, instead capturing the last still image. Mr. Watson agreed the videos do not show a date or time stamp and could not be exactly matched to a time or date. Mr. Watson identified the door in the upper left corner of the video was the door to the garbage room. When shown the video, Mr. Watson agreed that the video showed an individual approaching and entering the garbage room door at 2 minutes and 58 seconds. The person seen entering the garbage room door appeared in the video between one frame and the next, already in the field of view of the camera. Mr. Watson agreed he was not seen in the video until the motion sensor was triggered, possibly by a forklift also traveling in the frame at that time. He noted it was possible for a person to enter the room without the motion sensor picking it up. In addition, there were no cameras inside the garbage room. He also noted he had no personal knowledge of the garbage room.

At trial, Respondent introduced, and Petitioner authenticated a Security Incident Report. This report stated, Petitioner reported to the security office that he slipped and fell. Petitioner advised he was attempting to move a bin in the garbage room when he slipped on the metal drain cover. He reported having went down and having hit and twisted his right knee. This was reported around 8:50PM. (RX2).

Video Exhibit

Respondent introduced six video files on a CD-ROM. Each is a short video of the interior of an industrial facility depicting a hallway with an area of equipment and boxes. At the top left is a door set in a white wall. To the top right there is another door, also set in a white wall.

Video 1: At the beginning of video one a forklift is seen driving in the top right corner. After 15 seconds the motion stops, and the video continues without changes. At 1:45, the video suddenly shifts, and the forklift is in another position, and the doors in the top right are open. The forklift drives to the left and the open-door closes. The video stops at 2:08 and resumes at 2:57. A forklift can be seen moving from the center of the video to the right. A walking employee can be seen walking along the ground near the door on the left before entering the door around 3:07. (RX3).

Video 2: The second video begins with a forklift visible moving inside the door at the top right. After 10 seconds the video freezes. No other activity is seen. Videos 3, 4 and 5 depict no motion and no activity. It looks like some of these videos are still images. Video 6: The sixth file begins as a still image. At 2:19 the image suddenly changes, and a person is seen walking along the right edge, apparently triggering the motion sensor halfway through a walk down. In the upper left-hand corner, next to the door to the garbage room, an item on the wall has shifted suddenly to the right. At 2:39 an individual can be seen walking along the far white wall toward the door on the left. This individual reaches the door in the last frame of the video but is not seen to enter.

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 his testimony to be persuasive. The Arbitrator compared Petitioner's testimony with the totality of the evidence submitted and finds the witness reliable. While the Arbitrator did note some inconsistencies, the Arbitrator recognizes that there was no evidence to contradict his testimony.

With regard to Issue "C", whether an accident occurred that arose out of and in the course of Petitioner's employment, the Arbitrator finds as follows:

For accidental injuries to be compensable under the Workers' Compensation Act, a claimant must show such injuries arose out of and in the course of his or her employment. Navistar Intern. Transp. Corp. v. Industrial Com'n, 315 Ill.App.3d 1197 (2000).

After a careful review of the record, including Petitioner's testimony and the medical evidence available in this case, the Arbitrator finds Petitioner did sustain an "accident" as defined by the Act. Petitioner's description that he slipped on a mixture of water and grease on the floor is consistent throughout the evidence both testimonial and medical.

The Parties dispute whether an accident alleged in the Application occurred. The Arbitrator finds Petitioner met his burden of proof that the accident as described did occur. Petitioner testified credibly,

the initial report of the accident and the initial medical are sufficiently consistent with the testimony given, and Respondent's video does not provide credible rebuttal of the sworn testimony.

Petitioner testified he slipped on a wet floor and that his leg went out from under him. The Arbitrator noted the incident report was filled out the same day and written by Mr. Watson. The report stated Petitioner slipped and fell, stating he went down hit and twisted his right knee. The initial medical records stated he twisted his knee without contact. The Arbitrator notes the minor contradiction but finds the records to be otherwise consistent and credible.

Mr. Watson authenticated Petitioner reported the same accident as described to him, and that he was limping as he approached the security desk. The testimony Petitioner did not limp between the security desk and the HR reporting desk is not sufficient to outright deny accident.

While the Arbitrator reviewed Respondent's Exhibit 3, the video evidence, the Arbitrator finds it lacking in credibility. First the video does not show the garbage room where the accident actually happened. Rather it is a video of one room or the hallway between two different rooms. In addition, the videos are not dated or time stamped to confirm the accuracy. Mr. Watson testified that the door to the left was the garbage room, and no one was seen entering or leaving the garbage room around the incident. The Arbitrator saw an unidentifiable person entering the door to the garbage room in video 1 and approaching it in video 6. These persons appear between one frame and the next, confirming a person was able to enter the field of view of the camera without triggering the motion sensor. In addition, Mr. Watson testified it was possible for a person to enter the room without the motion sensor picking it up. Given the same, the video appears to be a series of non-dated and non-timed videos, interspersed with still images when little motion happened.

In addition, there was no testimony to rebut Petitioner's job duties or whether there was grease or water on the floor in the garbage room. Mr. Watson did not have any firsthand knowledge of the garbage room. He only testified to what he did not see on the video.

Weighing the evidence, the videos are insufficiently credible to outweigh the consistent and credible testimony of the Petitioner, his accident report, and the medical records.

At trial, Petitioner testified that his job duties consisted of picking up garbage from the departments. He would then take a garbage full of meat into the garbage room. Petitioner testified that he was moving a container used to dispose contaminated meats. While he was moving the container, his foot slipped on a wet and greasy floor.

The security incident report and medical records also show Petitioner sustained an injury at work. The Security Incident Report that initial day stated Petitioner was attempting to move a bin in the garbage room when he slipped on the metal drain cover. In addition, the medical records on October 5, 2020 from Adventist Bolingbrook Hospital stated Petitioner presented stating he slipped on a wet floor while at work and felt a popping his right knee.

Given that the purpose of the Respondent's business is to process meats, the Arbitrator finds that the risk of slipping on floors made greasy by meat and made wet by washing those floors, is a risk related to the employment. The risk was an employment risk, and as such compensable.

Based on the foregoing, the Arbitrator finds Petitioner sustained an accident that arose out of and in the course of his employment, mainly he slipped and fell in the garbage room while throwing garbage away.

With regard to Issue “F”, whether Petitioner’s current condition of ill-being is causally related to the injury and Issue “K” whether Petitioner is entitled to any prospective medical care, the Arbitrator finds as follows:

The Findings of Fact and Conclusions of Law, as stated above, are adopted herein.

To obtain compensation under the Act, a claimant must prove that some act or phase of his employment was a causative factor in her ensuing injuries. A work-related injury need not be the sole or principal causative factor, as long as it was *a* causative factor in the resulting condition of ill-being. “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). 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 Commission, 315 Ill. App. 3d 1197, 1205, 248 Ill. Dec. 609, 734 N.E.2d 900 (2000).

When a preexisting condition is present, a claimant must show that “a work-related accidental injury aggravated or accelerated the preexisting [condition] such that the employee’s current condition of ill-being can be said to have been causally connected to the work-related injury and not simply the result of a normal degenerative process of the preexisting condition.” St. Elizabeth’s Hospital v. Workers’ Compensation Commission, 864 N.E.2d 266, 272-273 (5th Dist. 2007). Even when a preexisting condition exists, recovery may be had if a claimant’s employment is a causative factor in his or her current condition of ill-being. Sisbro, Inc. v. Industrial Commission, 797 N.E.2d 665 (2003). 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. Industrial Commission, 834 N.E.2d 583 (2d Dist. 2005).

In the instant case, the Arbitrator finds Petitioner’s current condition of ill-being is causally related to his work accident. Petitioner testified he never had any prior right knee problems prior to the injury. In addition, Petitioner was working full duty with no known issues.

The Arbitrator further notes that both medical providers do not have a causation dispute. Both, Petitioner’s medical provider, Dr. Sompalli, and the Section 12 examiner, Dr. Hennessy opined Petitioner is in need for further medical care. Dr. Hennessy specifically stated Petitioner would benefit from a right total knee arthroplasty. He opined that with regards to causation, if it was determined that an injury took place, the right total knee arthroplasty would be causally related by aggravation of a previously asymptomatic condition. In addition, Dr. Sompalli opined Petitioner had pre-existing severe arthritis that was asymptomatic. This became symptomatic after his twisting injury. As the Arbitrator found an injury did take place, the Arbitrator also finds causation based on both of the doctor’s opinions.

Based on the same, the Arbitrator finds Petitioner's accident to be a cause of Petitioner's current condition of ill-being in his right knee.

Regarding the issue of whether Petitioner is entitled to any prospective medical care, following consideration of the testimony and evidence presented, the same is incorporated by reference, it is found Petitioner's condition is causally related to his work accident and has not stabilized or otherwise reached MMI. Petitioner seeks prospective care in the form of a right knee replacement. The Arbitrator finds that as the medical provider and the Section 12 examiner agree Petitioner needs a total arthroplasty, the Arbitrator finds no dispute regarding the causal connection between the accident and the current condition of ill being, and the need for the total knee arthroplasty.

Based on the same the Arbitrator finds Petitioner is entitled to prospective medical care as recommended by Dr. Sompalli, for his right knee to include the right knee total arthroplasty and any sequela. For the reasons stated above, Respondent shall authorize and pay for this and such other reasonable medical treatment pursuant to the statutory fee schedule.

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 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 October 5, 2020 work accident and his condition of ill-being regarding his right knee, Respondent is liable for reasonable and necessary medical treatment of the causally related condition.

The Arbitrator orders Respondent to pay Petitioner all other reasonable and necessary medical expenses incurred in connection with the care and treatment of his causally related conditions pursuant to Sections 8 and 8.2 of the Act. Respondent shall receive credit for amounts paid.

With respect to Issue "L", what temporary benefits are in dispute, the Arbitrator finds as follows:

In order to prove entitlement to TTD benefits, a claimant must establish not only that he did not work, but that he was unable to work. Sharwarko v. Illinois Workers' Compensation Comm'n, 2015 IL App (1st) 131733WC. An employee is temporarily totally disabled from the time that an injury incapacitates

him from work until such time as he is as far recovered or restored as the permanent character of his injury will permit. Archer Daniels Midland Co. v. Industrial Comm'n, 138 Ill. 2d 107, 118 (1990). Once an injured employee's physical condition stabilizes or he has reached MMI, he is no longer eligible for temporary total disability benefits. Archer Daniels Midland Co., 138 Ill. 2d at 118. A claimant reaches MMI when he is as far recovered or restored as the permanent character of his injury will permit. Nascote Industries v. Industrial Comm'n, 353 Ill. App. 3d 1067, 1072 (2004). Factors to be considered in determining whether a claimant has reached MMI include whether he has been released to return to work, medical evidence, testimony concerning the claimant's injury, the extent of his injury, and whether the injury has stabilized. Nascote Industries, 353 Ill. App. 3d at 1072. The period of time during which a claimant is temporarily and totally disabled is a question of fact to be determined by the Commission, and its resolution of the issue will not be disturbed on appeal unless it is against the manifest weight of the evidence. Archer Daniels Midland, 138 Ill. 2d at 119-20.

Petitioner is claiming TTD benefits beginning on October 5, 2020 through July 25, 2022 as provided in Section 8(b) of the Act. The Arbitrator finds Petitioner has not recovered from his injuries and has not reached Maximum Medical Improvement. The Arbitrator finds Petitioner's physicians have not allowed him to return to unrestricted work since his October 5, 2020 accident.

Based on the same, TTD benefits are awarded at a rate of \$376.66 per week for 94 1/7 weeks, commencing October 5, 2020 through July 25, 2022 provided in §8(b) of the Act. Respondent shall receive credit for amounts paid.

With respect to Issue (M), should penalties or fees be imposed upon Respondent, the Arbitrator finds as follows:

Petitioner claims that he is entitled to penalties and fees. The Arbitrator find that Respondent denied this matter based on the video evidence that Petitioner did not enter the garbage room. In addition, Dr. Hennessy opined that based on the video no causation existed. Respondent also argued as to Petitioner's credibility based on Mr. Watson's testimony regarding Petitioner stopped limping and the discrepancy of the accident details in the medical records.

While the Arbitrator does not agree with Respondent's argument, it is the Arbitrator's view that Respondent's position is not objectively unreasonable or vexatious. The denial of this matter based on accident does not rise to the level of being vexatious and unreasonable.

As such, taking the totality of the evidence in the record, specifically that Mr. Watson did not see Petitioner enter the garbage room, the discrepancy in medical records, Petitioner's limp that went away, and Dr. Hennessy's Section 12 report based on the video, Respondent's decision to deny accident and not pay benefits was not objectively unreasonable or vexatious under the circumstances. Petitioner's request for penalties and fees is, therefore, denied.