ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC021513
Case Name	Richard Leon v. Summit Staffing
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	24IWCC0146
Number of Pages of Decision	13
Decision Issued By	Amylee Simonovich, Commissioner

Petitioner Attorney	Kurt Niermann
Respondent Attorney	Robert Smith

DATE FILED: 4/1/2024

/s/ Amylee Simonovich, Commissioner

Signature

24IWCC0146

STATE OF ILLINOIS)
) SS.
COUNTY OF DUPAGE)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Richard Leon,

Petitioner,

vs. NO: 21 WC 21513

Summit Staffing,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petitions for Review having been filed by Respondent and Petitioner herein and notice given to all parties, the Commission, after considering the issue of permanent disability, and being advised of the facts and law, modifies the Decision of the Arbitrator. The Commission otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

Permanent Disability

The Arbitrator concluded Petitioner sustained a 25% loss of use of the left foot due to the June 18, 2021, work accident. While the Commission generally agrees with the Arbitrator's analysis of the five factors pursuant to Section 8.1b(b) of the Act, it views the evidence differently. After carefully considering the totality of the evidence, the Commission finds Petitioner met his burden of proving he sustained a 20% loss of the left foot due to the work accident.

Petitioner sustained a minimally displaced left distal fibula fracture. The evidence shows his left ankle fracture healed with minimal conservative treatment. Petitioner's treatment included less than one month of physical therapy and the use of a bone stimulator. Petitioner was cleared to return to his normal job without restrictions approximately four months after the work accident. He last visited his doctor regarding this injury on January 28, 2022. On that date, Petitioner reported dull pain that he rated at 1/10. After examining Petitioner, Dr. Ho placed him at maximum medical improvement and cleared Petitioner to progress to normal activities as tolerated without limitations. Petitioner was to continue working full duty without restrictions. Petitioner was no longer required to use the bone stimulator and he was told to follow up as needed.

Petitioner testified that he feels pain on the right side of his left ankle when walking down

stairs. He also testified that he no longer visits the gym because he worries about his ankle. Petitioner testified that he currently drives for Uber and he occasionally feels a little pain in his left foot and ankle when driving. He testified that he continues to feel more pain when driving a stick shift. Petitioner testified that he occasionally uses the bone stimulator, but was not sure it eased his residual pain. He testified that his left ankle is stiff when he first gets out of bed, and that the stiffness goes away once he walks around for a few minutes. Finally, Petitioner testified that he feels a little pain when it is very cold. Regarding his overall condition, Petitioner testified, "The pain, it's not—it's not very strong but I feel, you know, pain anyway." (Tr. at 25).

In light of the nature of Petitioner's injury, his limited conservative treatment, and his mild residual symptoms, the Commission finds the Arbitrator's award of 25% loss of the left foot is not appropriate. Instead, after considering the evidence, the Commission finds Petitioner proved he sustained a 20% loss of the left foot.

Additional Modifications

The Commission also corrects certain clerical errors in the Arbitration Decision. In the Findings section of the Arbitration Decision Form, the Arbitrator mistakenly wrote Petitioner's average weekly wage was $816.96. The Commission strikes "$816.96" from this sentence and replaces it with "$815.96." In the Order section of the Arbitration Decision Form, the Commission strikes the second and third paragraphs in their entirety and replaces them with the following:

> Respondent shall pay Petitioner temporary total disability benefits of $543.97/week for 12-4/7 weeks, commencing June 19, 2021, through September 14, 2021, as provided in Section 8(b) of the Act. Respondent is entitled to a credit for TTD benefits paid in the amount of $6,838.25. After applying the credit, Respondent's remaining liability for TTD benefits is $243.02.
>
> Respondent shall pay Petitioner permanent partial disability benefits of $489.58/week for 33.4 weeks, because the injuries sustained caused the 20% loss of the left foot, as provided in Section 8(e) of the Act.

Finally, on page one (1) of the Decision, the Arbitrator wrote, "Dr. Holmes authored a narrate report…" The Commission strikes "narrate" and replaces it with "narrative."

The Commission otherwise affirms and adopts the Decision of the Arbitrator.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed on December 19, 2022, is modified as stated herein.

IT IS FURTHER ORDERED that Respondent shall pay Petitioner temporary total disability benefits of $543.97/week for 12-4/7 weeks commencing June 19, 2021, through September 14, 2021, as provided in Section 8(b) of the Act. After applying Respondent's credit in the amount of $6,838.25, Respondent is liable for the $243.02 in benefits that remain outstanding.

IT IS FURTHER ORDERED that Respondent shall pay reasonable and necessary medical services identified in Petitioner's Exhibits 1, 2, 3, 4, and 5, pursuant to Sections 8(a) and 8.2 of the Act. Respondent shall be given a credit for medical expenses that have been paid, and Respondent shall hold Petitioner harmless from any claims by any providers of the services for which Respondent is receiving this credit, as provided in Section 8(j) of the Act.

IT IS FURTHER ORDERED that Respondent shall pay Petitioner permanent partial disability benefits of $489.58/week for 33.4 weeks, because the injuries sustained caused the 20% loss of the left foot, as provided in Section 8(e) of the Act.

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

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

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $18,000.00. 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.

April 1, 2024

d: 2/20/24
AHS/jds
51

/s/ *Amylee H. Simonovich*
Amylee H. Simonovich

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC021513
Case Name	Richard Leon v. Summit Staffing
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	9
Decision Issued By	Frank Soto, Arbitrator

Petitioner Attorney	Kurt Niermann
Respondent Attorney	Robert Smith

DATE FILED: 12/19/2022

/s/Frank Soto, Arbitrator

Signature

INTEREST RATE WEEK OF DECEMBER 13, 2022 4.63%

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

RICHARD LEON
Employee/Petitioner

v.

SUMMIT STAFFING
Employer/Respondent

Case # **21** WC **021513**

Consolidated cases: _____

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Frank Soto**, Arbitrator of the Commission, in the city of **Wheaton**, on **11/23/22**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On **6/18/21**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $**42,429.92**; the average weekly wage was $**816.96**.

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

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

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

Respondent shall be given a credit of $ 6,595.23 for TTD, $0 for TPD, $0 for maintenance, and $0 for other benefits, for a total credit of $6,595.23

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

ORDER

Respondent shall pay the medical expenses identified in Petitioner's exhibits 1 through 5 pursuant to Sections 8(2) and 8(a) of the Act subject to the fee schedule. Respondent shall be given credit for medical bills previously paid by Respondent and Respondent shall hold Petitioner harmless from bills which Respondent claims a credit.

Respondent shall pay Petitioner temporary total disability benefits of $543.97/week for 12 3/7 weeks, commencing 6/19/21 through 9/14/21, as provided in Section 8(b) of the Act. Respondent is entitled to a credit for TTD benefits paid in the amount of $6,595.23. After applying credit, Respondent shall pay Petitioner the sum of $173.89 in temporary total disability benefits.

Petitioner is entitled to have and receive the sum of $489.57 per week, for the further period of 41.75 weeks, because the injuries sustained caused permanent partial impairment to the left foot to the extent of 25% thereof under section 8(e)11.

Respondent shall pay Petitioner compensation that has accrued from June 18, 2021 through October 23, 2022 and shall pay the remainder of the award, if any, in weekly payments.

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

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

By: */o/ Frank J. Soto*

Arbitrator

December 19, 2022

Procedural History

This case was tried on November 23, 2022 and the issues in dispute were whether Petitioner's current condition of ill-being is causally connected to his injury, whether Respondent is liable for unpaid medical expenses, whether any TTD benefits remain due and owning Petitioner and the nature and extent of Petitioner's injury. (Arb. Ex. #1).

Findings of Fact

On June 18, 2021 Richard Leon (hereafter referred to as "Petitioner") stepped onto a wooden pallet to unwrap merchandise. One of the wooden slats broke and Petitioner's left foot fell through causing a fracture from an inversion injury. The parties stipulated Petitioner sustained accidental injuries arising out of and occurring in the course of the employment on June 18, 2021.

Petitioner testified he sought initial medical care through Amita (Presence Mercy Medical Center) but those records were not admitted into evidence. Petitioner subsequently received medical treatment at Physician's Immediate Care. X-rays dated June 21, 2021 revealed a displaced fracture of the lateral malleolus of the left fibula. (Px 3). Petitioner was also assessed with a sprain of the left ankle tibiofibular ligament. Petitioner had a series of follow-up visits through Physician's Immediate Care.

On August 2, 2021, Petitioner transferred care to Hinsdale Orthopedics. (Px 1). At that visit, Dr. Ho recommended continued immobilization of the left lower leg with a high tide walking boot. Dr. Ho prescribed physical therapy and off-work status. On September 9, 2021, Dr. Ho recommended Petitioner discontinue the walking boot and recommended physical therapy. The fibula fracture was noted to be stable and, at that time, Dr. Ho also diagnosed an achilles equinas contracture. Petitioner was issued work restrictions consisting of "desk duty."

On October 7, 2021 Petitioner returned to Dr. Ho who indicated Petitioner was "much improved." Dr. Ho noted that Petitioner was able to ambulate without assistive devices. At that time Dr. Ho recommended Petitioner wean out of the lace-up ankle brace and that he complete therapy. Petitioner was also released to return to work full duty. (Px. 1).

On October 11, 2021, Petitioner was examined by Dr. Holmes, of Midwest Orthopedics, pursuant to Section 12 of the Act. (Rx 1). Dr. Holmes authored a narrate report dated October 11, 2021. In the report, Dr. Holmes noted no evidence of atrophy or asymmetry or instability. At that time, x-rays were taken. Dr. Holmes indicated he did not have any medical records to

review. In his report, Dr. Holmes stated, "given the fact that his examination demonstrates no pain, it would appear that the fracture has healed" and Dr. Holmes opined Petitioner could return to work full duty as a forklift driver.

On October 18, 2021, Petitioner returned to Dr. Ho reporting 4/10 ankle pain, increased pain upon returning to work. (Px1, p.25). Dr. Ho noted that Petitioner should expected to experience increased pain as he increased activity but that the pain should improve over time. (Px1, p.26). Dr. Ho advised Petitioner to continue performing home exercises with a focus on the Achilles stretches. (Px 1, p.26)

On October 25, 2021, Dr. Holmes issued an addendum report. (Rx 2). In the report, Dr. Holmes indicated he reviewed Petitioner's medical records. In the addendum report, Dr. Holmes diagnosed a healed fibular fracture. Dr. Holmes opined there was a causal relationship between the June 18, 2021 work injury and Petitioner's condition. Dr. Holmes also opined the medical treatment had been appropriate. Dr. Holmes further opined no further medical care was warranted and Petitioner could return to work without any work restrictions. (Rx. 2).

On December 10, 2021, Petitioner returned to Dr. Ho reporting 5/10 pain with twisting motion. (Px. 1, p.26). An X-rays was taken which did not detect displacement but showed the fracture line had not resolved. (Px. 1, p.29). A CT scan was taken which showed a partial healing of the distal fibula fracture of 60%. (Px. 1, p.32). Dr. Ho noted a continued nonunion of the fibula fracture site primarily anteriorly with a fracture gap of 2mm anteriorly. (Px. 1, p.32). Dr. Ho opined there was enough healing to warrant use of the lace up brace. Petitioner was told to avoid painful activities and he was given a bone stimulator. (Px.1, p.32).

On January 28, 2022, Petitioner followed up with Dr. Ho. At this visit, Dr. Ho released Petitioner from care finding that Petitioner reached maximum medical improvement. (Px.1, p.33, 34).

Petitioner testified he had no plans to see a doctor in the future for his ankle and that he took no medications. Petitioner testified he did not go back to work for Respondent when he was released to full duty. Petitioner testified he has been driving for "Uber". Petitioner described he experiences pain going down stairs and pain and stiffness in the mornings. Petitioner testified he occasionally still used the bone stimulator but doesn't know if it helps. Petitioner testified while driving for Uber he needs to readjusts his left foot and leg while driving. No post-injury earnings were offered into evidence.

The Arbitrator found Petitioner's testimony credible.

Conclusions of Law

The Arbitrator adopts the finding of fact in support of the Conclusions of Law as Set forth below. The burden is upon the party seeking an award to prove by a preponderance of the credible evidence the elements of her claim. *Peoria County Nursing Home v. Industrial Comm 'n*, 115 lll.2d 524, 505 N.E.2d 1026 (1987).

With respect to issue "F", whether Petitioner's current condition of ill-being is causally related to his employment injury, the Arbitrator finds as follows*:*

In a proceeding under the Act, the employee has the burden of proving by a preponderance of the evidence all of the elements of his or her claim. *O'Dette v. Industrial Comm'n,* 79 Ill. 2d 249, 253 (1980). Among other things, the employee must establish that his or her condition of ill-being is causally connected to a work-related injury. *Elgin Board of Education School District U-46 v. Illinois Workers' Compensation Comm'n,* 409 Ill. App. 3d 943, 948-49 (2011). The accidental injury need not be the sole causative factor or even the primary causative factor, as long as it was a causative factor in the resulting condition of ill-being. *Sisbro, Inc. Industrial Comm'n*, 207 Ill. 2d 193, 204-05 (2003). It is the function of the Commission to decide questions of fact and causation, to judge the credibility of witnesses, and to resolve conflicting medical evidence. *Teska v. Industrial Comm'n*, 266 Ill. App. 3d 740, 741 (1994). 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 witness' demeanor and any external inconsistencies with testimony. Where a claimant's testimony is inconsistent with his actual behavior and conduct, the Commission has held that an award cannot stand. *McDonald v. Industrial Commission*, 39 Ill. 2d 396 (1968); *Swift v. Industrial Commission*, 52 Ill. 2d 490 (1972).

The Arbitrator finds Petitioner proved by the preponderance of the evidence that his current left ankle and Achilles' tendon condition is causally related to his June 18, 2021 work injury. Petitioner testified to a condition of well-being about the left foot and ankle prior to the work accident. Petitioner testified he did not injure the ankle in any type of incident after the work accident. The injuries are well-documented in all of the medical records. Dr. Holmes also opined that there was a causal relationship between the work accident and the left distal fibula fracture.

With respect to issue "J" were the medical services that were provided to Petitioner reasonable and necessary, the Arbitrator finds as follows*:*

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

The Arbitrator finds Petitioner to prove by the preponderance of the evidence the medical services Petitioner received was necessary and reasonably required to cure or relieve Petitioner from the effects of his injury. As such, Respondent shall pay the medical expenses identified in Petitioner's exhibits 1 through 5 pursuant to Sections 8(2) and 8(a) of the Act subject to the fee schedule. Respondent shall be given credit for medical bills previously paid by Respondent and Respondent shall hold Petitioner harmless from bills which Respondent claims a credit.

With respect to issue "L", Whether Petitioner is entitled to Temporary Total Disability benefits, the Arbitrator finds as follows:

The period of temporary total disability encompasses the time from which the injury incapacitates the claimant until such time as the claimant has recovered as much as the character of the injury will permit, "*i.e.,* until the condition has stabilized." *Gallentine v. Industrial Comm'n*, 201 Ill. App. 3d 880, 886 (2nd Dist. 1990). The dispositive test is whether the claimant's condition has stabilized, *i.e.,* reached MM.I. *Sunny Hill of Will County v. Ill. Workers' Comp. Comm'n*, 2014 IL App (3d) 130028WC at 28 (June 26, 2014, Opinion Filed); *Mechanical Devices v. Industrial Comm'n*, 344 Ill. App. 3d 752, 760 (4th Dist. 2003). To show entitlement to temporary total disability benefits, a claimant must prove not only that he did not work, but also that he was unable to work. *Gallentine*, 201 Ill. App. 3d at 887; *see also City of Granite City v. Industrial Comm'n*, 279 Ill. App. 3d 1087, 1090 (5th Dist. 1996).

The stipulated to an average weekly wage of $815.96. The parties further stipulated that Petitioner was entitled to temporary total disability benefits from June 19, 2021 through September 14, 2021, representing 12 3/7 weeks. (Arb. Ex. 1). Petitioner should have received temporary total disability benefits of $6,769.12 but Respondent only paid Petitioner temporary total disability benefits of $6,595.23. Therefore, Petitioner is still entitled to $173.89 in

Temporary total disability benefits. As such, Respondent shall pay Petitioner the sum of $173.89.

With respect is issue "L" the nature and extent of Petitioner's injuries, the Arbitrator finds as follows:

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

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

Id.

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

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

With regard to subsection (ii) of §8.1b(b), Petitioner was released to full duties. The Arbitrator gives no weight to this factor.

With regard to subsection (iii) of §8.1b(b), Petitioner was 49 years old at the time of the accident. Petitioner still has a significant amount of his work life remaining that he may still need to deal with the effects of his work injury. The Arbitrator gives some weight to this factor.

With regard to subsection (iv) of §8.1b(b), Petitioner's future earnings capacity, the Arbitrator gives no weight to this factor.

With regard to subsection (v) of §8.1b(b), evidence of disability corroborated by the treating medical records, Petitioner continues experiencing ongoing symptomology relating to the injury. Petitioner testified to experiencing pain while descending his steps pain with weather changes and he needs to rest his foot while driving. Petitioner testified to still using the bone stimulator on occasion. The Arbitrator gives significant weight to this factor.

Based on the above factors, and the record taken as a whole, the Arbitrator finds that Petitioner sustained permanent partial impairment to the left foot to the extent of 25% thereof under section 8(e)11.

By: /o/ *Frank J. Soto*
Arbitrator

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	22WC011570
Case Name	Luis Alfredo Sustaita v. United Maintenance Company
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b) Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	24IWCC0147
Number of Pages of Decision	38
Decision Issued By	Amylee Simonovich, Commissioner, Kathryn Doerries, Commissioner

Petitioner Attorney	Julio Costa
Respondent Attorney	Glenn Blackmon

DATE FILED: 4/1/2024

/s/Amylee Simonovich, Commissioner
Signature

DISSENT: /s/Kathryn Doerries, Commissioner
Signature

24IWCC0147

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Luis Alfredo Lozada Sustaita,

Petitioner,

vs. NO: 22 WC 11570

United Maintenance Company,

Respondent.

DECISION AND OPINION ON REVIEW

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

In the interest of efficiency, the Commission relies on the detailed recitation of facts in the Arbitration Decision, except as stated below. The Commission affirms the Arbitrator's conclusions regarding Petitioner's credibility, causal connection, medical expenses, and prospective medical treatment. However, the Commission makes certain modifications to the Arbitration Decision.

Accident

The Arbitrator correctly concluded that Petitioner met his burden of proving he sustained an injury due to an accident arising out of and in the course of his employment on March 7, 2022. Nevertheless, the Commission disagrees with the Arbitrator's legal reasoning and strikes Section C of the Conclusions of Law in its entirety from the Arbitration Decision.

Respondent does not dispute that the March 7, 2022, accident occurred in the course of Petitioner's employment as a custodian. Instead, Respondent disputes whether Petitioner's injury

was the result of an incident arising out of his employment. In *McAllister v. Ill. Workers' Comp. Comm'n*, the Illinois Supreme Court clarified the proper analysis to determine whether a claimant's injury arose out of their employment. 2020 IL 124848. Pursuant to *McAllister*, Petitioner must prove his injury "…had its origin in some risk connected with, or incidental to, the employment so as to create a causal connection between the employment and the accidental injury." *Id*. at ¶ 36 (internal citations omitted). A risk is incidental to a claimant's employment "…when it belongs to or is connected with what the employee has to do in fulfilling his or her job duties." *Id*. Generally, an injury arises out of employment risk if, at the time of the accident, "…the employee was performing acts he was instructed to perform by his employer, acts which he had a common law or statutory duty to perform, or acts which the employee might reasonably be expected to perform incident to his assigned duties." *Caterpillar Tractor Co. v. Indus. Comm'n*, 129 Ill. 2d 52, 58 (1989).

After considering the totality evidence, the Commission finds Petitioner's March 7, 2022, accident was due to an employment risk. The credible evidence reveals that Petitioner sustained a significant work-related injury when he was physically assaulted by a stranger on the date of accident. Mr. Richards, Respondent's witness, agreed that Petitioner was performing his work duties in his assigned area at the time of the assault. In fact, the evidence reveals that the assault was triggered by Petitioner's performance of his job duties in his assigned area. Therefore, the Commission finds Petitioner met his burden of proving the March 7, 2022, work accident arose out of his employment.

Finally, the Commission must address a significant error made by the Arbitrator. The Arbitrator wrote, "…the Arbitrator takes judicial notice of the overwhelming amount of current media coverage documenting the homelessness problem at O'Hare airport…" (Arb. Dec. at 13). The Arbitrator then cited and relied on news articles that are not in evidence. In fact, the Arbitrator obtained these articles by independently conducting research via the internet after the arbitration hearing concluded and proofs were closed. The Illinois Supreme Court has long held that a finder of fact is confined to the record and their impression of any witnesses when deciding a case. The court wrote, "Due process does not permit him to go outside the record, except for matters of which a court may take judicial notice, or conduct a private investigation in a search for aids to help him make up his mind…" *People v. Yarbrough*, 93 Ill. 2d 421, 429 (1982). Furthermore, if the finder of fact takes judicial notice of something *sua sponte*, they should inform the parties before the close of proofs. *See, e.g.*, *People v. Barham*, 337 Ill. App. 3d 1121, 1129 (2003).

Finders of fact may take judicial notice only of sources that meet certain requirements. "Illinois courts recognize that documents containing readily verifiable facts from sources of indisputable accuracy may be judicially noticed if doing so will aid in the efficient disposition of a case." *Centeno v. Ill. Workers' Comp. Comm'n*, 2020 IL App (2d) 180815WC, ¶ 39. Courts have found that a finder of fact may take judicial notice of sources such as municipal ordinances, the Federal Register, prior related decisions or orders, and hearing and deposition transcripts. *E.g.*, *id*. Contrary to the Arbitrator's assertion, news articles found on the internet do not qualify as sources subject to judicial notice. As such, the Arbitrator's reliance on these articles is clearly inappropriate.

Temporary Disability Benefits

The Arbitrator concluded that Petitioner met his burden of proving an entitlement to TTD benefits from August 7, 2022, through December 30, 2022, a period of 20-6/7 weeks. The Commission views the evidence differently. After carefully considering the totality of the evidence, the Commission finds Petitioner proved an entitlement to TTD benefits from August 7, 2022, through December 25, 2022, a period of 20-1/7 weeks.

To establish an entitlement to TTD benefits, Petitioner must demonstrate not only that he did not work, but also that he was unable to work. *See Mech. Devices v. Indus. Comm'n (Johnson)*, 344 Ill. App. 3d 752 (2003). The credible evidence reveals that Petitioner began working as a driver for Grubhub on December 26, 2022. (PX 6). Thus, Petitioner was not entitled to TTD benefits after December 25, 2022.

Similarly, the Commission modifies the Arbitrator's award of TPD benefits. The Arbitrator concluded that Petitioner met his burden of proving an entitlement to TPD benefits from December 31, 2022, through January 24, 2023. After carefully considering the evidence, the Commission finds Petitioner proved an entitlement to TPD benefits from December 26, 2022, through January 24, 2023, a period of 4-2/7 weeks.

Pursuant to Section 8(a) of the Act, TPD benefits are equal to two-thirds of the difference between the average amount Petitioner would have been able to earn if working full duty in his normal position and the gross amount he earned in the modified job. Petitioner's Exhibit 6 shows Petitioner's weekly earnings from December 26, 2022, through January 24, 2023. The Commission relies on this evidence and Petitioner's average weekly wage to determine the amount of TPD benefits due to Petitioner. After considering the evidence, the Commission finds Petitioner proved an entitlement to TPD benefits in the amount of $914.91.

Credit Due to Respondent

The Commission clarifies the credit due to Respondent for TTD benefits it previously paid. On the Request for Hearing form, Petitioner claimed an entitlement to TTD benefits from August 7, 2022, through December 30, 2022. The parties stipulated that Respondent previously paid $1,316.57 in TTD benefits and is entitled to a credit in that amount. While the parties did not specify the period for which Respondent paid TTD benefits, Respondent's Exhibit 7 reveals that it paid those benefits in March 2022. Petitioner testified that he received TTD benefits during the two weeks he was off work immediately following the date of accident. Furthermore, the parties agreed that Petitioner continued to work for Respondent until he was laid off on August 6, 2022.

The Commission finds Respondent's credit for the previously paid TTD benefits applies only to the periods covered by those payments. Thus, Respondent's credit for prior TTD payments is not applicable to any TTD benefits awarded in this Decision.

Additional Modifications to the Decision of the Arbitrator

After carefully reviewing the totality of the evidence, the Commission finds Dr. Singh

never examined Petitioner regarding the March 7, 2022, work-related injury. Instead, the evidence shows only that Dr. Singh's physician assistant examined Petitioner. There is also no evidence that Dr. Singh formed any opinions regarding the causal connection of Petitioner's condition and treatment to the work accident. Therefore, the Commission strikes such references to Dr. Singh in the Decision and makes the following modifications.

In the second paragraph on page four (4) of the Decision, the Commission strikes "Dr. Kern Singh," and replaces it with "Dr. Kern Singh's physician assistant." In the first paragraph on page nineteen (19) of the Decision, the Commission strikes "Drs. Verma and Singh," and replaces it with "Dr. Verma." On that same page, in subheading "b," the Commission strikes "Drs. Verma and Singh" and replaces it with "Dr. Verma." In the second paragraph on page twenty (20) of the Decision, the Arbitrator wrote that he "…places greater weight on the opinions of Drs. Verma and Singh, than…Respondent's IME expert, Dr. Shadid." The Commission modifies this sentence to read:

> Here, the Arbitrator places greater weight on the opinion of Dr. Verma than the opinion of Dr. Shadid, Respondent's Section 12 Examiner.

In the third paragraph on page twenty (20) of the Decision, the Commission strikes "Drs. Singh and Verma" and replaces it with "Dr. Verma."

The Commission also corrects certain errors in the Arbitration Decision Form. In the Findings section, the Arbitrator mistakenly identified the date of accident as August 23, 2019. The Commission modifies the above-referenced sentence to read as follows:

> On March 7, 2022, Respondent ***was*** operating under and subject to the provisions of the Act.

Also in the Findings section, the Arbitrator wrote that Respondent shall receive a credit of "$N/A for TTD, $ for TPD…" The Arbitrator also wrote that Respondent is entitled to an 8(j) credit of "$N/A." Pursuant to the stipulations of the parties, the Commission modifies the above-referenced sentences to read as follows:

> Respondent shall be given a credit of $1,316.57 for TTD, $0 for TPD, $0 for maintenance, and $0 for other benefits, for a total credit of $1,316.57.
>
> Respondent is entitled to a credit of $5,647.83 under Section 8(j) of the Act.

On page eighteen (18) of the Decision, the Arbitrator wrote: "…Petitioner injured his left shoulder and back…" This is clearly a scrivener's error. The Commission modifies this sentence to read as follows:

> Specifically, on 10/5/18, almost 3-1/2 years before his current

> accident, Petitioner injured his right shoulder and back while operating an electrical pallet that got stuck in a pothole.

Additionally, the Commission modifies certain references to Dr. Shadid throughout the Arbitration Decision. On page five (5) of the Decision, the Commission strikes "…an Independent Medical Examiner, Dr. Hythem Shadid," and replaces it with "Respondent's Section 12 Examiner, Dr. Hythem Shadid." On pages seventeen (17) and twenty-two (22) of the Decision, the Commission strikes "Respondent's IME expert, Dr. Shadid," and replaces it with "Dr. Shadid." On page twenty-one (21) of the Decision, the Commission strikes "IME Dr. Shadid," and replaces it with "Dr. Shadid."

Finally, the Commission strikes the following sentences from the Arbitration Decision:

> Dr. Singh's 5/5/22 quick report notes "Yes" when asked whether Petitioner's treatment is causally related his 3/7/22 work accident. (Page 20)

> As for the "inconsistencies" in the mechanism of injury, Dr. Shadid is simply wrong. He presumes Petitioner was either struck by an object or that the object was thrown at him without considering that both can be true as testified to by Petitioner and confirmed in the record. (Page 22)

The Commission otherwise affirms and adopts the Decision of the Arbitrator.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed on March 10, 2023, is modified as stated herein.

IT IS FURTHER ORDERED that Respondent shall pay Petitioner temporary total disability benefits of $426.67/week for 20-1/7 weeks commencing August 7, 2022, through December 25, 2022, as provided in Section 8(b) of the Act. Pursuant to stipulation by the parties, Respondent shall receive credit for $1,316.57 in TTD benefits it previously paid in March 2022 to Petitioner. However, that credit is not applicable to any TTD benefits awarded in this Decision.

IT IS FURTHER ORDERED that Petitioner proved an entitlement to temporary partial disability benefits from December 26, 2022, through January 24, 2023, in the amount of $914.91.

IT IS FURTHER ORDERED that Respondent shall pay reasonable and necessary medical expenses of $6,337.66 to ATI Physical Therapy and $2,140.48 to Midwest Orthopaedics at Rush, as provided in Sections 8(a) and 8.2 of the Act.

IT IS FURTHER ORDERED that Respondent shall authorize prospective medical treatment in the form of the right shoulder surgery prescribed by Dr. Verma.

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

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

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $18,000.00. 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.

April 1, 2024
o: 1/30/24
AHS/jds
51

/s/ *Amylee H. Simonovich*
Amylee H. Simonovich

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

DISSENT

I agree with the majority's finding that the Arbitrator's reliance on newspaper articles is inappropriate. However, I dissent from the majority's Conclusions of Law in the Opinion on Review. Specifically, I disagree with the majority's Conclusion that the Petitioner sustained his burden of proving accident, and the majority's analysis under *McAllister* finding that Petitioner's injury was incidental to his employment. *McAllister v. Ill. Workers' Comp. Comm'n*, 2019 IL App (1st) 162747WC, 126 N.E.3d 522. I would find Petitioner did not sustain his burden of proving accident under a neutral risk analysis, rendering all other issues moot, for the following reasons.

The majority has determined that under a *McAllister* analysis, the Petitioner's accident is incidental to his employment. I disagree that a *McAllister* analysis is proper in the context of this case. *McAllister* provides guidelines for risk analysis in the context of workers sustaining injury while performing job duties that involve "common bodily movements" an "activity of everyday life" or "everyday activities." Confusion resulting from several Appellate Decisions culminated in the split between the majority and dissenting opinions in *McAllister v. Illinois Workers' Comp. Comm'n.,* 2019 IL App (1st) 162747WC, and those Decisions were analyzed in the special concurrence written by Justice Holdridge, and joined by Justice Hoffman (M*cAllister v. Illinois Workers' Comp. Comm'n.,* 2019 IL App (1st) 162747WC, P78-P116). The divergent opinions were addressed by the Supreme Court. In doing so, the *McAllister* Court did not abandon the legion of neutral risk cases previously decided by Illinois courts. To do so would implicitly adopt the positional risk doctrine expressly rejected by our supreme court in *Brady v. Louis Ruffolo &*

Sons Construction Co. (1991), 143 Ill. 2d 542, 552-53, 578 N.E.2d 921, 161 Ill. Dec. 275.

> Under the positional risk doctrine, an injury arises out of employment if it "'would not have occurred but for the fact that the conditions or obligations of the employment placed claimant in the position where he was injured by a neutral force ***.'" *(Brady,* 143 Ill. 2d at 552, quoting Larson, *The Positional-Risk Doctrine in* [*1094] *Workmen's Compensation,* 1973 Duke L.J. 761, 761.) Our supreme court has rejected the doctrine in favor of the increased risk theory, under which workers' compensation covers an injury if the conditions of employment subjected the employee to a risk of injury increased beyond the risk which the general public faces. *Campbell "66" Express, Inc. v. Industrial Comm'n* (1980), 83 Ill. 2d 353, 355, 415 N.E.2d 1043, 47 Ill. Dec. 730. *Fligelman v. City of Chicago*, 275 Ill. App. 3d 1089, 1093-1094, 657 N.E.2d 24, 27.

The subject fact pattern falls squarely under a line of cases that the Illinois Courts have decided based upon a neutral risk analysis; cases when the worker was a victim of a crime, attack, shooting or, as in this case, assaulted by a third party. Illinois Courts analyze whether or not the assault, crime, or shooting occurred in an area where the risk of being a victim is greater than the risk to which the general public is exposed. For instance, in *Restaurant Development v. Hee Suk Oh,* the Court found Petitioner sustained his burden of proving accident based upon the following:

> The crime data revealed that the restaurant was located in a police district whose crime rates for violent crimes and shootings placed it in the top 25% to 33% of all police districts in the City of Chicago. The assailants lived a short distance from the restaurant and were shooting at a rival gang member driving in the neighborhood. Claimant bartended near the restaurant's floor-to-ceiling windows, adjacent to the street, where her body was exposed. Further, there was a history of gunfire in the neighborhood spanning many years. Claimant's employment required her to work late at night, on weekends, when most of the shootings were taking place. Moreover, Pallohusky testified that claimant's employment at the Coast exposed her to a higher risk for random gunfire than the general public. Finally, the crime data for 1999 and prior years in the 14th police district demonstrated that the restaurant's risk for violent crime and gun crimes was greater when compared with the crime data for the rest of the City, County, and State of Illinois. Claimant's exposure was not simply a matter of positional risk. The risks claimant was exposed to, including being struck by a stray bullet, by virtue of the conditions of her employment are not the same that the general public is commonly exposed to. *Rest. Dev. Group v. Hee Suk Oh,* 392 Ill. App. 3d 415, 421-422, 910 N.E.2d 718.

In the subject case, Petitioner was hit by an unidentified third party individual while performing his nighttime custodial service in the baggage claim area during the third shift, at 11:00 p.m. in the "LL" of terminal three. (T. 7-8, 13) Petitioner worked for Respondent for only two months prior to this assault, working from 10:30 p.m. to 6:30 a.m. (T. 6-7) Petitioner testified that this assailant hit him with a liter, semi-full glass bottle that struck him in the neck and shoulder. (T. 9-10) Petitioner's statement issued by his supervisor, Susan Espinoza, documents Petitioner called and reported that at 11:05 p.m. a homeless man had just hit him on his back right shoulder

and thrown a water bottle at him that just missed him. (PX5)

Petitioner testified there are a lot of people in the baggage claim area at that time of night. (T. 14-15) He testified that generally the people who came to the baggage claim area where he worked were travelers that come for their luggage. (T. 15) Petitioner also testified that there was another group of people laying by the heaters. *Id.* Petitioner's opinion was that these people, laying by the heaters, are homeless people and they sleep there. (T. 16)

Petitioner testified that the people would arrive there at the baggage claim to lay down by the heaters because it was cold during the wintertime. (T. 22-23) There was access to baggage claim from public transportation. (T. 23) Petitioner testified that police would remove the homeless people at 3:00 or 4:00 a.m., however, the individuals would come back. (T. 24) It is not clear whether or not he meant that morning or the next evening to sleep. Petitioner testified he would find syringes and needles and spoons in the bathrooms and he often cleaned drug paraphernalia. (T. 25) There was no testimony confirming these incidents occurred on the day of the accident, how often this occurred and certainly no evidence presented by Petitioner that the paraphernalia was left by the homeless people that slept near the heaters.

Petitioner's credibility

Petitioner also testified that he had two prior accidents involving his right shoulder. He testified that the first one was in October 2018 when he was driving a forklift, an electric pallet jack when his tire got caught in a hole that caused him to hit and injure his right shoulder when he fell to the floor. (T. 25-26) He had treatment for two months but no surgery was recommended. (T. 27) Petitioner testified that he had another accident involving his right shoulder in January 2019. (T. 28) Petitioner testified that a box was up here (indicating) and the box fell and it hit him "right here" (indicating). *Id.* Petitioner testified it was just one blow or hit and he had no treatment. *Id*. Petitioner testified that he had missed only one day of work for the accident in 2019 because he had inflammation in his shoulder. (T. 29)

On cross examination, Petitioner confirmed that he actually fell off of a pallet jack onto his right shoulder. He went to physical therapy following this incident. (T. 53) Petitioner testified when he was released from treatment for the second accident, he was completely symptom free. (T. 55)

Petitioner testified that "they" told him to continue working after he reported the subject incident and "they" did not let him see a doctor. (T. 30-31) Conversely, on cross-examination, Petitioner testified that he did not ask anybody if he could seek medical treatment at the time of the incident. (T. 47) Petitioner testified that after his shift, he went to Physicians Immediate Care on the date of accident at the direction of the manager of the company, named "Bill." (T. 31) In fact, Bill Richards took him to Physicians Immediate Care. (T. 48) Petitioner was paid for two weeks lost time because Physicians Immediate Care gave him restrictions. (T. 3) Petitioner was released to return to full duty work by The Physicians Immediate Care facility on May 9, 2022. (T. 56) He returned to work until August 2022 when the contract of work between his employer and O'Hare expired. (T. 37-38)

The Physicians Immediate Care (PIC) records confirm Petitioner was treated for three, not two, prior injuries to his right shoulder, (RX2) The records confirm he had two injuries to his right shoulder in October 2018. Under cross-examination, he admitted to only the October 5, 2018, accident, and the accident in January 2019; he denied suffering the third alleged work accident on October 30, 2018. (T. 52-54) A review of the PIC records, however, confirms he reported he injured his right shoulder while lifting a bag of liquid on October 30, 2018. (RX2)

Petitioner further denied any history of prior right shoulder injury or treatment to Dr. Shadid. (RX1) It is also obvious that Petitioner attempted to minimize the extent of his October 5, 2018, injury. Petitioner initially testified that he did not attend any physical therapy ("P.T.") following his October 5, 2018, work accident. (T. 27) He then agreed, only when questioned by the attorneys, that he did go to P.T. (T. 27, 53) He also testified that he did not miss any work after his October 2018 work accident. (T. 28-29). He testified that he treated for only two months following the October 5, 2018 injury. (T. 27).

While Petitioner might not have missed any work after his October 5, 2018, accident, the nurse practitioner ("NP") prescribed significant restrictions from October 6, 2018, through October 10, 2018. (RX2) On October 10, 2018, the NP cleared Petitioner to return to work without restrictions. On October 29, 2018, Petitioner was placed at maximum medical improvement ("MMI") and released from the clinic's care, despite Petitioner's continued complaints of significant pain in his right shoulder and trapezius and an inability to lift 25 lbs. The only abnormal examination finding was evidence of a hypersensitivity regarding Petitioner's cervical and thoracic spine, and his right arm. In the closure review, the NP noted that Petitioner had full strength and range of motion of the right shoulder. This arguably is evidence that Petitioner has a history of symptom magnification and comports with Dr. Shadid's conclusions. (RX1)

Similarly, the PIC medical records refute Petitioner's denial during the hearing that he sustained a separate injury on October 30, 2018. The day after Petitioner was discharged from the clinic for his October 5, 2018, work injury, he allegedly suffered another work injury. And this injury involved essentially the same complaints regarding his right shoulder and trapezius muscle. The PA prescribed significant lifting restrictions. *Id.* The office visit notes regarding the October 30, 2018, injury also indicate that Petitioner's subjective complaints were not supported by any objective findings. Petitioner attended twelve P.T. sessions in November and December 2018—he was discharged from P.T. on December 13, 2018, after Petitioner stated he achieved his functional goals. *Id.* Petitioner's complaints were also significant enough for the doctor to administer a right shoulder injection on November 27, 2018. He was placed at MMI and discharged from care regarding the October 30, 2018, injury on December 11, 2018. While Petitioner had some mild complaints, the doctor noted no abnormal findings during the exam. On that date, Petitioner was also cleared to return to work full duty. Prior to his release, the medical providers continued to prescribe significant lifting restrictions regarding use of the right arm. *Id.*

The records regarding the January 28, 2019, work injury also provide evidence of symptom magnification. The exam revealed hypersensitivity to light touch with Petitioner jumping away from finger contact to any area from the right scapula, teres minor, biceps, and trapezius. *Id.* The NP also noted that Petitioner exhibited pain in the trapezius while only the biceps flexion/extension active motion was being tested. The NP wrote that this could indicate some inconsistency. The NP

also noted that there was reduced range of motion in the right shoulder due to guarding. *Id.* Petitioner was diagnosed with a right shoulder contusion and was cleared to return to work with a lifting restriction regarding the right arm. While Petitioner did not attend P.T. for this work injury, on February 1, 2019, he complained of continued pain in his right shoulder, trapezius, upper arm, and even down to the right hand. The only abnormal exam finding was hypersensitivity to light touch with Petitioner pulling away with just a single finger grazing his skin. Despite Petitioner's ongoing complaints, the NP determined Petitioner's shoulder contusion was expected to fully resolve within 5 days. The NP placed Petitioner at MMI, discharged him from the clinic's care, and cleared him to return to work without restrictions. *Id.*

Therefore, I find that Petitioner's testimony is, for the most part, unreliable and thus he also lacks credibility. Petitioner's testimony regarding the homeless population at the airport and finding some drug paraphernalia while cleaning bathrooms is only, by inference, implicating that there is some higher risk of crime where he works than that to which the general public is exposed because of the presence of homeless people. He presented no data to support this contention. Petitioner did not establish that he was subject to a higher risk of attack where he worked by his testimony alone, and, without additional evidence or testimony, is not enough to sustain his burden of proving an accident that arose out of his employment.

Even if, arguendo, Petitioner had sustained his burden of proving accident, given the Petitioner's credibility issues, medical history and the alleged mechanism of injury, I would find Dr. Shadid more credible than Dr. Verma and find Petitioner failed to establish that his right shoulder condition is causally related to the subject incident.

Bill Richards' Testimony

Respondent's witness, Bill Richards testified that he was a general manager for Respondent at O'Hare Airport for airport terminals 1-3. (T. 67-68) He worked at O'Hare for four and one-half years. (T. 68) He testified that as of September 30, 2022, the job with Respondent ended because the company lost the maintenance contract. *Id.* He now works for Envoy Air, a division of American Airlines. (T. 67) He testified that his office was located one floor under the Terminal 3 baggage claim, one floor away from the baggage claim area. (T. 68-69)

Richards testified his job responsibilities were to operate and to manage a $160 million contract for the cleaning and the maintenance of O'Hare Airport in terminals one, two and three. Petitioner was under his umbrella. (T. 69) His job duties included handling workplace injuries—including reporting, investigating, and documenting the injuries. Richards testified that he also handled conflicts between an employee and a third party at the airport (such as this work accident). He spent most of his day walking through all the terminals and checking in with his managers and supervisors. Respondent had 305 workers each day and he made sure everything was properly cleaned and maintained. (T. 70-71)

Richards testified that Petitioner worked as a custodian. If Petitioner was assigned to Terminal 3 originally, that wouldn't change; however, his job duties might change because his assigned area changed each day. The jobs were rotated each day. He denied that custodians were responsible for handling security in their assigned terminals; however, a custodian would be

required to question a person in a restricted area without a badge. (T. 73) He testified that the Chicago Department of Aviation has its own police and there are also Chicago Police Department ("CPD") officers at the airport. (T. 75) Security is also provided by a private company, Universal Security, in certain areas. *Id.*

Richards testified that CPD has a station in Terminal 5, but the officers patrol/monitor all the terminals 24/7. He testified that he constantly saw police officers in the baggage claim area where the assault occurred. He testified that there are usually a lot of incidents (involving people getting bags) in the area because that's where you have people getting their bags as well as the people waiting for arrivals. (T. 76) He testified that it was not a secured area—meaning, it was open to the public. On the date of accident, Petitioner was working in the unsecured area. (T. 77) Richards further testified in an unsecured area, there are always police officers present. This was true for terminal three baggage claim area. (T. 78)

Richards was familiar with Petitioner's work accident. Petitioner was working by door 3A by the baggage claim. He testified that the area is well lit and that it was common for members of the public to be present even at 11 p.m. He testified that usually, arrivals stop around 11 p.m. or midnight. (T. 79) Richards believed Petitioner was hit with a water bottle. He did not speak with Petitioner because Petitioner is only Spanish speaking. (T. 80) He first arrived at the scene and met Petitioner at the end of his shift in the morning of March 8. He drove Petitioner to the clinic. (T. 81-82)

Richards testified that he was in constant contact with managers and supervisors in all three terminals each day and he believed the airport was a very safe place to work. When asked why he believed the airport was a safe place to work, Richards testified:

> …because we have passengers coming in and out, hundreds of thousands of people, and I literally haven't had any incidents in four and a half years of any, you know, violence as far as I know. (T. 83-84)

He further testified that he had incidents involving fights between employees, but Petitioner's incident was the only one he knew of involving a homeless person or passenger assaulting an employee. He testified that there are cameras everywhere except the restrooms, but all the surveillance is controlled and operated by the city Department of Aviation. (T. 85)

Under cross-examination, Richards denied that any other employee at the airport had been assaulted by a homeless person. He testified that he had had employees assault each other or argue in the past. He testified that he had heard from the airport's communications center, OCC, of incidents of a homeless person interacting with passengers in restrooms. He testified that there were homeless people who cleaned themselves in the restrooms and some slept in the stalls. (T. 86-88) He agreed that he had heard reports of complaints of disturbances between members of the general public and homeless people at the airport. He had heard complaints of people sleeping in the restrooms and going to the bathroom in the stairwells. He testified that he had heard of homeless people badgering members of the public because they think of the restroom as their home and got upset when someone tried to use the restroom. (T. 89) I find Bill Richards is an unbiased and credible witness and that he had more experience and knowledge than Petitioner of whether

or not there was a history of physical attacks or crime perpetrated by homeless people at the terminals. Richards unequivocally rebutted Petitioner's contention.

Conclusions

With respect to the subject incident, Petitioner testified that there is security in the baggage claim area. (T. 48) Police officers come through at least once a night. (T. 51) There was no credible evidence in the record presented by Petitioner via police statistics or objective data kept by the airport, the Department of Aviation, CPD or local law enforcement in the surrounding areas, that established that there is a higher risk of criminal assault activity in the airport, much less by homeless people at the airport, at the O'Hare baggage terminals or in the area in or surrounding O'Hare, than to which the general public is exposed.

The *95th Street Produce Market* Court is insightful as to the Petitioner's burden of proof in this context:

> We note that in those cases in which this court has found that the employee was subject to the risk of injury from a neutral risk to a greater degree than the general public, the employee has introduced evidence to support that conclusion. For instance, in *Illinois Institute of Technology Research Institute*, the employee was killed when he was struck by a stray bullet while inside his place of employment, 20 feet behind floor-to-ceiling glass windows. *Illinois Institute of Technology Research Institute*, 314 Ill. App. 3d at 152, 165. The employee introduced the testimony of a detective with knowledge of area crime rates who testified to recent increases in criminal activity in the area surrounding the job site. *Id.* There was also testimony that bullets had previously struck and entered the building where the employee worked. *Id.* Similarly, in *Restaurant Development Group*, the employee was injured by a stray bullet while standing next to the bar in the restaurant where he worked. *Restaurant Development Group*, 392 Ill. App. 3d at 417. The employee presented evidence of a police sergeant who was familiar with crime in the area where the restaurant was located. The police sergeant testified that the district in which the restaurant was located had a large collection of multiple gangs and that violent crimes increased in the area during the hours in which the restaurant was open. *Restaurant Development Group*, 392 Ill. App. 3d at 418-19, 421. In contrast to *Illinois Research Institute* and *Restaurant Development Group*, claimant in this case failed to introduce any testimony to establish that she was subject to the risk of injury from a neutral risk to a greater degree than the general public. *95th St. Produce Mkt. v. Ill. Workers' Comp. Comm'n*, 2013 IL App (1st) 122348WC-U, P20.

Similarly in this case, Petitioner failed to introduce any testimony to establish that he was subject to the risk of injury from a neutral risk to a greater degree than the general public. Respondent's witness Bill Richards, who is no longer employed by Respondent, credibly rebutted the Petitioner's theory that there is a higher risk of a violent crime to the employees of Respondent by the homeless people that frequent O'Hare airport to get out of the cold in the winter. To make such determination, the Petitioner bears the burden of proving his case with reliable evidence or

testimony, not inference and innuendo.

In this case Petitioner could not even identify the perpetrator. His testimony is unreliable. Notwithstanding his credibility issues, Petitioner failed to establish there is a relationship between the population of homeless people and an increased risk of violent crime at LL, terminal three at O'Hare or even at the airport at large. There is security and a local area police presence that come routinely to move the homeless people out after they have slept and warmed up for a while. There is no indication that the people who are homeless are moved out on a daily basis for any reason other than keeping them out of the airport while it is bustling with travelers who are claiming their luggage. Even, arguendo, with the testimony that the Petitioner found drug paraphernalia in the bathrooms, there is no evidence that these people who are homeless are the alleged drug users or that they committed any violent crimes or assaults upon the employees at O'Hare to a degree greater than the general public is exposed. Absent that finding, Petitioner failed to sustain his burden of proving that he was in an area of crime risk greater than that to which the general public is exposed or that he was subject to the risk of injury from a neutral risk to a greater degree than the general public. For all those reasons, I respectfully dissent from the majority opinion.

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	22WC011570
Case Name	Luis Alfredo Sustaita v. United Maintenance Company
Consolidated Cases	
Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	24
Decision Issued By	Charles Watts, Arbitrator

Petitioner Attorney	Julio Costa
Respondent Attorney	Glenn Blackmon

DATE FILED: 3/10/2023

THE INTEREST RATE FOR THE WEEK OF MARCH 7, 2023 4.97%

/s/Charles Watts, Arbitrator

Signature

STATE OF ILLINOIS)
)SS.
COUNTY OF COOK)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

Luis Alfredo Sustaita
Employee/Petitioner

v.

United Maintenance Company
Employer/Respondent

Case # 22 WC 11570

Consolidated cases:

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **CHARLES WATTS**, Arbitrator of the Commission, in the city of CHICAGO, on **1/24/23**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On August 23, 2019, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned **$4,838.40**; the average weekly wage was **$640.00**.

On the date of accident, Petitioner was **63** years of age, **Married** with **0** dependent children.

Petitioner ***has not*** received all reasonable and necessary medical services.

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

Respondent shall be given a credit of $N/A for TTD, $ for TPD, $N/A for maintenance, and $N/A for other benefits, for a total credit of $N/A.

Respondent is entitled to a credit of $N/A under Section 8(j) of the Act.

ORDER

Respondent shall pay to Petitioner TTD benefits from August 7, 2022 through December 30, 2022, a period of 20-6/7 weeks, and TPD benefits from December 31, 2022, through the date of hearing on January 24, 2023, a period of 3-4/7 weeks after subtracting Grubhub earnings in PX6.

Respondent shall pay directly to Petitioner all outstanding and related medical bills as outlined in Section J of Arbitrator's Conclusions of Law and pursuant to Sections 8(a) and 8.2 of the Act.

Respondent shall authorize and pay for right shoulder surgery and any post-operative medical treatment prescribed by Dr. Verma for Petitioner's right shoulder condition of ill-being.

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

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

Signature of Arbitrator **MARCH 10, 2023**

FINDINGS OF FACT

1. Injury & Medical Treatment

Petitioner, Luis Lozada Sustaita, a 63-year-old man, was employed by United Maintenance Co, Inc. (Respondent) as a custodian at O'Hare Airport and suffered a work accident on March 7, 2022, injuring his right shoulder and neck after being attacked by a homeless man. (Transcript, "TX", 6-10). Afterwards, on March 8, 2022, Petitioner presented to Physician Immediate Care (PIC) in Norridge with complaints of pain of the right scapular region. (Petitioner's Exhibit 1, "PX1"). After an x-ray, he was diagnosed with an unspecified sprain of the right shoulder joint and a sprain of ligaments of the cervical spine. (*Id*.). On March 15, 2022, he was recommended for an MRI given his persistent complaints. (*Id*.). MRI of the right shoulder performed on March 23, 2022, revealed moderate tendinopathy of the supraspinatus with partial thickness tear, mild distal infraspinatus tendinopathy, potential underlying rotator cuff pathology, arthropathy of the acromioclavicular joint, and moderate tendinopathy of the proximal head of the biceps tendon (*Id.*). On March 25, 2022, Petitioner was given a subacromial injection. (*Id*.). Petitioner was placed on light duty work restrictions and began physical therapy. (*Id*.). On April 25, 2022, due to continued pain, Bianca Lopez, PA at PIC recommended a transfer of care to orthopedics for final determination. (*Id*.).

On April 29, 2022, Petitioner presented to Midwest Orthopaedics at Rush (MOR), where he was evaluated by orthopedic surgeon, Dr. Nikhil Verma. (Petitioner's Exhibit 2, "PX2"). Dr. Verma prescribed medication and physical therapy and placed Petitioner on light duty work with restrictions. (*Id*.). On May 5, 2022, Petitioner followed up with Dr. Kern Singh, another orthopedic surgeon at MOR, and underwent an MRI of the cervical spine. (*Id*.). The MRI results indicated a cervical muscular strain. (*Id*.). On July 15, 2022, Petitioner underwent another cortisone injection and was kept on work restrictions with physical therapy. (*Id*.). On August 26, 2022, Dr. Verma

reviewed the MRI which in his opinion, revealed significant subacromial bursitis and partial rotator cuff tear. (*Id*.). At this time, Petitioner was recommended for surgery, consisting of a right shoulder arthroscopic subacromial decompression, evaluation of the rotator cuff with possible rotator cuff repair, distal clavicle resection and possible biceps tenodesis. (*Id*.). At the same visit, he was placed off work pending surgery. (*Id*.). Petitioner was scheduled to receive surgery on October 13, 2022, but was postponed due to lack of insurance authorization. (*Id*.). On December 27, 2022, Dr. Verma reinforced his recommendation for surgical intervention and believes all "conservative measures" have been exhausted to this point. (*Id*.).

Petitioner completed nineteen sessions of physical therapy at ATI between the dates of May 3, 2022, and final discharge of July 14, 2022. (Petitioner's Exhibit 3, "PX3"). Termination of physical therapy was due to a denial of additional visits by insurance. (*Id*.). At the time of discharge, Petitioner was still experiencing "difficulty and pain with overhead reaching" and "significant pain" in anterior and posterior shoulder. (*Id*.).

On August 24, 2022, Petitioner was evaluated and examined by an Independent Medical Examiner, Dr. Hythem Shadid. (Respondent's Exhibit 1, "RX1"). Petitioner testified that he was examined by Dr. Shadid for fifteen minutes. (TX, 36-37). Dr. Shadid reviewed Petitioner's medical history, including reports and examinations from Physicians Immediate Care, Midwest Orthopaedics at Rush, and ATI physical therapy. (*Id*.). Dr. Shadid also conducted a physical examination of Petitioner (RX1). Dr. Shadid indicated that Petitioner suffered a blunt trauma over the scapula which caused a self-limited contusion, should have resolved within 2-3 weeks, and does not cause rotator cuff or other shoulder joint pathology. (RX1). Dr. Shadid also questioned Petitioner's reliability, citing two different mechanisms of injury between what Petitioner conveyed to him and what the accident report stated.

2. Petitioner's Testimony

At trial, Petitioner candidly testified that he had previously injured his right shoulder in October of 2018 while driving a pallet jack that fell into a hole. (TX, 25). He stated that he completed two months of treatment including physical therapy. (TX, 27). Petitioner testified to another accident when a box fell and hit his shoulder in January of 2019, and he said received no treatment for this injury. (TX, 27-29). Since these accidents, Petitioner explained that he has not had any other issues with his right shoulder and worked full duty leading up to his accident on March 7, 2022. (TX, 29).

Petitioner testified that he is no longer employed with Respondent as of August 2022. (TX, 6, 37). Petitioner worked as a custodian in Terminal Three at O'Hare Airport on that date, working the third shift from 10:30PM to 6:30AM. (TX, 7). In his testimony, he stated that his main duties are to clean the airport areas. (*Id.*).

When asked about the circumstances surrounding his work-related attack, Petitioner stated that he was cleaning the floor around a person lying on the ground when he was suddenly attacked and felt a blow to his right shoulder area (TX, 8). He testified that he did not know the individual that struck him, but that he believed that he was a homeless person (*Id.*). At the time he was struck, he was working inside the airport near baggage claim in terminal three (TX, 8-9). He stated that the homeless person struck him with a glass bottle that was about a liter in size and was partially filled with a clear liquid (TX, 9-10). He indicated with his hand that the impact was at the posterior side of his right shoulder scapular area (TX, 10-11). He further testified that after the homeless person attempted to hit him a second time and missed, and the homeless man fled the area afterwards (TX, 11-13). He then reported the incident to his supervisor (TX, 16). The police were called following the incident and arrived approximately fifteen minutes later (TX, 18).

Petitioner stated that, at about 11:00PM, when the incident occurred, there were people in that area to retrieve their luggage, as well as other individuals lying down by the heaters (TX, 13). Petitioner believed the people lying by the heaters were homeless (TX, 15-16). Further, he consistently sees, on average, 20 homeless people per shift in the terminal near baggage claim sleeping around the heaters (TX, 15-16, 19, 22). Petitioner stated that, typically, police would come through the terminal once in the morning to remove these homeless people out of the terminal, but the homeless people would generally return later (TX, 24). Petitioner also claims that he would generally find and be confronted with homeless people in the bathroom, where he suspected they were using drugs based on drug paraphernalia that he would have to clean up (TX, 24-25).

On cross-examination, Petitioner confirmed that he worked for Respondent from January 2022 until August 2022, with approximately two weeks off for his work accident (TX, 42-43). Petitioner confirmed that people were still coming in from flights to get their baggage at that time of night (TX, 45). Petitioner further stated he continued to work after the incident (TX, 47). He testified that, following his shift, William Richards directed him to Physicians Immediate Care (TX, 48). Petitioner again candidly testified to his prior work accidents involving his right shoulder (TX 52-55). He also affirmed that he was evaluated by the Independent Medical Examiner, Dr. Shahid (TX, 59).

Petitioner expressed his desire to proceed with the surgery because he would like to "continue with [his] normal life" (TX, 36). Petitioner testified that before the accident he "was leading [his] normal life" and he could lift his arms and other objects (*Id.*). He conveyed that now, after the accident, he has a problem "changing clothes" and he can no longer work as he used to (*Id.*). He is only able to lift five pounds now (*Id.*). Since the injury and subsequent loss of his job with Respondent, he has been working for Grubhub, delivering food, as this job conforms to his doctor's recommendations for work restrictions (TX, 40-41).

3. Testimony of William Richards

At trial, Respondent called William Richards, who, at the time of the incident, was the General Manager for United Maintenance at O'Hare Airport (TX, 67-68). Mr. Richards was in that position for approximately four and a half years at the time of the incident (TX, 68). His responsibilities in that role were to operate and manage the contract for the cleaning and maintenance of O'Hare Airport in terminals one, two, and three (TX, 69). He testified that he is familiar with the process for reporting, investigating, and documenting work injuries among his staff (TX, 70). Additionally, Mr. Richards testified that under this process, if there is an injury, the company takes the injured worker to the clinic for evaluation and the clinic sends that information to their headquarters which determines the proper course of action for returning to work (*Id.*). Mr. Richards testified that as part of his responsibilities, he is made aware of workplace injuries as well as if those injuries involve a third-party (TX, 70-71).

On cross-examination, Mr. Richards testified that he "had people saying that they have been assaulted by a homeless person" (TX, 87). He claimed that he has heard reports of disturbances or issues with homeless people in general in the airport terminals (TX, 88-89). Further, he testified to being aware of reports of homeless people badgering members of the general public in the terminals (TX, 89). He also testified that he personally has witnessed homeless people in the terminal near baggage claim (TX, 92). Mr. Richards, in his estimation, states that he believes that there are more homeless people present in the terminal during the wintertime, where they can find a place to sleep and be warm, than in the summertime (TX, 93).

Mr. Richards testified that flights begin to cease between 9:00PM and midnight, depending on the day (TX, 90). He states that there is less pedestrian traffic at night than there is during the day (*Id.*). He believes that the pedestrian traffic slows down around 9:00PM or 9:30PM because there are generally less flights coming in at that time of night (*Id.*). He testified that the baggage

claim is in the lower lobby on the unsecured side of terminal three (TX, 90-91). He also testified that this area is open to the general public, but that he typically saw passengers or people that were there to meet passengers in that area at that time (*Id.*). When asked about the people that had business being in the baggage claim at night, Mr. Richards testified that typically only passengers and people meeting passengers had a reason to be in that area (TX, 91-92). He additionally reports to seeing homeless people in that same area at that time (TX, 92-93). Mr. Richards explicitly acknowledged the homeless people present in baggage claim generally had no business being there (*Id.*).

CONCLUSIONS OF LAW

The Arbitrator adopts the Statement of Facts in support of the Conclusions of Law.

Section 1(b)3(d) of the Act provides that, in order to obtain compensation under the Act, the employee bears the burden of showing, by a preponderance of the evidence, that he or she has sustained accidental injuries arising out of and in the course of the employment. 820 ILCS 305/1(b)3(d).

To obtain compensation under the act, Petitioner has the burden of proving, by a preponderance of the evidence, all of the elements of her claim (O'Dette v. Industrial Commission, 79 Ill.2d 249, 253 (1980) including that the accidental injury both arose out of and occurred in the course of his employment (Horvath v. Industrial Commission, 96 Ill.2d. 349 (1983)) and that there is some causal relationship between the employment and her injury. C*aterpillar Tractor Co. v. Industrial Commission*, I29 Ill. 2d 52, 63 (1998). Decisions of an Arbitrator shall be based exclusively on the evidence in the record of the proceeding and material that has been officially noticed. 820 ILCS 305/1.1(e).

Credibility is the quality of a witness which renders her evidence worthy of belief. The Arbitrator, whose province it is to evaluate witness credibility, evaluates the demeanor of the

witness and any external inconsistencies with her testimony. Where a claimant's testimony is inconsistent with her actual behavior and conduct, the Commission has held that an award cannot stand. *McDonald v. Industrial Commission*, 39 Ill. 2d 396 (1968); *Swift v. Industrial Commission*, 52 Ill. 2d 490 (1972). While it is true that an employee's uncorroborated testimony will not bar a recovery under the Act, it does not mean that the employee's testimony will always support an award of benefits when considering all the testimony and circumstances shown by the totality of the evidence. *Caterpillar Tractor Co. v. Industrial Commission*, 83 Ill. 2d 213 (1980). The mere existence of testimony does not require its acceptance. *Smith v. Industrial Commission*, 98 Ill.2d 20, 455 N.E.2d 86 (1983). To argue to the contrary would require that an award be entered or affirmed whenever a claimant testified to an injury no matter how much her testimony might be contradicted by the evidence, or how evidence it might be that her story is a fabricated afterthought. *U.S. Steel v. Industrial Commission*, 44 Ill2d 207, 214, 254 N.E.2d 522 (1969); see also *Hansel & Gretel Day Care Center v. Industrial Commission*, 215 Ill. App. 3d 284, 574 N.E.2d 1244 (1991). The burden of proof is on a claimant to establish the elements of his right to compensation, and unless the evidence considered in its entirety supports a finding that the injury resulted from a cause connected with the employment there is no right to recover. *Revere Paint & Varnish Corp. v. Industrial Commission*, 41 Ill.2d. 59 (1968). Preponderance of the evidence means greater weight of the evidence in merit and worth that which has more evidence for it than against it. *Spankroy v. Alesky*, 45 Ill. App.3d 432 (1st Dist. 1977).

In the case at hand, the Arbitrator observed Petitioner during the hearing and finds him to be a credible witness. Petitioner testified in open hearing before the Arbitrator who viewed his demeanor under direct examination and under cross-examination. Petitioner's manner of speech, body language, and flow of answers to questions, when added together, showed sincerity.

Petitioner was well-mannered, composed, spoke clearly, and made normal eye contact with the Arbitrator.

The credibility of other witnesses is discussed below.

(C) Did an accident occur that arose out of and in the course of Petitioner's employment with Respondent on March 7, 2022?

The Arbitrator finds that Petitioner sustained a compensable, work-related accident on March 7, 2022. It is well established that "to obtain compensation under the [Workers' Compensation] Act, a claimant bears the burden of showing, by a preponderance of the evidence, that he has suffered a disabling injury which arose out of and in the course of his employment." *Sisbro, Inc. v. Industrial Commission*, 207 Ill. 2d 193, 203 (2003). 'Arising out of' one's employment requires an injury's origin to be in some risk connected with, or incidental to, the employment so as to create a causal connection between the employment and the accidental injury." *Homerding v. Industrial Commission*, 327 Ill. App. 3d 1050, 1054 (2002). A risk is incidental to the employment when it belongs to or is connected with what the employee has to do in fulfilling his or her job duties. *Orsini v. Industrial Comm'n*, 117 Ill. 2d 38, 44, 109 (1987). To determine whether a claimant's injury arose out of his or her employment, we must categorize the risks to which the claimant was exposed. *Dukich v. Illinois Workers' Compensation Comm'n*, 2017 IL App (2d) 160351WC, ¶ 31. The three categories of risks recognized by the case law are "(1) risks distinctly associated with the employment; (2) risks personal to the employee; and (3) neutral risks which have no particular employment or personal characteristics." *Illinois Institute of Technology Research Institute v. Industrial Comm'n*, 314 Ill. App. 3d 149, 162, (2000). The first step in risk analysis is to determine whether the claimant's injuries arose out of an employment-related risk—a risk distinctly associated with the claimant's employment. *Mytnik v. Illinois Workers' Compensation Comm'n*, 2016 IL App (1st) 152116WC, ¶ 38. A risk is distinctly

associated with an employee's employment if, at the time of the occurrence, the employee was performing (1) acts he or she was instructed to perform by the employer, (2) acts that he or she had a common-law or statutory duty to perform, or (3) acts that the employee might reasonably be expected to perform incident to his or her assigned duties. *Caterpillar Tractor Co. v. Industrial Comm'n*, 129 Ill. 2d 58, 133 (1989). "Injuries resulting from a neutral risk generally do not arise out of the employment and are compensable under the Act only where the employee was exposed to the risk to a greater degree than the general public." *Springfield Urban League v. Illinois Workers' Compensation Comm'n*, 2013 IL App (4th) 120219WC, ¶27. "Such an increased risk may be either qualitative, such as some aspect of the employment which contributes to the risk, or quantitative, such as when the employee is exposed to a common risk more frequently than the general public." *Metropolitan Water Reclamation District of Greater Chicago v. Illinois Workers' Compensation Comm'n*, 407 Ill. App. 3d 1010, 1014 (2011).

The Arbitrator finds that Petitioner's right shoulder injury arose out of an employment-related risk because the evidence overwhelmingly establishes that at the time of the occurrence, he was attacked performing his nighttime custodial services in the baggage claim department. The area where Petitioner was assigned to work on March 7, 2022, specifically the baggage claim area inside the airport in terminal 3, created an enhanced risk of assault given the homeless population that occupied that area at night. The baggage claim area, while open to all members of the public in theory, is generally limited to either passengers picking up their luggage or persons meeting passengers there at nighttime; excluding any employees, police, or other individuals required to be there for work-related purposes. In fact, Respondent's own witness, Bill Richards, confirmed that the only individuals that had any "business" being in the baggage claim area at night were the passengers grabbing their luggage or persons meeting the passengers. The homeless people in

baggage claim, in his opinion, did not have a reason to be there other than for sleep and/or staying warm. (TX, 91-93).

Respondent, through its witness Bill Richards, wants this Arbitrator to believe that O'Hare airport, at least in the context of workplace safety and whether an increased risk exists, is somehow "very safe" given the lack of any incidents between Respondent's *employees* and any third-party individuals during Mr. Richard's 4-1/2-year tenure with Respondent. The Arbitrator is not persuaded by this skewed metric. For starters, the Arbitrator takes judicial notice of the overwhelming amount of current media coverage documenting the homelessness problem at O'Hare airport, prompting Mayor Lori Lightfoot to make a public statement to address the growing safety concerns, stating: "We absolutely, fundamentally cannot have people sleeping in our airports who are homeless. That is unacceptable. We are going to continue, within the bounds of the law, to do what is necessary to provide those folks with support but elsewhere. They can't be in our airports." (https://www.chicagotribune.com/news/breaking/ct-ohare-homelessness-social-media-20230216-6hv6hltyencinpb4ljwklqpzle-story.html). Additionally, the Chicago Department of Aviation has gone on record saying:

> *"Mayor Lightfoot made clear Thursday that all City of Chicago agencies must continue to work together and provide services to unsheltered individuals at Chicago's airports. While it is not illegal to be homeless in this city, it is trespassing to be at O'Hare or Midway without any airport business. The CDA remains committed to providing financial and logistical support to its partners at the Department of Family Support Services (DFSS), the Chicago Police Department (CPD) and the Chicago Fire Department (CFD) to ensure O'Hare and Midway remain safe and secure for our passengers, while also doing what we can to support individuals experiencing homelessness who make their way to Chicago's airports."*

(CBS News https://www.cbsnews.com/chicago/news/mayor-lightfoot-homeless-people-ohare/). The Arbitrator relies on these sources solely for the purpose of taking judicial notice of the public statements made therein by the public officials. These public statements made by the Mayor and Chicago Department of Aviation (CDA), the city agency tasked with administering all aspects of

O'Hare airport, strikes the very heart of any employment or neutral risk argument Respondent may aim to assert. Bill Richards testified that the Chicago Department of Aviation (CDA) was responsible for the security at O'Hare airport (TX, 75). If the CDA has gone on record saying that homeless people without any airport business are legally trespassing, then any accidents caused by confrontations with homeless individuals trespassing would naturally be the result of an employment related risk. Specifically, it is undisputed that the homeless individual that attacked Petitioner was sleeping by the indoor heaters prior to attacking him and ran away after; there was no evidence submitted that this individual was sleeping in baggage claim for any "airport business." But for the act of having to clean around this homeless individual, in furtherance of his job duties, Petitioner likely wouldn't have been attacked. Both Petitioner and Respondent's witness, Bill Richards, testified about reported encounters with homeless individuals that further illustrate the unsettling environment of nighttime employment at O'Hare, some of which involve drug paraphernalia, bathroom "territorial" disputes, complaints of homeless people urinating and "crapping" in the stairwell, and general badgering instigated by homeless people. (TX; 24-25, 88-89). The Arbitrator finds that the increased exposure to homeless individuals in the airport, whose presence the CDA has publicly condemned without any legitimate airport business, sufficiently elevates any potential confrontations or assaults to a level of risk that is distinctly associated with that type of employment.

The Arbitrator finds this case analogous to *Holthaus v. Industrial Comm'n,* 127 Ill. App. 3d 732 (1984). In *Holthaus v. Industrial Comm'n*, the claimant, a swimming pool manager at a public park, was attacked and shot by an escaped convict who was looking for a car to steal. At the time of the attack, 6 p.m., the claimant was working alone at the pool and her car was the only vehicle in the pool parking lot. The convict approached the claimant and asked whether the car was hers. When the claimant said it was, the convict attacked her. The Appellate Court reversed

the Commission's decision that the claimant's injuries were not compensable because they did not arise out of her employment. The Court concluded that the site at which the claimant was required to work created an *enhanced risk* of criminal assault. (Emphasis added). The court noted that the pool area was isolated to a significant extent from the rest of the community at the time of year, mid-spring, when the assault took place. As the pool was closed, the public had no occasion to visit the pool area, as shown by the fact that the claimant's car was the only one in the parking lot. In other words, the general public was neither required, *nor had reason to be* where the claimant was. (Emphasis added). These circumstances, however, made the location particularly attractive to an escaped convict looking to acquire a getaway car. *Holthaus*, 127 Ill. App. 3d at 738. See also *Springfield School District No. 186 v. Industrial Comm'n,* 293 Ill. App. 3d 226 (1997) (finding security guard's risk of injury was higher than that of the general public when he was attacked in the course of carrying out his duties in the middle of the night in a location when and where the general public would not and should not be located).

Similarly in this case, during the winter months, the airport baggage claim area is a seemingly attractive place for the homeless to sleep and find warmth, much to the chagrin of Chicago's Mayor and the CDA. The O'Hare Terminal 3 baggage claim area is isolated from the general public in that only members with "airport business" have a legitimate reason for being there at 11pm; i.e. passengers picking up luggage, people meeting passengers, or airport employees. Bill Richards confirmed that there is much less "people traffic" at night, starting around 9-9:30PM, due to less flights coming in and no flights going out. (TX, 90). These circumstances undoubtedly increased the risk of a potential injury resulting from a confrontation between a homeless person and an employee working in the baggage claim area, particularly one tasked with having to mop around a homeless person sleeping on the floor.

Alternatively, even under a neutral risk analysis, the Arbitrator still finds Petitioner's right shoulder injury arose out of his employment given his increased exposure to homeless individuals to a greater degree than the general public. O'Hare Airport, specifically the baggage claim area in this case, is frequently occupied by homeless people at night as confirmed by the testimony of both Petitioner and Bill Richards. (TX, 19, 94). Petitioner testified he sees, on average, 20 homeless people per shift in the terminal near baggage claim sleeping around the heaters (TX, 15-16, 19, 22). This quantitative exposure aligns with the *Chicago, Illinois Community Encampment Report,* submitted into evidence by Petitioner and which confirms the increased presence of homeless persons in O'Hare Airport. (Petitioner's Exhibit 7 ("PX7"), *Chicago, Illinois Community Encampment Report,* US Department of Housing and Urban Development, Office of Police Development and Research (February 2020)). According to this report, the Haymarket O'Hare Outreach Program, which is funded by the Chicago Department of Aviation, often engage an average of twenty-five to thirty homeless people per day, a figure which increases during the winter months (PX7, 6). These engagements involve offering the homeless detoxification services, substance abuse treatment programs, and handoffs to other housing providers (PX7, 6-7). These types of services align with Petitioner's testimony that he has encountered homeless people drugging themselves in the airport. (TX, 24). Accordingly, Petitioner's risk of injury must be compared to that of the general public, as opposed to just other individuals at the airport, and the analysis is not changed by the fact that being attacked by a homeless person may also be the result a random act of violence, not distinctive to a particular employment or person. In fact, IL Courts have acknowledged "[i]t is not enough that the employment placed claimant in a particular place at a particular time. This is known as positional risk and Illinois has expressly and repeatedly rejected this doctrine." *Illinois Institute of Technology Research Institute v. Industrial Comm'n*, 314 Ill. App. 3d 149 (2000). Rather, an injury may be said to arise out of employment if the injury

occurred not just because of where the claimant was, at that particular time, "but was *coupled* with some [work condition/environment] factor that increased the risk" of injury. (Emphasis added) *Illinois Institute of Technology* 314 Ill. App 3d at 164. Here, Petitioner's risk of injury was more than merely positional; it was coupled with some factor of his employment condition (cleaning) or environment (airport area where many homeless people congregated) that increased the risk of injury (assault) above that of the general public. Clearly, the risks Petitioner was exposed to, including being attacked by one of the 20 homeless people he encountered each night he worked, by virtue of his cleaning duties are not the same types of risks that the general public is commonly exposed to.

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

The Arbitrator finds that Petitioner's right shoulder injury and current condition of ill-being is causally related to his March 7, 2022, work injury. In so finding, the Arbitrator relies on the "chain of events" analysis and the credibility of both Petitioner and his treating physicians over Respondent's IME expert, Dr. Shadid. Whether a causal relationship exists between a claimant's employment and his current condition of ill being is a question of fact to be resolved by the Commission, who is to judge the credibility of the witnesses and resolve any conflicting medical testimony. *Sisbro, Inc. Industrial Comm'n*, 207 Ill.2d 193, 206-07 (2003).

a. "Chain of events" analysis supports causation.

The Arbitrator finds that a causal connection is apparent under Martin's "chain of events" analysis frequently cited by the Commission and other reviewing courts. *Martin Young Enterprises, Inc. v. Industrial Comm'n*, 51 Ill.2d 149 (1972). A chain of events that demonstrates a previous condition of good health, an accident, and subsequent injury resulting in disability may

be sufficient evidence to prove a causal connection between the accident and the employee's injury. *International Harvester v. Industrial Com*., 93 Ill.2d 59, 63-64 (1982).

In this case, the Arbitrator finds Petitioner credibly established a condition of good health prior to his 3/7/22 accident. While Petitioner's prior accidents are not lost on the Arbitrator, a careful review of the prior records suggests that his prior accidents and resulting treatment were inconsequential to his current medical condition and outlook. Specifically, on 10/5/18, almost 3-1/2 years before his current accident, Petitioner injured his left shoulder and back while operating an electrical pallet that got stuck in a pothole. (Respondent Exhibit 2 (RX2)). Petitioner treated at Physicians Immediate Care and was diagnosed with right shoulder sprain, right wrist sprain, low back pain, and contusion of right hand. (*Id*.). He underwent a few sessions of physical therapy, was returned to work full duty on 10/10/18, and discharged at MMI on 10/29/18. (*Id*.). The very next day, Petitioner aggravated his right shoulder and low back pain lifting a bag at work. (*Id*.). He again underwent a few sessions of physical therapy, a right shoulder injection on 11/27/18, and was released from medical care at full duty MMI on 12/11/18 with no residual disability or impairment. (*Id*.). Finally, on 1/28/19, Petitioner was seen at PIC complaining of right shoulder pain after a box fell on him while unloading a truck. (*Id*.). He was given medication and released from care at his next appointment on 2/1/19, without needing any physical therapy or diagnostics. (*Id*.). Cumulatively, the Arbitrator finds Petitioner underwent minimal conservative treatment during a time spanning less than four months, was never referred out for MRI imaging or specialist evaluation and was discharged from medical care with full resolution of symptoms relative to his right shoulder. There was no evidence submitted at hearing that Petitioner saw a medical provider for his right shoulder from 2/1/19 up until his most recent injury on 3/7/22. At trial, Petitioner gave unrebutted testimony that he was symptom free at the time of his accident and had no pain in the right shoulder leading up to his 3/7/22 work injury. (TX, 55).

It is undisputed that Petitioner was performing his regular duties as a custodian at the time of his work injury. Following his injury, Petitioner credibly testified to an immediate onset of pain to his right shoulder, neck, and scapula, followed by treatment consisting of MRI testing, physical therapy, right shoulder injections, and ultimately recommended for right shoulder surgery. (PX1, PX2, PX3). Petitioner's unrebutted testimony and medical records clearly show that Petitioner's symptoms, particularly to his right shoulder, have been consistent, ongoing, and unabated since his work injury on 3/7/22. After his accident, Respondent sent Petitioner to Physicians Immediate Care (PIC), where he reported right shoulder and neck complaints (PX1). Petitioner's symptoms did not improve despite undergoing physical therapy and a right shoulder injection with PIC. Thereafter, Petitioner was recommended for orthopedic evaluation, and he presented to Drs. Verma and Singh at Midwest Orthopedics at Rush, with reports of right shoulder and neck pain following a work-related injury. (PX2). He again underwent physical therapy and a right shoulder injection with minimal improvement. (*Id*.). Once Petitioner exhausted all conservative measures to relieve his right shoulder pain, Dr. Verma recommended surgery in the form of a right shoulder arthroscopic subacromial decompression, possible rotator cuff repair, distal clavicle resection and possible biceps tenodesis. (*Id*.).

Reviewing Petitioner's medical history in its entirety, the Arbitrator finds Petitioner sustained a right shoulder injury on March 7, 2022, that resulted in a condition of ill-being that has not resolved despite extensive efforts at conservative management. Given Petitioner's minimal pre-existing issues several years before and his asymptomatic state at the time of his March 7, 2022, accident, the Arbitrator finds that a causal connection is apparent under a "chain of events" analysis.

b. Arbitrator places greater weight on the opinions of Drs. Verma and Singh than IME Dr. Shadid

The second and most critical factor the Arbitrator weighs in determining whether Petitioner's condition of ill-being is casually related to his March 7, 2022, accident is the credibility of the medical experts.

Here, the Arbitrator places greater weight on the opinions of Drs. Verma and Singh, than on the opinion of Respondent's IME expert, Dr. Shadid. Petitioner's testimony regarding his right shoulder injury is consistent with the histories noted in the contemporaneous medical records; specifically, that Petitioner was working full duty prior to his work injury on March 7, 2022, when he was assaulted and hit in the right shoulder/scapular area and since then, this right shoulder complaints have been consistent and uninterrupted.

The Arbitrator finds Dr. Verma's recommendation for right shoulder surgery to be credible based on Petitioner's treatment that yielded: (1) exhaustion of all conservative treatment, including several right shoulder injections, pain medication, and physical therapy; (2) physical exam findings revealing positive empty can test, positive Hawkins test, and positive Neer impingement test; (3) an MRI of the right shoulder indicating subacromial bursitis, partial thickness rotator cuff tear, and tendinitis; and (4) ongoing subjective complaints of right shoulder pain, particularly with overhead lifting. As it pertains to causation, both Drs. Singh and Verma found Petitioner's condition of ill-being causally related to his March 7, 2022, accident. Dr Singh's 5/5/22 quick report notes "Yes" when asked whether Petitioner's treatment is causally related his 3/7/22 work accident. Additionally, on June 17, 2022, Dr Verma indicates Petitioner continues to "have pain, weakness, and reduced range of motion in his right shoulder due to an accident at work on 3/7/22." (PX2). On July 15, 2022, Dr. Verma's assessment documents Petitioner is a "63-year-old male with right shoulder subacromial bursitis, rotator cuff tendinitis with possible partial thickness supraspinatus tear status post a work injury on March 7th [2022]." The Arbitrator finds that Petitioner's treating physicians, specifically Dr. Verma, incorporated a more thorough medical assessment as it relates

to diagnosis, causation, and need for future medical care over a much longer period than IME Dr. Shadid. While the Arbitrator acknowledges Dr. Verma did not review any of Petitioner's pre-existing medical records, neither did IME Dr. Shadid; therefore, the Arbitrator does not weigh this against either expert's credibility.

The Arbitrator does, however, afford less weight to the remainder of Dr. Shadid's opinion based on his conclusions regarding Petitioner's diagnosis, the recommendation for no further medical treatment, and maximum medical improvement. The Arbitrator finds that the existence of pre-existing "age-related" findings in the MRI, as opined by Dr. Shadid, is not fatal to causation recovery for an accidental injury and will not be denied so long as Petitioner can show that his employment was a causative factor to his condition of ill-being. *Corn Belt Energy Corp. v. Ill. Workers' Comp. Comm'm.*, 2016 IL App (3d) 150311WC, ¶ 28. The Arbitrator finds that given Petitioner's asymptomatic state at the time of injury, there is no doubt that his uncontested assault and trauma suffered to his right shoulder on March 7, 2022, was a causative factor to his ongoing symptomatic state and current need for surgery. Dr. Shadid concludes that Petitioner, at most, sustained a work-related scapula region contusion and should have been at MMI within 2-3 weeks of his accident. (RX1). This is inconsistent with the overwhelming amount of medical evidence from PIC, Respondent's own occupational health facility, Midwest Orthopedics at Rush, and ATI; all of which objectively tested and monitored Petitioner's symptoms and pain far beyond "2-3 weeks." Finally, Dr. Shadid inexplicably questions Petitioner's reliability, citing: 1) marked guarding on physical exam; and 2) inconsistencies between two different mechanisms of injury. The Arbitrator finds it curious that Petitioner only displays "guarding" for IME Dr. Shadid on the provocative tests on physical exam that he coincidentally happens to test positive for under physical examination by Dr. Verma. In fact, there is no evidence of marked guarding, symptoms magnification, or malingering in any of the medical records from PIC or from Midwest

Orthopedics at Rush. As for the "inconsistencies" in the mechanism of injury, Dr. Shadid is simply wrong. He presumes Petitioner was either struck by an object or that the object was thrown at him without considering that both can be true as testified to by Petitioner and confirmed in the record.

Reviewing the totality of the evidence, the Arbitrator finds that Petitioner sustained a work-related assault resulting in right shoulder and neck injuries, which caused a right shoulder condition of ill-being that has not abated through conservative treatment. The Arbitrator finds Petitioner's neck condition is resolved and therefore requires no further treatment. The Arbitrator further finds the opinion of Dr. Verma to be more credible than Respondent's IME expert, Dr. Shadid. It is for the reasons above, the Arbitrator finds Petitioner has met his burden of proving by a preponderance of the evidence that his condition of ill-being is causally related to his March 7, 2022, work 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?

At trial, Petitioner introduced the following unpaid medical bills into evidence:

ATI Physical Therapy	$6,337.66
Midwest Orthopedics at Rush	$2,140.48
Total Bills:	**$8,478.14**

Respondent denied liability for these medical charges based on their accident dispute and pursuant to their IME opinion.

The Arbitrator finds the medical treatment ordered and rendered by all the above-listed providers to be both reasonable and necessary and that Respondent has not paid all appropriate charges for Petitioner's reasonable and necessary medical services. Irrespective of accident and causation, the Arbitrator notes Respondent failed to obtain a Utilization Review to challenge the reasonableness and necessity of all medical services rendered and recommended as of the date of trial. As such, the Arbitrator finds that Respondent lacked a legal basis to challenge the

reasonableness and necessity of medical services rendered. More importantly though, because the Arbitrator finds Petitioner's current condition of ill-being causally related to his work injury, the Arbitrator finds Respondent liable for all outstanding and related medical charges.

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

The Arbitrator finds that Petitioner is entitled to prospective medical care. Petitioner has not reached MMI as Dr. Verma has recommended right shoulder surgery that Petitioner has yet to undergo given lack of authorization.

As of the date of the trial, Petitioner has undergone extensive conservative treatment and exhausted all conservative efforts to alleviate his right shoulder symptoms, including physical therapy and injections. As Petitioner suffered a compensable work accident and his present condition is causally related to his work accident, the Arbitrator finds that Petitioner is entitled, and Respondent is liable to approve and pay for the right shoulder surgery and any post-operative treatment recommended by Dr. Verma.

(L) Is Petitioner entitled to TTD & TPD benefits?

The Arbitrator finds Petitioner is entitled to TTD from August 7, 2022, through December 30, 2022, and TPD benefits from December 31, 2022, through the date of hearing on January 24, 2023. The dispositive inquiry in deciding whether a Petitioner is entitled to TTD is whether his condition has stabilized, i.e. whether he has reached maximum medical improvement. *Interstate Scaffolding, Inc. Illinois Workers' Comp. Comm'm*, 236 Ill.2d 132, 142 (2010). When an injured Petitioner demonstrates that he continues to be temporarily totally disabled as a result of his work-related injury, he is entitled to TTD benefits. (*Id.).* at 149. Furthermore, a temporary partial disability benefit is awarded when an employee is not yet at MMI and works on a "full-time basis and earns less than he or she would be earning if employed in the full capacity of the job." 820 ILCS 305/8(a).

In this case, Petitioner stopped working on August 6, 2022, after Respondent's contract with the airport was not renewed. Afterwards, Respondent denied liability for TTD benefits pursuant to their accident dispute and the IME opinion of Dr. Shadid, who opined Petitioner was at MMI within 2-3 weeks of his accident and required no further medical care. Since Petitioner stopped working for Respondent, Petitioner has either been on light duty restrictions or completely off work. At the end of December, Petitioner testified he started doing delivery work for Grubhub. As the Arbitrator gives more weight to the opinions of Petitioner's treating physicians and finds Petitioner's right shoulder condition is causally related to his work accident, the Arbitrator finds Petitioner is entitled to TTD benefits from August 7, 2022 through December 30, 2022, a period of 20-6/7 weeks, and TPD benefits from December 31, 2022, the start of his employment with Grubhub, through the date of hearing on January 24, 2023, a period of 3-4/7 weeks.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	10WC044607
Case Name	Krzystof Szorc v. State of Illinois - Illinois Department of Corrections
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	24IWCC0148
Number of Pages of Decision	18
Decision Issued By	Kathryn Doerries, Commissioner

Petitioner Attorney	Mark Maritote
Respondent Attorney	Sidney Gui

DATE FILED: 4/1/2024

/s/Kathryn Doerries, Commissioner

Signature

24IWCC0148

STATE OF ILLINOIS)
) SS.
COUNTY OF WILL)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Krzystof Szorc,

Petitioner,

vs. NO: 10 WC 044607

State of Illinois – Department of Corrections

Respondent.

DECISION AND OPINION ON REVIEW

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

The Commission corrects a scrivener's error in the Arbitrator's decision, in the Findings of Fact section, in the fifth paragraph of page 1, first and sixth lines, and strikes the year "2020" and replaces it with "2010."

All else is affirmed and adopted.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent pay to Petitioner permanent partial disability benefits of $505.55/week for a period of 116.90 weeks, as provided in Section 8(e)(11) of the Act, for the reason that the injuries sustained caused the 70% loss of use of the right foot.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay reasonable and necessary medical services, pursuant to the medical fee schedule regarding Petitioner's right ankle and CRPS conditions as provided in Sections 8(a) and 8.2 of the Act.

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

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

Pursuant to §19(f)(1) of the Act, claims against the State of Illinois are not subject to judicial review.

April 1, 2024
O 3/26/24
KAD/swj
42

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

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

/s/*Amylee H. Simonovich*
Amylee H. Simonovich

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	10WC044607
Case Name	Krzystof Szorc v. State of Illinois – Illinois Department of Corrections
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	15
Decision Issued By	Roma Dalal, Arbitrator

Petitioner Attorney	Mark Maritote
Respondent Attorney	Sidney Gui

DATE FILED: 4/11/2023

THE INTEREST RATE FOR THE WEEK OF APRIL 11, 2023 4.79%

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

April 11, 2023

/s/ Michele Kowalski

Michele Kowalski, Secretary
Illinois Workers' Compensation Commission

/s/ Roma Dalal, Arbitrator

Signature

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Krzysztof Szorc Case # **10WC44607**
Employee/Petitioner

v.

Illinois Department of Corrections
Employer/Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Roma Dalal**, Arbitrator of the Commission, in the city of **JOLIET**, on **February 7, 2023**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On **8/12/2010**, Respondent ***was*** operating under and subject to the provisions of the Act.

On these dates, an employee-employer relationship ***did*** exist between Petitioner and Respondent.

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

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

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

In the year preceding the first injury, Petitioner earned $**43,814.00**; the average weekly wage was $**842.58.**

On the first date of accident, Petitioner was 29 years of age, ***single*** with **0** dependent children.

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

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

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

Respondent is entitled to a credit of for all reasonably related group medical under Section 8(j).

ORDER

The Arbitrator finds Petitioner established causal connection between his current condition of ill-being and the August 12, 2010 accident in regards to his right ankle and CRPS.

Respondent shall pay reasonable and necessary medical services, pursuant to the medical fee schedule regarding Petitioner's right ankle and CRPS conditions as provided in Sections 8(a) and 8.2 of the Act. Respondent shall be given a credit for any payments made by the State through group insurance pursuant to section 8(j) of the Act. Respondent shall hold Petitioner harmless from same.

Respondent shall pay Petitioner permanent partial disability benefits of $505.55/week for 116.90 weeks, because the injuries sustained caused the 70% loss of use of the right foot, as provided in Section 8(e)(11) of the Act.

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

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

Signature of Arbitrator

April 11, 2023

ICArbDec19(b)

STATE OF ILLINOIS)
) SS
COUNTY OF WILL)

ILLINOIS WORKERS' COMPENSATION COMMISSION

Kzysztof Szorc,	)	
	)	
Petitioner,	)	
	)	
v.	)	
	)	**Case No. 10 WC 44607**
State of Illinois – Dept. of Corrections	)	
	)	
	)	
Respondent.	)	

FINDINGS OF FACT

This matter proceeded to hearing on February 7, 2023 in Joliet, Illinois before Arbitrator Roma Dalal on Petitioner's Request for Hearing. Issues in dispute include causation, disputed medical bills and nature and extent. (Arb. Ex.1).

Kzysztof Szorc, (hereinafter referred to as the "Petitioner") was employed by the Illinois Department of Corrections as a correctional officer at Statesville Correctional Center (hereinafter referred to as the "Respondent"). Petitioner testified his job duties were maintaining safety and law and order. Specifically, he supervised "problem inmates" and was on the tactical team which arose a few times a month.

On August 12, 2010, Petitioner was working the 3-11 pm shift. As he was walking down the stairs, he tripped over an extension cord causing him to fall down the stairs. He estimated falling down three to four feet which was maybe three to four steps. Petitioner testified he felt his right foot swell up immediately and notified his supervisor. Petitioner was then sent to Alexian Brothers.

On August 12, 2010, Petitioner presented to Alexian Brothers Medical Center ER. Petitioner complained of right ankle pain from a workplace injury. Petitioner had swelling and redness in his right ankle. Petitioner underwent an x-ray of the right ankle which showed no evidence of fracture. Petitioner was discharged home with pain medication and an air cast. (PX7, p.5-9).

Petitioner followed up on August 14, 2020 at Alexian Brothers Medical Group. Petitioner was a 29-year-old male who worked as a Corrections Officer. He noted he fell downstairs at work. Petitioner was diagnosed with a right ankle sprain and was to keep the air cast on, ice, and elevate. Petitioner was provided medications and restrictions of sitting only work. He was to use crutches as needed. (PX1, p.3-4). In an August 20, 2010 follow up, Petitioner was to continue with medication, ice, elevate and with restrictions. *Id*. at 16. Petitioner followed up on September 3, 2020 with continued right ankle pain.

Petitioner was to begin physical therapy. *Id*. at 30. Petitioner followed up on October 22, 2010. Petitioner was not much improved and was referred to Dr. Karnezis for further medical care. *Id*. at 53.

On October 27, 2010, Petitioner presented to Dr. Karnezis for ankle pain. Petitioner was coming down the stairs and tripped on an extension cord when he heard his ankle pop. He underwent a short course of therapy but had ongoing pain. Petitioner was diagnosed with persistent lateral ankle pain. Petitioner was to undergo an MRI and ultrasound. Petitioner was to work full duty. (PX3, p.31-32). In a November 10, 2010 follow up, Petitioner had undergone an ultrasound revealing displaced cortical avulsion fragment off the anterior talofibular ligament. Petitioner was to undergo an MRI and placed in a short leg splint. Non-weightbearing was recommended. *Id*. at 29.

On November 17, 2010, Petitioner underwent a CT scan of the right ankle which revealed two tiny avulsion fracture fragments and adjacent soft tissue swelling. (PX7, p.2). Petitioner also had an MRI on November 17, 2010 which revealed an ununited ossicle at the tip of the lateral malleolus with ligament attachment. There was fluid deep in the ligament which might indicate instability but showed no evidence of ligament tear. *Id*. at 4.

Petitioner returned on December 8, 2010 with Dr. Karnezis. Dr. Karnezis reviewed the diagnostic imaging and diagnosed Petitioner with small avulsion fragments of the navicular and lateral malleolus and a ligamentous/soft tissue injury. Petitioner was given a corticosteroid injection. (PX3, p.26). In a January 11, 2011 follow up Petitioner complained of instability to ambulate with a constant limp to the foot because of ankle pain. The Doctor recommended a right ankle arthroscopic evaluation and debridement. *Id*. at 24-25.

On February 17, 2011, Dr. Karnezis performed a right ankle arthroscopic debridement, open anterior talofibular and calcaneofibular ligament repair with connective tissue tendon graft, and excision of a large lateral fibular osseous spur. (PX7, p.57).

On January 25, 2012, Petitioner followed up with Dr. Karnezis. Petitioner was to begin working full duty beginning on February 2, 2012. He was to wear ankle splints on an as needed basis. (PX3, p.23). Petitioner returned to Dr. Karnezis on February 22, 2012 with resolving swelling to the right lower extremity, foot, and ankle. His ankle stability was excellent. Petitioner was provided a brace and a short leg splint to provide support as well as edema control. Petitioner was to continue working full duty. *Id.* at 21. In an April 18, 2012 follow up, Dr. Karnezis noted Petitioner had slight pain to the right ankle. Petitioner was to utilize the voltaren patches, continue bracing and continue with his home exercise program. *Id*. at 19. Petitioner returned to Dr. Karnezis on June 19, 2012. He noted intermitted instability to the right ankle when walking and pain to the anterior lateral aspect of the right ankle with difficulty mobilizing that ankle. Petitioner was to continue with topical medications and return. *Id*. at 17.

On August 27, 2012, Petitioner reported right ankle pain at the incision site and fatiguing easily at work. X-rays were obtained and appeared normal. He was released to full duty work but was told to seek an ultrasound if the pain continued. Petitioner was given a prescription for Norco for home and another air brace for his right foot. (PX3, p.14-15). On August 31, 2012, Petitioner's pain medicine was reviewed and switched from two short acting narcotics to at least one longer acting narcotic. *Id*. at 13.

On October 15, 2012, Petitioner followed up with Dr. Karnezis. Petitioner noted he had persistent right ankle pain to the anterolateral aspect of the ankle. He noted he had fallen and tripped when he was

getting out of the bathtub and his ankle was not strong enough and gives way. On physical exam, he had no evidence of any instability of the ankle and there was no evidence of ecchymosis or any injuries from the accident suffered. Petitioner reported his pain was periodic. A right ankle ultrasound was compared to prior ultrasounds and showed no soft tissue abnormalities or evidence of any ligament tearing. Dr. Karnezis opined he was uncertain as to Petitioner's persistent complaints and recommended an MRI. Petitioner was provided medication, released to full duty with no restrictions, and given Tubigrip stockinettes and told to wear a short leg splint to reduce swelling. (PX3, p.11-12).

On December 3, 2012, Petitioner followed up with Dr. Karnezis with persistent right ankle pain with full range of motion to the foot. Petitioner was provided a short leg splint and Tubigrip stockinettes. Petitioner was to continue to work full duty. He was also provided a prescription for Norco to alternate with Tramadol in an effort to wean him. A request to refill hydrocodone was declined. (PX3, p.7-8).

On December 19, 2012, Petitioner had an urgent appointment with Dr. Karnezis after he was involved in a lockdown at work after an aggressive handling on inmates. Petitioner noticed he was unable to stand, walk, or ambulate. Petitioner had a significant amount of pain and would limp. Petitioner was provided a prescription for Norco, was to continue full duties and referred to a pain specialist. (PX3, p.6).

On January 7, 2013, Petitioner followed up with Dr. Karnezis and was told to follow up with the pain specialist as indicated. He was given a prescription for Norco and was to return to work full duty. (PX3, p.4). Petitioner returned on January 21, 2013 with increased pain to the anterior lateral aspect of his ankle. He also had an antalgic gait with difficulty ambulating. The Doctor noted he recently saw a pain physician. Petitioner was provided a prescription for Norco to use at home and not work and could work full duty without restrictions. Petitioner had completed his physical therapy program. (PX3, p.2).

On August 18, 2014, Petitioner presented to Dr. Anand Vora for a Section 12 examination. (RX2, p.68). Dr. Vora examined Petitioner and reviewed medical records. Dr Vora opined Petitioner sustained an ankle strain. Dr. Vora found Petitioner's ankle was stable with no evidence of mechanical instability. (RX3, p.73). The Doctor noted the injury of August 12, 2010 was causally related to Petitioner's current condition and need for medical treatment. Petitioner continued to have functional instability of the ankle, but his symptoms appeared disproportionate. (RX2, p.74). Dr. Vora noted Petitioner's surgical procedures were unusual for an ankle injury of Petitioner's kind. Dr. Vora did not find Petitioner to be at MMI but disagreed with the diagnoses and proposed surgeries suggested by Petitioner's providers. (RX2, p.68-75). Dr. Vora suggested additional surgery for lateral ligament reconstruction to resolve Petitioner's condition and recommended the operating surgeon should be familiar in secondary re-construction. He did not believe any other surgeries were appropriate to address Petitioner's condition. (RX2, p. 74-75).

On February 19, 2015, Petitioner underwent a left ankle arthroscopic debridement with repair of anterior talofibular ligament, posterior talofibular ligament, and calcaneofibular ligament using semi tendinosis graft and modified Elmslie-Kelikan technique with capsular repair, and tendolysis with soft tissue mobilization with application of Amniox by Dr. Karnezis. (PX2, p.269).

On February 22, 2015 Petitioner presented to the ER with increased pain to the whole lower right extremity since surgery. There was no swelling or no evidence for deep venous thrombosis. (PX2, p.312). On February 24, 2015 Petitioner was seen by Dr. Siddiqui due to this pain. Petitioner was offered a popliteal nerve block but was refused. Petitioner was given medication and discharged. (PX2, p.322).

On March 18, 2015, Petitioner reported to the ER. Petitioner underwent a CT of his right foot, which indicated soft tissue swelling laterally and a possible osteomyelitis (bone infection) in the fibular head. On March 20, 2015 Petitioner underwent surgery to irrigate and debride the right foot, which included a synovectomy and advancement of soft tissues for partial wound closure. Petitioner was ultimately discharged on March 25, 2015, at which time his pain was deemed to be controlled and he was able to ambulate without incident. (PX2, pg. 355-381).

On April 29, 2015 Petitioner presented to the ER due to a poorly positioned PICC line (medicine catheter) for his antibiotics and he was switched to oral antibiotics. (PX2, p. 434-461).

On May 29, 2015, Petitioner sought care at Alexian Brothers for ongoing ankle pain and concerns about a renewed infection. Petitioner's condition was stable, and he was diagnosed with right ankle pain. He was discharged. (PX2, p.491-500).

On July 6, 2015 Petitioner presented to Dr. John Prunskis at Illinois Pain Institute. Petitioner was a 34-year-old corrections officer who had a right ankle injury. Petitioner's right foot was in a boot and was utilizing crutches. Petitioner was noted to have temperature differences in the foot and difference in color. Petitioner was diagnosed with complex regional pain syndrome in the right foot. He was recommended a lumbar sympathetic block. (PX13, p.75-76).

On December 16, 2015, Dr. Vora reviewed additional medical records and performed a second Section 12 examination. (RX2, p.76). Petitioner noted after surgery he was in the hospital for three weeks for continued problems as well as an infection. On physical examination, Dr. Vora noted some peri-incisional redness. There was no warmth or redness and mild atrophy. (RX2, p.77). Dr. Vora noted no evidence of CRPS and found Petitioner's pain was disproportionate to the nature of the procedure. Petitioner's diagnosis was status post revision lateral ankle ligament reconstruction with continued subjective pain. Petitioner was at MMI and did not need any further medical care. He recommended an FCE to confirm but found Petitioner capable of full duty without restrictions. (RX2, p.78-79).

Petitioner returned to Dr. Prunskis on February 15, 2016. Petitioner stated his pain was a 6 out of 10, in his right foot and ankle area. The Doctor noted his right foot was darker in color than the left foot. The hair and nail grown appeared the same. The Doctor noted a clear temperature difference as well. Dr. Prunskis diagnosed Petitioner with complex regional pain syndrome of the right foot and ankle. The Doctor recommended a spinal cord stimulation trial and an FCE. After todays, visit the Doctor indicated he had no further therapies to offer him unless the spinal cord stimulator trial was approved. He could continue with medications. (PX9, p.7, PX13, p.73). Petitioner followed up on May 2, 2016 and May 28, 2016. Petitioner's symptoms did not change, and Norco Medication was dispensed. The Doctor pushed for approval for the spinal cord stimulator trial. (PX9, p.5-6).

On May 12, 2016 Petitioner underwent a Functional Capacity Evaluation. The FCE was valid. It noted Petitioner's job as a correctional officer was a medium physical demand level and Petitioner was able to perform at a medium physical demand level. Petitioner had increased right ankle and lower extremity pain during associated assessment including lifting and carrying activities. Petitioner was recommended balance, bending, stooping, crouching, repetitive right foot motion, and squatting done on an occasional basis only. In addition, climbing stairs was recommended on a minimally occasional basis. (PX9, p.12-19, RX1).

On June 28, 2016 Petitioner presented to Dr. Prunskis. Petitioner was still having pain in his right ankle and requested a refill on his Norco. Petitioner was awaiting approval for the spinal cord stimulator and was provided medications. He was to return on an as needed basis. (PX9, p.4). Petitioner continued to treat with Prunskis on the following dates: July 26, 2016, August 22, 2016, September 19, 2016, October 24, 2016, November 15, 2016, and December 20, 2016. The diagnosis of CRPS continued and narcotic medication was dispensed. (PX13, p.63-69).

On May 23, 2017, Petitioner presented to Dr. Kenneth Candido for a Section 12 examination. (RX4, p.256). Dr. Candido performed an extensive physical exam, reviewed all of the prior treatment records and concluded that Petitioner did not have CRPS. (RX4, p.254-286). Dr. Candido diagnosed Petitioner with arthrofibrosis, which is defined as joint pain and stiffness that does not allow for full functional range of motion without pain. This was related to the injury. (RX4, p.275). Dr. Candido opined Petitioner was at MMI and was "as good as he is going to get." (PX4, p.276). Petitioner was able to work at a medium-heavy duty work capacity with only restrictions being to limit his continual time standing or ambulating. (PX4, p.276).

Petitioner returned to Dr. Prunskis on October 8, 2018, still complaining of right ankle throbbing pain. Petitioner was given medication and diagnosed with complex regional pain syndrome. (PX13, p.63). Petitioner continued to follow up with Dr. Prunskis on November 5, 2018, November 26, 2018, December 31, 2018, January 28, 2019, February 25, 2019, March 11, 2019, April 15, 2019, and April 29, 2019. (PX13, p. 55-62).

On January 7, 2019 Petitioner presented to Dr. Jay Virchow, an internist, for an initial visit. Petitioner had right ankle pain stemming from an injury at work 8 years ago and was seeing a pain management physician. Petitioner was to undergo a spinal stimulator. (PX8, p.22)

On February 25, 2019 Petitioner presented to Dr. Asghar Rizvi, a pain physician, for a continued pain in right foot and ankle. Petitioner was a patient of Dr. Prunskis and was to undergo a spinal cord stimulator trial and was awaiting a psych evaluation. Petitioner was diagnosed with complex regional pain syndrome of his right lower extremity. Petitioner's medication was refilled. (PX8, p.6).

On May 20, 2019 Petitioner followed up with Dr. Rizvi for continued pain in the right lateral malleolar region. Petitioner had discoloration of the right foot with allodynia to light touch. Petitioner was diagnosed with complex regional pain syndrome of the right lower extremity, right ankle, and foot pain with medical history significant for hyper cholesterol. Prior to doing a stimulator an MRI was recommended. He also underwent a behavioral health evaluation. (PX8, p.4). Petitioner followed up with Dr. Rizvi on June 18, 2019. He was to undergo an MRI and his medications were refilled. (PX13, p.50).

On June 18, 2019, Dr. Asghar Rizvi of Illinois Pain Institute authored a narrative report. He noted Petitioner originally was treated by Dr. Prunskis and diagnosed with CRPS in 2015. Petitioner underwent several lumbar sympathetic nerve blocks and ankle injections that did not help Petitioner. Dr. Rizvi noted he performed his own physical examination on May 20, 2019 and found Petitioner had discoloration on his foot at the incision site from his prior surgery. In addition, Petitioner had allodynia to light touch in the right lateral malleolar region proximal to where the incision scar was located. Dr. Rizvi found Petitioner had diminished range of motion on plantar flexion and dorsiflexion of the right foot at the May 2019 examination and noted a 1.5-degree difference in foot temperature by placing gradient strips on the left and right side of the foot. Using these findings, Dr. Rizvi felt Petitioner had CRPS, which he stated

was based on the Budapest Criteria. Given Petitioner did not have any improvement he strongly believed that a spinal cord stimulation therapy was medically necessary for Petitioner. (PX13, p.48-49).

On July 16, 2019 Petitioner underwent an MRI of the lumbar spine which revealed minor degenerative changes. (PX2, p.149).

Petitioner followed up with Dr. Rizvi on July 22, 2019, August 19, 2019, and September 30, 2019 for continued pain. Petitioner was still awaiting approval on the spinal cord stimulator. Petitioner's medications were refilled. (PX13, p.43; PX8, p.3). On October 17, 2019 Petitioner was seen by Dr. Asghar Rizvi with continued pain in the right lower extremity. Petitioner was diagnosed with right lower extremity CRPS based upon the Budapest criteria. Petitioner was to undergo a spinal cord stimulator trial. (PX2, p.10).

On October 17, 2019 Petitioner underwent a spinal cord stimulator trial with placement of 2 spinal cord simulator leads. His postoperative diagnosis was complex regional pain syndrome of the right lower extremity. (PX2, p.23; PX13, p.132).

On October 18, 2019, Dr. Rizvi spoke with Petitioner to see how he was doing. He noted the intensity of the pain as significant yesterday.(PX13, p.39). On October 22, 2019 Petitioner underwent a removal of the spinal cord stimulator trial leads. (PX13, p.38). Petitioner followed up on October 22, 2019 with Dr. Rizvi. Petitioner had throbbing and constant pain. Petitioner stated since the leads had been placed there was no significant improvement. X-rays showed a migration of the leads. Petitioner was referred to a neurosurgeon for a possible placement of a dorsal column stimulator through paddle leads. (PX13, p.37). Petitioner followed up on December 2, 2019, December 23, 2019, January 13, 2020, February 17, 2020, and March 16, 2020 with continued pain. No changes were made, and medications were refilled. Petitioner was to see a neurosurgeon. (PX13, p.32-36).

On April 13, 2020, Petitioner presented to Dr. Bradley Silva, a pain physician, for his ankle pain. The Doctor went over his medical history, including the spinal cord stimulator which was not successful. Petitioner was now scheduled for a repeat trial with possible implantation with Dr. Rosenow, a neurosurgeon. Dr. Silva opined if the spinal cord stimulator was ineffective an EMG could be considered. (PX13, p.31).

Petitioner continued to follow up with Dr. Silva for his CRPS diagnosis on May 11, 2020, June 15, 2020, July 20, 2020, August 17, 2020, September 14, 2020, October 12, 2020, November 9, 2020, and December 7, 2020. (PX13, p.23-30) Petitioner was still waiting clearance to undergo the spinal cord stimulator. Petitioner's Norco was refilled at every visit.

On June 8, 2020 Petitioner presented to Dr. Konstantin Slavin for a neurosurgery consult and evaluation of chronic and severe pain related to complex regional pain syndrome, involving his right ankle and foot area. (PX5, p.2). Petitioner had multiple surgeries and ultimately underwent a trial of spinal cord stimulation. The Doctor noted there were no musculoskeletal issues, except for the right foot problems. From neurological point, Petitioner advised he now had chronic and severe pain in his leg. The Doctor told him that the plan would be to proceed with a two-stage procedure. The first step would be to place the electrodes under general anesthesia and tunnel the extension cable to the side. The second stage of the surgery involves internalization of the electrodes and implantation of generator once again done

under general anesthesia as an outpatient basis. Following this, the device would be controlled by a special remote control. The Doctor noted the stimulation would help him be more functional to the point that the eventually the stimulation may not be needed. (PX5, p.4).

Petitioner has subsequently continued to treat with Dr. Silva via telemedicine on January 11, 2021, February 15, 2021. March 15, 2021, April 13, 2021, and May 13, 2021. (PX13, p.18-22). Petitioner continued to get his Norco medication refilled.

On April 4, 2022 Petitioner first presented to Dr. Keith Schmidt, a pain physician, for an evaluation for DRG. Petitioner had hypersensitivity to the right ankle. The Doctor noted Petitioner presented with chronic right lateral ankle pain. Petitioner had symptoms consistent with CRPS. Petitioner wanted to proceed with a DRG trial right L5 and s1. Petitioner was to return as needed. (PX14). On August 25, 2022 Petitioner followed up with Dr. Schmidt. Petitioner presented for lead pull after the DRG trial on August 19 with 50% pain relief. Petitioner was open to pulling leads today but was unsure if he wanted to proceed with the implant. Petitioner was provided a refill of Norco. Petitioner followed up on September 19, 2022 with Dr. Keith Schmidt via telehealth. Petitioner was still taking Norco five times a day. Petitioner was diagnosed with complex regional pain syndrome, lumbar radiculopathy, and difficulty coping with pain. Petitioner's Norco was refilled. (PX14).

On September 30, 2022, the parties proceeded with the Evidence Deposition of Dr. Anand Vora. (RX2). Dr. Vora is a board-certified orthopedic surgery who specializes in foot and ankle surgery. (RX2, p.11). Dr. Vora testified to both of his Section 12 examinations. He first examined Petitioner on August 8, 2014. Dr. Vora reviewed medical records and examined Petitioner. Dr. Vora diagnosed Petitioner with functional ankle instability. Petitioner had no evidence of mechanical instability, meaning his ankle was stable when they stressed it. (RX2, p.13). Dr. Vora causally related this diagnosis to the August 12, 2010 accident. Dr. Vora noted Petitioner could consider a lateral ligament reconstructive procedure and was not at MMI. *Id*. Dr. Vora testified he examined Petitioner again on December 16, 2015. He reviewed medical records and examined Petitioner, noting Petitioner was still in severe pain. In his opinion there was no findings of complex regional pain syndrome. (RX2, p.15). Petitioner was at MMI and was to undergo an FCE.

On Cross-Examination, Dr. Vora noted complex regional pain syndrome was out of his expertise. (RX2, p.16). Dr. Vora noted there was no fibula component of the surgery. The part that was involved here was part of the lateral malleolus, which is the distal part of the fibula, which is the ankle bone. (RX2, p.18).

On November 10, 2022, the Parties proceeded with the evidence deposition of Dr. Kenneth Candido. (RX4). Dr. Candido is a board-certified anesthesiologist with added qualifications in pain medicine. (RX4, p.88). Dr. Candido testified he has a lot of experience with training and diagnosing CRPS. (RX4, p.89). Dr. Candido testified he reviewed medical and records and examined Petitioner on May 23, 2017. Dr. Candido went over Petitioner's medical care. (RX4, p.90-91). Dr. Candido testified to his lengthy examination and testing performed. (RX4, p.91-92). Based on his objective findings, Dr. Candido found Petitioner did not have CRPS based on examination, measurement of size, measurement of temperature, sensory motor finding, and strength findings. In addition, the foot and ankle on the right side moved functionally normally for known four movements of a foot and ankle (RX4, p.94). Instead, he diagnosed Petitioner with arthrofibrosisis which is a degenerative and arthritic problem. This is an

orthopedic problem where scar tissue impairs movement and function. (RX4, p.94). Dr. Candido felt like Petitioner was putting forth a very full and honest effort. He found causation for the arthrofibrosis. Dr. Candido opined he could not speak on behalf of what an orthopedic surgeon would do but from a pain perspective there was no evidence of complex regional pain syndrome. (RX4, p.95). He opined Petitioner could return to at least a medium heavy-duty work with the only restriction being limited both is continual time standing or ambulating. Petitioner was at maximum medical improvement. (RX4, p.95).

On Cross Examination, Dr. Candido conceded he saw a small patch on the dorsum of the right foot in variability in temperature but did not feel there was a significant temperature variability. Dr. Candido noted Petitioner described aching, throbbing, tiring, nagging and miserable pain. (PX4, p.97). He further noted Petitioner does not walk without a limp. Lastly, he noted there was allodynia. (RX4, p.100).

Petitioner testified consistently with his medical records. Petitioner testified he continues to work full duty, but now has an office job. He currently works as a Notice of Charges Officer and resigned from the tactical force because he believed he could not perform his job duties as best as he could. Currently he spends four days a week seeking out parole violators to give them parole violation papers and one day a week as a "floater", going wherever he is needed.

Petitioner described his foot at the time of trial as still being swollen and painful. He reported difficulty wearing certain types of footwear, including dress shoes and work boots. He stated that he ices his foot for relief. Petitioner described his foot as discolored, and with loss of hair on the affected foot compared to the other foot. He noted he feels like a nail is going thorugh his foot and is still on prescription medications. Since the injury he is unable to participate in activities he used to enjoy, such as snowboarding or skiing, playing soccer, bicycling, and attending supporting events or concerts. Petitioner testified that before this accident he was engaging in those activities frequently. He testified that this was due to foot pain and also due to the "mental aspect", as Petitioner fears suffering re-injury.

Petitioner's exhibit 10 was a picture of Petitioner's right foot which was viewed to be purplish.

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. Petitioner testified in open hearing before the Arbitrator who viewed his demeanor under direct examination and under cross-examination. Petitioner's manner of speech, body language, and flow of answers to questions, when added together, showed sincerity. Petitioner was well-mannered, composed, spoke clearly, and made normal eye contact with the Arbitrator. He testified to his accident and medical care consistently with the medical records. The Arbitrator compared Petitioner's testimony with the totality of the evidence submitted and did not find any material contradictions.

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

The 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 his ensuing injuries. A work-related injury need not be the sole or principal causative factor, as long as it was *a* causative factor in the resulting condition of ill-being. "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 conditions of ill-being in regards to his right ankle and CRPS are causally related to his work accident. First addressing the accepted, orthopedic injuries, the Arbitrator notes there are no present disputes with respect to the same. Petitioner testified he was working full duty when he slipped and fell on August 12, 2010. Medical records show Petitioner sustained an ankle injury necessitating three surgeries. The Arbitrator notes that this is an ankle injury and not a leg injury. All physicians addressed Petitioner's right ankle, necessitating three surgeries. No Doctor indicated Petitioner had a leg injury, but rather an ankle/foot injury. In fact, Dr. Vora, a foot and

ankle orthopedic specialist, noted there was no fibula component of the surgery. The part that was involved here was part of the lateral malleolus, which is the distal part of the fibula, which is the ankle bone. As such the Arbitrator notes this is a foot injury and not a leg injury. Dr. Vora opined Petitioner reached MMI for his ankle injury on December 16, 2015. The medical records show Petitioner was last seen by Dr. Karnezis on February 19, 2015, the date of the surgery. Petitioner subsequently began treatment for his CRPS condition. Accordingly, Petitioner's orthopedic condition reached MMI as of December 16, 2015 for his orthopedic ankle injury.

In regards to Petitioner's CRPS condition, the Arbitrator finds Petitioner's current condition of ill-being is causally related to his work accident. In this case the Arbitrator finds the opinions of the treating physician Drs. Asghar Rizvi, John Prunskis, Bradley Silva, and Keith Schmidt more persuasive than those of Dr. Candido. The Arbitrator further finds Petitioner had a consistent history of right ankle pain from date of the work accident. Following consideration of the testimony and evidence presented, it is found by this Arbitrator that Petitioner's current condition of ill-being regarding his CRPS is causally connected to the injuries sustained on August 12, 2010.

Petitioner testified he began experiencing severe pain in his right ankle following the fall down the stairs. Petitioner underwent three surgeries with no improvement of the same. Petitioner repeatedly provided a consistent history of the subject incident being the source of his pain to every treating provider following the injury.

The Arbitrator notes that CRPS is a pain diagnosis and thus will only examine the testimonies and opinions of the pain physicians. Based on the same, the Arbitrator finds the opinions of Dr. Rizvi, Dr. Prunskis, Dr. Silva, and Dr. Schmidt to be more persuasive. Petitioner was examined by several pain physicians. Petitioner first came under the care of Dr. Prunskis in 2015. On July 6, 2015, Dr. Prunskis opined Petitioner had CRPS and noted Petitioner to have temperature differences and color differences in the right foot. Petitioner continued to treat with Dr. Prunskis with the diagnosis of CRPS until April 2019. Petitioner subsequently began treatment with Dr. Asghar Rizvi. Dr. Rizvi also opined Petitioner had a diagnosis of complex regional pain syndrome. Dr. Rizvi authored a narrative noting Petitioner had pain in the right lateral malleolar region. In addition, Petitioner had discoloration of the right foot with allodynia to light touch. Dr. Rizvi found Petitioner had diminished range of motion on plantar flexion and dorsiflexion of the right foot at the May 2019 examination and noted a 1.5-degree difference in foot temperature by placing gradient strips on the left and right side of the foot. Using these findings, Dr. Rizvi felt Petitioner had CRPS, which he stated was based on the Budapest Criteria. Based on the same, Petitioner was diagnosed with complex regional pain syndrome of the right lower extremity, right ankle, and foot pain. Petitioner then began treatment with Dr. Bradley Silva on April 13, 2020. Petitioner was once again diagnosed with CRPS. Lastly, Petitioner treated with Dr. Keith Schmidt, who noted Petitioner had hypersensitivity to the right ankle. He also noted Petitioner's symptoms were consistent with CRPS. All of these doctors noted objective findings indicative of CRPS during their physical examinations of Petitioner.

The Arbitrator notes that while Dr. Candido also testified in this matter, he diagnosed Petitioner with arthrofibrosisis but saw no evidence of CRPS. He did note there was a variability in temperature, but not enough to consider a temperature difference. He also noted Petitioner described aching, throbbing, tiring, nagging and miserable pain. Dr. Candido ignored the reports of Petitioner's treating physicians who reported Allodynia, temperature asymmetry, decreased range of motion and skin color changes as

well as his own examination which revealed temperature asymmetry, decreased range of motion at the time of the examination. In addition, Dr. Candido's examination revealed stiffness, reduced movability, and decreased range of motion in Petitioner's ankle joint.

The Arbitrator finds Petitioner credible in his pain complaints. Based on the same, the Arbitrator is not persuaded by the opinions of Dr. Candido. Dr. Candido's findings and opinions are not only inconsistent with Petitioner's testimony, but they are also inconsistent with Petitioner's medical records since 2010 documenting consistent right ankle pain complaints with objective findings.

Based upon the foregoing, the Arbitrator finds Petitioner has met his burden of proving his current condition of ill-being is causally related to the work accident following his surgeries and infections.

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.

Regarding Petitioner's CRPS claim, based on the record in its entirety, the Arbitrator finds Petitioner's treatment to be reasonable and necessary and finds Respondent has not paid for said treatment. Given the Arbitrator's finding of causation between Petitioner's August 12, 2010 work accident and his condition of ill-being regards his CRPS, Respondent is liable for reasonable and necessary medical treatment of the causally related condition.

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

The parties have stipulated to, and the Arbitrator finds that, a general credit is appropriately due to Respondent for any group insurance payments that have been made for any awarded medical expenses in evidence. Based on the same, a general credit shall be awarded against any medical, surgical or hospital benefits paid by group insurance for that condition to the full extent provided for pursuant to Section 8(j) of the Act. Respondent shall hold Petitioner harmless for the same.

With regard to issue "L", what is the nature and extent of the injury, the Arbitrator finds as follows:

The Findings of Fact and Conclusions of Law, as stated above, are adopted herein. Consistent with the Illinois Workers' Compensation Act, the Arbitrator is to base the permanency determination on the following factors:

i. The reported level of impairment pursuant to subsection (a) (e.g., the AMA rating)
ii. The occupation of the injured employee
iii. The age of the employee at the time of the injury
iv. The employee's future earning capacity

v. Evidence of disability corroborated by the treating medical records.

No single enumerated factor shall be the sole determinant of disability. In determining the level of disability, the relevance and weight of any factors used in addition to the level of impairment as reported by the physician must be explained in a written order.

With regard to subsection (i) of § 8.1b(b), the Arbitrator notes no party introduced an impairment rating at trial and as such, no weight is given to this factor.

With regard to subsection (ii) of § 8.1b(b), the Arbitrator notes Petitioner testified he was employed as a corrections officer at the time of the work injury. Petitioner is no longer on the tactical force as he resigned as he did not believe he could perform his job duties. The Arbitrator does recognize that Petitioner was not taken off of the job and Petitioner's FCE did indicate he could return to work. Petitioner, however, does have limitations in regards to standing and ambulating. Petitioner is currently employed as a Notice of Charges Officer which is an office job. Given the original requirements of the job were much strenuous than his current job, the Arbitrator gives moderate weight to this factor.

With regard to subsection (iii) of § 8.1b(b), the Arbitrator notes Petitioner was 29 years old on the date of this accident. The Arbitrator notes that due to Petitioner's young age the remaining amount of work life is great. In addition, the Arbitrator notes Petitioner will have to work with pain for a significant number of years. As such, the Arbitrator assigns great weight to this factor.

With regard to subsection (iv) of § 8.1b(b), the Arbitrator concludes Petitioner is currently working as a Notice of Charges Officer. No testimony was provided of impaired wages. As such, the Arbitrator assigns moderate weight to the lack of effect Petitioner's injury had on wages.

With regard to subsection (v) of § 8.1b(b), the Arbitrator notes Petitioner's medical records show Petitioner was released to return to work per the FCE. The FCE, however, also noted Petitioner had increased right ankle and lower extremity pain during associated assessment including lifting and carrying activities. Petitioner was recommended balance, bending, stooping, crouching, repetitive right foot motion, and squatting done on an occasional basis only. In addition, climbing stairs was recommended on a minimally occasional basis. (PX9, p.12-19, RX1). Petitioner continues to have hypersensitivity to the right ankle and continues to take Norco on a daily basis.

The Arbitrator notes Petitioner testified his foot is painful and swollen. In addition, he still has difficulty with certain types of footwear. Petitioner noted he continues to feel that a nail is going through his foot. Lastly, he does not enjoy participating in activities he used to such as snowboarding or skiing, playing soccer, bicycling, and attending supporting events or concerts. This was due to his foot pain as well as the "mental aspect," as Petitioner fears suffering re-injury. Based on Petitioner's surgical interventions, therapy and current complaints, the Arbitrator assigns significant weight to this factor.

Based on the above factors, and the record taken as a whole, the Arbitrator finds that Petitioner sustained permanent partial disability to the extent of 70% loss of use of the right foot pursuant to §8(e)2 of the Act. Respondent shall pay Petitioner permanent partial disability benefits of $505.55 for 116.90 weeks or $59,098.80.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	19WC013423
Case Name	Margaret Martin v. Garden Hotel & Conference Center
Consolidated Cases	19WC030373;
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	24IWCC0149
Number of Pages of Decision	13
Decision Issued By	Amylee Simonovich, Commissioner

Petitioner Attorney	Jason Esmond
Respondent Attorney	Christopher Crawford

DATE FILED: 4/2/2024

/s/ Amylee Simonovich, Commissioner

Signature

24IWCC0149

STATE OF ILLINOIS)
) SS.
COUNTY OF WINNEBAGO)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Margaret Martin,

Petitioner,

vs. NO: 19 WC 13423

Garden Hotel & Conference Center,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by Respondent herein and notice given to all parties, the Commission, after considering the issues of accident, causal connection, medical expenses, and permanent disability, and being advised of the facts and law, modifies the Decision of the Arbitrator. The Commission otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

The Commission notes that prior to the arbitration hearing, the parties consolidated this case with a subsequent case. Case number 19 WC 30373 involves a subsequent work accident that occurred on March 7, 2019. The parties addressed both cases during the June 16, 2022, arbitration hearing, and the Arbitrator issued separate, but identical Arbitration Decisions in each case. The Commission addresses the issues Respondent raised on review relating to the companion case in a separate Decision.

After considering the disputed issues, the Commission affirms the Arbitrator's conclusions regarding accident, causal connection, medical expenses, and permanent disability. However, the Commission makes certain modifications to the Arbitration Decision.

In the Findings section of the Arbitration Decision Form, the Arbitrator included the subsequent March 7, 2019, date of accident. The Commission strikes "and March 7, 2019" from the Decision Form. Additionally, the Commission modifies the language in the Findings section to reflect that the Decision addresses a single date of accident. For example, the Arbitrator wrote, "On the dates of accident…" The Commission modifies this language to "On the date of accident…" In the Findings section, the Arbitrator also wrote that Petitioner's average weekly wage was $374.00. The Commission modifies this sentence to read as follows:

> In the year preceding the injury, Petitioner earned $19,448 and the average weekly wage was $374.00.

On page six (6), the second line and first full paragraph on (7), page eight (8), and page nine (9) of the Decision, the Arbitrator refers to injuries and/or accidents Petitioner sustained "…through March 7, 2019." The Commission strikes "through March 7, 2019" from the above-referenced sentences and replaces it with "on December 1, 2018, and March 7, 2019."

On page four (4) of the Decision, the Arbitrator wrote the "…activity was done primarily sedentary…" The Commission modifies this sentence to read as follows:

> Petitioner's sales duties were primarily sedentary and included typing and talking on the phone.

Finally, on page eight (8) of the Decision, the Arbitrator wrote, "Additional, Respondent is liable for…" The Commission strikes "Additional" from this sentence and replaces it with "Additionally."

The Commission otherwise affirms and adopts the Decision of the Arbitrator.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed August 30, 2022, is modified as stated herein.

IT IS FURTHER ORDERED that Respondent shall pay reasonable and necessary medical services of $6,885.00, as provided in Sections 8(a) and 8.2 of the Act.

IT IS FURTHER ORDERED that Respondent is responsible for the resolution of the Blue Cross / Blue Shield lien in the amount of $70,065.30, for reasonable and necessary medical services related to the December 1, 2018, and March 7, 2019, work accidents.

IT IS FURTHER ORDERED Respondent shall pay Petitioner permanent partial disability benefits of $253.00/week for 50 weeks, because the injuries sustained caused the 10% loss of the whole person, as provided in Section 8(d)2 of the Act.

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

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $19,700.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

April 2, 2024

o: 2/20/24

AHS/jds

51

/s/ *Amylee H. Simonovich*
Amylee H. Simonovich

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	19WC013423
Case Name	Margaret Martin v. Garden Hotel & Conference Center
Consolidated Cases	
Proceeding Type	Request for Hearing
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	9
Decision Issued By	Paul Seal, Arbitrator

Petitioner Attorney	Jason Esmond
Respondent Attorney	Christopher Crawford

DATE FILED: 8/30/2022

/s/ Paul Seal, Arbitrator

Signature

INTEREST RATE WEEK OF AUGUST 30, 2022 3.23%

STATE OF ILLINOIS)
)SS.
COUNTY OF WINNEBAGO)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Margaret Martin
Employee/Petitioner

v.

Case # **19 WC 13423**

Consolidated cases:

Garden Hotel & Conference Center
Employer/Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Paul Seal**, Arbitrator of the Commission, in the city of **Rockford**, on **June 16, 2022.** After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On the dates of accident, **December 1, 2018, and March 7, 2019,** Respondent ***was*** operating under and subject to the provisions of the Act.

On these dates, an employee-employer relationship ***did*** exist between Petitioner and Respondent.

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

Timely notice of these accidents ***were*** given to Respondent.

Petitioner's current condition of ill-being ***is*** causally related to her accidents.

In the year preceding the Petitioner's injuries, Petitioner's average weekly wage was **$374.00.**

On the dates of accident, Petitioner was **56** years of age, ***married*** with **0** dependent children.

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

ORDER

- The Respondent shall pay **$ 6,885.00** for necessary medical services, as provided in Section 8(a) and 8.2 of the Act and consistent with the medical fee schedule.

- The Respondent is responsible for resolution of the lien with Blue Cross / Blue Shield relative to **$70,065.30** for the reasonable, necessary medical bills paid for Petitioner's treatment related to her injuries.

- The Respondent shall pay the Petitioner the sum of **$253.00** / week for a period of **50** weeks, as provided in Section 8(d)2 of the Act, because the injuries sustained caused **10% loss of a person as a whole.**

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

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

Signature of Arbitrator

August 30, 2022

STATEMENT OF FACTS

The parties appeared for hearing on June 16, 2022, before Arbitrator Seal under the Illinois Workers' Compensation Act. The parties stipulated that Petitioner was an employee of Respondent on December 1, 2018 and March 7, 2019. The parties stipulated that that timely notice of Petitioner's injuries were provided

to Respondent. The parties stipulated that Petitioner's average weekly wage relative to her injuries was $374.00 and that Petitioner was 56 years of age, married, with 0 dependent children at the time of her injuries.

Petitioner testified that she began working for Respondent around August of 2018. Her position was sales and banquet manager. Petitioner worked full time, at least 40 hours a week. She testified that when she first started working for Respondent, she mainly performed sales and booked events. The sales activity was done primarily sedentary, mainly typing and talking on the phone. After approximately one to one and half months, staff was cut, and she started performing set-up for events as well as still doing sales. Set-up required her to move and position chairs, tables, and stages. The venue held approximately 700-800 people. Petitioner testified that events were held weekly or bi-weekly, on the weekends. For events of 175 people, she would set up around 28 tables. Petitioner testified the tables weighed 40-60 pounds. She indicated for a bridal expo, she set up for approximately 400 people. Petitioner testified that set-up would be performed the evening before an event. Petitioner would push and pull carts with the tables and chairs, and then lift them and arrange them around the venue. Petitioner testified that she was doing the set-up on her own. After the event was completed, Petitioner would also take down all the tables and chairs. At times, the waitstaff would assist in take down, but Petitioner typically did that on her own as well.

Petitioner testified that after the first event of approximately 300 guests, in October of 2018, she began to experience pain from her neck down into her right hand. She testified the pain was excruciating and she couldn't sleep or lay on her right side. Petitioner testified that she notified Respondent's General Manager, Nicole White, of her pain with setting up for the event. Petitioner testified that Ms. White filled out an injury report which was kept by Linda in Respondent's office. Petitioner testified that she did not seek treatment right away and was able to keep working. Petitioner testified that she continued to perform her job but noted pain from the back of her neck and down her right arm when she continued to move stages and tables for large events. Petitioner testified that she reported her pain with these activities to Ms. White approximately 15 to 20 times. Petitioner testified that she may have taken a day or two off after experiencing these injuries, but she did continue to return to her position as she was the only one doing the job. Petitioner testified she had not experienced any such symptoms in her neck or shoulder prior to working for Respondent.

Petitioner continued working for Respondent until around March 26, 2019, performing the same job duties. Around March of 2019, Respondent closed its doors due to back owed taxes. Petitioner testified that the banquet activity continued as normal until they abruptly closed their door. After Respondent closed, Petitioner requested her accident reports and was provided copies from Ms. White. Petitioner presented the Illinois Form 45 injury reports as Petitioner's Exhibit 3. Contained are twelve accident reports between October 18, 2018 and March 10, 2019, each signed by Nicole White, General Manager. The October 18, 2018 accident report noted that Petitioner had assisted with event setup = she worked the event carrying large oval food trays with multiple plates and glassware. It noted she had reported severe neck and shoulder pain on her right side. An October 28, 2018 report noted neck and shoulder pain with lifting and moving large round banquet tables and chairs with setup and cleanup of the banquet room. (Px. 3). Similar complains with similar activities were recorded on December 8, 2018, December 28, 2018, February 10, 2019, February 15, 2019, February 20, 2019, March 7, 2019, and March 10, 2019. (Px. 3).

Petitioner sought treatment with Dr. Matloob at Beloit Health System on January 21, 2019. (Px. 4). At that time, she was treated for a cyst on her right wrist, which she testified was unrelated to her work for Respondent. She underwent excision of the cyst on February 6, 2019 with improvement of the right wrist symptoms on February 15, 2019 and discharge on February 25, 2019. (Px. 4). On April 24, 2019, Dr. Matloob noted Petitioner was experiencing numbness and tingling in her right hand involving mainly the median nerve distribution of the hand. He indicated she likely had carpal tunnel syndrome and recommended an EMG. (Px. 4). Petitioner testified that she reported the pain from her neck into her hand with Dr. Matloob but was initially treated for the cyst and carpal tunnel syndrome.

Around May of 2019, Petitioner woke up unable to see from her left eye. She treated for a detached retina at SSM Health Dean Medical Group, undergoing surgery on her left retina. (Px. 5). On June 17, 2019, Petitioner was seen following an EMG which indicated she did not demonstrate findings consistent with carpal tunnel syndrome, but findings consistent with C6-7 radiculopathy. (Px. 4). Petitioner underwent a cervical MRI on August 30, 2019. On September 6, 2019, Petitioner was seen by Rebecca Kellum. Petitioner reported she had hurt her neck at work last year, in December 2018. The record noted she would type and set up and take down banquet rooms. The record noted she'd initially been treated for a ganglion cyst, then carpal tunnel syndrome was ruled out. It noted she had torn her retina prior to a cervical MRI being performed, delaying treatment for her neck symptoms. Following review of the MRI, Dr. Kellum assessed cervical myelopathy with cervical radiculopathy and referred her to spine center triage. (Px. 5).

Petitioner was then seen by Kara Rusy, NP on September 20, 2019 at SSM Health Dean Medical. She again reported pain with setting up and taking down banquet rooms at a facility, performing heavy lifting. She reported ongoing neck pain radiating down her right arm. A nerve block was recommended along with a right shoulder MRI. (Px. 5). Petitioner underwent the C6 and C7 selective nerve root injection on October 24, 2019 which she testified did not improve her symptoms.

On November 22, 2019, Petitioner was seen by Dr. Kashif Ali at SSM Health Dean Medical, at NP Rusy's request, after having undergone the right shoulder MRI. Dr. Alif indicated that the right shoulder MRI demonstrated tendinosis within the biceps tendon as well as high-grade thickness RC tearing involving the far anterior fibers of the supraspinatus tendon. (Px. 5).

Petitioner followed up with NP Rusy on December 13, 2019. She reported 48 hours of significant relief of neck and right arm pain with the C6, C7 selective nerve root block, with resumption of her pain thereafter. At that time, it was determined she was a candidate for a C5-6 and C6-7 anterior cervical decompression and fusion. (Px. 5). She was referred to Dr. Masciopinto for surgery. (Px. 5).

Petitioner testified that her symptoms in her neck and right arm did not improve after she stopped working for Respondent. The symptoms remained consistent. Petitioner testified she did not work elsewhere until after undergoing surgery. Petitioner testified that her surgery was paid by Blue Cross/Blue Shield, a policy through her husband's employer. She received no workers' compensation benefits while off work for her surgery.

Petitioner underwent the C5-7 fusion with Dr. Masciopinto on February 4, 2020. Petitioner testified that she woke up in the hospital bed and the pain was gone. Dr. Masciopinto provided a narrative on June 3, 2020,

offering the opinion that Petitioner's pain symptoms and surgery were a result of an exacerbation of pre-existing conditions of her cervical spine due to her work activities for Respondent. Dr. Masciopinto noted that Petitioner's cervical spine condition could cause symptoms such as numbness and tingling in one's hand, such that Petitioner complained of in April of 2019. Dr. Masciopinto testified that he last saw Petitioner on August 26, 2020, at which time she was discharged. (Px. 6).

Petitioner was seen by Dr. Ghanayem at Respondent's request for an Independent Medical Examination on September 21, 2020. (Rx. 1). Dr. Ghanayem recorded a history that Petitioner sustained an injury sometime in December 2018 when removing round banquet tables off a racking system using a pulley system when she hurt her neck. Dr. Ghanayem noted that she had reported symptoms in her neck and right arm following that incident. Dr. Ghanayem noted that Petitioner's surgery had worked, and she was pain free as of September 21, 2020. Dr. Ghanayem testified that he felt there was insufficient evidence to find a causal relationship between Petitioner's cervical spine condition and her work activities as there was no medical care documenting her neck symptoms shortly thereafter. (Rx. 1). Dr. Ghanayem agreed that a work injury can cause a degenerative cervical condition to become symptomatic. He agreed that nerve root compression in the cervical spine can cause numbness in the hand. Dr. Ghanayem noted that if there was documentation that Petitioner reported injuries to her employer, his opinions regarding causation could change. Dr. Ghanayem also testified that symptoms of carpal tunnel syndrome would not be resolved with a cervical spine procedure. (Rx. 1).

Petitioner testified that she has not required any additional treatment for her neck or any radicular symptoms. She has no ongoing symptoms, testifying that she feels brand new since her surgery. She returned to work, though not for Respondent, after surgery, without limitation.

FINDINGS OF FACT AND CONCLUSIONS OF LAW ON THE DISPUTED ISSUES

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

The Arbitrator adopts the statement of facts detailed above and finds that Petitioner sustained accidents that arose out of and in the course of her employment by Respondent through March 7, 2019. Petitioner filed claims alleging a repetitive trauma injury on or around December 1, 2018 as well as March 7, 2019. Petitioner testified that she repeatedly injured her neck while working for Respondent after she stared setting up for banquet events. She testified to pain with lifting and moving large tables and chairs. Petitioner completed nine injury reports between October 18, 2018 and March 10, 2019 that documented severe neck and right arm pain with these types of activities. The same activity was recorded on the March 7, 2019 injury report. The reports contain consistent descriptions of the job duties that caused Petitioner pain as well as consistently noting the pain in the neck and right arm. As such, the Arbitrator finds that Petitioner did sustain repeatedly accidents that arose out of and in the course of her employment with Respondent through March 7, 2019.

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

The Arbitrator adopts the findings of fact stated above and incorporates them herein by this reference. The Arbitrator finds that Petitioner's current condition of ill-being is causally related to her work injuries through March 7, 2019. The Arbitrator relied upon the treating records, the opinions of Dr. Masciopinto, as well Petitioner's credible testimony.

The Arbitrator relies upon the well-established rules set forth by the Illinois Supreme Court that "the fact that an employee may have suffered from a preexisting condition will not preclude an award if the condition was aggravated or accelerated by the employment. The employee need not prove employment was the sole causative factor or even that it was the principal causative factor, but only that it was **a causative factor** in the resulting injury." Williams v. Industrial Com., 85 Ill. 2d 117, 122 (1981).

Petitioner's treatment records, combined with the accident reports, her testimony, and the opinions of Doctors Masciopinto and Ghanayem, establish that a causal relationship exists between Petitioner's work activities for Respondent and her cervical spine condition, which resulted in the fusion on February 4, 2020. Petitioner testified credibly regarding the onset of her neck and right arm symptoms. Petitioner noted she had not experienced any symptoms in her neck or right shoulder prior to working for Respondent. She described the onset of pain in her neck and down her right arm with a change in job duties that required her to push, pull, and lift large tables and chairs to set up Respondent's banquet room. Petitioner's initial medical records do not contain complaints of neck pain. Neck pain is not found in the records until September 6, 2019. However, Petitioner was seen for numbness and tingling in her right hand as of April 24, 2019. These complaints were initially believed to be related to carpal tunnel syndrome and she was initially evaluated regarding that condition. Dr. Masciopinto and Dr. Ghanayem agreed that Petitioner's cervical spine condition could have caused numbness and tingling in her right hand. Thereafter, she had a detached retina which delayed treatment for her neck. Petitioner underwent an EMG on June 17, 2019 and then a cervical MRI on August 30, 2019 that established that her cervical spine was the source of her symptoms. The injury reports completed by Respondent's general manager establish that Petitioner had been complaining of neck pain as well as radiating pain down the right arm from October of 2018 through March of 2019.

Dr. Masciopinto opined that Petitioner's job duties aggravated her pre-existing degenerative cervical spine condition, necessitating the cervical fusion she underwent on February 4, 2020. Dr. Ghanayem opined that there was no causal relationship given the lack of documentation of neck pain prior to September 6, 2019. However, Dr. Ghanayem agreed that if Petitioner were complaining of neck pain at the time of her work injury, his opinion could change. Petitioner's injury reports establish that she was complaining of neck pain with those job duties throughout her employment with Respondent.

No evidence was presented that Petitioner had any complaints relative to her cervical spine prior to her employment with Respondent. Petitioner credibly testified to the onset of her symptoms as well as to the resolution with surgery. After the onset of her symptoms, Petitioner's symptoms continued until she underwent the fusion procedure on February 4, 2020. Petitioner testified, and her records confirm, that her symptoms drastically improved following the surgery. Petitioner's neck pain, as well as the radicular symptoms down her right arm, completely resolved with the February 4, 2020 fusion.

As such, the Arbitrator finds that Petitioner's current condition of ill-being is causally related to her work activities through March 7, 2019.

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

The Arbitrator finds that the medical services provided to Petitioner were reasonable and necessary for the injuries she sustained as a result of her accidents through March 7, 2019. The Arbitrator notes that the medical records, diagnoses, treatment carried out, and treatment recommendations are noted in the Statement of Facts. The Arbitrator finds that Petitioner's treatment described in the statement of facts, including her February 4, 2020 surgery was reasonable and necessary. For the reasons stated above and having found that Petitioner's current condition of ill-being to be related to her injuries, Petitioner's treatment has been reasonable and necessary.

As such, the Arbitrator finds that the Respondent is liable for the treatment provided, as set forth in Petitioner's Exhibits 7 and 8, pursuant to the medial fee schedule, as follows:

Respondent is responsible for the outstanding charges at St. Mary's Hospital through Neurological Monitoring Associates. These charges, totaling $6,885.00 correspond to Petitioner's February 4, 2020 surgery. Having found the surgery to be causally related, Respondent is responsible for those outstanding charges, totaling $6,885.00.

Respondent is responsible for resolution of the ERISA lien from Blue Cross / Blue Shield for the listed charges paid from April 24, 2019 through August 26, 2020. The lien notes charges prior to April 24, 2019 relative to Petitioner's ganglion cyst. The cyst has not been found causally related to Petitioner's work injuries. As such, those charges, prior to April 24, 2019, are denied. Thereafter, Blue Cross / Blue Shield paid charges related to Petitioner's cervical radiculopathy and cervical fusion. Those charges, from April 24, 2019, through August 26, 2020, totaling $70,065.30, are awarded.

As such, Respondent is liable for charges with St. Mary's Hospital, totaling $6,885.00, pursuant to the medical fee schedule. Additional, Respondent is liable for the ERISA lien with Blue Cross / Blue Shield, totaling $70,065.30.

K. What temporary benefits are in dispute?

The Arbitrator finds that Petitioner is not owed Temporary Total Disability benefits. Petitioner testified that no doctor took her off work following the loss of her job with Respondent. Despite her pain, Petitioner continued working for Respondent until they abruptly shut down. She was then treated for unrelated conditions before being treated specifically for her cervical spine. Petitioner was not taken off work and no restrictions were noted by her treating physicians. After Petitioner's February 4, 2020 surgery, she testified she was completely healed. As such, there is no period in which Petitioner was clearly unable to work. As such, TTD is denied.

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

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

1) An impairment report prepared by a physician using the most current edition of the American Medical Association's "Guides to the Evaluation of Permanent Impairment." An impairment rating was not offered by either party. The arbitrator gives this factor no weight.

2) The occupation of the injured employee. Petitioner worked for Respondent for approximately 7 months as a banquet manager. Petitioner continued working until Respondent shut down its doors in March of 2019. Petitioner did not return to Respondent but has been able to return to employment, without limitation as of February of 2020. The arbitrator gives this factor less weight.

3) The age of the employee at the time of the injury. Petitioner was 56 years old at the time of her injuries through March 7, 2019. The arbitrator gives this factor some weight.

4) The employee's future earning capacity. Petitioner has been able to secure employment since her injury. Petitioner testified that she woke up feeling brand new after her surgery on February 4, 2020. She indicated she has not required any additional treatment and has not been under any restrictions after having the cervical fusion. She has not had any symptoms that have limited her future earning capacity. The arbitrator gives this factor some weight.

5) Evidence of disability corroborated by the treating medical records. Petitioner testified to excruciating pain in her neck and down her right arm with her work activities, moving of tables and chairs for events. Petitioner's records support those symptoms, with MRI and EMG findings consistent with nerve root compression in the cervical spine resulting in right sided radiculopathy. Petitioner underwent an anterior cervical C6 corpectomy with decompression and C5-7 fusion on February 4, 2020. Petitioner reported she awoke pain free, with no ongoing symptoms in her neck or right arm. Petitioner was released from care on August 26, 2020 with no restrictions. Petitioner has been able to find subsequent employment with no limitations relative to her cervical spine. The arbitrator gives this factor more weight.

The Arbitrator finds that given the factors above, Petitioner has sustained injury to her cervical spine, resulting in an anterior cervical C6 corpectomy with decompression, neural foraminotomy, and fusion from C5-7. Petitioner has recovered well from the surgery with no ongoing symptoms or functional limitations. Her injury has not prevented her from returning to employment. Given the procedure she underwent, the Arbitrator finds that Petitioner has sustained permanent impairment in the amount of 10% loss of a person as a whole under Section 8(d) (2) of the Act.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	19WC030373
Case Name	Margaret Martin v. Garden Hotel & Conference Center
Consolidated Cases	19WC013423;
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	24IWCC0150
Number of Pages of Decision	12
Decision Issued By	Amylee Simonovich, Commissioner

Petitioner Attorney	Jason Esmond
Respondent Attorney	Christopher Crawford

DATE FILED: 4/2/2024

/s/ Amylee Simonovich, Commissioner

Signature

24IWCC0150

STATE OF ILLINOIS)
) SS.
COUNTY OF WINNEBAGO)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Margaret Martin,

Petitioner,

vs. NO: 19 WC 30373

Garden Hotel & Conference Center,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by Respondent herein and notice given to all parties, the Commission, after considering the issues of accident, causal connection, medical expenses, and permanent disability, and being advised of the facts and law, modifies the Decision of the Arbitrator. The Commission otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

The Commission notes that prior to the arbitration hearing, the parties consolidated this case with an earlier case. Case number 19 WC 13423 involves a prior work accident that occurred on December 1, 2018. The parties addressed both cases during the June 16, 2022, arbitration hearing, and the Arbitrator issued separate, but identical Arbitration Decisions in each case. The Commission addresses the issues Respondent raised on review relating to the companion case in a separate Decision.

After considering the disputed issues, the Commission affirms the Arbitrator's conclusions regarding accident, causal connection, medical expenses, and permanent disability. However, the Commission makes certain modifications to the Arbitration Decision.

In the Findings section of the Arbitration Decision Form, the Arbitrator included the prior December 1, 2018, date of accident. The Commission strikes "December 1, 2018" from the Decision Form. Additionally, the Commission modifies the language in the Findings section to reflect that the Decision addresses a single date of accident. For example, the Arbitrator wrote, "On the dates of accident…" The Commission modifies this language to "On the date of accident…" In the Findings section, the Arbitrator also wrote that Petitioner's average weekly wage was $374.00. The Commission modifies this sentence to read as follows:

> In the year preceding the injury, Petitioner earned $19,448 and the average weekly wage was $374.00.

Also on the Decision Form, the Commission strikes the award included in the Order section and replaces it with:

> **Please refer to the Arbitration Decision issued in case number 19 WC 13423.**

On page six (6), the second line and first full paragraph on (7), page eight (8), and page nine (9) of the Decision, the Arbitrator refers to injuries and/or accidents Petitioner sustained "…through March 7, 2019." The Commission strikes "through March 7, 2019" from the above-referenced sentences and replaces it with "on December 1, 2018, and March 7, 2019."

On page four (4) of the Decision, the Arbitrator wrote the "…activity was done primarily sedentary…" The Commission modifies this sentence to read as follows:

> Petitioner's sales duties were primarily sedentary and included typing and talking on the phone.

Finally, on page eight (8) of the Decision, the Arbitrator wrote, "Additional, Respondent is liable for…" The Commission strikes "Additional" from this sentence and replaces it with "Additionally."

The Commission otherwise affirms and adopts the Decision of the Arbitrator.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed August 30, 2022, is modified as stated herein.

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $100. 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.

April 2, 2024

o: 2/20/24
AHS/jds
51

/s/ *Amylee H. Simonovich*
Amylee H. Simonovich

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	19WC030373
Case Name	Margaret Martin v. Garden Hotel & Conference Center
Consolidated Cases	
Proceeding Type	Request for Hearing
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	9
Decision Issued By	Paul Seal, Arbitrator

Petitioner Attorney	Jason Esmond
Respondent Attorney	Christopher Crawford

DATE FILED: 8/30/2022

/s/ Paul Seal, Arbitrator

Signature

INTEREST RATE WEEK OF AUGUST 30,2022 3.23%

STATE OF ILLINOIS)
)SS.
COUNTY OF WINNEBAGO)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Margaret Martin
Employee/Petitioner

v.

Case # **19 WC 30373**

Consolidated cases:

Garden Hotel & Conference Center
Employer/Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Paul Seal**, Arbitrator of the Commission, in the city of **Rockford**, on **June 16, 2022.** After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On the dates of accident, **December 1, 2018, and March 7, 2019,** Respondent ***was*** operating under and subject to the provisions of the Act.

On these dates, an employee-employer relationship ***did*** exist between Petitioner and Respondent.

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

Timely notice of these accidents ***were*** given to Respondent.

Petitioner's current condition of ill-being ***is*** causally related to her accidents.

In the year preceding the Petitioner's injuries, Petitioner's average weekly wage was **$374.00.**

On the dates of accident, Petitioner was **56** years of age, ***married*** with **0** dependent children.

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

ORDER

- The Respondent shall pay **$ 6,885.00** for necessary medical services, as provided in Section 8(a) and 8.2 of the Act and consistent with the medical fee schedule.

- The Respondent is responsible for resolution of the lien with Blue Cross / Blue Shield relative to **$70,065.30** for the reasonable, necessary medical bills paid for Petitioner's treatment related to her injuries.

- The Respondent shall pay the Petitioner the sum of **$253.00** / week for a period of **50** weeks, as provided in Section 8(d)2 of the Act, because the injuries sustained caused **10% loss of a person as a whole.**

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

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

Signature of Arbitrator

August 30, 2022

STATEMENT OF FACTS

The parties appeared for hearing on June 16, 2022, before Arbitrator Seal under the Illinois Workers' Compensation Act. The parties stipulated that Petitioner was an employee of Respondent on December 1, 2018 and March 7, 2019. The parties stipulated that that timely notice of Petitioner's injuries were provided to Respondent. The parties stipulated that Petitioner's average weekly wage relative to her injuries was $374.00 and that Petitioner was 56 years of age, married, with 0 dependent children at the time of her injuries.

Petitioner testified that she began working for Respondent around August of 2018. Her position was sales and banquet manager. Petitioner worked full time, at least 40 hours a week. She testified that when she first started working for Respondent, she mainly performed sales and booked events. The sales activity was done primarily sedentary, mainly typing and talking on the phone. After approximately one to one and half months, staff was cut, and she started performing set-up for events as well as still doing sales. Set-up required her to move and position chairs, tables, and stages. The venue held approximately 700-800 people. Petitioner testified that events were held weekly or bi-weekly, on the weekends. For events of 175 people, she would set up around 28 tables. Petitioner testified the tables weighed 40-60 pounds. She indicated for a bridal expo, she set up for approximately 400 people. Petitioner testified that set-up would be performed the evening before an event. Petitioner would push and pull carts with the tables and chairs, and then lift them and arrange them around the venue. Petitioner testified that she was doing the set-up on her own. After the event was completed, Petitioner would also take down all the tables and chairs. At times, the waitstaff would assist in take down, but Petitioner typically did that on her own as well.

Petitioner testified that after the first event of approximately 300 guests, in October of 2018, she began to experience pain from her neck down into her right hand. She testified the pain was excruciating and she couldn't sleep or lay on her right side. Petitioner testified that she notified Respondent's General Manager, Nicole White, of her pain with setting up for the event. Petitioner testified that Ms. White filled out an injury report which was kept by Linda in Respondent's office. Petitioner testified that she did not seek treatment right away and was able to keep working. Petitioner testified that she continued to perform her job but noted pain from the back of her neck and down her right arm when she continued to move stages and tables for large events. Petitioner testified that she reported her pain with these activities to Ms. White approximately 15 to 20 times. Petitioner testified that she may have taken a day or two off after experiencing these injuries, but she did continue to return to her position as she was the only one doing the job. Petitioner testified she had not experienced any such symptoms in her neck or shoulder prior to working for Respondent.

Petitioner continued working for Respondent until around March 26, 2019, performing the same job duties. Around March of 2019, Respondent closed its doors due to back owed taxes. Petitioner testified that the banquet activity continued as normal until they abruptly closed their door. After Respondent closed, Petitioner requested her accident reports and was provided copies from Ms. White. Petitioner presented the Illinois Form 45 injury reports as Petitioner's Exhibit 3. Contained are twelve accident reports between October 18, 2018 and March 10, 2019, each signed by Nicole White, General Manager. The October 18, 2018 accident report noted that Petitioner had assisted with event setup = she worked the event carrying large oval food trays with multiple plates and glassware. It noted she had reported severe neck and shoulder pain on her right side. An October 28, 2018 report noted neck and shoulder pain with lifting and moving large round banquet tables

and chairs with setup and cleanup of the banquet room. (Px. 3). Similar complains with similar activities were recorded on December 8, 2018, December 28, 2018, February 10, 2019, February 15, 2019, February 20, 2019, March 7, 2019, and March 10, 2019. (Px. 3).

Petitioner sought treatment with Dr. Matloob at Beloit Health System on January 21, 2019. (Px. 4). At that time, she was treated for a cyst on her right wrist, which she testified was unrelated to her work for Respondent. She underwent excision of the cyst on February 6, 2019 with improvement of the right wrist symptoms on February 15, 2019 and discharge on February 25, 2019. (Px. 4). On April 24, 2019, Dr. Matloob noted Petitioner was experiencing numbness and tingling in her right hand involving mainly the median nerve distribution of the hand. He indicated she likely had carpal tunnel syndrome and recommended an EMG. (Px. 4). Petitioner testified that she reported the pain from her neck into her hand with Dr. Matloob but was initially treated for the cyst and carpal tunnel syndrome.

Around May of 2019, Petitioner woke up unable to see from her left eye. She treated for a detached retina at SSM Health Dean Medical Group, undergoing surgery on her left retina. (Px. 5). On June 17, 2019, Petitioner was seen following an EMG which indicated she did not demonstrate findings consistent with carpal tunnel syndrome, but findings consistent with C6-7 radiculopathy. (Px. 4). Petitioner underwent a cervical MRI on August 30, 2019. On September 6, 2019, Petitioner was seen by Rebecca Kellum. Petitioner reported she had hurt her neck at work last year, in December 2018. The record noted she would type and set up and take down banquet rooms. The record noted she'd initially been treated for a ganglion cyst, then carpal tunnel syndrome was ruled out. It noted she had torn her retina prior to a cervical MRI being performed, delaying treatment for her neck symptoms. Following review of the MRI, Dr. Kellum assessed cervical myelopathy with cervical radiculopathy and referred her to spine center triage. (Px. 5).

Petitioner was then seen by Kara Rusy, NP on September 20, 2019 at SSM Health Dean Medical. She again reported pain with setting up and taking down banquet rooms at a facility, performing heavy lifting. She reported ongoing neck pain radiating down her right arm. A nerve block was recommended along with a right shoulder MRI. (Px. 5). Petitioner underwent the C6 and C7 selective nerve root injection on October 24, 2019 which she testified did not improve her symptoms.

On November 22, 2019, Petitioner was seen by Dr. Kashif Ali at SSM Health Dean Medical, at NP Rusy's request, after having undergone the right shoulder MRI. Dr. Alif indicated that the right shoulder MRI demonstrated tendinosis within the biceps tendon as well as high-grade thickness RC tearing involving the far anterior fibers of the supraspinatus tendon. (Px. 5).

Petitioner followed up with NP Rusy on December 13, 2019. She reported 48 hours of significant relief of neck and right arm pain with the C6, C7 selective nerve root block, with resumption of her pain thereafter. At that time, it was determined she was a candidate for a C5-6 and C6-7 anterior cervical decompression and fusion. (Px. 5). She was referred to Dr. Masciopinto for surgery. (Px. 5).

Petitioner testified that her symptoms in her neck and right arm did not improve after she stopped working for Respondent. The symptoms remained consistent. Petitioner testified she did not work elsewhere until after

undergoing surgery. Petitioner testified that her surgery was paid by Blue Cross/Blue Shield, a policy through her husband's employer. She received no workers' compensation benefits while off work for her surgery.

Petitioner underwent the C5-7 fusion with Dr. Masciopinto on February 4, 2020. Petitioner testified that she woke up in the hospital bed and the pain was gone. Dr. Masciopinto provided a narrative on June 3, 2020, offering the opinion that Petitioner's pain symptoms and surgery were a result of an exacerbation of pre-existing conditions of her cervical spine due to her work activities for Respondent. Dr. Masciopinto noted that Petitioner's cervical spine condition could cause symptoms such as numbness and tingling in one's hand, such that Petitioner complained of in April of 2019. Dr. Masciopinto testified that he last saw Petitioner on August 26, 2020, at which time she was discharged. (Px. 6).

Petitioner was seen by Dr. Ghanayem at Respondent's request for an Independent Medical Examination on September 21, 2020. (Rx. 1). Dr. Ghanayem recorded a history that Petitioner sustained an injury sometime in December 2018 when removing round banquet tables off a racking system using a pulley system when she hurt her neck. Dr. Ghanayem noted that she had reported symptoms in her neck and right arm following that incident. Dr. Ghanayem noted that Petitioner's surgery had worked, and she was pain free as of September 21, 2020. Dr. Ghanayem testified that he felt there was insufficient evidence to find a causal relationship between Petitioner's cervical spine condition and her work activities as there was no medical care documenting her neck symptoms shortly thereafter. (Rx. 1). Dr. Ghanayem agreed that a work injury can cause a degenerative cervical condition to become symptomatic. He agreed that nerve root compression in the cervical spine can cause numbness in the hand. Dr. Ghanayem noted that if there was documentation that Petitioner reported injuries to her employer, his opinions regarding causation could change. Dr. Ghanayem also testified that symptoms of carpal tunnel syndrome would not be resolved with a cervical spine procedure. (Rx. 1).

Petitioner testified that she has not required any additional treatment for her neck or any radicular symptoms. She has no ongoing symptoms, testifying that she feels brand new since her surgery. She returned to work, though not for Respondent, after surgery, without limitation.

FINDINGS OF FACT AND CONCLUSIONS OF LAW ON THE DISPUTED ISSUES

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

The Arbitrator adopts the statement of facts detailed above and finds that Petitioner sustained accidents that arose out of and in the course of her employment by Respondent through March 7, 2019. Petitioner filed claims alleging a repetitive trauma injury on or around December 1, 2018 as well as March 7, 2019. Petitioner testified that she repeatedly injured her neck while working for Respondent after she stared setting up for banquet events. She testified to pain with lifting and moving large tables and chairs. Petitioner completed nine injury reports between October 18, 2018 and March 10, 2019 that documented severe neck and right arm pain with these types of activities. The same activity was recorded on the March 7, 2019 injury report. The reports contain consistent descriptions of the job duties that caused Petitioner pain as well as consistently

noting the pain in the neck and right arm. As such, the Arbitrator finds that Petitioner did sustain repeatedly accidents that arose out of and in the course of her employment with Respondent through March 7, 2019.

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

The Arbitrator adopts the findings of fact stated above and incorporates them herein by this reference. The Arbitrator finds that Petitioner's current condition of ill-being is causally related to her work injuries through March 7, 2019. The Arbitrator relied upon the treating records, the opinions of Dr. Masciopinto, as well Petitioner's credible testimony.

The Arbitrator relies upon the well-established rules set forth by the Illinois Supreme Court that "the fact that an employee may have suffered from a preexisting condition will not preclude an award if the condition was aggravated or accelerated by the employment. The employee need not prove employment was the sole causative factor or even that it was the principal causative factor, but only that it was **a causative factor** in the resulting injury." Williams v. Industrial Com., 85 Ill. 2d 117, 122 (1981).

Petitioner's treatment records, combined with the accident reports, her testimony, and the opinions of Doctors Masciopinto and Ghanayem, establish that a causal relationship exists between Petitioner's work activities for Respondent and her cervical spine condition, which resulted in the fusion on February 4, 2020. Petitioner testified credibly regarding the onset of her neck and right arm symptoms. Petitioner noted she had not experienced any symptoms in her neck or right shoulder prior to working for Respondent. She described the onset of pain in her neck and down her right arm with a change in job duties that required her to push, pull, and lift large tables and chairs to set up Respondent's banquet room. Petitioner's initial medical records do not contain complaints of neck pain. Neck pain is not found in the records until September 6, 2019. However, Petitioner was seen for numbness and tingling in her right hand as of April 24, 2019. These complaints were initially believed to be related to carpal tunnel syndrome and she was initially evaluated regarding that condition. Dr. Masciopinto and Dr. Ghanayem agreed that Petitioner's cervical spine condition could have caused numbness and tingling in her right hand. Thereafter, she had a detached retina which delayed treatment for her neck. Petitioner underwent an EMG on June 17, 2019 and then a cervical MRI on August 30, 2019 that established that her cervical spine was the source of her symptoms. The injury reports completed by Respondent's general manager establish that Petitioner had been complaining of neck pain as well as radiating pain down the right arm from October of 2018 through March of 2019.

Dr. Masciopinto opined that Petitioner's job duties aggravated her pre-existing degenerative cervical spine condition, necessitating the cervical fusion she underwent on February 4, 2020. Dr. Ghanayem opined that there was no causal relationship given the lack of documentation of neck pain prior to September 6, 2019. However, Dr. Ghanayem agreed that if Petitioner were complaining of neck pain at the time of her work injury, his opinion could change. Petitioner's injury reports establish that she was complaining of neck pain with those job duties throughout her employment with Respondent.

No evidence was presented that Petitioner had any complaints relative to her cervical spine prior to her employment with Respondent. Petitioner credibly testified to the onset of her symptoms as well as to the resolution with surgery. After the onset of her symptoms, Petitioner's symptoms continued until she

underwent the fusion procedure on February 4, 2020. Petitioner testified, and her records confirm, that her symptoms drastically improved following the surgery. Petitioner's neck pain, as well as the radicular symptoms down her right arm, completely resolved with the February 4, 2020 fusion.

As such, the Arbitrator finds that Petitioner's current condition of ill-being is causally related to her work activities through March 7, 2019.

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

The Arbitrator finds that the medical services provided to Petitioner were reasonable and necessary for the injuries she sustained as a result of her accidents through March 7, 2019. The Arbitrator notes that the medical records, diagnoses, treatment carried out, and treatment recommendations are noted in the Statement of Facts. The Arbitrator finds that Petitioner's treatment described in the statement of facts, including her February 4, 2020 surgery was reasonable and necessary. For the reasons stated above and having found that Petitioner's current condition of ill-being to be related to her injuries, Petitioner's treatment has been reasonable and necessary.

As such, the Arbitrator finds that the Respondent is liable for the treatment provided, as set forth in Petitioner's Exhibits 7 and 8, pursuant to the medial fee schedule, as follows:

Respondent is responsible for the outstanding charges at St. Mary's Hospital through Neurological Monitoring Associates. These charges, totaling $6,885.00 correspond to Petitioner's February 4, 2020 surgery. Having found the surgery to be causally related, Respondent is responsible for those outstanding charges, totaling $6,885.00.

Respondent is responsible for resolution of the ERISA lien from Blue Cross / Blue Shield for the listed charges paid from April 24, 2019 through August 26, 2020. The lien notes charges prior to April 24, 2019 relative to Petitioner's ganglion cyst. The cyst has not been found causally related to Petitioner's work injuries. As such, those charges, prior to April 24, 2019, are denied. Thereafter, Blue Cross / Blue Shield paid charges related to Petitioner's cervical radiculopathy and cervical fusion. Those charges, from April 24, 2019, through August 26, 2020, totaling $70,065.30, are awarded.

As such, Respondent is liable for charges with St. Mary's Hospital, totaling $6,885.00, pursuant to the medical fee schedule. Additional, Respondent is liable for the ERISA lien with Blue Cross / Blue Shield, totaling $70,065.30.

K. What temporary benefits are in dispute?

The Arbitrator finds that Petitioner is not owed Temporary Total Disability benefits. Petitioner testified that no doctor took her off work following the loss of her job with Respondent. Despite her pain, Petitioner continued working for Respondent until they abruptly shut down. She was then treated for unrelated conditions before being treated specifically for her cervical spine. Petitioner was not taken off work and no restrictions were noted by her treating physicians. After Petitioner's February 4, 2020 surgery, she testified

she was completely healed. As such, there is no period in which Petitioner was clearly unable to work. As such, TTD is denied.

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

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

1) An impairment report prepared by a physician using the most current edition of the American Medical Association's "Guides to the Evaluation of Permanent Impairment." An impairment rating was not offered by either party. The arbitrator gives this factor no weight.

2) The occupation of the injured employee. Petitioner worked for Respondent for approximately 7 months as a banquet manager. Petitioner continued working until Respondent shut down its doors in March of 2019. Petitioner did not return to Respondent but has been able to return to employment, without limitation as of February of 2020. The arbitrator gives this factor less weight.

3) The age of the employee at the time of the injury. Petitioner was 56 years old at the time of her injuries through March 7, 2019. The arbitrator gives this factor some weight.

4) The employee's future earning capacity. Petitioner has been able to secure employment since her injury. Petitioner testified that she woke up feeling brand new after her surgery on February 4, 2020. She indicated she has not required any additional treatment and has not been under any restrictions after having the cervical fusion. She has not had any symptoms that have limited her future earning capacity. The arbitrator gives this factor some weight.

5) Evidence of disability corroborated by the treating medical records. Petitioner testified to excruciating pain in her neck and down her right arm with her work activities, moving of tables and chairs for events. Petitioner's records support those symptoms, with MRI and EMG findings consistent with nerve root compression in the cervical spine resulting in right sided radiculopathy. Petitioner underwent an anterior cervical C6 corpectomy with decompression and C5-7 fusion on February 4, 2020. Petitioner reported she awoke pain free, with no ongoing symptoms in her neck or right arm. Petitioner was released from care on August 26, 2020 with no restrictions. Petitioner has been able to find subsequent employment with no limitations relative to her cervical spine. The arbitrator gives this factor more weight.

The Arbitrator finds that given the factors above, Petitioner has sustained injury to her cervical spine, resulting in an anterior cervical C6 corpectomy with decompression, neural foraminotomy, and fusion from C5-7. Petitioner has recovered well from the surgery with no ongoing symptoms or functional limitations. Her injury has not prevented her from returning to employment. Given the procedure she underwent, the Arbitrator finds that Petitioner has sustained permanent impairment in the amount of 10% loss of a person as a whole under Section 8(d) (2) of the Act.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	19WC002535
Case Name	Dawna Oberg v. Schaumburg Park District
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	24IWCC0151
Number of Pages of Decision	17
Decision Issued By	Deborah Simpson, Commissioner

Petitioner Attorney	Andrew Kriegel
Respondent Attorney	John McCabe

DATE FILED: 4/2/2024

/s/ Deborah Simpson, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Dawna Oberg,
Petitioner,

vs. NO: 19 WC 2535

Schaumburg Park District,
Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of medical, permanent disability and temporary disability and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed May 16, 2023, is hereby affirmed and adopted.

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

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

There is no bond for the removal of this cause to the Circuit Court by Respondent pursuant to §19(f)(2) of the Act. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

April 2, 2024

o3/6/24
DLS/rm
046

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

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

/s/*Raychel A. Wesley*
Raychel A. Wesley

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	19WC002535
Case Name	Dawna Oberg v. Schaumburg Park District
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	15
Decision Issued By	Charles Watts, Arbitrator

Petitioner Attorney	Andrew Kriegel
Respondent Attorney	John McCabe

DATE FILED: 5/16/2023

THE INTEREST RATE FOR THE WEEK OF MAY 16, 2023 4.98%

/s/Charles Watts, Arbitrator

Signature

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Dawna Oberg
Employee/Petitioner

v.

Schaumburg Park District
Employer/Respondent

Case # **19** WC **002535**

Consolidated cases: _____

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Charles Watts**, Arbitrator of the Commission, in the city of **Chicago**, on **4/18/2022**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On **January 20, 2019**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $**11,885.12**; the average weekly wage was $**228.56**.

On the date of accident, Petitioner was **76** years of age, ***single*** with **0** dependent children.

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

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

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

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

ORDER

- Respondent Shall pay Petitioner TTD benefits in the amount of $228.56 from the period of January 21, 2019 through February 11, 2020.
- Petitioner sustained injuries to the right leg resulting in 40% loss of the right leg. Respondent shall pay Petitioner $228.56 per week for a period of 86 weeks as a result of her right leg injury.
- Petitioner sustained to the right hand resulting in 15% loss of the hand. Respondent shall pay Petitioner $228.56 per week for a period of 30.75 weeks as a result of the right wrist/hand injury.
- Petitioner sustained injuries to her neck and back resulting in 3.5% loss of a person-as-a-whole. Respondent shall pay $228.59 per week for a period of 17.5 weeks as a result of the neck and head injuries.
- Respondent Shall pay, pursuant to the fee schedule, the following unpaid medical bills: Alexian Brothers Medical Center: $3,725.00; Chicago Hand & Orthopedic Surgery Centers: $9,796.00; Perns Neck & Back Clinic: $417.00; ATI Physical Therapy: $5,791.59; Illinois Bone & Joint Institute: $1,755.00

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

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

MAY 16, 2023

Signature of Arbitrator

THE ARBITRATOR'S FINDINGS OF FACT AND CONCLUSIONS OF LAW

Petitioner, Dawna Oberg, aged 75 (Tr. 7) worked for the Schaumburg Park District on January 20, 2019. The parties stipulated on that date Petitioner suffered an accident arising out of and in the course of her employment. (Arb. Ex. 1). Petitioner testified that at the time of the accident she worked part-time as a front counter attendant. (Tr. 7). She testified to her job duties, which included opening and closing the gates to the various entrances and nature center, arming and disarming the alarms. She also checked people into the building and assisted with miscellaneous tasks on an as needed basis. (Tr. 7-8). Petitioner employed by the Park District as a front counter attendant for eighteen years prior to her work injury. (Tr. 8).

Petitioner testified that on January 20, 2019 she was working a special event at the Schaumburg Park District. She had gone into the multi-purpose room to speak to another staff member and as she was leaving she tripped over something on the floor. Petitioner testified this caused her to stagger forward and as she was struggling to regain her balance her left foot got hooked on a chair and she was jerked back. She fell and landed on her hip and heard a crack of the bone breaking. (Tr. 9). Petitioner testified that as she was falling she extended her right arm and her hip, right arm and head hit the ground. (Tr. 9). The emergency room records document Petitioner being unable to catch herself with her right arm and hearing a pop. (PX 5 p 33).

After the fall she was writhing in pain on the floor. The facility director came to Petitioner's aid and informed her an ambulance had been called. (Tr. 9). Paramedics arrived at the scene and transported Petitioner Alexian Brothers Elk Medical Center where she was admitted. (Tr. 10).

Petitioner underwent right intertrochanteric femur fracture reduction and cephalomedullary nailing. (PX 5 p 114). Petitioner remained hospitalized through January 29,

2019. (Tr. 10). During the hospital stay Petitioner testified her pain was really bad and she was given morphine for pain control. (Tr. 10). Following the surgery, Petitioner was admitted to Transitional Care of Arlington Heights where she stayed through February 25, 2019. (PX 6 p 1184; Tr. 11). While in transitional care Petitioner underwent walking and stretching exercises. The treatment was focused on restoring her ability to walk normally. (Tr. 11).

Petitioner followed-up with her hip surgeon Dr. Patel at his office on February 11, 2019. The intake forms completed by Petitioner report injuries to her hip, neck, head and right hand. (PX 7 pp 2079-2080). At that time she was having trouble walking and did not have full function in her leg. (Tr. 11). Petitioner testified that when she saw Dr. Patel on February 11, 2019, that in addition to leg pain, she was having pain in her neck, and her right hand. (Tr. 12). Petitioner's treating surgeon diagnosed her with right carpal tunnel syndrome on February 11, 2019. (PX 7 p 2091). An x-ray of the right wrist documented a displaced fracture of the right hamate. (Px 7 p 2092). The Arbitrator notes that Respondent argues that because the date of the x-ray taken at Chicago Hand & Orthopedic to her wrist is given the date of 1-21-19 that it is impossible that she had this x-ray taken because she was in-patient post-surgery at Alexian Brothers. The much more plausible reason the Arbitrator adopts is that Petitioner was examined on 2-11-19 by Dr. Patel who ordered diagnostic testing of Petitioner's right upper extremity and that the x-ray was in fact taken that day, 2-11-19, and that the 1-21-19 date is a simple typographical error – the 1 and 2 merely reversed.

Petitioner testified that Dr. Patel referred her for additional treatment for the other problems and that she continued to treat with Dr. Patel for the right hip injury. (Tr. 12-13). Dr. Patel continued to recommend physical therapy for the right hip and continued to restrict Petitioner from work. (Tr. 13).

Dr. Patel recommended an EMG of the right upper extremity, which was authorized for four months. (PX 7 p 2097). Dr. Patel documented persistent numbness in the digits of the right hand. (PX 7 p 2097). He continued to restrict Petitioner from work and continued to order physical therapy.

On May 16, 2019, Petitioner underwent the recommended EMG that revealed electrophysicological evidence of severe right median mononeuropathy across the wrists. (PX 7 p 2108).

Petitioner returned in May 2019 to Dr. Patel for evaluation of her hip and wrist. At that time she was able to walk a little without a cane. (Tr. 14). Dr. Patel documented that Petitioner was having dizzy spells post trauma and referred her to a neurologist for a consultation. (Px 7 p 2105). He documented delayed healing of the right femur fracture. (Px 7 p 2105). The treatment with the neurologist for the post-trauma dizzy spells was never authorized by Respondent. Dr. Patel reviewed the EMG findings and Petitioner was referred to Dr. Kulovitz at Chicago Hand and Orthopedic Surgery. (Tr. 14).

Petitioner was seen by Dr. Kulovitz on June 27, 2019 for treatment of her right wrist. Dr. Kulovitz examined Petitioner and noted a positive tinel's over the carpal tunnel, with a positive median nerve compression test. She was diagnosed with paresthesias in the right hand and carpal tunnel syndrome of the right wrist. (PX 7 p 2109). Dr. Kulovitz found Petitioner to be a surgical candidate due to the severity of the compression of the median nerve. Dr. Kulowitz performed a cortisone injection and ordered Petitioner to follow-up in 3-4 weeks. She continued to restrict Petitioner from work.

Petitioner followed-up with Dr. Kulowitz on July 25, 2019 to discuss the planned surgery given the continued symptoms in her right hand. (PX 7 p 2113). During this time, Petitioner

was continuing to treat for her hip. She followed-up with Dr. Patel who released her from his care for the hip and ordered a continued home exercise program. She was instructed to follow-up as needed for the hip. (PX 7 p 2115). Dr. Patel noted despite being cleared for the hip that Petitioner would require continued restrictions due to her wrist and neck. (PX 7 p 2115).

Petitioner was seen by Dr. Regan of Illinois Bone and Joint Institute in August 2019. He noted that Petitioner hurt her neck and hand when she slipped and fell at work in addition to her hip. (PX 8 p 2317). He ordered an MRI of the cervical spine. Following the MRI, Dr. Regan ordered a course of physical therapy and noted if she had more nerve pain in the future that she would be a candidate for cervical decompression. (PX 8 p 2321). Following the course of physical therapy, Petitioner returned to Dr. Regan who recommended continued exercises and to follow-up with any worsening symptoms in the future. (PX 2322).

On September, 9 2019 Petitioner underwent right carpal tunnel release. (Px 7 p 2127). Petitioner continued to treat with Dr. Kulovitz post-surgery. She underwent a course of physical therapy and was eventually released on February 11, 2020. (Tr. 16).

Petitioner testified that she continued to have symptoms in her head and neck that required additional treatment at the time she was released by Dr. Kulovitz. (Tr. 17). She testified that Dr. Patel referred her to be seen by a neurologist. (Tr. 17).

Petitioner testified she currently has balance problems. She has trouble getting on and off escalators and now gets dizzy going down escalators. She now has trouble doing yard work and can no longer do all of her own yard work. She also testified to unsteady gait, memory, and balance testified she did not have any of these neurological problems prior to the accident other than two ocular headaches over the span of her entire life. (Tr. 21). She was went onto testify

that her previous ocular type headaches never disrupted her activities of daily living and her ability to work. (Tr. 22).

Petitioner testified she continues to have numbness in the first three fingers of her right hand and she can no longer type. It is now difficult for her to manipulate things, to work in the garden, clip anything, and groom her cats. She drops things because of the weakness in her right hand and inability to grip things properly. (Tr. 23). She did not have any of these issues prior to the work accident. (Tr. 25).

Petitioner testified has pain in her right hip with certain motions. When she leans at an awkward angle, she will also get sharp right hip pain. (Tr. 23). She still has weakness in her leg and no longer trusts it. She now walks with a cane wherever she goes because she does not know if there will be curbs or uneven surfaces. She testified she can only walk without a cane if she knows there is going to be no wind and flat walking surfaces and something she can hold on to. (Tr. 24). She did not have any of these issues prior to the work accident. (Tr. 24).

Petitioner testified she has not seen Dr. Patel or any other physician for her hip injury since the summer of 2019. (Tr. 29-30). Petitioner testified she still drives an automobile and only uses a cane on windy days or on uneven surfaces. (Tr. 24, 29, 33). Petitioner testified she has "no pressing problems" with her hip. (Tr. 30, 36).

Dr. Mark Levin, a board-certified orthopedic specialist, performed a Section 12 Medical Examination on the Petitioner on July 8, 2019, and testified about his findings. (RX15). Dr. Levin testified that Petitioner stated she was capable of returning to work from the right hip standpoint on July 8, 2019. (RX15 pp. 18-19). Dr. Levin diagnosed Petitioner with a well healed fracture of hip. (RX15 p. 28). Dr. Levin testified that Petitioner was at MMI as of July 8, 2019, for the right hip injury and did not need any more medical treatment. (RX15 pp. 28-29, 71). Dr.

Levin testified that Petitioner could perform her front counter job for Respondent with no restrictions as of July 8, 2019. (RX15 pp. 30, 76). Dr. Levin testified Petitioner had no restrictions on her driving from a right hip standpoint. (RX15 pp. 19, 30-31). Dr. Levin opined that Petitioner suffered a 7% loss of use of the lower extremity from the hip injury pursuant to the AMA Impairment Ratings. (RX15 pp. 43-44).

CONCLUSIONS OF LAW

The Arbitrator adopts the Statement of Facts in support of the Conclusions of Law.

Section 1(b)3(d) of the Act provides that, in order to obtain compensation under the Act, the employee bears the burden of showing, by a preponderance of the evidence, that he or she has sustained accidental injuries arising out of and in the course of the employment. 820 ILCS 305/1(b)3(d).

To obtain compensation under the act, Petitioner has the burden of proving, by a preponderance of the evidence, all of the elements of her claim (*O'Dette v. Industrial Commission*, 79 Ill.2d 249, 253 (1980) including that the accidental injury both arose out of and occurred in the course of his or her employment (*Horvath v. Industrial Commission*, 96 Ill.2d. 349 (1983)) and that there is some causal relationship between the employment and her injury. *Caterpillar Tractor Co. v. Industrial* Commission, I29 Ill. 2d 52, 63 (1998). Decisions of an Arbitrator shall be based exclusively on the evidence in the record of the proceeding and material that has been officially noticed. 820 ILCS 305/1.1(e).

Credibility is the quality of a witness which renders Petitioner's 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 Petitioner's testimony. Where a claimant's testimony is inconsistent with his actual behavior and conduct, the Commission has held that an

award cannot stand. *McDonald v. Industrial Commission*, 39 Ill. 2d 396 (1968); *Swift v. Industrial Commission*, 52 Ill. 2d 490 (1972). The mere existence of testimony does not require its acceptance. *Smith v. Industrial Commission*, 98 Ill.2d 20, 455 N.E.2d 86 (1983).

The Petitioner bears the burden of proving every aspect of his claim by a preponderance of the evidence. *Hutson v. Industrial Commission*, 223 Ill App. 3d 706 (1992). "Liability under the Workmen's Compensation Act may not be based on imagination, speculation, or conjecture, but must have a foundation of facts established by a preponderance of the evidence…" *Shell Petroleum Corp. v. Industrial Commission*, 10 N.E.2d 352 (1937). The burden of proof is on a claimant to establish the elements of her right to compensation, and unless the evidence considered in its entirety supports a finding that the injury resulted from a cause connected with the employment there is no right to recover. *Revere Paint & Varnish Corp. v. Industrial Commission*, 41 Ill.2d. 59 (1968). Preponderance of the evidence means greater weight of the evidence in merit and worth that which has more evidence for it than against it. *Spankroy v. Alesky*, 45 Ill. App.3d 432 (1st Dist. 1977).

The Arbitrator observed Petitioner's demeanor at trial. On direct exam, Petitioner appeared calm and answered questions with an easy and direct manner. Petitioner's body language and eye contact was consistent with her testimony. Petitioner's demeanor remained the same during cross examination. Her testimony is consistent with the medical records. The Arbitrator finds Petitioner to be credible.

Dr. Levin, Respondent's Section 12 examiner, opined that he could not corroborate Petitioner's injuries to her head, neck and wrist because of discrepancy in the date of an x-ray and documentation in the medical records. Dr. Levin does corroborate the hip injury. Dr. Patel's records indicate complaints to the hip, wrist, neck and head. The issue surrounding when the x-

ray was taken of Petitioner's wrist concerns a typographical error that is completely logical and explained by a review of the entirety of these records. The Arbitrator finds the records of Dr. Patel and Petitioner's other treaters more credible and persuasive than the opinions of Dr. Levin.

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

The parties have stipulated that Petitioner sustained an accident arising out of and in the course of her employment with the Schaumburg Park District on January 20, 2019. The manner in which Petitioner fell is important in the determination of causation of all her claimed injuries. Ms. Oberg credibly testified that she tripped over something on the floor, which caused her to stagger forward and as she was struggling to regain her balance her left foot got hooked on a chair and she was jerked back. She fell and landed on her hip and heard a crack of the bone breaking. (Tr. 9). Petitioner testified that as she was falling she extended her right arm and her hip, right arm and head hit the ground. (Tr. 9). The emergency room records corroborate Petitioner's testimony documenting Petitioner being unable to catch herself with her right arm and hearing a pop. (PX 5 p 33). The intake forms completed by Petitioner corroborate her testimony regarding injuries to her hip, neck, head and right hand. (PX 7 pp 2079-2080). The Arbitrator finds the accident involved Petitioner's hip, neck, head and right hand.

Petitioner underwent right intertrochanteric femur fracture reduction and cephalomedullary nailing. (PX 5 p 114). Treatment to this body part is not in dispute.

Petitioner's treating surgeon diagnosed her with right carpal tunnel syndrome on February 11, 2019. (Px 7 p 2091). An x-ray of the right wrist documented a displaced fracture of the right hamate. (Px 7 p 2092). Respondent argues that because the date of the x-ray taken at Chicago Hand & Orthopedic to her wrist is given the date of 1-21-19 that it is impossible that she had this x-ray taken because she was in-patient post-surgery at Alexian Brothers. The much

more plausible reason is that Petitioner was examined on 2-11-19 by Dr. Patel who ordered diagnostic testing of Petitioner's right upper extremity and that the x-ray was in fact taken that day, 2-11-19, and that the 1-21-19 date is a simple typographical error – the 1 and 2 merely reversed. The Arbitrator finds the wrist injury causally related to the work accident.

Workers need only prove that some act or phase of employment was a causative factor in her ensuing injuries. *Land and Lakes Co. v. Industrial Commission,* 359 Ill.App.3d 582, 592 (2005). The work-related task need not even be the sole or principal causative factor of the injury, as long as the work is a causative factor. *Sisbro v. Industrial Commission,* 207 Ill.2d 193, 205 (2003). Even if the claimant has a pre-existing degenerative condition which makes him more vulnerable to injury, recovery for accidental injury will not be denied as long as she can show that her employment was a causative factor. See *Sisbro,* 207 Ill.2d at 205. Causal connection between work duties and an injured condition may be established by a chain of events including claimant's ability to perform duties before the date of an accident and inability to perform the same duties following the date of accident. *Darling v. Industrial Commission,* 176 Ill.App.3d 186, 530 N.E.2d 1135. If a claimant is in a certain condition, an accident occurs, and following the accident the claimant's condition deteriorated, it is plainly inferable the intervening accident caused the deterioration. The salient factor is not the precise previous condition, it is the resulting deterioration from whatever the previous condition had been. *Schroeder v. Illinois Workers' Compensation Commission,* 4-16-0192 WC (Fourth Dist. 2017).

Here, Petitioner was seen to have right hip fracture following her work accident and underwent immediate surgery. X-rays also objectively showed a fracture of the right hamate following the work injury and an EMG demonstrated carpal tunnel syndrome. Petitioner testified that she had a new onset of dizziness and balance issues post-accident and Respondent does not

have any medical testimony to refute this claimed injury. Not one of these conditions was seen on any imaging prior to the work accident and not one of these findings were symptomatic prior to work accident. Petitioner's intake forms completed at her first follow-up with her hip surgeon document, hip, head, neck and hand problems. The evidence here clearly demonstrates a causal connection between the work injury and Petitioner's current condition of ill-being in the hip, neck, head, and wrist.

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

Under Section 8(a) of the Act, a claimant is entitled to recover reasonable medical expenses, the incurrence of which are causally related to an accident arising out of and in the scope of employment and which are necessary to diagnose, relieve, or cure the effects of the claimant's injury. *Absolute Cleaning/SVMBL v. Ill. Workers' Compensation Comm'n,* 409 Ill.App.3d 463, 470 (4th Dist. 2011). The Arbitrator finds that Petitioner's treatment was reasonable and necessary to diagnose, relieve or cure Petitioner's effects of his injuries. Petitioner has numerous unpaid medical bills, which are enumerated below:

Alexian Bros. Medical Center:	$3,725.00
Chicago Hand & Orthopedic Surgery Centers:	$9,796.00
Perns Neck and Back Clinic:	$417.00
ATI Physical Therapy:	$5,791.59
Illinois Bone & Joint Institute:	$1,755.00

As such, Respondent shall pay, pursuant to the fee schedule, the above-listed unpaid reasonable and necessary medical bills directly to Petitioner.

Issue K: What temporary benefits are in dispute?

Section 8(b) of the Illinois Workers' Compensation Act provides for the payment of temporary total disability ("TTD") to workers who are temporarily unable to work as a result of a

work-related injury. An injured employee is entitled to TTD from the time an injury incapacitates him from working until the time the employee is recovered to the point the permanent character of the injury will permit. *Mobil Oil Corp. v Industrial Comm'n* 327 Ill.App.3d 778, 261 Ill.Dec. 924, 764 N.E.2d 539 (3d Dist. 2002). Here, Petitioner's condition had not stabilized and she remained restricted from work through February 11, 2020. Therefore, the Arbitrator finds Petitioner is entitled to TTD benefits from the time of her January 20, 2019 injury through February 11, 2020 the date she was released from treatment.

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

Section 8.1b(b) of the Workers' Compensation Act sets forth the factors to be considered in determining PPD. As to subsection (i), the Arbitrator notes that Dr. Levin opined that Petitioner suffered a 7% loss of use of the lower extremity from the hip injury pursuant to the AMA Impairment Ratings. (RX15 pp. 43-44). The Arbitrator gives this factor significant weight in determining the extent of injury to Petitioner's hip.

As to subsection (ii), Petitioner's occupation was a clerk at a nature center. She has not returned to work having retired. The Arbitrator finds that a return to that occupation would be difficult. The Arbitrator gives this factor moderate weight.

As to subsection (iii), Petitioner was 75 years old at the time of the accident. The Arbitrator gives this factor moderate weight.

As to subsection (iv), the Arbitrator finds that the work injury did not impact Petitioner's future earning capacity. Petitioner retired. This factor is given little weight.

As to subsection (v), there is evidence of disability corroborated by the medical records. Petitioner had surgery to her hip and wrist. She walks with a cane and has numbness and loss of

strength in her injured wrist. Her unrebutted testimony is that she also suffers from balance issues and dizziness The Arbitrator gives this factor significant weight.

Based on the above factors, and the evidence taken as a whole, the Arbitrator finds that Petitioner sustained permanent partial disability to the extent of 40% loss of the right leg as a result of her hip injury; 15% loss of the right hand as a result of the right wrist fracture and carpal tunnel; and 3.5% loss of a person-as-a-whole as a result of her neck and neurological injuries sustained in the work accident.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	22WC032819
Case Name	Omar Hernandez v. Cicero Fire Department
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b-1) Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	24IWCC0152
Number of Pages of Decision	24
Decision Issued By	Carolyn Doherty, Commissioner

Petitioner Attorney	Patrick Serowka
Respondent Attorney	Robert Luedke

DATE FILED: 4/3/2024

/s/Carolyn Doherty, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

OMAR HERNANDEZ,

Petitioner,

vs. NO: 22 WC 32819

TOWN OF CICERO,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed under Section 19(b-1) of the Act by the Petitioner herein and notice given to all parties, the Commission, after considering the issues of causal connection, medical expenses, and the Arbitrator's failure to award unpaid medical bills to Petitioner, and being advised of the facts and law, clarifies and further modifies the Decision of the Arbitrator as stated below and otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part thereof. The Commission further remands this case to the Arbitrator for further proceedings for a determination of a further amount of temporary total compensation or of compensation for permanent disability, if any, pursuant to *Thomas v. Industrial Comm'n*, 78 Ill. 2d 327 (1980).

I. Causal Connection

The Commission writes additionally to clarify the Decision of the Arbitrator regarding the issue of causal connection. On page 10 of the Decision, the Arbitrator concluded that "the medical records and causal opinion of Dr. Domb support a causal connection between the 11.27.22 work injury for respondent and the subsequent disabling condition of the right hip *and* low back." The Arbitrator also concluded that the Petitioner proved by a chain of events analysis, and by both the lay and the medical expert testimonial evidence, including the Section 12 examiner, Dr. Michael Stover, that Petitioner's current condition of ill-being is related to the November 27, 2022, work injury for Respondent. *Id.* However, in the Order section of the Decision, the Arbitrator stated, "The arbitrator finds only the labral tear in the petitioner's right hip causally connected to the petitioner's work accident" and "The arbitrator finds the

petitioner's femoral head, femoral neck, acetabulum, was causally connected to the work accident." The Arbitrator made no finding regarding the lumbar spine in the Order section of the Decision.

The Commission writes to clarify the Decision to resolve these inconsistencies. Specifically, the Commission clarifies that Petitioner proved a causal connection between the work accident and the condition of ill-being in his right hip and lumbar spine as stated in the body of the Decision. Although the discussion in the Decision focused on the right hip, which was the most contested part of Petitioner's claim, the Arbitrator also found that there was no evidence that Petitioner had any symptomatic right hip condition or condition of the low back prior to November 27, 2022 and no physical inhibition to working full-duty as a firefighter for Respondent before the accident. Decision, p. 8, 10. The Arbitrator relied on the chain of events to find causation as to both body parts. See *id*. The Commission affirms and adopts these findings and clarifies the Decision only to indicate that the Petitioner proved a causal connection between the November 27, 2022 accident and the current condition of Petitioner's right hip *and* lumbar spine.

II. Medical Expenses

On review, Petitioner objects to the Arbitrator's failure to award his unpaid medical bills as demonstrated by Petitioner's Exhibit 17. In failing to award medical expenses, the Arbitrator stated that "the evidence does not establish medical bills are unpaid and what the fee schedule amounts are for the claimed unpaid medical bills." Decision, p. 11. The Commission disagrees and finds that a significant amount of unpaid medical expenses is clearly reflected in the record. The Request for Hearing form clearly states that Petitioner claimed $394,783.07 in unpaid medical bills and refers to Petitioner's Exhibit 17. The summary included in that exhibit refers to $404,129.18 in alleged unpaid medical bills from: ADCO Billing Solutions; AHI; Athletico; BCBS; Bright Light Medical Imaging; Chicago Center for Advanced Surgery; Team Rehab; Town Square Anesthesia; University of Chicago AdventHealth La Grange; and West Suburban Medical Center. These bills also appear in Petitioner's other exhibits and are compiled for demonstrative purposes in Petitioner's Exhibit 17. A review of these bills indicates that BCBS paid $614.22 in benefits on $1,677.00 in bills from Primary Care Associates, Central DuPage Hospital, and Bright Light Medical Imaging. Respondent's Exhibit 5 is correspondence from BCBS to IMPG, Respondent's workers' compensation carrier, indicating that it would be seeking reimbursement for benefits paid in this case. Respondent's Exhibit 8 is a summary of $10,371.32 in claims paid by IMPG for services by Orthopedic Associates of Riverside, ADVANET, Align Networks Northshore University Health System, and Priority Care Solutions. Given this record, Petitioner has proved that there is a large sum of unpaid medical expenses remaining and which were incurred in connection with the care and treatment of Petitioner's causally related conditions of ill-being.

Petitioner further objects on review to the Arbitrator's conclusion that any unpaid medical expenses are to be paid directly to the medical providers due to a lack of dispute. Based on its review of the record, and on a plain reading of the Request for Hearing, the Commission finds that a dispute clearly existed on the issue of medical expenses.

After establishing that unpaid bills exist and that Respondent in fact disputed the unpaid bills, the Commission next turns to the issue of to whom the payment of medical expenses is to be made. Generally, Section 8 of the Act specifically requires that "compensation *** shall be paid to the employee." 820 ILCS 305/8 (West 2022). The Commission is cognizant that Section 8(a) of the Act provides that "[i]If the employer *does not dispute* payment of first aid, medical, surgical, and hospital services, the employer shall make such payment to the provider on behalf of the employee." 820 ILCS 305/8(a) (West 2022). In this case, the record clearly indicates Respondent's dispute on the issue of medical expenses based on a review of the Request for Hearing. The "dispute" language in Section 8(a) refers to a dispute existing prior to hearing, as is the case in the instant matter. *E.g.*, *Buff v. Mayce's Competitive Edge*, Ill. Workers' Comp. Comm'n, No. 17 WC 07280, 21 IWCC 0261 (Jun. 1, 2021); *Wagner v. Walgreens Distribution Center*, Ill. Workers' Comp. Comm'n, No. 18 WC 17063, 20 IWCC 0745 (Dec. 17, 2020). Accordingly, the Commission concludes that this case falls within the general command of Section 8, not the exception in Section 8(a) of the Act, and that the unpaid bills are to be paid to Petitioner.

Lastly, the Commission rejects the position that unpaid medical bills cannot be ordered paid by the Respondent if the fee schedule amount of those bills is unknown. The Commission specifically notes that the employer may be ordered to pay medical expenses according to the fee schedule even when the fee schedule amount is unknown, under the procedures provided for in the Act. See *Springfield Urban League v. Illinois Workers' Compensation Comm'n*, 2013 IL App (4th) 120219WC, ¶¶ 35-39.

Based on the foregoing, the Commission modifies the Decision of the Arbitrator to order that Respondent shall pay the disputed, unpaid, reasonable and necessary medical services summarized in Petitioner's Exhibit 17 to Petitioner, pursuant to Sections 8(a) and 8.2 of the Act. The Commission also awards Respondent a credit for amounts already paid. Respondent shall hold Petitioner harmless from any claims by any providers of the services for which Respondent is receiving this credit, as provided in Section 8(j) of the Act.

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

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator dated February 5, 2024, is modified as stated herein. The Commission otherwise affirms and adopts the Decision of the Arbitrator.

IT IS THEREFORE FOUND BY THE COMMISSION that Petitioner established a causal connection between the November 27, 2022 accident and the condition of ill-being of his lumbar spine and right hip.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay Petitioner's reasonable and necessary medical services, as summarized in Petitioner's Exhibit 17, to Petitioner pursuant Sections 8(a) and 8.2 of the Act. The Commission also awards Respondent a credit for amounts already paid. Respondent shall hold Petitioner harmless from any claims by any providers of the services for which Respondent is receiving this credit, as provided in Section 8(j) of the Act.

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

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

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

April 3, 2024

o: 3/21/24
CMD/kcb
045

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

/s/ *Raychel A. Wesley*
Raychel A. Wesley

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	22WC032819
Case Name	Omar Hernandez v. Cicero Fire Department
Consolidated Cases	
Proceeding Type	19(b-1) Petition Remand Arbitration
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	19
Decision Issued By	William McLaughlin, Arbitrator

Petitioner Attorney	Patrick Serowka
Respondent Attorney	Robert Luedke

DATE FILED: 2/5/2024

/s/William McLaughlin, Arbitrator

Signature

THE INTEREST RATE FOR THE WEEK OF JANUARY 30, 2024 4.985%

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b-1)

Omar Hernandez
Employee/Petitioner
v.
Town of Cicero
Employer/Respondent

Case # **22** WC **32819**

Consolidated cases: _____

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. Petitioner filed a *Petition for an Immediate Hearing Under Section 19(b-1) of the Act* on **August 7, 2023**. Respondent filed a *Response* on **August 11, 2023**. The Honorable **William McLaughlin**, Arbitrator of the Commission, held a pretrial conference on August 18, 2023, November 22, 2023, and **December 6, 2023**, and a trial on **December 11, 2023 and January 3, 2024**, in the city of **Chicago**. 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 **reimbursement of sick days and/or vacation days**

FINDINGS

On the date of accident, **November 27, 2022**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $**82,542.20**; the average weekly wage was $**1,587.35**.

On the date of accident, Petitioner was **37** years of age, ***married*** with **2** dependent children.

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

Respondent shall be given a credit of $**0** for TTD, $**0** for TPD, $**0** for maintenance, and $**$92,127.39 full salary** for other benefits, for a total credit of $**$92,127.39**.

Respondent is entitled to a credit of $**all medical paid by Blue Cross Blue Shield** under Section 8(j) of the Act.

ORDER

The arbitrator finds only the labral tear in the petitioner's right hip causally connected to the petitioner's work accident.

The arbitrator finds the petitioner's femoral head, femoral neck, acetabulum, was causally connected to the work accident.

Penalties are not awarded.

Petitioner received full salary during the time he was off work or on light duty.

No TTD is awarded.

All sick and/or vacation days used by petitioner during time off for this accident have been returned to petitioner by respondent.

Some of the petitioner's medical bills for this accident have been paid by the respondent's group carrier, Blue Cross Blue Shield.

Some of the petitioner's medical bills for this accident have been paid by the third-party administrator for workers compensation medical bills, IPMG.

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

RULES REGARDING APPEALS Unless a party 1) files a *Petition for Review* within 30 days after receipt of this decision; and 2) certifies that he or she has paid the court reporter $ or the ***final*** cost of the arbitration transcript and attaches a copy of the check to the *Petition*; and 3) perfects a review in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

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

Signature of Arbitrator

February 5, 2024

FINDINGS OF FACT

Petitioner, Omar Hernandez, has been a firefighter for Respondent since August 2019.His job requires fighting fires, extractions from cars, rendering medical aid. He lifts and carries hoses, uses Halligan bars, axes, jaws of life in the usual course of his duties. (Tr. 11-14).

On November 27, 2022, Petitioner was answering a fire call at a structure, he exited the rig in full gear, equipment, and a full water canister over his right shoulder. This equipment weighed between 150 and 200 lbs. As he approached the home he stepped on uneven ground with his right foot and felt pain in his right groin but proceeded into the active fire. He completed the call. (Tr. 15-17). Upon leaving and arriving at the firehouse he noticed right groin and hip pain and subsequently reported it to his Chief. (PX 1).

Respondent paid PEDA from November 28, 2022, through April 22, 2023. (RX 2, Tr. 24). Petitioner worked modified duty from April 23, 2023, through May 2, 2023. (Tr. 24). On May 2, 2023, Deputy Chief Fithian and Chief Penskoff told him, per human resources, they could no longer provide an accommodation. He had been working at a desk on forms in light duty. (Tr. 25).

Petitioner testified he was examined on the July 26, 2023, Dr. Michael Stover (IME). Petitioner testified the doctor spent approximately 60 seconds performing a range of motion examination. (Tr. 32).

Following the denial of PEDA and medical care Petitioner was forced to use s sick and vacation time so he could get paid. He estimated that time ran out in Mid-Late July 2023. He explained other firefighters donated their sick, vacation, kelly and worked shifts for him to enable him to get paid. (Tr 34-35).

On December 4, 2023 Petitioner was contacted by Justin Swiatiwc who told Petitioner to come in the next day for sedentary duty. Petitioner returned on December 5, 2023, through the end of the week and worked at the desk as he had done prior to May 2, 2023. He has not received (Tr. 35-37).

Medical Treatment

The 11.27.22 notes of West Suburban Medical Care reflect Petitioner presented to the ER with complaints of right groin pain after foot going into a hole on the sidewalk. He was restricted from work through 11.30.2022. (PX 3, 12-14). The 11.28.22 notes of Primary Care Associates reflect Petitioner presented with right groin/right hip pain, radiating down right thigh and pain in mid-back, does have some numbness and pain is constant. He was kept off 11.29.22 through 12.2.2022 (PX 2, 41-42). On 12.2.2022 he saw Dr. Gershenberg at Primary Care Associates who prescribed medications and recommended an MRI of the right hip. Dr. Gershenberg stated the

patient injured his right hip and back after jumping off the fire truck while carrying heavy equipment on 11.27. He was off work through Jan 3, 2023 (PX 2, 39-40, 37). The Advent Health records of right MRI reflected mild right hip osteoarthritis with OS acetabuli with possible acetabular labral tear. Further, it reflected a small hip effusion, two loose bone fragments along the superior margin of the right acetabulum of the right hip and a hyper intense signal in the anterior superior and superior portions of the labrum, possibly representing a labral tear. (PX 2, 32-33). On December 20, 2022, Dr. Gershenberg referred Petitioner with MRI films to a hip specialist, ortho (PX 2, 28). The lumbar MRI reflected L3-4 moderate to severe right neural foraminal encroachment, moderate left neural foraminal encroachment & moderate central canal stenosis. (PX 2, 26). On January 9, 2023, Dr. Gershenberg reviewed the lumbar MRI and referred him to neurosurgery. (PX 2, 21).

On January 18, 2023, records from Orthopedic Associates of Riverside reflects consistent history of a work injury. The records also indicate a prior medical history of slipped femoral epiphysis treated with a screw at the age of 12. Impression of right hip indiciated moderate osteoarthritis with possible labral tear, lumbar radiculopathy. Referral for physical therapy for hip and lumbar spine and to Dr. Espinosa for lumbar evaluation. Discussion of right hip surgery pending outcome of conservative care. Follow up in four to six weeks, off work for the time being. (PX 4, 26-28). On February 22, 2023, records of Dr. Ho reflect Petitioner was in therapy, and that an injection helped quite a bit. He was to follow up in five to six weeks and remain off work. (PX 4, 30-32). On April 3, 2023, records of Dr. Ho reflect continued discomfort and mechanical symptoms of the right hip. Off work until further notice. (PX 4, 35-37).

The records of Athletico physical therapy reflect treatments of the right hip and for lumbar radiculopathy from January 25, 2023, through April 12, 2023. (PX 10, 12-79). The April 12th, 2023, records of Athletico reflect he is now scheduled for surgery in May. (PX 10, 18).

Records from February 21, 2023, from North Shore Medical Group reflect a referral from Michael Gershenberg MD. The petitioner presented for evaluation of low back pain and right hip pain. The history reflects that on November 27, 2022, he was at work, was called for a fire with all this gear weighing up to 150 lbs. When they arrived on the site Petitioner was walking towards a destination and took a step on uneven ground where he had radiating pain up and down his right lower extremity and sharp shooting pain radiating from the low back down to the middle of his lower extremity to his foot. When he completed the call, he talked to the supervisor because he was having right hip and right thigh pain. Dr. Ho sent him for Neurosurgical consultation after an MRI of the lumbar spine. He presented to Dr. Espinosa stating when he's sitting his pain is at a 2-3/10, pain gets worse when doing activities and around the house with walking. He points to one line of thing that radiates to the right lower back to the right hip across the groin to the anterior thigh stopping at the knee. Further, he endorses numbness and tingling sensation of the anterior thigh in the same distribution as the pain. He states since the cortisone injection the right hip pain has improved but is still present and worsening pain in the low back. He states that prior to the injection the pain was worse than the hip and thigh and he did not

notice the back pain as much. On examination, the only positive findings were FABERS on the right and he had negative straight leg raise testing bilaterally. The doctor's review of the January 6, 2023, lumbar MRI was an acute right L3 and possibly L4 radiculopathy. He has foraminal stenosis at both levels on the right side, worse is L3-L4. He noted the hip injection provided some relief for his low back pain and recommended an EMG and NCV test to clearly define what nerves may be affected or if he needs surgery and recommended physical therapy (PX 13, 19-22).

On March 28, 2023, Petitioner followed up with Dr. Espinosa for low back discomfort and lower extremity pain which has improved with only occasional lower extremity pain emanating from the spine. The EMG of bilateral lower extremities of March 21, 2023, is normal. Dr Espinosa's diagnosis for lumbar herniated disc, lumbar radiculopathy-acute and right hip pain. He is having hip surgery and if his lumbar condition worsens in his feet with respect to the herniation or nerve problems then he will call this office to schedule an appointment for follow up as needed (PX 13, 14-15).

Petitioner, went to see Dr. Domb of the American Hip Institute on April 20, 2023. Records of AHI reflect initial evaluation of right hip pain. They reflect a history of a November 27, 2022, injury where he had all his gear on and a water pack on his right side as he was running the ground wasn't even and all his way came onto his lower extremity with pain starting immediately. Further, the patient notes he has not had any issues with his right hip until this incident. Further, it reflects the history of having a pinning of a skiffy when he was 12 or 13 years old and is right from our head. Patient claims he never had any issues after this procedure and pain only began after the work injury. pain is localized deep in the growing and it does radiate down the right knee described as sharp and achy. Further, activities such as prolonged sitting, walking, lateral movement, sleeping on his right side, abduction movements, and hip flexion make it worse. The patient has tried intra-articular cortisone injection, PT, and NSAID's, and EMG, and physical therapy. Patient confirms giving way of the joint. (PX 15, 61).

A Physical examination reflected two plus of the psoas pain with flexion pain with internal rotation pain with external rotation abduction to 25°. Further, the examination finds a positive log roll test, pain with log roll on internal and external rotation, positive findings of interior impingement, positive findings of lateral impingement, positive findings of posterior impingement, positive straight leg raise testing and positive Trendelenburg test. The patient is in severe pain. X-rays reflect an alpha angle greater than 60°, acetabular rim fracture also appreciated, pinning from the prior skiffy present with no abnormalities or loosening. Further there is a positive crossover sign. A review of the MRI of the right hip performed on December 19, 2022, at Uchicago Advent Health LaGrange reveals a non-degenerative tear of the labrum with acetabular Rim fracture. Diagnoses include right hip labral tear, acetabular rim fracture, LCEA-27(lateral center edge angle) and ACEA-25(Anterior Center Edge Angle). (PX 15, 64-65)

Dr. Domb stated given the temporal onset of the symptoms and the mechanism of injury, it is with a reasonable medical certainty that the patient's current condition is causally related to the injury described above. The patient was instructed to continue with conservative measures of rest, ice heat, and said, activity modification and therapy. He discussed different treatment options including physical therapy, cortisone, cold laser therapy, PRP and stem cell IA injections, as well as arthroscopic preservation surgery for the right hip pain. His work restrictions were continued. Dr. Domb stated as the patient has failed to improve and has exhausted all conservative measures the patient would be a good candidate for a right hip labor repair versus debridement versus reconstruction with allograft, femoroplasty, acetabuloplasty, removal of loose bodies/ possible microfracture, subspine decompression, capsular release, capsular plication/ capsulorrhaphy. Dr. Domb explained the surgical indications included moderate to severe pain, worsened by flexion, joint motion, impingement test, for more than three months. Further, the pain has significantly limited simple activities of daily living. This pain has been unresponsive to more than 3 months of conservative care; a diagnostic injection only provided temporary improvement in the patient's pain, confirming an intra-articular source of symptoms. Clinically, the patient had a positive impingement sign which reproduced the pain, and limited, painful range of motion. Radiographically, there is no evidence of advanced arthritis, the hip is graded Tonnis 0-1(not 2-3). He has more than 2 mm of joint space remaining, the alpha angle is over 60°, there is no suspicion of outerbridge grade 3 or 4 cartilage damage. Advanced Imaging demonstrated a labral tear. A CT scan will be required in preparation for the surgery. (PX 15, 66-67).

On May 16, 2023, the petitioner presented to Dr. Domb where the patient consented to proceed with surgery. On examination the provocative tests were the same as they were on April 20, 2023. Further, the diagnosis and treatment recommendations remained the same. It was noted that the CT scan is required for this technically complex procedure and requires three-dimensional Imaging of the bony anatomy for surgical planning. (PX 15, 49).

On June 2, 2023, at the Greater Chicago Center for Advanced Surgery the petitioner underwent an arthroscopic labral reconstruction using allograft, a labral repair with chondrolabral apposition, acetabuloplasty, femoroplasty of the peripheral compartment, capsular release, iliopsoas bursectomy, microfracture of the acetabulum and removal of loose bodies. Assistance was required due to the complexity of the procedure by Andrew Carbone, MD and Darcy Steel, APRN. The operative report revealed a Seldes Type 1 and 2 combined tear of the labrum which extended from the 10:30 O'clock to 4:00 O'Clock circumference. The tear was felt to be irreparable and was treated with a reconstruction using allograft. There was a Grade 4 ALAD lesion comprising two square centimeters of cartilage on the acetabulum at the 12:00 to 2:00 Zone, the remainder of the cartilage in the weight bearing areas of the femur and acetabulum was intact. There was a pincer morphology and inflammation in the iliopsoas bursa. A loose body measuring greater than 5 mm was identified in the OS acetabulum, the capsule was

thickened consistent with stiffness, and in the peripheral compartment there was a cam morphology. (PX 5, 11-14).

On June 16, 2023, petitioner presented 2-week status post right hip labor reconstruction with microfracture with Dr. Domb. Sedentary work restrictions and he continued therapy (PX 15, 37-41).

On July 21, 2023, the records of Dr. Domb reflect the petitioner presenting six weeks post right hip labor reconstruction with microfracture. He is progressing well. His orders are to wean from crutches over the next few days, Tylenol, continuous stationary bike, CPM for a total of 8 weeks postoperatively and physical therapy. Further, A return to modified work as of July 21.2023. (PX 15, 43-48).

The records of Team rehab reflect he commenced physical therapy on July 19, 2023, and he continues it to the current date. The records of rehabilitative therapy are through October 23, 2023. (PX 14, 9-246) On October 17, 2023, he was evaluated for work conditioning. (PX 14, 229). Petitioner testified he's still participating in work conditioning at Team Rehab.

On September 1, 2023, the records of Dr. Domb reflect his 3-month status post hip labor reconstruction with microfracture and is doing well. The patient describes feeling some resistance in the right hip but does not feel sharp pain and progressing through physical therapy towards activities. Dr. Domb recommended continued Physical Therapy progressing through all five phases, they discussed work conditioning and will consider it at the next visit. He provided an updated work status restricting him from work. (PX 15, 29-35).

On October 12, 2023, the records of Dr. Domb reflect a 4 month post-surgical visit, patient is doing well feeling some resistance in the right hip and is progressing through physical therapy and work conditioning was recommended. He was restricted to light or sedentary Duty. (PX 15, 16-23).

On November 27, 2023, the records of Dr. Domb reflect the petitioner is 6 months status post hip surgery. The patient is doing well feeling some resistance in the right hip, has completed physical therapy and is progressing back to activities. The patient is slowly progressing through work conditioning and has one to two more weeks left. The patient feels work conditioning is helpful, however, is not improving at the rate he thought he would. His physical therapist believes he had benefited from continued work conditioning. The patient is taking meloxicam daily for aches and pains caused by work conditioning and reports being able to walk for 5 miles a day. He was restricted to light duty. (PX 15, 11-14).

Deposition of Dr Stover

The evidence deposition of Michael Stover MD was taken on October 30, 2023. (RX 1). Dr Stover is board certified in Orthopedics. 5. He treats patients for Orthopedic issues, hip & pelvis.

Dr Stover examined Omar Hernandez but could not recollect the records he had reviewed. He stated the patient's history was he had an onset of growing pain that occurred after getting out of a truck and grabbing his water pack after stepping on to some uneven ground. He had growing pain that would go down to his knee. further, he had a history of a childhood disorder of the hip reported but he had no previous history or any problems with his hip since he was an adolescent. (RX 1, 9). The radio grass reflected mild arthritis of the hip joint and increasing densities of the weight-bearing surface, that he had a small lateral cyst but didn't really appear to have a significant joint space narrowing. He had an acquired deformity of morphology of the upper femur consistent with his history of slipped capital femoral epiphysis. that's a pistol grip deformity with decreased femoral head and neck offset, Tonnis grade 1. If it was over a Tonnis grade two you don't want to do something with that for hip preservation. His review of the MRI from December 19th 2022 was mild thinning and irregularity of the right hip articular cartilage, areas of deep fathering scattered throughout the right hip, some sub control sclerosis and cystic changes and Mild right hip osteophytic spurring, there is a peripheral bone fragment, lateral bone Osco with a rim failure and then the anterior Superior portions of the labrum that possibly represent a liberal tear or labral detachment.(RX 1, 10-11).

The doctor's records indicated that while stepping on some uneven ground with full gear he had immediate right groin pain. (RX 1, 12). On June 2nd, 2023, Petitioner had right hip surgery. He conducted an examination of Mr Hernandez's post-operative condition not his preoperative condition and he had motion like the contralateral leg. 12- 13. The doctor mentioned there was a screw in his right hip from the previous surgery when he was young. The placement of the screw in the femoral neck on the outside of the hip stabilizes the femoral head. (RX 1, 14). He would not foresee any complications from a benign procedure such as the screw insertion when he was an adolescent. 15. Further, the doctor opined that the petitioner denied having any complications after this procedure. 17 The doctor explained the various procedures the petitioner underwent. (RX 1, 18-20).

Dr. Stover opined that the patient likely had some abnormalities or injury to his labrum prior to his presentation of symptoms. but even with the deformity or with a highly likely incidence of having a labral injury prior to his incident, this is the first reported return of bringing hip pain since an adolescent. So, in that way, you have to say that this is an exacerbation of a preexisting condition. Dr Stover agreed that the surgery conducted by Dr. Domb was both reasonable and necessary. (RX 1 20-21). Dr Stover opined that although petitioner had a morphology consistent with impingement (acetabular impingement since childhood) he did not have any symptoms until the incident per the patient's report. So, this is the first presentation of his symptoms that he had since he was an adolescent. Therefore, that is why I said this is a symptomatic presentation of the pre-existing condition (RX 1, 23-25). The doctor's diagnosis was right slipped capital femoral epiphysis and his secondary diagnosis was right groin pain beginning 11/27/22. The doctor explained they don't know exactly what the cause is of slipped capital femoral epiphysis. The doctor will find these activities of November 27, 2022, aggravated his labral tear because now he

has increasing pain and he had not had pain in the hip for a long time, so there was an aggravation of the labrum that occurred on the date of injury (RX 1, 35-37). The doctor opined the acquired deformities of the slipped capital femoral epiphysis were not changed by the incident of 11.27.22 but believes the cartilage damage and the labral pathology were exacerbated- a new presentation of symptoms that occurred on 11/27/22. (RX 1, 37-38). Either damage to the labrum or damage to the cartilage, either of those things could have occurred that day but he reported new symptoms he did not have prior to this date. (RX 1, 37-38).

Dr. Stover opined the petitioner's condition was caused and it resulted in symptoms in his hip that he did not have prior to the accident. (RX1, 38). The doctor clarified that the petitioner's symptoms are likely from the labrum and/or cartilage around the peripheral rim. (RX1, 39). Further, the doctor opined it was highly likely the labral cartilage around the peripheral room was caused or brought about by the underlying bone morphology of the misshapen femoral head and neck offset. (RX1, 39).

On cross examination Dr Stover agreed by history that Mr Hernandez had immediate groin pain after the incident of November 27th, 2022, and agreed it is likely that his presentation is indicative of an exacerbation of the hip condition. (RX 1, 41). More specifically, the doctor agreed that the incident exacerbated the articulating cartilage and labrum. (RX 1, 41). The doctor agreed given the morphology of the cam, the ratio of the hip and neck angle, and other things that he's outlined Dr Stover agreed that this predisposed Mr Hernandez to injuries of the labrum. Further, Dr Stover agreed that the work incident along with these morphologies were a causative Factor in the petitioner's subsequent need for arthroscopic treatment. (RX 1, 41). With respect to arthritis Dr. Stover agreed that a Tonnis Scale one is usually described as a slight narrowing of the joint. Further, Dr Stover agreed that he had no evidence of any symptoms that would be generated from his hip prior to the date of injury. Further, the doctor agreed that he had been presented with no evidence that the petitioner was not fully capable of working as a firefighter leading up to this November 27, 2022, incident. (RX 1, 43-44).

The petitioners exhibit number 8 reflects the donated time of fellow Cicero Fire Department personnel in providing Kelly days, sick days, and days of actual work and this pay was donated to the petitioner to enable him to keep up with his bills From July 26th, 2023, through November 30th, 2023, (PX 8).

On December 4, 2023, Petitioner was contacted by Respondent (Justin Swiatowiec) who informed the Petitioner that the Department could accommodated in his sedentary restrictions. n

CONCLUSIONS OF LAW

(F) Whether Petitioner's current condition of ill-being is related to the work accident.

It has long been recognized that, in preexisting condition cases, recovery will depend on the employee's ability to show that a work-related accidental injury aggravated or accelerated the preexisting disease such that the employee's current condition of ill-being can be said to have been causally connected to the work-related injury and not simply the result of a normal degenerative process of the preexisting condition. *Sisbro, Inc. v. Indus. Comm'n,* 207 Ill. 2d 193, 204–05 (2003). It is axiomatic that employees take their employers as they find them; even when an employee has a pre-existing condition, recovery for an accidental injury won't be denied so long as it can be shown the employment was 'a' causative factor. *Caterpillar Tractor Co. v. Industrial Comm'n,* 92 Ill.2d 30, 36 (1982). An employee need only prove that some act or phase of the employment was a causative factor of the resulting injury, explaining that "[t]he mere fact that an employee might have suffered the condition, even if not working, is immaterial." *Twice Over Clean, Inc. v. Indus. Comm'n*, 214 Ill. 2d 403, 414 (2005). "If a claimant is in a certain condition, an accident occurs, and following the accident, the claimant's condition has deteriorated, it is plainly inferable that the intervening accident caused the deterioration." *Schroeder v. IWCC*, 414 Ill. Dec. 198, 204 (2017 4th Dist.). "The salient factor is not the precise previous condition; it is the resulting deterioration from whatever the previous condition had been." *Id.* Further, "If a claimant is in a certain condition, an accident occurs, and following the accident, the claimant's condition has deteriorated, it is plainly inferable that the intervening accident caused the deterioration." *Schroeder v. IWCC*, 414 Ill. Dec. 198, 204 (2017 4th Dist.). "The salient factor is not the precise previous condition; it is the resulting deterioration from whatever the previous condition had been." *Id.*

The arbitrator finds the testimony of the petitioner of his mechanism of injury and notice of the injury to a superior officer credible and corroborated by the three contemporaneously made injury reports(.PX 1) Further, the arbitrator finds that the mechanism of injury and subsequent disabling condition of the right hip is reflected in the initial records of treatment and subsequent treatment of all medical providers. In addition the arbitrator concludes Petitioner's testimony that he had no prior issues with the right hip before 11/27/2022 was corroborated by the records of medical treatment and by the history, medical evaluation and review of medical records as testified to by Respondent's Section 12 examining physician Michael Stover, M.D. Further, the arbitrator finds there was no evidence presented that reflected the petitioner had any symptomatic right hip condition or condition of the low back prior to 11/27/2022 and no physical inhibition to working full duty as a firefighter for the respondent before, up and through the date of accident.

Section 12 examiner Dr. Stover testified he would not foresee any complications from a benign procedure such as the screw insertion when he was an adolescent and had not reviewed any

evidence of complications since that time. (RX 1, 15.) Further, the doctor opined that the petitioner denied having any complications after this procedure. (RX 1, 17). The records of Primary Care Associates, Orthopedic Associates of Riverside and American Hip institute reflect no prior history of a symptomatic condition prior to the date of injury. (PX 2, 48, (PX 15, 61).

Dr. Gershenberg stated that the patient injured his right hip and back after jumping off the fire truck while carrying heavy equipment on 11.27. (PX 2, 39-40). On January 18, 2023, the records of Orthopedic Associates of Riverside reflect a prior medical history of slipped femoral epiphysis treated with a screw at the age of 12 and doing reasonably well until this injury. (PX 4, 26-28). Further, the February 21, 2023, records of North Shore reflect petitioner presented for evaluation of low back pain and right hip pain after November 27, 2022 work injury carrying gear weighing up to 150 lbs, while walking, stepped on uneven ground where he had radiating pain up and down his right lower extremity and sharp shooting pain radiating from the low back down to the middle of his lower extremity to his foot. (PX 13, 19-22). The April 20, 2023, records of AHI reflect a history of a November 27, 2022, injury where he had all his gear on and a water pack on his right side as he was running the ground wasn't even and all his way came onto his lower extremity with pain starting immediately. Further, the patient notes he has not had any issues with his right hip until this incident. further it reflects the history of having a pinning of a skiffy when he was 12 or 13 years old and is right from our head. Patient claims he never had any issues after this procedure and pain only began after the work injury. (PX 15, 61). The arbitrator finds the evidence reflects the petitioner did not have a symptomatic condition of the right hip or low back prior to November 27, 2022.

On April 20, 2023, Dr. Domb stated: given the temporal onset of the symptoms and the mechanism of injury, it is with a reasonable medical certainty, that the patient's current condition is causally related to the work injury. (PX 15, 66-67).

On direct exam, Dr. Stover opined that the patient likely had some abnormalities or injury to his labrum prior to his presentation of symptoms. But, even with the deformity or with a highly likely incidence of having a labral injury prior to his incident, this is the first reported return of bringing hip pain since an adolescent. So, in that way, you have to say that this is an exacerbation of a preexisting condition. (RX 1, 21-22). Dr Stover opined that although petitioner had a morphology consistent with impingement (acetabular impingement since childhood) he did not have any symptoms until the incident per the patient's report. So, this is the first presentation of his symptoms that he had since he was an adolescent. Therefore, that is why I said this is a symptomatic presentation of the pre-existing condition. (RX 1, 23-25). The doctor's diagnosis was right slipped capital femoral epiphysis and his secondary diagnosis was right groin pain beginning 11/27/22. The doctor found these activities of November 27, 2022, aggravated his labral tear because now he has increasing pain and he had not had pain in the hip for a long time so there was an aggravation of the labrum that occurred on the date of injury (RX 1, 35-37). The doctor believes the cartilage damage and the labral pathology were exacerbated- a new presentation of symptoms that occurred on 11/27/22. Either damage to the labrum or damage to

the cartilage, either of those things could have occurred that day but he reported new symptoms he did not have prior to this date. (RX 1, 37-38). Dr. Stover opined the petitioner's condition was caused and it resulted in symptoms in his hip that he did not have prior to the accident. (RX1, 38). The doctor clarified that the petitioner's symptoms are likely from the labrum and/or cartilage around the peripheral rim. (RX1, 39).

Dr. Stover agreed with the conclusion that it is likely that his presentation is indicative of an exacerbation of the hip condition. (RX 1, 41). More specifically, the doctor agreed that the incident exacerbated the articulating cartilage and labrum. (RX 1, 41). With respect to arthritis Dr. Stover agreed that a Tonnis Scale one is usually described as a slight narrowing of the joint. (RX 1, 43). Dr. Stover agreed someone with a cam deformity is predisposed to labral tears. He agreed surgery was reasonable and necessary. He agreed he addresses the cam deformity with a femoroplasty in patients to protect the labrum. (RX 1, 45).

The arbitrator finds there was no evidence presented that reflected the petitioner had any symptomatic right hip condition or condition of the low back prior to 11/27/2022 and no physical inhibition to working full duty as a firefighter for the respondent before, up and through the date of accident.

The arbitrator finds that the medical records and causal opinion of Dr. Domb support a causal connection between the 11.27.22 work injury for respondent and the subsequent disabling condition of the right hip and low back. (RX 1 21-22). Dr Stover opined that although petitioner had a morphology consistent with impingement, he did not have any symptoms until the incident per the patient's report. So, this is the first presentation of his symptoms that he had since he was an adolescent. Therefore, that is why I said this is a symptomatic presentation of the pre-existing condition.

Further, Dr. Stover opined that the November 27, 2022, injury aggravated his labral tear because now he has increasing pain and he had not had pain in the hip for a long time so there was an aggravation of the labrum that occurred on the date of injury (RX 1, 35-37). The doctor believes the cartilage damage and the labral pathology were exacerbated- a new presentation of symptoms that occurred on 11/27/22. Either damage to the labrum or damage to the cartilage, either of those things could have occurred that day but he reported new symptoms he did not have prior to this date. (RX 1, 37-38). Dr. Stover opined the petitioner's condition was caused and it resulted in symptoms in his hip that he did not have prior to the accident. (RX1, 38). The doctor clarified that the petitioner's symptoms are likely from the labrum and/or cartilage around the peripheral rim. (RX1, 39).

The arbitrator concludes that the Petitioner has proven by a chain of events analysis, the medical and testimonial evidence [both lay and expert, most significantly Sec. 12 examiner Dr. Stover] that his current condition of ill-being is related to the November 27, 2022, work injury for Respondent.

(G) What was Petitioners' earnings?

The arbitrator relies on (RX. 3) and finds from November 27, 2021, to January 1, 2022, the petitioner earned $3055.16 every 2 weeks or $1527.58 a week. From January 1, 2022, until August 19, 2022, the petitioner earned $3131.54 every 2 weeks or $1565.77 a week. From August 19, 2022, until November 27, 2022, the petitioner earned $3319.28 every 2 weeks or $1659.64 a week. The arbitrator has computed the petitioner's average weekly wage to be $1587.35 with earnings in the year preceding the injury of $82,542.20. The petitioner's TTD rate would be $1058.23 with a permanency rate of 952.41.

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

The arbitrator notes that on the stipulation sheet entered as arbitrator's Exhibit 1 respondent has agreed to pay all reasonable and necessary and causally connected medical expenses relating to the petitioner's labral tear. (ARB.1) The arbitrator therefore orders the respondent to pay all reasonable and necessary and causally connected medical expenses to treat the petitioner's injuries consistent with the conclusions as discussed in Paragraph (F) causal connection. Per the fee schedule, Section 8(a), and Section 8.2 of the Act.

There has been no evidence produced of denial of medical bills by any group carrier. The arbitrator notes the evidence does not establish medical bills are unpaid and what the fee schedule amounts are for the claimed unpaid medical bills.

In *Watson v. Silgan Containers*, 16 IWCC 422, the arbitrator noted that the respondent had stipulated on the record that the medical bills had either been paid or would be paid. The arbitrator noted there was no evidence as to when the bills were tendered to respondent or that respondent has refused to make payment. The commission affirmed this decision. In the instant case respondent stipulated that the medical services to Petitioner's labrum tear were reasonable and necessary and have been paid or will be paid.

The arbitrator notes that Section 8(a) of the Act provides that:

"If the employer does not dispute payment of first aid, medical, surgical, and hospital services, the employer shall make such payment to the provider on behalf of the employee." 820 ILCS 305§8(a). The arbitrator orders payment of the medical bills directly to the appropriate medical

provider. Under the facts of this case, any assertion by petitioner's counsel that payment of medical bills should be made to Petitioner's counsel would be contrary to Section 8(a).

Medical bills are routinely awarded by the IWCC, and respondents are ordered to pay the awarded medical bills pursuant to section 8(a) and Section 8.2 of the Act. The arbitrator chooses to do so in this case.

The arbitrator notes the virtually universal language in IWCC decisions that:

"In support of the Arbitrator's decision relating to issue (J), Medical Expenses, the outstanding medical bills shall be paid by the Respondent directly to the medical providers pursuant to the Medical Fee Schedule set forth in Section 8(a) and 8.2 of the Act." ***Friend v. State of Illinois,*** 15 IWCC 884, *Greenwood v. Spherion Staffing*, 13 IWCC 951, *Paxton v. Standard Forwarding*, 20 IWCC 354, *Fox v SOI-Dixon Correctional Center*, 14 IWCC 622, *Flanagan v. City of Springfield*, 14 IWCC 21, *Barker v. Walmart* 19 IWCC 696, *Izaguirre v City of Chicago*, 19 IWCC 642.

The arbitrator notes the arbitration decision paragraphs that the IWCC has requested that practitioners use in their proposed decisions since September 19, 2014. The form medical benefits award paragraph provides that the respondent shall pay reasonable and necessary medical services pursuant to the medical fee schedule directly to specific providers in specific amounts. The payments are to be made pursuant to sections 8(a) and 8.2 of the Act. The arbitrator sees no reason to depart from the use of a standard medical benefits award paragraph in the instant case.

> In addition to Section 8(a), Section 8.2(e-20) of the Act states, in part, "In the case of a procedure, treatment, or service deemed compensable, the provider shall not require a payment rate, excluding interest provisions under subsection (d), greater than the lesser of the actual charge or the payment level set by the Commission in the fee schedule established in this Section. Payment for services deemed not covered or not compensable under this Act is the responsibility of the employee unless provider and employee have agreed otherwise in wri

writing." *820 ILCS 305/8(e-20)*.

The arbitrator notes that Section 8(a) defines the medical care compensation to which an injured employee is entitled, and Section 8(e- 20) defines how and in what amount such compensation is to be paid.

The arbitrator notes that the Workers' Compensation Act is to be interpreted liberally to effectuate its main purpose which is providing financial protection for interruption or termination of a worker's earning power. *Sylvester v. Industrial Commission*, 197 Ill. 2d 225 (2001) at 232.

In assessing legislative intent "the court should consider, in addition to the statutory language, the reason for the law, the problems to be remedied, and the objects and purposes sought. *People v. Donoho*, 204 Ill. 2d 159 (2003), at 172. In construing the language of Section 8.2(e-20) in context with Section 8(a), the arbitrator determines that ordering payment directly to the providers is consistent with underlying intent of the Act, which is providing financial protection to an injured employee.

Once the matter proceeds to hearing and the decision is final, the medical bills awarded are compensable and no longer in dispute. As such, the employer is mandated by Section 8(a) to pay the providers directly on behalf of the employee.

Section 8.2 of the Act provides for a cause of action in favor of the medical providers against employers for any interest accrued due to non-payment of medical bills. It would be unjust to hold employers liable for interest on unpaid medical bills if they have no control in paying those bills. In the present matter, certain medical expenses were found compensable and others not. Ordering payment to the providers directly is consistent with the language and intent of the Act.

Having Respondent pay the providers directly would ensure the workers' compensation medical bills are subject to the appropriate medical fee schedule, which is the intention of the General Assembly. *Gray v. Asbach Vanslow*, 13 IWCC 555, at page 10. The arbitrator notes that there has been no evidence indicating what the fee schedule amount of the alleged unpaid medical bills would be.

The arbitrator notes that Section 9080.20 of the Rules Governing Practice before the Illinois Workers Compensation Commission states:

"Payment of Proceeds of Litigation

Unless otherwise directed by the petitioner or the Commission, the respondent, its agent or insurance carrier shall deliver the first payment of accrued compensation following an award or settlement to the offices of the attorney of record for the petitioner. Unless otherwise directed by the petitioner or the Commission, all subsequent payments of an award shall be delivered to the petitioner." 50 Ill. Adm. Code 9080.20.

The arbitrator finds that the medical bills are to be paid directly to the appropriate medical providers pursuant to Section 9080.20. The arbitrator specifically directs that awarded medical bills are to be paid directly to the medical provider pursuant to the medical fee schedule. The arbitrator finds there is no accrued compensation to be paid directly to Petitioner's counsel pursuant to Section 9080.20. Respondent has agreed on the stipulation sheet to pay reasonable and necessary and causally connected consistent with paragraph (f).

.

(L) TTD

The arbitrator awards no TTD benefits because the evidence established that the petitioner always received full salary after the accident. The petitioner testified he received full salary under the Public Employees Disability Act from November 28, 2022, through when he stopped working light duty on May 2, 2023, (Tr. 24) After May 2, 2023 up until December 5, 2023, the petitioner was still getting paid but he had to use sick and vacation time. (Tr. 34). The petitioner testified that R.Ex.2 shows that he received his regular salary in January of 2023 of $3402 every 2 weeks all the way down to August 4, 2023. (Tr.34) After August 4 he got a raise to $3594.70 every 2 weeks from August 4 until December 8, 2023. (Tr.56). The petitioner received his regular pay but used his vacation pay and sick days. *(Tr. 57)*

Petitioner always received his full salary after the accident whether he was off work or participating in light duty employment. Any sick days or vacation days that he used during the time he was off work was reimbursed to him on December 8, 2023. *R.Ex.9.* Any sick or vacation days loaned to him by coworkers have been reimbursed to the coworkers. *Id.* No TTD benefits are due and owing to the petitioner because he received full salary.

.

(M) Fees and Penalties

The arbitrator awards no penalties or Section 16 attorney's fees. At all times the petitioner received full salary during the time he was off from work. No TTD was due and owing. Petitioner testified he used the vacation pay and sick pay and used vacation or sick days from co-employees when his own sick and vacation days ran out. The arbitrator notes that the petitioner's sick days and vacation days were reimbursed to petitioner on December 8, 2023, three days prior to the start of trial and three weeks prior to the close of proofs. The arbitrator notes the sick days and vacation days for Petitioner's co-employees were reimbursed prior to the close of proofs. The arbitrator notes the denial of the plaintiff's medical treatment for his femoral head, femoral neck, and acetabulum is based on unrebutted medical testimony from a Board-certified orthopedic surgeon who specializes in hip treatment. Dr. Stover testified that the petitioner's congenitally misshapen femoral head, femoral neck, and acetabulum was caused by a growth plate problem when the petitioner was an adolescent. His misshapen femoral head, femoral neck, and acetabulum were not caused or aggravated by the work accident. Respondent's exhibits 4 and 8 demonstrate that Blue Cross Blue Shield the group carrier, and IPMG the third-party Worker's Compensation administrator have paid some of the petitioner's medical bills. Petitioner's counsel agreed on the record that the group carrier is paying some of the medical bills. *T65.* The fee schedule amounts, and the amount of unpaid medical bills has not

been determined. Respondent's defense of this claim is not unreasonable or vexatious and penalties are not awarded.

O. Additional Issues: Reimbursement of Sick Time and Lost Time

The arbitrator has carefully reviewed the daily sick log-post refund entered R.Ex.9. It is printed on Cicero Fire Department letterhead and lists the printed names of the Cicero fire fighters. The ledger makes entries of the sick days and/or vacation days allocated to each firefighter. It shows at the top that entries in red ink with a circle and an "R" below it was refunded back to the respective firefighter. The arbitrator notes that on page 2 of R.Ex.9 the sick log shows that all of Mr. Hernandez's sick days were returned to him on December 8, 2023.

The arbitrator notes the respondent also reimbursed employees who loaned petitioner sick days or vacation days and reimbursed employees who physically worked shifts for the petitioner. The IWCC has no jurisdiction over employees and the arbitrator makes no ruling regarding employees. However in an attempt to avoid any evidentiary issues regarding RX. 9, the arbitrator orders respondent to reimburse the petitioner for any sick or vacation days used after the accident from this accident. The arbitrator notes the respondent has stated on the record that they have already reimbursed the petitioner for sick or vacation days and have already provided written documentation in R.X. 9 that they reimbursed the petitioner on December 8, 2023.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC002888
Case Name	Nancy Straight v. State of Illinois - Chester Mental Health Center
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	24IWCC0153
Number of Pages of Decision	6
Decision Issued By	Marc Parker, Commissioner

Petitioner Attorney	Jason Coffey
Respondent Attorney	Nicole Werner

DATE FILED: 4/4/2024

/s/Marc Parker, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF WILLIAMSON)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Nancy Straight,

Petitioner,

vs. No. 21 WC 002888

Chester Mental Health Center,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by Petitioner herein and notice given to all parties, the Commission, after considering the issues of accident, notice, causal connection, medical expenses, and permanent partial disability, and being advised of the facts and law, reverses the Decision of the Arbitrator as stated below.

Petitioner, 55, testified that she worked as an executive secretary for Respondent for 17 years before she retired in 2021. She described her day-to-day activities in that position in detail. Her duties included preparing numerous handwritten reports, keyboarding, data entry, filing, and processing mail. She had to work overtime hours many times due to staffing shortages, and on those days she would begin work at 6:00 a.m. or 7:00 a.m., and work until 6:00 p.m. Petitioner's supervisor, Dainelle Powell, testified that Petitioner's testimony describing her office duties was accurate, and she agreed that Petitioner did work overtime hours, though she described the amount of overtime as "minimal."

Petitioner began to notice that her hands would sometimes become numb while working, and she would have to stop writing or typing. Occasionally, she wore "wristbands." On July 28, 2020, she completed and gave Respondent a Notice of Injury form, in which she reported her hands would go numb from repetitive motions at work, and that this had been progressive over the years.

On August 18, 2020, Petitioner underwent an upper extremity EMG/NCV test which, Dr. Goldring reported, showed, "evidence of bilateral median neuropathies localized to the wrists (carpal tunnel syndrome)." On September 15, 2020, Petitioner began treating with orthopedic hand surgeon, Dr. Mirly, who documented Petitioner's complaints of bilateral hand numbness and dropping objects. Dr. Mirly confirmed Petitioner had bilateral carpal tunnel syndrome, and he prescribed conservative treatment in the form of cock-up splints to be worn at night.

When Petitioner returned to Dr. Mirly six weeks later, she reported the splints had not provided any relief and she wished to proceed with surgery. On December 11, 2020, Dr. Mirly performed a right carpal tunnel release, followed by a left carpal tunnel release on February 17, 2021. On February 26, 2021, Petitioner reported that she had complete resolution of her numbness and tingling. Petitioner has not received any further hand or wrist treatment since that date.

Dr. Mirly testified via deposition that he reviewed the written job description which Petitioner provided to him, although he had not reviewed her employer's formal job description. He opined that Petitioner's office activities, which included handwriting, typing, keyboarding, and phone work, contributed to the development of her carpal tunnel conditions. He reported that recent studies showed an increased prevalence of carpal tunnel syndrome in patients who "type" for more than eight years, four hours a day. Dr. Mirly testified that while Petitioner's age and gender were risk factors for carpal tunnel syndrome, she did not have other co-morbidities for that condition like obesity, hypothyroidism, diabetes, or exposure to vibrations.

Respondent presented the deposition testimony of its Section 12 expert, Dr. Feinstein, who examined Petitioner on August 2, 2022, after she had undergone her carpal tunnel surgeries. Dr. Feinstein opined that Petitioner's work activities did not cause or aggravate her carpal tunnel syndrome because her work activities were only light repetitive, and none of her work activities involved forceful pinching or gripping. He opined that Petitioner had other risk factors for developing carpal tunnel syndrome: her gender, her menopausal age, and having a vitamin D deficiency.

The Arbitrator found Petitioner failed to prove that her carpal tunnel syndrome was the result of repetitive activates arising out of and in the course of her employment, and denied all benefits. The Arbitrator did not believe Petitioner sufficiently proved the frequency, duration, and manner that she performed each of her work activities. The Arbitrator did not find Dr. Mirly's causation opinion persuasive because he had not reviewed Petitioner's official CMS job description, and because he did not know the precise duration that Petitioner performed each of her work duties. The Arbitrator noted Petitioner's duties were varied and she had breaks in between them. The Arbitrator also believed Petitioner described her activities differently to Dr. Feinstein, Dr. Mirly, and at arbitration.

The Commission views the evidence differently than the Arbitrator, and finds Petitioner did prove her repetitive work activities caused her bilateral carpal tunnel syndrome, and that it

manifested on August 18, 2020. While true that Petitioner did not describe her job duties in *exactly* the same way to Dr. Feinstein, Dr. Mirly, and at arbitration, we find the differences to be materially insignificant.

Petitioner provided her best estimate of how much time she spent performing most of her daily tasks, except for her handling mail. We find that was unnecessary. The time spent on that task varied from day to day, as did the amount of mail, which would include anywhere from 50 to 200 pieces per day. There is no legal requirement that a certain percentage of the workday be spent on a task in order to support a finding of repetitive trauma. *Edward Hines Precision Components v. Industrial Comm'n,* 356 Ill. App. 3d 186 (2nd Dist., 2005).

We also find the opinions of Petitioner's hand surgeon, Dr. Mirly, more persuasive than those of Dr. Feinstein. Dr. Mirly's opinions were based upon his consideration not only of Petitioner's written job description, but also, her verbal history and description of her duties. Dr. Mirly opined that Petitioner's handwriting, typing, keyboarding, and phone work all contributed to the development of her carpal tunnel syndrome. He testified that recent studies established that there is an increased prevalence of carpal tunnel syndrome in individuals who have typed for more than eight years, four hours a day – as Petitioner herein did. Dr. Mirly also noted that Petitioner did not have co-morbidities for carpal tunnel syndrome such as obesity, hypothyroidism, diabetes, or exposure to vibrations.

We find Dr. Feinstein's opinions less persuasive; at times they were equivocal. When Dr. Feinstein was asked whether Petitioner's work duties may have aggravated her condition, Dr. Feinstein answered, "I wouldn't say that for sure. You know, all I can say is that she experienced symptoms while she was at work…" Although Dr. Feinstein initially testified that medical literature indicates that keyboarding and data entry over a long period of time were not risk factors for carpal tunnel, he conceded that there may be literature which disagrees with that conclusion. We afford little weight to Dr. Feinstein's suggestion that Petitioner's vitamin D deficiency may have been a risk factor which contributed to her carpal tunnel syndrome. Petitioner was not found to have a vitamin D deficiency until after her carpal tunnel syndrome was diagnosed. There is no evidence that Petitioner suffered a vitamin D deficiency during the period she developed carpal tunnel symptoms.

The date of an accidental injury in a repetitive trauma compensation case is the date on which the injury "manifests itself." That phrase refers to the date on which both the fact of the injury and the causal relationship of the injury to the claimant's employment would have become plainly apparently to a reasonable person. *Peoria County Belwood Nursing Home v. Industrial Comm'n,* 115 Ill. 2d 524 (1987). In Petitioner's Application for Adjustment of Claim, she identified August 18, 2020 as the manifestation date of her injuries, and she testified that was the date on which her EMG/NCS report first documented she had bilateral carpal tunnel syndrome. We find August 18, 2020 to have been an appropriate manifestation date.

Petitioner testified that following her NCV/EMG test, she informed her supervisor and Respondent's workers' compensation coordinator that she had been diagnosed with carpal tunnel syndrome. Petitioner's testimony was not contradicted. Although the Arbitrator found Petitioner provided Respondent with timely notice of her accident on July 28, 2020 – the date Petitioner gave her Notice of Injury form to Respondent – we find that Petitioner also provided verbal notice of her work injuries to Respondent on August 18, 2020.

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

(i) **Disability impairment rating:** no relevance or weight, because neither party offered an AMA impairment rating from a physician.

(ii) **Employee's occupation:** little relevance and weight, because Petitioner voluntarily retired from her secretarial job, and there was no evidence that she did so because of her injuries, or that she intends to reenter the workforce.

(iii) **Employee's age:** little relevance and weight, because although Petitioner was 55 years old at the time of her injuries, she has since retired, and will not be experiencing the effects of her injury while in the workforce.

(iv) **Future earning capacity:** no relevance or weight, because no evidence was offered to show that Petitioner's future earning capacity was affected by her current disability.

(v) **Evidence of disability corroborated by the treating records:** significant relevance and weight, because Petitioner underwent bilateral carpal tunnel releases, and has residual weakness in both of her hands. Other than that, however, she made a good recovery from her injuries; at her last office visit, Petitioner reported that her numbness and tingling had completely resolved. She did not require any physical therapy; she has no physical restrictions, and she has not returned to any doctors for wrist or hand treatment since February 2021. At arbitration, Petitioner testified that she does not wear braces or protective devices on her wrists, and she does not take any prescription or OTC mediations. Accordingly, we find Petitioner entitled to permanent partial disability in the amount of 10% loss of use of each hand, pursuant to §8(e)9 of the Act.

The parties have stipulated, and the Arbitrator found, Petitioner's average weekly wage to be $1,164.91. Thus, we find Petitioner's permanent partial disability rate to be $698.95 per week. Petitioner made no claim for temporary total disability, and offered no medical bills into evidence. Accordingly, the Commission makes no award for TTD or payment of medical expenses.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed January 26, 2023, is reversed. The Commission finds Petitioner proved her bilateral carpal tunnel syndrome was causally related to her repetitive work activities, and that her condition manifested on August 18, 2020. The Commission finds timely notice was given to Respondent on that date.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay Petitioner the sum of $698.95 per week for a period of 19 weeks, as provided in §8(e)9 of the Act, for the reason that the injuries sustained caused the loss of use of 10% of the right hand.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay Petitioner the sum of $698.95 per week for a period of 19 weeks, as provided in §8(e)9 of the Act, for the reason that the injuries sustained caused the loss of use of 10% of the left hand.

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

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

Pursuant to §19(f)(1) of the Act, claims against the State of Illinois are not subject to judicial review. Therefore, no appeal bond is set in this case.

April 4, 2024

MP/mcp
o-03/07/24
068

/s/ *Marc Parker*
Marc Parker

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	22WC005974
Case Name	Diamond Scott v. QuikTrip
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	24IWCC0154
Number of Pages of Decision	13
Decision Issued By	Raychel Wesley, Commissioner

Petitioner Attorney	John Winterscheidt
Respondent Attorney	J Bradley Young

DATE FILED: 4/4/2024

/s/ Raychel Wesley, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF MADISON)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

DIAMOND SCOTT,

Petitioner,

vs. NO: 22 WC 05974

QUIK TRIP,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by Respondent herein and notice given to all parties, the Commission, after considering the issue of whether Petitioner sustained an accidental injury arising out of and occurring in the coure of her employment on November 9, 2021, and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed April 10, 2023 is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay the medical expenses detailed in Petitioner's Exhibit 5, as provided in §8(a), subject to §8.2 of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $276.30 per week for a period of 50 weeks, as provided in §8(c) of the Act, for the reason that the injuries sustained caused permanent disfigurement to the left hand, left arm, and chest.

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

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

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $19,600.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

April 4, 2024

/s/ *Raychel A. Wesley*

RAW/mck

O: 3/20/24

43

/s/ *Stephen J. Mathis*

/s/ *Deborah L. Simpson*

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	22WC005974
Case Name	Diamond Scott v. QuikTrip
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	10
Decision Issued By	Jeanne AuBuchon, Arbitrator

Petitioner Attorney	John Winterscheidt
Respondent Attorney	J Bradley Young

DATE FILED: 4/10/2023

THE INTEREST RATE FOR THE WEEK OF APRIL 4, 2023 4.70%

/s/ Jeanne AuBuchon, Arbitrator

Signature

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Diamond Scott
Employee/Petitioner

v.

Quik Trip
Employer/Respondent

Case # **22** WC **005974**

Consolidated cases:

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Jeanne L. AuBuchon**, Arbitrator of the Commission, in the city of **Collinsville**, on **November 22, 2022**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On **November 9, 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 $**14,367.60**; the average weekly wage was $**276.30**.

On the date of accident, Petitioner was **23** years of age, ***single*** with **2** dependent children.

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

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

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

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

ORDER

Respondent shall pay for reasonable and necessary medical services, as outlined in Petitioner's Exhibit 5, directly to the providers listed therein, pursuant to the medical fee schedule, as provided in Section 8(a) of the Act.

Respondent shall pay Petitioner permanent partial disability benefits of $276.30 (minimum rate)/week for 50 weeks, because the injuries sustained caused permanent disfigurement of the left hand, left arm and chest, as provided in Section 8(c) of the Act.

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

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

Jeanne L. AuBuchon
Signature of Arbitrator

April 10, 2023

PROCEDURAL HISTORY

This matter proceeded to trial on November 22, 2022, on all disputed issues. The issues in dispute are: 1) whether the Petitioner sustained accidental injuries that arose out of and in the course of her employment; 2) payment of medical bills incurred; and 3) the nature and extent of the Petitioner's disfigurement. The parties stipulated that if the claim was to be found compensable, the Respondent would pay medical expenses incurred.

FINDINGS OF FACT

At the time of the accident on November 9, 2021, Petitioner was 23 years old and employed as a store clerk by Respondent. (AX1, T. 10) The Petitioner testified that on that day, she was using the store's women's restroom when a customer began banging on the restroom door and told the Petitioner to hurry up. (T. 11-12) The Petitioner said that when she exited the restroom, the customer started getting aggressive and said that when she got out of the bathroom, she was going to knock out the Petitioner. (T. 12) The Petitioner said she went to the counter area of the store to talk to the assistant manager. (Id.) The Petitioner testified that when the customer left the restroom, she approached the Petitioner, and the two exchanged words. (T. 13) The Petitioner did not remember what was said. (Id.) The Petitioner said she pushed the customer away because she was scared the customer was going to attack her, as the customer had threatened her. (Id.) She said she didn't know if the customer was going to hit her, adding that the customer's "arms were kind of everywhere." (T. 25) She said she wanted to get the customer away from her. (Id.) A scuffle then ensued. (T. 13)

Surveillance video showed the customer knocking, then banging on the restroom door. (Id.) She appeared to be yelling for someone towards the front the store. (RX1) The Petitioner exited the restroom, and there appeared to be a verbal argument between the two that was

unintelligible on the audio except for the Petitioner saying she would be there all night before walking away. (Id.) The customer can be seen reaching out her hand towards the Petitioner at least twice as she entered the bathroom. (Id.) The Petitioner can next be seen at the front counter, speaking to a coworker, with most of the audio being unintelligible except for the Petitioner saying: "If you don't get her out of here, I'm gonna f*** her up." (Id.) Moments later, the customer could be heard yelling as she came from the bathroom to the front counter. (Id.) The Petitioner could be heard saying: "What y'all need?" and "What did I do?" (Id.) The two women got in each other's faces and were waiving hands and pointing fingers. (Id.) The customer could be heard yelling expletives repeatedly. (Id.) The Petitioner stepped back from the customer, the customer stepped forward toward the Petitioner, the two exchanged a few more words and the Petitioner pushed the customer. (Id.) The Petitioner then backed about four steps away from the customer, and the customer put down whatever she was holding in her hand and went toward the Petitioner with her hands raised toward the Petitioner. (Id.) The two began physically fighting. (Id.) During the altercation, a wine-rack display was knocked over, causing bottles to break, and both the customer and the Petitioner fell to the ground. (Id.) After the Petitioner and customer separated, and the fight appeared over, the customer continued to pursue the Petitioner into a nearby aisle. (Id.) At that point, the video stopped. (Id.)

The Petitioner testified that the police were called and spoke to the customer and Petitioner. (T. 14) She said she was not arrested, but the customer was handcuffed and taken away by the police. (T. 14-15) The Petitioner said she was taken by ambulance to Alton Memorial Hospital's emergency room, where she reported what happened and had x-rays taken of her left arm, and lacerations – presumable from the broken glass – were cleaned and sutured. (T. 15, PX1) The Petitioner was advised to follow up with her personal physician for removal of the sutures. (Id.)

The Petitioner saw Dr. Bryon Steele on November 18, 2021, and he removed 32 sutures from her arm. (PX2).

The Petitioner did not return to work for Respondent. (T. 20) However, she received a text message from the store manager on or about April 22, 2022, asking the Petitioner if she was going to come back to work. (T. 20, PX3)

With the parties' counsel, the Arbitrator viewed 11 scars on the Petitioner's left hand, left forearm and chest. There were six scars on Petitioner's left arm and one on her hand. Some of the scars had keloid, some were over an inch in length and a half inch in width. All were readily visible at a distance. The scar on the Petitioner's chest was vertical and about 4 inches long. Photographs of the scarring, taken in excess of 6 months after November 9, 2021, were admitted in evidence. (PX 4). The photographs accurately depicted the Petitioner as she appeared on November 22, 2022.

CONCLUSIONS OF LAW

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

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

An injury is compensable under the Act only if the claimant proves by a preponderance of the evidence that the injury both occurred in the course of and arose out of the employment. *Sisbro, Inc. v. Industrial Comm'n*, 207 Ill. 2d 193, 203, 797 N.E.2d 665, 278 Ill. Dec. 70 (2003).

"An injury is received in the course of employment where it occurs within a period of employment, at a place where the worker may reasonably be in the performance of his duties, and while he is fulfilling those duties or engaged in something incidental thereto." *Scheffler*

Greenhouses, Inc. v. Industrial Comm'n, 66 Ill. 2d 361, 367, 362 N.E.2d 325, 5 Ill. Dec. 854 (1977). The Arbitrator finds the time and place requirements have been met. There is a question of whether the Petitioner using and returning from the bathroom are circumstances that fulfill her duties or are something incidental thereto. For this, the Arbitrator finds the "personal comfort" doctrine to apply. An employee, while engaged in the work of his employer, may do those things which are necessary to his health and comfort, even though they are personal to himself, and such acts will be considered incidental to the employment. *Hunter Packing Co. v. Industrial Comm'n*, 1 Ill. 2d 99, 104, 115 N.E.2d 236 (1953). The Petitioner's acts of using and returning from the bathroom were incidental to her employment. Therefore, the Arbitrator finds the Petitioner's injuries occurred in the course of her employment.

An injury arises out of the employment if it results from a risk that originates in, or is incidental to, the employment. *Sisbro*, 207 Ill.2d at 203. This claim involves an injury that resulted from a workplace physical altercation between an employee and a store customer. Apparently, the dispute initially arose because the customer believed that Petitioner was in the restroom too long.

When a fight at work arises out of a purely personal dispute, resulting injuries do not arise out of the employment. *Franklin v. Indus. Comm'n*, 211 Ill. 2d 272, 279-280, 811 N.E.2d 684, 285 Ill. Dec. 197 (2004) On the other hand, fights arising out of disputes concerning the employer's work are risks incidental to the employment, and resulting injuries are compensable, unless the claimant is the aggressor. (Id.) However, *Franklin*, the cases it sites and its progeny regarding workplace fights all involve coworkers. The Arbitrator finds the facts of this case are more akin to those involving an attack by a stranger rather than a fight between coworkers.

Portenzo v. Ill. Workers' Comp. Comm'n, 378 Ill.App. 113, 881 N.E.2d 523, 317 Ill.Dec. 355 (1st Dist.) is instructive in this regard.

In *Portenzo*, the claimant was unloading a truck at a dock in an alleyway when someone grabbed his ankle then hit him in the head. *Portenzo*, 378 Ill.App.3d at 114. The Appellate Court's analysis focused on the risk analysis set forth in *Caterpillar Tractor Co. v. Industrial Comm'n*, 129 Ill.2d 52, 541 N.E.2d 665, 133 Ill.Dec. 454 (1989). The Court found the risk of attack was neither distinctly associated with his employment nor personal to him but was neutral in nature. *Portenzo*, 378 Ill.App.3d at 117. The Court then undertook a neutral risk analysis. *Id*. at 118. The Court noted that injuries sustained by an employee resulting from his exposure to a neutral risk such as an assault arise out of his employment if the employee was exposed to the risk of a greater degree than members of the general public (citing cases). *Id*.

Although the Court in *Portenzo* used the claimant's status as a travelling employee as a decisive factor for determining whether the claimant was at greater risk than the general public, the analysis used therein and cited above is applicable to the instant case. The Arbitrator thus finds that the Petitioner herein was exposed to the risk of an attack greater than the risk to the general public. Being a convenience store employee in itself places a person at a greater risk of attacks – especially from disgruntled customers "hell-bent" on causing trouble.

Because this claim involves a continuing altercation (verbal and nonverbal) rather than a surprise attack as in *Portenzo*, the Arbitrator also looks at the "aggressor defense." The aggressor defense applies only when the claimant's conduct negates the causal connection between the employment and the fight. *Franklin v. Indus. Comm'n*, 211 Ill.2d 272, 282, 811 N.E.2d 684, 285 Ill.Dec. 197 (2004). The question of who made the first physical contact, while important to determining whether that has occurred, is not decisive. *Id*. 282, citing *Ford Motor Co. v. Industrial*

Comm'n, 78 Ill.2d 260, 399 N.E.2d 1280, 35 Ill.Dec. 752 (1980). Rather, a claimant's conduct must be judged in light of the totality of the circumstances. *Id*. The circumstances obviously include the conduct of the other participant or participants in the fight. *Id*. Thus, whether a claimant's conduct rises to the level that triggers the aggressor defense depends in large part on the degree to which the other participant in the dispute has provoked her. *Id*. In *Franklin*, the Court remanded the case for the Commission to determine which party to the fight was the aggressor. *Id*. at 284.

Being that the Court in *Franklin* relied heavily on the *Ford Motor Co*. case, the Arbitrator looks at that case for guidance. The case involved a claimant and a coworker who had a long-running verbal dispute, and, at one point, the coworker rushed up to the claimant, who shoved the coworker, leading to a scuffle. *Ford Motor Co*. 78 Ill.2d at 262. The Court found that the coworker taunted and antagonized the claimant then rushed up to the claimant, leading to the claimant reacting by pushing the coworker away. *Id*. at 263-264.

Another piece of evidence to consider is that the Petitioner was not arrested, but the customer was. Apparently, the police determined the customer to be the aggressor for the purpose of criminal prosecution. The Arbitrator notes that the videos showed there were customers and other staff members in the store, none of whom were called to testify. The Arbitrator accepts as true the Petitioner's testimony that the customer was threatening her. Her testimony was consistent with the video, which depicted the customer continuing to antagonize the Petitioner verbally and physically before the Petitioner pushed her. Even after the physical fight concluded, the customer continued to pursue the Petitioner.

Based on all of the above, the Arbitrator finds that the Petitioner has proven by a preponderance of the evidence that she sustained accidental injuries that arose out of and in the course of her employment with Respondent.

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

The right to be compensated for medical costs associated with work-related injuries is at the very heart of the Workers' Compensation Act. *Hagene v. Derek Polling Center*, 388 Ill. App. 3d 390, 902 N.E. 2d 1269 (5th Dist. 2009).

As the Arbitrator finds this claim to be compensable as bein in the course of and arising out of the Petitioner's employment, the Arbitrator orders the Respondent to pay the medical expenses contained in Petitioner's Exhibit 5 directly to the providers listed therein, pursuant to the Act's medical fee schedule, pursuant to Section 8 of the Act. The Respondent shall reimburse Medicaid and Blue Cross Blue Shield for the bills paid by those entities.

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

Section 8 (c) of the Act provides: "For any serious and permanent disfigurement to the hand… arm… or the chest above the axillary line, the employee is entitled to compensation for such disfigurement, the amount determined by… arbitration under this Act, at a hearing not less than 6 months after the date of accidental injury…". 820 ILCS 305, 8 (c).

The scars on Petitioner's left hand, left arm and chest are disfiguring – especially those with keloid, and are visible at a distance. Therefore the Arbitrator finds that Petitioner is entitled to 50 weeks of disfigurement benefits.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	10WC018189
Case Name	Katherine Timmons v. OpticsPlanet
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b) Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	24IWCC0155
Number of Pages of Decision	21
Decision Issued By	Stephen Mathis, Commissioner

Petitioner Attorney	Scott Barber
Respondent Attorney	Patrick D. Duffy

DATE FILED: 4/5/2024

/s/Stephen Mathis, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Katherine Timmons,

Petitioner,

vs. NO. 10WC 18189

Optics Planet,

Respondent.

DECISION AND OPINION ON REVIEW

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

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed March 14, 2023, is hereby affirmed and adopted.

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

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

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

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

April 5, 2024
SJM/sj
o-3/6/2024
44

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

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

/s/ *Raychel A. Wesley*
Raychel A. Wesley

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	10WC018189
Case Name	Katherine Timmons v. OpticsPlanet
Consolidated Cases	
Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	18
Decision Issued By	Jeffrey Huebsch, Arbitrator

Petitioner Attorney	Scott Barber
Respondent Attorney	Patrick D. Duffy

DATE FILED: 3/14/2023

THE INTEREST RATE FOR THE WEEK OF MARCH 14, 2023 4.70%

/s/ Jeffrey Huebsch, Arbitrator

Signature

K. Timmons v. Optics Planet, 10 WC 018189

PDD/335-10798

STATE OF ILLINOIS)
)SS.
COUNTY OF COOK)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

Katherine Timmons Case # **10** WC **018189**
Employee/Petitioner
v.
Optics Planet
Employer/Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Jeffrey Huebsch**, Arbitrator of the Commission, in the city of **Chicago**, on **June 28, 2022**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On the date of accident, **January 15, 2010**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $**31,358.60**; the average weekly wage was $**603.05**.

On the date of accident, Petitioner was **26** years of age, ***married*** with **2** dependent children.

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

Respondent shall be given a credit of $**0** for TTD, $**0** for TPD, $**0** for maintenance, and $**9,045.75** for other benefits, for a total credit of $**9,045.75**. All TTD has been paid through June 8, 2020.

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

ORDER

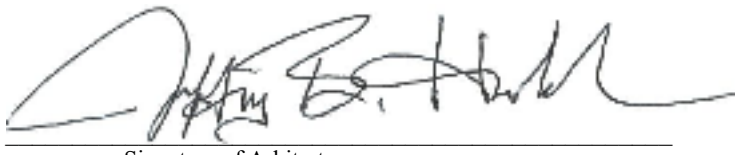
Respondent shall pay Petitioner temporary total disability benefits of $402.03/week for 107-1/7 weeks, commencing June 9, 2020 through June 28, 2022, as provided in §8(b) of the Act.

Respondent shall authorize and pay for the Spinal Cord Stimulator offered by Dr. Adam Young, along with all related services, including the recommended psychological testing and MRI studies, in accordance with §§8(a) and 8.2 of the Act.

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

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

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



Signature of Arbitrator

March 14, 2023

INTRODUCTION

This case was previously tried as a §19(b)/8(a) proceeding in December of 2017. The Arbitrator's decision regarding that hearing was admitted into evidence as ArbX 2.

The issues in the second §19(b)/8(a) proceeding were: Causal Connection; Prospective Medical and TTD. (ArbX 1)

The Parties ordered a copy of the trial transcript and entered into a Stipulation that was filed in CompFile On August 2, 2022 correcting page 62 of the transcript to reflect that the date in question was June of 2016, not June of 2021.

FINDINGS OF FACT

Petitioner worked as a risk management specialist for the Respondent. She sustained accidental injuries which arose out of and in the course of her employment by Respondent on January 15, 2010, when she fell in Respondent's bathroom and injured her right wrist. She eventually developed CRPS of the right upper extremity and right lower extremity.

Since the last hearing in this case, Petitioner attended the Rosomoff Clinic in Miami, Florida. She testified it was not her choice, but she went because her "payments would be cut off" from workers' compensation if she did not attend. She testified that she had the pain pump installed by Rush Hospital and was on fentanyl patches and oral opioid medication at the time she went to Rosomoff in July of 2018. She understood the purpose of going to Rosomoff was to wean her off opioids. She was not aware they were going to remove the pain pump. She testified that she was weaned off opioids during the first admission at Rosomoff from July 2018 to August 2018. She testified that Rosamoff referred her to Dr. Murillo for the pain pump removal and she was told to return for the removal of the pain pump. She returned in 2019 and the pain pump was then removed.

Petitioner testified that when she went to the removal appointment, she thought she was going to a surgery center. Instead, it was Dr. Murillo's office in a "rundown hole in the wall, delipidated house". It was not connected to any hospital or surgery center. Dr. Murillo administered an IV twilight drug and during the surgery her IV blew out twice. The second time he could not reinsert the IV and told her he was almost done. She ended up leaking spinal fluid.

Petitioner agreed that if the records indicate she was at Rosomoff in January 2020, she must have been there. She agreed that Rosomoff provided extensive physical therapy. Rosomoff closed during COVID. Petitioner testified her condition today is worse now than it was when she was discharged from Rosomoff. She said she was left on her own with no doctors and no medication. She said her condition in June 2020, when her workers' comp benefits were terminated, was the same as it was when she left Rosomoff.

At the time of the June 28, 2022 hearing, Petitioner was taking Topamax 100 milligrams; BuSpar 10 milligrams, twice a day; Cymbalta 80 milligrams; Klonopin 1 milligram, three times a day; Lamictal 100 milligrams; Naproxen 500 milligrams, as needed; Sumatriptan 100 milligrams, as needed; and she has a medical

marijuana license in Florida. These medications are being prescribed by a neurologist and a psychiatrist for treatment of nerve pain, anxiety and depression. Topamax, , Naproxen and the medical marijuana help to manage the nerve pain. She has developed depression and anxiety, and Cymbalta helps with the anxiety and depression. The psychiatrist recently added Lamictal.

Petitioner testified that she only sleeps in two-hour increments and her typical day begins around 7:30-8:00am. She feeds the cats and then makes a pot of coffee. She goes outside to smoke marijuana and then comes in and lays on the couch. About 11:00am or 12:00pm she will return to her room to lay down. She gets back out of bed around 1:00-2:00 pm. She will then sit on the couch but does not watch TV because she cannot concentrate.

Petitioner tries to be as helpful as she can around the house, but her husband and kids do most of everything around the house. She will clean the kitty litter boxes. Occasionally when her husband unloads the dishwasher, he will place the dishes on the counter, and she will put them away as best she can. Her husband and children do the laundry and cleaning in the house. Her husband used grocery shop in-store, but now orders groceries and has them delivered, and her son puts them away. Her activities are limited by her chronic pain condition.

The condition has completely and utterly destroyed her marriage. Her condition is a sensitive topic in their household because her husband is the only provider and Petitioner does not contribute to the household at all. She testified that she does not complain because it does not do any good. She will tell her husband that "today is a bad day" and that she will be in bed all day.

Petitioner testified she was in pain during the hearing and is in constant pain and it never goes away. The pain is in her right arm from above her mid-forearm and down; in her right leg from a little above mid-shin and down; and in her right hip. The pain is a fire burn. It is like holding an ice cube in your hand that you can't let go of. She described the feeling as being like an overinflated blood pressure cuff on her right arm and leg. She has a sharp stabbing pain in her hip that she said Dr. Corbett told her was from the way she was walking.

Petitioner testified that she currently lives in the Tampa Bay area of Florida. When she drove to the Rosomoff clinic in Miami for the first time in July, she had a pain pump, was on pain medications and she would make stops during the trip. Her daughter drove both ways in January of 2020. Petitioner was able to adjust her position and recline while her daughter drove. She would arrive at Rosomoff one day before her appointment because she would not be in any condition to participate on the day of her arrival. She would stay at the Rosomoff facility, which was a pain clinic inside an assisted living facility. She would spend an additional day after her treatment ended.

She noticed a cognitive difference at the end of her first admission in August 2018 because she was weaned off the opioids. She was more-clear headed. It was hard to tell if the pain was the same, because she has good and bad days. A good day was being able to attend her daughter's softball game last year. Afterward, she has to go home and lay down because she is drained.

She testified that Rosomoff had a walking track. She said that they were trying to force her to wear shoes and even bought her a pair, but she could not and still cannot wear them. She said she would walk the track alone and that no one from Rosomoff was there to measure how far she walked.

Petitioner testified she drove downtown to the arbitration hearing with her attorney. She made the significant walk to the basement of the courthouse. She stopped one time along the way and rested because she almost tripped.

Petitioner testified she was not able to see a psychiatrist at Rosomoff, only a psychologist, and she doesn't recall her depression level being stable. She agreed with Rosomoff that upon discharge on January 24, 2020, she still had right upper-extremity and right lower-extremity pain, with a history of Complex Regional Pain Syndrome ("CRPS"). She agreed her chronic pain condition was stable at the time of discharge. She agreed with Rosomoff that her anxiety and depression was ongoing. She testified she never had anxiety or depression before developing CRPS. She agreed her insomnia was refracted to Temazepam and Trazadone because they took all her sleeping medications away. She testified she still has diarrhea one or two times per day. She agreed she still has chronic pelvic pain that she treats with ice. She agreed with Rosomoff that she has trochanteric bursitis on the right side and said that she is in horrific pain in the hip.

Petitioner testified that Dr. Young has prescribed a spinal cord stimulator ("SCS") and it is something she wants, if approved.

On cross examination, she agreed she had a first spinal cord stimulator implanted at the Rush Pain Center on December 31, 2012. Dr. Lubenow never told her that the spinal cord stimulator was not very effective. Six weeks after its implantation, she was admitted to Rush for Ketamine injections. She said the trial of the SCS was successful, so she had the SCS implanted permanently. She could feel the sensation of the stimulator. She testified that the new stimulators are better because you can't feel the stimulation, it just blocks the pain. She turned the first SCS off by September 2014. She had continued to take narcotics while the SCS was implanted. The SCS was removed, and the pain pump was implanted on or about December 1, 2015.

Petitioner testified the pain pump needed to be refilled every three months. She would return to Rush, because her husband allowed it and she trusted Dr. Lubenow. She was having difficulty finding a pain doctor who was not at the Rush Pain Center who was going to just fill the pain pump with narcotics or opioid medications. Her last visit at Rush was on May 23, 2018. She testified she was forced to go to Rosomoff, or her workers' compensation benefits would be terminated.

Petitioner testified the pain pump was originally implanted in her stomach and had to be moved to her back when she lost weight. She was hospitalized in June 2016 with a flare up. She testified the pain pump flipped twice before it was moved to her back. She did not recall telling Dr. Buvenendran that she wanted the pain pump removed because it was not helping. She was taking narcotic medication while the pain pump was implanted.

Dr. Murillo slowly tapered her off the Prialt and then the pump only contained saline until it was removed in August 2019.

Since her testimony in the first trial, the pain has spread to her hip, and she has now developed a rash on the back of her right leg. She cannot get treatment because of financial concerns, especially with a daughter in college. She testified it is a very stressful time in her life; she is not able to work and is bringing no financial assistance to the household. She is emotionally worse, and her anxiety and depression are worse. She has

difficulty seeing doctors because of the out-of-pocket expenses and co-pays. She feels she is worse now than five years ago because she cannot seek the medical care she needs.

Petitioner testified she flew in from Florida by herself for the hearing, which is about a two-and-a-half-hour flight and arrived on the Saturday before the hearing. She also flew into Chicago when saw Dr. Young for an in person visit in the fall of 2021. She flew into Chicago with her husband in October of 2020 when his mother died. She flew to Arizona alone when her father was gravely ill and also stayed with her sister sometime before her mother-in-law died. She denied telling Dr. Suarez she was fine on October 13, 2021.

She was able to place her father in assisted living in December 2021. Her sister flew her father to her house in Florida in September 2021 and he had severe dementia. He was in and out of the hospital during the time he stayed with her. His belongings were not there. She had his car repossessed and what things he did have were put into storage. He now lives with his sister in Tennessee. He stayed in her daughter's room while he was there.

Petitioner testified Dr Young placed an epidural catheter that infused Fentanyl and Bupivacaine in June of 2021. She said when she had her telehealth appointment on March 16, 2021, Dr. Young explained there was new SCS technology and that she would be a good candidate for it. She did not recall if Dr. Young opined on the percentage of success for the new generation stimulator. She testified Dr. Young ordered a psychological evaluation and MRI of the cervical and thoracic spine, but she has not had them done because she cannot afford the procedures. Dr Young also prescribed Clonazepam and cannabis. She did inform her primary care doctors she was on medical marijuana. She received her Florida medical marijuana license January 24, 2022.

Petitioner testified that her daughter plays softball at Ball State, and she traveled there when her daughter was recruited in her junior year of high school, which was three or four years ago. She flew to Indianapolis with her husband and then drove to Muncie. She testified Ball State made accommodations for her by allowing her to use an ATV to tour the campus because she could not walk it. She has returned one time to Ball State, this year, when her daughter broke two bones in her hand playing softball.

Petitioner testified she returned to Rush twice since the December 2107 hearing. Once, in February 2018 and one final time in May 2018. She flew in for both appointments and has not been back to Chicago.

Rosomoff advised Petitioner to try to be as active as possible, which she tries to do on her good days. Rosomoff gave her a Fitbit, which she used and would email the occupational therapists until Rosomoff closed. She stopped using it because she had no one to email the results to.

Petitioner testified that Dr. Corbett had recommended she see a psychologist or psychiatrist, and she started seeing Dr. Suarez in March 2021. She was seeing a psychologist when she was at Rosomoff. She is currently seeing Sun City Neurology.

Petitioner testified that she is not on any opioid medication since 2018 and she is happy about that because she is clear headed. She testified she used to be a avid reader but now cannot concentrate long enough and must re-read what she just read and has to start over.

On redirect examination, Petitioner testified the reason she went to the Rosomoff clinic was because she was shown an email in June 2018 from Respondent's counsel stating they would reinstate temporary total disability ("TTD") as of October 2017 if she went to the Rosomoff Clinic and completed the program. She testified the Rosomoff clinic had been something Respondent wanted her to attend for a couple of years, but she was dead set against it. She testified she had done research on the clinic and fought long and hard not to go, but they stopped her payments, and she had no choice.

Petitioner testified that she had been sitting about one and a half hours during the current hearing, but she was able to adjust her position. She is able to get up and stretch when she is on a plane and stop and stretch while she is driving.

Petitioner said her job at Respondent was 100% computer work and there is no way she could type with her right hand. She testified neither Rosomoff nor Dr. Young ever released her to return to work. No doctor has told her that she can go back to work. She testified she cannot concentrate and is easily distracted if there is any background noise. She said she is overwhelmed by constant pain.

The records of Rosomoff Clinic show that Petitioner was admitted there on July 30, 2018 and was discharged on August 25, 2018. When she arrived she underwent a Multidisciplinary Pain Team Evaluation, including physical therapy, occupational therapy, neuromuscular massage therapy and psychological assessment. She was currently taking Oxycodone, Methadone, Clonazepam, Tizanidine, Trazadone, Ambien, Duloxetine, Fioricet and Prialt in the pain pump. She was considered an excellent candidate for their program to detox her from the opioid medications. They discussed removing the pain pump as well, but she was apprehensive about that. They wanted to start the detox program immediately, which they anticipated would take 4-5 weeks as an inpatient.

The Discharge Summary from Rosomoff indicates she was successfully weaned off opioid medication as of August 24, 2018. The discharge diagnoses were: pain and CRPS symptoms in her right upper and lower extremities. She was said to have markedly reduced sensitivity to range of motion to the right upper and lower extremities. Her depression and anxiety were deemed to have improved. She was still having problems with insomnia. She was noted to have successfully improved her functional score from 44% to 63%. Her functional status did not improve as much as expected due to motivation and self- confidence issues. She was noted to have undergone intensive gait training and shown a lot of progress and was taken off fall precautions. She attempted to wear shoes, but preferred flip flops. Her temperature evaluations showed no significant difference between right and left upper and lower extremities.

Rosomoff's recommendations on discharge were to follow daily home exercise programs and use a relaxation CD, refrain from opioids, maintain an active and productive lifestyle, follow up with Dr. Murillo for removal of the pain pump, continue psychological counseling, undergo vocational training, and follow up with primary care and return in one month for follow up with Dr. Corbett. The physical therapy discharge note indicated she still reported an overall pain level of 5/6 for her right upper and lower extremities. She met goals for active range of motion to both upper and lower extremities. She was able to wear a shoe and sock for 10-15 minutes with weightbearing, although she developed a maladaptive gait pattern secondary to pain. Her right upper extremity was starting to have normal range of motion and she was capable of doing overhead activities. The occupational therapy discharge note indicated she did not meet the set goals. She continued to be modified independent in the performance of self-care tasks, predominantly using her left arm to accomplish hygiene tasks. She could tolerate sitting for 30 minutes while wearing sneakers and 60 minutes while wearing flip flops.

She was said to be able to stand for 125 minutes while wearing sneakers and 34 minutes while wearing flip flops. She could walk 50 feet with a rolling walker indoors wearing sneakers and half a mile outside wearing flip flops. She could climb 20 stairs while wearing flip flops and utilizing a handrail. She could handle carrying 5 pounds and lifting 6 inches above the floor. She was discharged with prescriptions for Ambien, Duloxetine, Zofran, Fioricet, Clonidine, Clonazepam and Trazodone. She was told to return in one month for a follow up visit with Dr. Corbett. (PX 28)

Petitioner was readmitted to Rosomoff on April 15-20, 2019. The Prialt in her pain pump was tapered. The notes state that she could tolerate walking one mile with shoes with weight bearing. She improved from a psychological standpoint, with improved her outlook and she was in good spirits. She continued to be motivated and was in better spirits. (PX 28, p. 2010)

Dr. Corbett noted that on November 25, 2019 he had a few conversations with the Petitioner regarding her work status and he indicated he sent a letter to the insurance company. He notes she had the pain pump removed and she reports worsening depression, increased anxiety and worsening pain. He noted he had predicted she would need "tune ups" from time to time. He recommended she return to the clinic for a one week "tune up." He called in a prescription for Duloxetine, Clonazepam and Trazodone. (PX 28, p. 2006)

Petitioner was admitted to Rosomoff for the last time on January 20, 2020. She reported ongoing diarrhea, between 6-8 episodes per day. She reported ongoing anxiety that affects her sleep. She has difficulty falling and staying asleep. She is taking Ambien and Tramadol. She reported continued pain in her right upper and lower extremity, which has been unchanged compared to discharge. She wears shoes on occasion and is utilizing hot showers for pain control. She reported she was able to go to Ball State and was happy about that. She said she is doing relatively poorly from a coping perspective and is lashing out. She feels she is going backwards and is unhappy about that. After physical exam, Dr. Corbett admitted her for a one week "tune up". He recommended she undergo a psychiatric evaluation with Dr. Berger to assist with insomnia and anxiety. He was going to prescribe Duloxetine to manage the depression. He also wanted to consider Meloxicam as an anti-inflammatory. (PX 28 p. 2014)

Petitioner saw Dr. Berger on January 21, 2020. After his exam, he diagnosed her with major depressive disorder, adjustment disorder with mixed anxiety and depressed mood, anxiety disorder due to a known physiological condition, insomnia, and mood disorder due to known physiological condition with depressive features. He prescribed Temazepam. He ordered a return visit in 2 months or sooner. (PX 28 p. 2018)

During the January, 2020 admit, Petitioner received daily physical therapy and occupational therapy. She participated in all activities that were asked of her. Her status remained largely unchanged, and she was discouraged and unenthusiastic about her rehabilitation.

The discharge notes on January 24, 2020, state the discharge diagnoses are: Right upper and lower extremity pain with history of CRPS; Chronic pain syndrome Stable; Ongoing anxiety and depression both stable; insomnia refractive to Temazepam and Trazodone; diarrhea resolved; sacroiliac joint dysfunction/trochanteric bursitis on the right. Dr. Corbett recommended she continue with follow up visits and wanted to see her back in two months. (PX 28 p. 2021)

Rosomoff was shut down because of the COVID pandemic.

Petitioner submitted the evidence deposition of Adam Young, M.D. Dr. Young is a board-certified anesthesiologist and licensed to practice in Illinois. His CV was introduced into evidence, without objection, to establish his credentials and qualifications. He has an extensive history of written peer-reviewed articles, book chapters, has given lectures and served on many committees. Several of his articles and book chapters deal specifically with spinal cord stimulation. (PX 29 p. 2100)

Dr. Young trained at the Rush Pain clinic with a group called University Anesthesiologists (PX 29 p. 2028). He now practices at Illinois Bone and Joint. He saw Petitioner at both Rush and IBJ. He reviewed the medical records from his visit with her at Rush in 2015, the Rosomoff records for the treatment rendered in 2019, and the discharge note in 2020. (PX 29 pp 2031-2038)

He saw the Petitioner on March 16, 2021, for a telehealth visit. She complained of pain in her right arm and right leg. She reported to him that she relied upon medical marijuana to address the burning symptoms in her arm and legs, as well as swelling and color changes. She had weakness and flareups that would leave her incapacitated for short periods of time. At the time of the telehealth visit, she appeared to be relatively distress-free. She appeared to be rather normal without any signs of any sort of mental issues, such as a depressed affect or seemingly overanxious. He was not able to conduct a physical examination of the patient. (PX 29 2040-2042)

Dr. Young agreed Petitioner still had CRPS Type I of the right upper and lower extremities, and they were the same conditions he had diagnosed her with when he saw her in 2015. Her condition was largely unchanged from when he saw her in 2015. He did not recommend any changes to her medications and thought the Duloxetine, Clonazepam and use of medical marijuana were all reasonable. He didn't think additional physical or occupational therapy would help her, given she had extensive courses of both in the past. (PX 29 p 2044) He recommended the use of a pain psychologist to help teach biofeedback relaxation techniques. He had a deeper discussion of what other interventions may be available to her.

He discussed that the technique of applying electrical energy to the central nervous system was fairly rudimentary when Petitioner had the original spinal cord stimulator implanted. He said there were more advances at Rush in the field of neuromodulation, and he thought she would be a candidate for something as simple as a retrial of spinal cord stimulation. (PX 29 p. 2045) He said the advancements in spinal cord stimulation have taken place in the last five years. Initially, it was the use of high-frequency wave form that was brought into the market by one manufacturer. Other manufacturers have entered the market with their own novel techniques. The prior use of spinal cord stimulation was not favored because it did not have long-term efficacy and would not provide the degree of relief compared to that received nowadays. (PX 29 2047-2048).

Dr. Young agreed that the best time for spinal cord stimulation would be within the first three years of symptoms. However, he did not want to preclude the SCS merely on that basis. He thought the fact Petitioner did not have a good result from the first SCS implantation speaks very clearly to the lack of efficacy in the previous type of stimulation, which was tonic and was fairly rudimentary. He recommended a trial of the SCS first. (PX 29 p 2049). He saw very few options for the Petitioner beyond another SCS. (PX 29 2050)

His assessment of Petitioner's condition did not change at all when he saw her in November of 2021. (PX 29 p 20)

On cross examination, Dr. Young testified he saw Petitioner in November of 2021 in person. He testified that he ordered MRIs for her cervical and thoracic spine on both visits to determine whether there would be any anatomical contraindications for a new SCS, but he thought that would be highly unlikely given her age. He also wanted a psych evaluation to see whether she would be a satisfactory candidate. He thought either a psychologist or psychiatrist with experience in administering preoperative psych evaluations would be fine. (PX 29 p 2057) He said that by far, a majority of these evaluations were just a hurdle to jump through. (PX 29 p 2057) It is very rare for patients to have a mental health issue that would prevent them from having a trial SCS placement. (PX 29 p. 2058) Even in cases where the patient has a substance abuse disorder or mental health condition, that would only mean the patient was not an appropriate candidate at that time. He said he can't speak to Dr. Suarez's opinion that Petitioner was overwhelmed and the diagnosis of generalized anxiety disorder and mood disorder with depressive factors. He didn't think that the evaluation was for the trial of the device. (TR 29 p. 2058-2059) It did not matter to him whether Dr. Suarez had a year long relationship with Petitioner. (PX 29 p. 2059)

Dr. Young defines success of the trial SCS as a 50% reduction in overall pain symptoms. Another measure of success would be a reduction in the need for pain medications. A third measure would be improvements in sleep and the activities of daily living. He testified that these measurements are objective in how much medications they are taking and how much sleep they are getting. (PX 29 p.2060) He testified the current success rate from a trial to a permanent implantation range from between 70-80%. He testified that once the SCS is implanted, it stays implanted. He testified that the older devices that would only provide tonic stimulation did have a higher explant rate than the newer ones. He testified the older stimulators had a 60-70% success rate from trial to permanent, but the newer ones provide a better success rate. (PX 29 p. 2061) He testified that the risks of the trial stimulation can be the patient feeling an increase in the amount of pain or soreness at the site where the leads are introduced. There was a remote chance of bleeding, infection, headache or Dural puncture, and even a more remote chance of injuring the nerves of the spinal cord itself. (PX 29 pp 2062-2063) The risks of the permanent implant are the same. (PX 29 p. 2063) He testified the complication rate for the trial is almost next to nothing. He has only seen one case in the last six- and one-half years where the permanent implant needed to be removed. (PX 29 p. 2064) He said the number of times where a patient said the SCS was not working was quite low- below 10%. (PX 29 p, 2064)

Dr. Young said that Petitioner's complaint that the prior SCS was mimicking the pain she already had indicated the tonic stimulation was not effective for her. He testified that burst stimulation would be more effective for her. (PX 29 p. 2066)

Dr. Young testified that patients with chronic pain don't necessarily do better on opioids, but he does have several patients who are on them for an extended period of time. Petitioner does not seem to be any better being off the opioids than when she was on them. (TR 29 p. 2069)

In November of 2021, his physical exam revealed she favored her left leg but did not use a walker or a cane. He diagnosed allodynia in both legs and the right arm. She did not demonstrate any clear inability to lift her arm or her foot. (PX 29 p. 2071). He noted there was no atrophy, but he thought that could be from her household activities. (PX 29 p. 2072)

Dr. Young opined that Petitioner would get the best results from burst stimulation, which is only provided by the Abbott SCS. He testified that it does not give him one second of pause that Abbott excluded patients who had previous spinal cord stimulators. He testified he recognized that Petitioner has had an

extensive amount of treatment at Rush, and she has had a tough case of CRPS. He said that the new SCS devices are a potential opportunity to use newer technology, and she may finally obtain some relief. (PX 29 p. 2075). He testified that he does not know what the chance of success is for Petitioner (PX 29 p, 2077). He would discuss a rehab program with her if the SCS implant was successful. (PX 29 p. 2077). He thought the triangular fibrocartilage complex ("TFCC") injury was only an incidental finding and was not a cause of her pain. He did not think it needed to be addressed prior to the SCS trial. (PX 29 p. 2079)

On re-direct examination, Dr. Young testified he needed an indication to have an MRI and the psych evaluation done before he could order it, and the implementation of the SCS would be that indication (TR 29 p. 2081) He also testified it is not unusual to see concomitant mood disorders in patients who suffer from chronic pain. (PX 29 p. 2082) The findings Dr. Suarez made about Petitioner being easily overwhelmed and having generalized anxiety and a mood disorder are not contraindications to the spinal cord stimulator. (PX 29 2081) He did not see a big difference between when Petitioner was on the opioids and when she is off, but she is not a candidate to restart them. (PX 29 p 2083) He was not sure if re-implanting the pain pump would be recommended because he was not sure how well it was working and if Petitioner was against it, it would be a contraindication. (PX 29 2084)

He testified that there was no place along the course of treatment at Rush would be appropriate to stop treatment because the prior modalities were not working and everything done at Rush was very reasonable and appropriate. (PX 29 p. 2085) He testified there were no contraindications to Petitioner undergoing the trial of the SCS (PX 29 p. 2085)

Respondent introduced the transcript of the evidence deposition testimony of Dr. Howard Konowitz, MD, its Section 12 independent medical examiner as its RX 54. He is board certified in internal medicine and anesthesia, with a subspecialty in pain management. 50% of his professional time is practicing pain management.

He has been implanting spinal cord stimulators since the early 1990s. He said out of 99 of his patients, he will implant three. He said the technology has changed since 1991, with the programing getting easier and the systems having improved. He testified the big changes had occurred in 2004 to 2005, but there has been significant improvement in the technology since then. The devices used to be very big, but they are much smaller now and with tiny little batteries.

Dr. Konowitz first examined Petitioner on September 23, 2011, and then again on June 28, 2013; June 27, 2014; and October 27, 2016. He drafted several records review reports as well. His reports were introduced into evidence in the December 2, 2017 hearing as Respondent's Exhibits 2, 3, 4, 5, 26, 30, 31 and 32. He has not examined Petitioner after December 7, 2017. However, he has drafted reports dated January 20, 2020; May 18, 2020; July 18, 2021; December 9, 2021; and January 13, 2022.

His last examination of Petitioner was on October 27, 2016. He testified Petitioner's vitals at his last examination were stable. He testified palpation of the thoracic, supraclavicular on the right side did not trigger symptoms. He testified the healed scars from the stimulator were non-tender and the rest of her neurological exam were normal, as was her gait. The exam of the right upper extremity from the elbow to the hand demonstrated increased sensation form the lateral epicondyle to the wrist. Vibration was increased in the right upper extremity and the right great toe. He testified light touch was also increased along the arm by the elbow and then along the saphenous distribution, which is the anterior tibia. The CRPS exam demonstrated right arm

and right leg allodynia but did not demonstrate changes in temperature, or changes in skin, hair or nails for both right upper and lower extremities. Her perception of pain with a sharp touch was augmented. He also reviewed the surveillance report from July 16, 2016 and July 17, 2016. After his examination and review of the video, he formulated the opinions on Petitioner's ability to return to work and her need for future medical care.

Dr. Konowitz received additional records from Respondent's counsel sometime between January 13, 2020 and January 18, 2020, which were from Dr. Jaycox and Dr. Lubenow at Rush Medical Center for six office visits between June 7, 2017 and May 23, 2018, together with the medical records from the Rosomoff Clinic for the inpatient admission and the outpatient records from July 29, 2018 to August 25, 2018. It also included the records for the pain pump removal on August 23, 2019. Dr. Konowitz testified he understood the pain pump was implanted on the same date the spinal cord stimulator was removed, on August 8, 2015. Dr. Konowitz testified the Rush records made no mention of a revised spinal cord stimulator.

Dr. Konowitz testified the goal of the Rosomoff Clinic was to withdraw the opioids from Petitioner because chronic high doses of opioids can lead to hyperalgesia, which worsens the pain state. He testified Petitioner's morphine equivalent was in the 300's per day. (RX 54, pp14-15)

He testified that he was also given a job description. After reviewing the medical records and the job description, he drafted his January 20, 2020 report that contains his opinions at the time. He testified that the status as a risk specialist had no restrictions required for the job. He also opined in the report that Petitioner needed no future treatment and that she was at maximum medical improvement, as of November 25, 2019. (RX 54, pp18-19)

Dr. Konowitz testified he received additional records from Rosomoff and Dr. Corbett after January 20, 2020 and drafted another report, which Respondent attached as Deposition Exhibit 4. He testified after reviewing those records that Petitioner was capable of returning to work as a risk specialist with no restrictions, and once again Petitioner did not need future medical care. (RX 54, p 20)

Dr. Konowitz also reviewed the records from Dr. Young's March 16, 2021 telehealth visit and drafted another report dated July 15, 2021, which was attached as Deposition Exhibit 5. Dr. Konowitz opined that the re-implantation of a spinal cord stimulator that Dr. Young recommended was not reasonable or necessary. He based his opinion on the increased pain and symptoms the first stimulator caused. He testified a small subgroup of spinal cord stimulators worsen pain, depending on where they are placed. He testified there is a subgroup of CRPS patients that it does not help at all and makes them feel worse. He also testified there is a subgroup with irritability that their generators cause where the battery gets sensitive. He testified the stimulator that was implanted to cover her leg did well until it failed, which is different than the arm, which does not stimulate well. (RX 54, pp 21-23)

He also testified that stimulators are a tool where early implantation is better. The effectiveness of the stimulator degrades over time, so a stimulator put in year one is a better choice than year three, or five to ten years. Most clinicians cut off in the three-to-five-year range, because it doesn't work to provide lasting relief. He testified he loves stimulators that are not just 50% to 70% better, but ones where it is 90% to 100%. He testified the re-implantation of the spinal cord stimulator was not reasonable and there was a high chance of causing more harm. He characterized the reimplantation as high risk and red flag. (RX 54, pp 23-25)

Respondent's counsel asked Dr. Konowitz if there was any medical literature that supported his opinions, and on December 9, 2021, he authored a report providing medical literature. Those articles were attached as Deposition Exhibits 8-11. One of the articles Dr. Konowitz provided states that the bulk of spinal cord stimulator failures were hardware related. He testified the infection rate was 2%-4%, depending on the surgeon and whether it was implanted in a hospital or surgi-center.

Dr. Konowitz testified that he uses all the tools to make sure people succeed. He uses an independent psychologist to make the determination of whether the patient is psychologically sound for the SCS. He testified he uses someone who he is not writing their paycheck for. He testified he does not want a treating psychologist to determine the spinal cord stimulator evaluation. Dr. Konowitz was given Dr. Young's November 3, 2021 record and he provided a report opining that the Petitioner's adjustment disorder, anxiety, depression, and poor coping skills made her a poor candidate for a re-implantation of the spinal cord stimulator. (RX 54, pp 31-34)

On cross examination, Dr. Konowitz agreed the articles listed in his CV were not related to the issues in this case. He testified that he is asked two or three times a year to give a CRPS lecture. He testified that he was just with a physical therapy group, where they had a bunch of physicians, and he recently was at Gibson's for a talk. He was also at "The Bar" with lawyers downtown and has recently been on "Zoom" a lot. He agreed his presentations were all informal. He was at an IME related lecture in Wisconsin where he presented slides and gave a talk. Dr. Konowitz gives 20-25 depositions per year, which is about once every two weeks. He admitted he has a website that has a direct portal for claims adjusters and case managers to upload medical records for him to conduct IMEs

He testified that Petitioner could return to the sedentary job description he was given. (RX 54, p 41)

He testified that the spinal cord stimulators had changed, but nowhere in his report marked as Deposition Exhibit 5 did he explain what those changes are. He also did not answer the request in the January 13, 2022 report marked as Exhibit 7 to explain whether the newer products are not as effective and the older products. (RX 54, pp 44-45)

Dr. Konowitz admitted the risks of re-implanting the spinal cord stimulator are the same as the original implantation and are the same each time it was performed; the risks are not cumulative. He testified that his opinion that re-implantation was not well studied is because doctors would not reimplant spinal cord stimulators after the first one failed, therefore institutions would not study re-implantation. He was presented with Deposition Exhibit 11 entitled "1.2 kHz High-Frequency Stimulation as a Rescue Therapy in Patients with Chronic Pain Refractory to Conventional Spinal Cord Stimulation". He testified he was aware of this article, but he disagreed that the subject of the article was relevant to Petitioner's case.

He was presented with Exhibit 12 which was an article published in Science Direct entitled "Technology at the Neural Interface" and he testified he had not seen the article and not aware of it.

Dr. Konowitz was questioned on his statement that he did not condone Dr. Young's re-implantation of the spinal cord stimulator and whether such implantation would be medical negligence. He opined that it would not be malpractice, but he did not condone it because it did not comply with insurance guidelines. (RX 54, pp 52-54)

He testified that he read the complete articles he attached to his reports, but he only supplied the abstracts of those articles to his reports and did not provide copies of the complete articles to the Respondent's attorney. He did not answer the question why he did not provide the full articles to Respondent's attorney. He also testified he could do a literature search for articles, but he missed the HALO study article because it came out after his last IME report.

Petitioner's attorney had Dr. Konowitz read a section from the abstract that Konowitz provided entitled "Complication of Spinal Cord Stimulation and Peripheral Nerve Stimulation Techniques: A Review of the Literature" published December 12, 2015, that stated:

> "Spinal cord and peripheral neurostimulation techniques are safe and reversible therapies. Hardware complications are commonly observed than biologic complications. Serious adverse events such as neurologic damage is rare". (RX 54, p 58)

Dr. Konowitz also read from the article he provided entitled "Selection of Spinal Cord Stimulation Candidates for the Treatment of Chronic Pain", marked as Exhibit 8 that stated:

> "In the rare case in which this disease spreads to the contralateral limb or ipsilateral limb., SCS remains a viable option. In these cases, multiple leads, complex rechargeable generators, and high frequency programs may be required. These complex capabilities have changed the selection of CRPS patients and have elevated SCS above pumps as an option for multiple extremity disease. Anecdotally, the use of high-frequency stimulation may be effective in patients who have failed conventional stimulation parameters. There, frequencies greater than 500 have been reported beneficial in intractable CRPS, but more investigation is needed." (RX 54, pp 59-60)

He admitted the "studies" to which he referred in his December 9, 2021 report was only one study, and that was a study conducted by Boston Scientific, reporting its own older, conventional SCS was more effective than the new Nevro sub-threshold SCS. He admitted that the newer SCS can be programmed to do both sub-threshold and conventional SCS. (RX 54, pp 61-65)

Dr. Konowitz testified that he had been familiar with the Rosomoff Clinic and was aware of them before he saw Petitioner; he was the one who first suggested she attend that clinic. He was aware that the Rosomoff Clinic's goal would be to take Petitioner off the opioid medication and the pain pump, and he had that opinion as early as June 28, 2013. He testified the Petitioner did not need further care as of November 25, 2019. He disagreed with Rosomoff's assessment during her admission of January 20, 2109 that Petitioner needed more care and disagreed with Rosomoff's assessment that "she will greatly benefit from ongoing psychiatric/mental healthcare as it is affecting her overall biological condition, as well". (RX 54, p 68)

He agreed depression can be a natural sequalae of CRPS. He disagreed that Petitioner needed physical therapy at Rosomoff to address pain in the right buttock and hip. He also disagreed with Rosomoff that she needed passive stretching to increase range of motion or that she needed upper body/lower body gymnasium strength training. He disagreed with Rosomoff that she needed cardiovascular training or pain management to the low back and hip. He disagreed with Rosomoff that Petitioner needed gluteus range of motion exercises for the right shoulder. He agreed that sleep disturbances can be a sequalae of CRPS.

He testified that Rush utilized a multidisciplinary approach to Petitioner's treatment for the last ten years and despite all the treatment, Petitioner is still suffering from CRPS and she is still in pain. He agreed she is not on pain medication, but he would not recommend medical marijuana or the SCS. He testified that he would need to see the current psychological testing to determine whether the Petitioner's depression is caused by the CRPS.

He was then shown Deposition Exhibit 13, which he identified as a slide he prepared. Petitioner's counsel had him read from the slide that stated:

> "For those in whom pain persists, psychological symptoms (anxiety, depression) and loss of sleep are likely to develop, even if they are not prominent at the onset. Therefore, an integrated interdisciplinary approach is recommended, tailored to the individual patient." (RX 54, p 83)

Dr. Konowitz testified all the treatment rendered by Rush in the past was reasonable during the time the treatment was rendered.

He admitted the job description he was given was dated 12 years ago. He agreed with the functional limitations Rosomoff, indicated in January of 2020. He said he was basing his opinion she could return to work on the job description from 12 years ago.

On re-direct examination, he testified SCS devices have become smaller and last longer, but still follows the same methodology. He also testified that a marriage that is in pieces can be a cause of depression, anxiety, and insomnia. (RX 54, pp 88-89)

Respondent introduced the medical records from March 23, 2021 – January 10, 2022 of Dr. Suarez, a psychiatrist and neurologist, and his group as its RX 56. The records indicate Petitioner is suffering from CRPS and having difficulty with stress, pain and sleeping. Dr. Suarez increased the Petitioner's Cymbalta dosage and started Bupivacaine at the first visit on March 21, 2021. On July 15, 2021, he started Ambien, as needed. At the last visit he continued the medication and offered supportive therapy (RX 56)

CONCLUSIONS OF LAW

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

To obtain compensation under the Act, Petitioner has the burden of proving, by a preponderance of the evidence, all of the elements of her claim (O'Dette v. Industrial Commission, 79 Ill. 2d 249, 253 (1980).

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

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

The Arbitrator finds that Petitioner's current condition of ill-being, to wit: CRPS of the right upper extremity and right lower extremity, chronic pain syndrome and associated psychological symptoms (anxiety, depression and insomnia) is causally related to the work injury of January 15, 2010.

The Arbitrator bases this finding on the prior decision herein, the testimony of Drs. Young and Konowitz, the submitted medical records and the credible testimony of Petitioner.

(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?

No bills were submitted and, therefore, no finding is made on this issue.

(K) Is Petitioner entitled to any prospective care?

Petitioner is seeking an order compelling Respondent to authorize and pay for treatment associated with the reimplantation of a SCS, as recommended by Dr. Young. After considering the entirety of the evidence adduced, including the opinions of Dr. Young and Dr. Konowitz, the Arbitrator finds that Petitioner is entitled to the proposed SCS reimplantation.

The bottom line is that Petitioner has CRPS of the right upper and lower extremities and chronic pain syndrome that dramatically affects her life and the upgraded/refined SCS technology offers her the chance for a recovery that may allow her to improve, such that she may return to work and live a more active and satisfying life. Happily, Petitioner has been weaned off of opioid medication. The new generation of SCS devices appears to be her only hope to recover. The Arbitrator is persuaded by Dr. Young's opinions and recommendations.

Dr. Konowitz's opinions do not persuade the Arbitrator in the case. He has not examined Petitioner since before the first §19(b) hearing. He was vague on the efficacy of new generation SCS devices. He did not offer any alternative treatment that would offer Petitioner the chance of a decrease in her CRPS symptoms. The risks of reimplantation are the same as existed when the first SCS was placed.

The new generation SCS devices offer Petitioner a chance at recovery. If Dr. Young continues to endorse the implantation of a new SCS after the recommended MRI studies and psych clearance and Petitioner wishes to proceed, then Respondent should be liable for said expenses, pursuant to §8(a) of the Act.

Accordingly, Respondent shall authorize and pay for the Spinal Cord Stimulator offered by Dr. Adam Young, along with all related services, including the recommended psychological testing and MRI studies, in accordance with §§8(a) and 8.2 of the Act.

(L) What temporary disability benefits are in dispute? TTD?

Respondent paid TTD through June 8, 2020. Petitioner claims ongoing TTD through the date of trial (June 28, 2022).

We have a Petitioner with a very serious medical condition, for which she has been undergoing treatment. She has not been released to return to work by her treating physicians, including Rosomoff Clinic, a provider chosen by Respondent. Based upon the Arbitrator's findings above on the issues of causation and prospective medical treatment, Petitioner is not at MMI and TTD is appropriate, pursuant to the holding in Interstate Scaffolding v. Illinois Workers' Compensation Commission, 236 Ill.2d 132 (2010).

Accordingly, Respondent shall pay Petitioner TTD benefits of $402.03/week from June 9, 2020 through June 28, 2022, a period of 107-1/7 weeks, pursuant to §8(b) of the Act.

Respondent is entitled to a credit against this award for the $9,045.75 PPD advance that it made, per ArbX 1.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	20WC026732
Case Name	Quanee Granberry v. Steris IMS
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b) Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	24IWCC0156
Number of Pages of Decision	28
Decision Issued By	Stephen Mathis, Commissioner

Petitioner Attorney	Mitchell Horwitz
Respondent Attorney	Robert Harrington

DATE FILED: 4/5/2024

/s/Stephen Mathis, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Quanee Granberry,

Petitioner,

vs. NO. 20WC 26732

Steris IMS,

Respondent.

DECISION AND OPINION ON REVIEW

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

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed March 28, 2023 is hereby affirmed and adopted.

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

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

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

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

April 5, 2024
SJM/sj
o-3/6/2024
44

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

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

/s/ *Raychel A. Wesley*
Raychel A. Wesley

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	20WC026732
Case Name	Quanee Granberry v. Steris IMS
Consolidated Cases	
Proceeding Type	19(b)/8(a) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	25
Decision Issued By	Jeffrey Huebsch, Arbitrator

Petitioner Attorney	Mitchell Horwitz
Respondent Attorney	Robert Harrington

DATE FILED: 3/28/2023

THE INTEREST RATE FOR THE WEEK OF MARCH 28, 2023 4.65%

/s/ Jeffrey Huebsch, Arbitrator

Signature

Q. Granberry v. Steris IME, 20 WC 026732

STATE OF ILLINOIS)
)SS.
COUNTY OF Cook)

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

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

Quanee Granberry Case # **20** WC **026732**
Employee/Petitioner
v.
Steris IME
Employer/Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Jeffrey Huebsch**, Arbitrator of the Commission, in the city of **Chicago**, on **August 19, 2022**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

M. ☐ Should penalties or fees be imposed upon Respondent?
N. ☐ Is Respondent due any credit?
O. ☐ Other _____

FINDINGS

On the date of accident, **September 3, 2020**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned **$24,089.51**; the average weekly wage was $**780.00.**

On the date of accident, Petitioner was **33** years of age, ***single*** with **4** dependent children.

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

Respondent shall be given a credit of $**1,230.48** for TTD, $**0** for TPD, $**0** for maintenance, and $**0** for other benefits, for a total credit of $**1,230.48**.

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

ORDER

Respondent shall pay Petitioner temporary total disability benefits of $520.00/week for 69-5/7 weeks, commencing 3/5/2021 through 3/21/2021 and 5/6/2021 through 8/19/2022.

Respondent shall pay reasonable and necessary medical of expenses of $44,807.00, as contained in PX 15, as provided in Sections 8(a) and 8.2 of the Act, and as is set forth below.

Respondent shall authorize and pay for prospective medical care as recommended by Dr. Dworsky regarding Petitioner's cubital tunnel syndrome/ulnar neuropathy condition and any related expenses, in accordance with sections 8(a) and 8.2 of the Act.

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

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

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

Signature of Arbitrator

MARCH 28, 2023

STATEMENT OF FACTS

Petitioner's Testimony:

Petitioner testified that she was employed by Respondent as a Sterile Processing Tech II (SPT), preparing surgical trays and decontaminating and sterilizing surgical instruments at Rush Hospital. (TA @ 14-15). She began this employment on December 30, 2019. She is right-handed. (TA @ 50-51).

Petitioner explained her job duties. (TA @ 15). When the materials from surgeries come down to the basement contaminated, those items go through de-contamination, which is cleaning, then it goes through the washer, and then the SPTs have to pull them out of the washer. After that, the SPTs assemble the trays, prep the trays again, prepare the trays for surgeries, to go through sterilization, and then the trays are stored until they are pulled for the cases. (TA @ 15).

The Parties stipulated that Petitioner sustained accidental injuries which arose out of and in the course of her employment by Respondent on September 3, 2020.

On the date of accident, Petitioner was wrapping loaner trays, which is a specialized tray that comes in for surgeries that they do not normally stock in the hospital. She was wrapping bone trays, trays used for surgeries for bone. These trays are filled with heavier instruments, like drills. (TA @ 16-17). Petitioner's shift started at 11:00p.m. (TA @ 16). She estimated that she moved at least 100 trays on the date of accident. (TA @ 17). She demonstrated, she would reach overhead to get trays off a rack or reach down to about knee level to pull a tray. The tray is like a container, anywhere from 4 inches to one foot deep (like a tub?). They hold bone surgery tools. She placed the tray in front of her on a table, she would inspect the instruments for leftover debris, assemble it back, put the indicator in it, to know after it goes through the sterilization process, and then wrap the tray in a blue cloth. After it was wrapped, she placed it onto a different cart. The highest level was eye level, then chest level, then waist level. The trays were side by side, it is a long cart. It has wheels so she can push and pull it. She estimates she moved over 100 trays in that shift. They were heavier, for the bone surgery. (TA @ 23-27). About an hour into her shift, around 12:00a.m., or 12 midnight, she began to feel pain and tingling in her right elbow, radiating both up into her right shoulder and down into the fingers of her right hand,

particularly her ring and pinky fingers. (TA @ 26). As the shift went on, the pain got worse and at the end of her shift around 4:30cart or 5:00a.m., she could no longer use her arm. She told her supervisor, Alex, about her arm pain. (TA @ 26).

On this day and for the following week she communicated, with the "incident report hotline" (TA @ 71). She was eventually directed to Concentra by her employer. (TA @ 31-32).

At Concentra, Petitioner reported pain radiating to her neck, back, numbness and tingling, elbow to hand, repetitive wrapping, lifting of heavy trays. (TA @ 31).

Following her visits at Concentra, she was put on work restrictions that were not really accommodated by her employer. (TA @ 32). She would still have to do regular trays and other things she was not supposed to do. (TA @ 32). She attended physical therapy for her right arm/hand and right shoulder, arm, neck. (TA @ 33).

Petitioner next went to see her primary care physician, Dr. Bhatt, at Family Christian Health Center who recommended she see an orthopedic surgeon. (TA @ 33-34). She then was seen by Dr. Bradley Dworsky at Hinsdale Orthopaedics. Petitioner agreed with Dr. Dworsky's notes that she was keeping her right arm in a "guarded" position, bent and avoiding anyone touching it. (TA @ 37). Petitioner wore the night guard that Dr. Dworsky prescribed her and said it helped relieve some of her pain. (TA @ 41).

Petitioner was laid off the light duty job by Respondent on May 6, 2021. (TA @ 43). After a §12 examination by Dr. Michael Cohen, all treatment was denied. (TA @ 44).

Petitioner also underwent another MRI of her neck on June 21, 2021. (TA @ 44). Following that MRI, she saw Dr. Cary Templin, a spine surgeon, on September 14, 2021, who referred her back to Dr. Dworsky. (TA @ 45-46).

She participated in physical therapy, MRI's, splinting, and rest as ordered by Dr. Dworsky. She submitted for surgery on her right elbow on May 10, 2022, by Dr. Dworsky (TA @ 46). Following surgery, her symptoms, including chronic pain from her neck to her fingers was gone. (TA @ 46). She still had some nerve pain, but the pain that she was suffering from every day is gone. (TA @ 47). She has been doing physical therapy since the surgery, ordered by Dr. Dworsky. (TA @ 47). Petitioner can use her arm now more than before the surgery. For instance, bringing in groceries, picking things up, taking out the trash. (TA @ 47-48). Her next appointment with Dr. Dworsky is August 22, 2022, and she has not been released to return to work yet. (TA @ 49).

Petitioner testified that she has not had any injury to her right arm, elbow, shoulder, neck or hand since September 3, 2020. She did not have any symptoms of pain, numbness, tingling from her neck to her hand prior to September 3, 2020. (TA @ 49).

Petitioner said she was still in physical therapy three times per week. The symptoms she previously had, of neck pain down her arm, dissipated after the surgery by Dr. Dworsky. She still

does get numbness in the two fingers, pinky and ring finger, however, her previous symptoms, which were the main cause of her pain and limitations, appear to be gone. (TA @ 48).

The Arbitrator viewed Petitioner's surgical scar on her right elbow. (TA @ 46).

On cross-examination, Petitioner testified that she began noticing pain radiating down from her right shoulder into her fingers and numbness at 12:00 a.m., about an hour into her shift. (TA @ 52). She continued working the rest of her shift. (TA @ 53). September 11, 2020 was the first time she went to see a doctor, after she asked to be sent to one. (TA @ 55). She testified that her employer did not accommodate her work restrictions. (TA @ 55). She hired an attorney and filed an Application for Adjustment of Claim on September 18, 2020. (TA @ 56). She saw Dr. Bhatt on September 22, 2020, and had been treating with him for six months or so before the accident. (TA @ 56). She was referred to a rheumatologist by Dr. Bhatt on February 17, 2021. (TA @ 58). She is not treating with Dr. Bhatt right now because she does not have health insurance. (TA @ 58). She did not see a rheumatologist. She was referred to Hinsdale Orthopedics by a health network, First Call, after her doctor gave her a referral to orthopedic. (TA @ 59). Dr. Dworsky took her off work completely on March 4, 2021, through March 15, 2021, and she was paid temporary total disability during that time. (TA @ 62). Her last day worked was May 6, 2021. Dr Dworsky had updated her restrictions prior to that time, and she presented the updated note to Respondent. (TA @ 62). She sent Respondent emails with her updated work restrictions every time she got them, but she did not recall emailing someone from Respondent on or around May 6, 2021. (TA @ 65-66).

Petitioner attended the IME on May 12, 2021, and had surgery on May 10, 2022. (TA @ 66). She has not returned to work since May 6, 2021, or worked at any other jobs. (TA @ 67). She filed for unemployment, but did not qualify. (TA @ 67). She has not applied for SSDI. (TA @ 67). She is still treating with Dr. Dworsky and ReLive Physical Therapy. (TA @ 67).

On re-direct examination, Petitioner testified that it was not any one tray, but the course of the work on September 3, 2020, that caused her symptoms. (TA @ 68). She recalls being told on May 6, 2021, that there was no work for her. She would have kept working if light duty was available at that time. (TA @ 68). Petitioner viewed PX16 dated July 20, 2021, showing that Alex Calvillo and Curtis Asay did not have accommodated work for her at that time. (TA @ 70). She does not recall a change in her restrictions on or around May 6, 2021. (TA @ 71). After her injury, she spoke with the incident report hotline pretty much every day. (TA @ 71-72). Her pain was really intense and not getting any better, so they suggested a few things to her – put ice on it, then to put heat on it, then to take Tylenol with a different pain reliever and "switch them up." (TA @ 72). She did that until she sent an email asking to be seen by a doctor. (TA @ 72).

On recross-examination, Petitioner testified that she does not recall specifically what would have changed regarding her restrictions on May 6, 2021, because every time she saw a doctor, she would email Steris a picture of her restrictions. (TA @ 74). She does not recall whether she saw Dr. Dworsky on May 6, 2021, but she would not have emailed work without having seen Dr. Dworsky and obtaining a picture of her updated restrictions. (TA @ 74).

Testimony of Respondent's witness, Aimee Baquero:

Respondent submitted the testimony of Aimee Baquero, its Director of Clinical Operations at Respondent's Rush facility. She has worked at Respondent for 3.5 years and does have extensive experience in the industry. (TA @ 77-78). Baquero described the two-elevator system that Rush has that receives contaminated surgical trays and sends out sterilized surgical trays. (TA @ 79). She authenticated a copy of Petitioner's job description. (RX 5). (TA @ 81). Ms. Baquero testified that while her shift did not overlap much with Petitioner's shift (maybe an hour or so), she did observe Petitioner do her job via recorded video. She used the video footage to, "observe the flow of the department," and to ensure that, "everybody was where they were assigned [to be]." (TA @ 82-83).

Ms. Baquero explained there are four different areas in the sterilization process. It was her opinion that none of the surgical trays could be over 25 pounds. (TA @ 88). Ms. Baquero further explained that none of the job duties of the SPT II required lifting over 25 pounds or bending one's elbow at a 90-degree angle. (TA @ 91, 94, 98, 100). She also contended, based on RX 6, that Petitioner did no lifting at all and did not bend her elbows to 90-degrees for a prolonged period of time during the first hour of her shift. (TA @ 106-107). Ms. Baquero concluded, based upon her review of the production report (RX 6), that Petitioner was assembling loaner trays in between sterilization when the machines were running. She disputed Petitioner's statement that she lifted over 100 trays during the shift, and contended it was 34 trays assembled and 11 were passed back on the sterile storage shelves, based on her interpretation of RX 6. (TA @ 110-111).

Ms. Baquero testified that the last day that Petitioner worked at Respondent was May 6, 2021, and that Petitioner had been working under a ten-pound lifting restriction at that time, which, according to Ms. Baquero, Respondent had been accommodating. (TA @ 111). Ms. Baquero testified that on May 6, 2021, Petitioner's restrictions imposed by her doctor changed to include, "no repetitive elbow movement." (TA @ 112). Ms. Baquero testified that this restriction was provided to her by Petitioner, but she does not recall whether it was in person or via email. (TA @ 112). Ms. Baquero testified that after receiving the doctors note, she contacted the safety team and the leave team about the additional restriction to get clarity on what repetitive movement meant, and she told this to Petitioner. (TA @ 114). Ms. Baquero testified that she, along with Alex Calvillo and Curtis Asay, talked to Petitioner, "right around that time," to see if she could get a doctor to say what movement would be restricted. (TA @ 115-116). Ms. Baquero testified that the "no repetitive movement," was never clarified, but that if the restriction remained at ten pounds, Respondent would have been able to accommodate Petitioner. (TA @ 118).

Ms. Baquero testified that the trays on September 2nd and 3rd were not any heavier than usual, based on the production report. (TA @ 119-120). She also testified that she disagreed with Petitioner's testimony that she had to lift the trays to wrap them. (TA @ 120). Ms. Baquero explained that the tray is lifted and placed in the middle of the wrapping but that there is no further lifting after that until the tray is completely wrapped. (TA @ 121).

On cross-examination, Ms. Baquero testified that Petitioner's job required her to do an "envelope fold" while wrapping trays. (TA @ 121). At this point in the testimony, Ms. Baquero demonstrated the envelope fold, which, the Arbitrator notes, requires one to bend one's elbows at about a 90-degree elbow. Ms. Baquero also testified that while she, herself, observed the video

footage from the date of accident, the video was later destroyed and not available for review now. (TA @ 123). On cross examination, Baquero admitted that the job description did indicate that the SPT job required frequent lifting up to 50 pounds. Ms. Baquero did not personally weigh the trays that were later sterilized. She states they were weighed on site, and she knew where that information was, which is in the "ReadySet surgical system" (TA @ 125-126). Baquero did not have the weights of the loaner trays that were moved on September 3, 2020, in court on the day of trial. (TA @ 125, 129-130).

Respondent sent Petitioner to Concentra for treatment. (TA @ 126). Ms. Baquero knows on the first visit at Concentra the records state that Petitioner reported "lifting heavy trays repetitively and injured herself." (TA @ 127) (PX 4). At no time did Ms. Baquero, or anyone she knows of, tell Concentra or Dr. Cohen, Respondent's expert, that Petitioner had given a false history regarding how she was injured at work, or that the history was inaccurate, or she was not lifting heavy trays. (TA @ 127-128). Baquero stated that the industry standard for the surgical trays is not more than 25 lbs. (TA @ 128). No accommodated work was offerred to Petitioner after May 6, 2021. (TA @ 130). Baquero testified that Petitioner might be eligible for rehire. (TA @ 131-132). Baquero agreed that the production report did not show what activities Petitioner was doing between time stamps of 11:25 PM and 11:28 PM. (RX 6) (TA @ 133).

FurtherTestimony of Petitioner and Respondent's Witness:

Petitioner testified in rebuttal following Ms. Baquero's testimony. She had never seen RX 6 before August 19, 2022, but has seen something similar before. (TA @ 138). Petitioner reviewed RX 6, and noted the following: At 11:25p.m., 20 objects were scanned, it takes just a few seconds to scan them in. (TA @ 141). Prior to 11:25p.m., she was wrapping the loaner trays as she had described in her earlier testimony (TA @ 141). At 11:28p.m., 28 objects were scanned. Between 11:25 and 11:28p.m. she was wrapping the loaner trays. (TA @ 142). The next scan was at 12:36-12:38a.m. From 11:28p.m. to 12:36a.m. she was "inspecting loaners and wrapping them." Up to 12:38a.m. this document does not show her work activities. There are other activities she performed that are not shown in the spreadsheet. (TA @ 143). Everything that was pushed into the steamers (Steam 06, 05, etc.) had to be wrapped. (TA @ 144). Petitioner testified that the time stamps on the production report represent a scan, which takes her only a few seconds to do. (TA @ 141, 148). She did not agree with the opinion of Baquero that there was no bending of the elbows to 90 degrees when lifting. She was constantly bending her elbows to 90 degrees, "that's part of the job." (TA @ 150). She testified that during the first hour of her shift, she had to lift items because the trays were wet on the rack, from the steam, and she had to "inspect" the tray, which required her to lift it up, move things around, dry it off. (TA @ 151). Petitioner also explained that she had to lift overhead to grab the wet trays from the racks. (TA @ 153). On re-cross-examination, she testified that she did still believe that she handled, wrapped, about 100 trays. (TA @ 154). The Arbitrator notes that although there was some back and forth at arbitration regarding "handling" vs "assembling" trays, Petitioner's testimony has always been referring to lifting and wrapping trays. Petitioner disagreed with her supervisor that the 34 +11-time stamped trays in the production report were the only trays she lifted and wrapped. It was her testimony that she lifted and wrapped all the trays that were eventually pushed into the steamers. She handled around 100 trays during her shift.

On cross examination, Petitioner testified that each line on the production report represented a tray, not an item. (TA @ 155). The Arbitrator notes that Ms. Baquero agreed with this testimony, with the caveat that some trays include only a few or a single item. Nonetheless, Arbitrator notes that each line of the production report represents the trays discussed by both Petitioner and Ms. Baquero. (TA @ 167).

After Petitioner testified for a second time, Ms. Baquero was called again to testify. On direct examination, Ms. Baquero testified that all trays that had Petitioner's time stamp and name were produced by everyone working the shift. (TA @ 161). She also testified that a tray could include one tool or multiple, it is still a tray. (TA @ 167).

On cross examination, Ms. Baquero testified that she believed that Petitioner did not work from 11:00p.m. to 11:25p.m., because there was no time stamp, however, she also admitted that Petitioner was paid to work from 11:00p.m. to 11:25p.m. (TA @ 169). Despite this testimony, Baquero admitted that Petitioner was not reprimanded, fired, or docked pay during the periods on the production report that showed no time stamps and during which she alleged Petitioner not to be working. (TA @ 170). Ms. Baquero stated on cross examination that she believed Petitioner to be lying. (TA @ 170-171). She also testified that she believed Petitioner had fabricated her story. (TA @ 170-171). It is noted that Ms. Baquero viewed the video of Petitioner's work activities on the date of accident and a copy of the video was not preserved.

Following Ms. Baquero's second round of testimony, Petitioner was again called to testify. When asked what she did from 11:00p.m. to 11:25p.m. on September 2, 2020, she said, "So I was wrapping loaners. The process is you let them dry, and then you inspect them on the table, and then you wrap them, and then you scan it to get the label to push it through the sterilizer." The first scanning of the loaners shows up around 1:03 a.m. when she was pushing them into the sterilizer, stating, "In order for me to scan those, I would have to wrap them first." (TA @ 174). At 1:03 a.m. a loaner was scanned in. This is a tray that I took off the rack, inspected and then wrapped, then printed the label, then pushed it through the sterilizer. You just print it out of the system, put in on the packaging. After you wrap it, you just place it on the wrapper. The entry at 1:03 am were 16 trays that she had wrapped and placed into a cart or rack. In response to her supervisor saying other people were putting these trays on the racks, she said "I think she was saying was like in the process, people have to assemble trays. I also have to take those trays and push those through as well." (TA @ 173-175).

When asked if she was injured the way she states she was injured, Petitioner said yes, and when asked by her attorney is she is lying, she said, "No, I'm not." (TA @ 176).

On cross examination, Petitioner explained, "If it's a loaner tray, the loaner trays don't have to be assembled through other employees to be assembled. The loaner trays are for the people doing the sterilization." (TA @ 177).

Baquero was then called to testify for a third time. She did not agree with the last statement of Petitioner. She said all trays must be produced to get the bar code. The bar code is placed on the outside of the tray. Loaner trays are the same. (TA @ 178-179).

On cross examination, Ms. Baquero agreed that she was not present to see Petitioner working on the evening of September 3, 2020. (TA @ 179).

Medical Records/Treatment:

Petitioner first presented to Concentra on September 11, 2020, with pain and numbness due to repetitive wrapping and lifting of heavy trays. (PX 4 @ 17). "The pain is severe, constant, worst with movement, improved with rest, pain radiating to the neck and back, has numbness/tingling from elbow to hands. Feels loss of strength." (PX 4 @ 18). At that time, the working diagnosis was sprain of the rotator cuff capsule. The medical records incorrectly mention the left arm in places, but Petitioner testified that it was her right arm. (PX 4 @ 18) (TA @ 31-32).

At the first physical therapy visit on September 11, 2020, Petitioner described, "pain in her right shoulder from repetitive lifting, wrapping and lifting heavy trays," she described the pain as aching, heavy, and burning with symptoms including numbness, pins and needles, and sudden onset, symptoms are intermittent. (PX 4 @ 11). Petitioner's condition was noted as being aggravated by carrying, grasping, movement and reaching. (PX 4 @ 11). A physical examination of Petitioner showed a positive Apprehension test and positive Hawkins Kennedy test. (PX 4 @ 12).

On September 14, 2020, Petitioner followed up with Concentra. The records report that Petitioner had numbness and tingling from her elbow down to the pinky and ring fingers, with symptoms also occurring in the right shoulder. (PX 4 @ 21). She received a steroid injection of the right shoulder by Dr. King at Concentra. (PX 4 @ 22). She was placed on work restrictions including no reaching above shoulders, may lift up to 10lbs, may push/pull up to 10lbs. (PX 4 @ 23).

Petitioner participated in physical therapy through September 2020 at Concentra. Concentra diagnosed Petitioner with a shoulder sprain. (PX 4).

On September 22, 2020, Petitioner presented to her Primary Care Physician, Dr. Jay Bhatt at Family Christian Health Center, for continued right shoulder and arm pain. (PX 6 @ 9). Dr. Bhatt recommended that Petitioner limit her activity in her right shoulder, continue PT, and ordered an MRI of the right shoulder. (PX 6 @ 10).

On October 5, 2020, an MRI of the right shoulder was negative. (PX 5 @ 1).

On October 20, 2020, Petitioner followed up with Dr. Bhatt, who recommended an MRI of the neck and recommended she see an orthopedic surgeon. (PX 6 @ 20).

On October 21, 2020, Petitioner saw Dr. Bradley Dworsky, an orthopedic surgeon, at Hinsdale Orthopedics. (PX 1). She, again, gave a history of a workplace injury caused by lifting objects at work. The records note that the location of pain is the back of the shoulder, the medial elbow, and the 5th digit. The pain is 5/10. Petitioner described her pain increasing in the last two (2) weeks, with the pain being dull and burning, and symptoms occurring during the entire day,

sleep, and with activity. Associated symptoms include weakness and joint pain, alleviated with rest, aggravated with movement, lifting, and holding objects. (PX 1 @ 8). Physical examination of the right shoulder showed reduced grip strength in her right hand and pain at the elbow when flexing or bending. (PX 1 @ 9). Dr. Dworsky's assessment was injury right shoulder pain with radiculopathy with right posterior shoulder pain. (PX 1 @ 10). Dr. Dworsky's working diagnosis was cervical radiculopathy. (PX 1 @ 10). Dr. Dworsky placed Petitioner on a 20-pound lifting restriction with no overhead lifting and ordered an MRI of the cervical spine. (PX 1 @ 10).

As Petitioner testified, at this time, Respondent accommodated Dr. Dworsky's restrictions, and she was given light duty work. (TA @ 35).

On November 3, 2020, Petitioner underwent an MRI of the cervical spine, which demonstrated some straightening of the spine, "likely due to muscle spasm." (PX 7 @ 2). The rest of the MRI scan was normal. (PX 7 @ 2).

On December 21, 2020, Dr. Dworsky ordered an EMG due to Petitioner, "having consistent numbness/tingling radiating down from her neck to her hand. With a negative MRI of her shoulder, we must determine where the tingling sensation is coming from." (PX 1 @ 27).

On February 9, 2021, Petitioner underwent an EMG, which revealed evidence of mild right sided ulnar mononeuropathy that can be seen in the cubital tunnel, and no evidence of cervical radiculopathy. (PX 8).

Petitioner continued physical therapy at ReLive Physical Therapy. (TA @ 38).

On February 11, 2021, Petitioner returned to Dr. Dworsky, who ordered a night splint. (PX 1 @ 34). Petitioner explained the night splint immobilized her right elbow. (TA @ 39). The splint reaches from approximately the middle of her humerus to the middle of her right forearm. (TA @ 39). Wearing the night splint at night helped reduce her symptoms at nighttime and helped reduce the symptoms in her pinky and ring finger, as well as the numbness. (TA @ 40).

On March 4, 2021, Petitioner returned to Dr. Dworsky. The records indicate that she had been wearing the night splint and working within her restrictions, but still was experiencing pain and stiffness, as well as numbness and tingling from her elbow down, despite use of the splint. The splint helps, but the symptoms return as soon as she goes back to work. (PX 1 @ 36). At that time, Dr. Dworsky took Petitioner off work completely. (PX 1 @ 37).

On March 15, 2021, Petitioner followed up with Dr. Dworsky following the immobilization and time off work. At that visit, the records indicate that Petitioner was "feeling a lot better having been off work. The discomfort is gone." Dr. Dworsky returned her to work with a 10-pound restriction, ordered continued use of the night splint, and continued physical therapy. (PX 1 @ 40).

The physical therapy records of ReLive report that Petitioner did return to work as of March 23, 2021, and her pain had flared up. (PX 3).

On March 29, 2021, Dr. Dworsky ordered surgery, stating, "We have attempted to try and treat this conservatively with therapy, night splinting, and rest, and despite that, it continues to be symptomatic, consistent with cubital tunnel syndrome. As such, I have now recommended that we proceed with surgical intervention to decompress the ulnar nerve." (PX 1 @ 44).

Petitioner testified that she did want to proceed with the arm surgery ordered by her doctor. (TA @ 43).

On April 26, 2021, she returned to see Dr. Dworsky. Petitioner reported having a lot of shoulder and arm pain while at work. (PX1 @ 47). Dr. Dworsky diagnosed a lesion of the ulnar nerve at the right upper limb. Dr. Dworsky prescribed surgery again. Dr. Dworsky updated Petitioner's work restrictions to be no lifting greater than 10 pounds, no activity at or above her shoulder height, no repetitive elbow movement, no overhead work. Dr. Dworsky recommended Petitioner continue physical therapy. (PX 1 @ 48).

Petitioner was accommodated at work until May 5, 2021. (TA @ 43). After that time, Respondent did not accommodate her restricted work prescriptions. (TA @ 43).

On May 12, 2021, Petitioner saw Dr. Michael Cohen at the request of her employer for a Section 12 examination. (RX 2, TA @ 44).

After Petitioner saw Dr. Cohen, no further treatment was authorized, no TTD was paid, and Petitioner's workers' compensation claim was placed in dispute. Respondent did not accommodate Petitioner's prescribed restrictions. (TA @ 44).

Dr. Dworsky's chart note of June 2, 2021, indicates that he reviewed the report of Dr. Michael Cohen (RX 2) and talked to his patient, Ms. Granberry, about how she was injured at work. The chart note reflects:

> On questioning with Quanee, as far as how this started and when it started, she elaborated that she had no symptomatology, no radiating pain, no shoulder pain, and no neck pain until the day of September 3, 2020, where she was assigned to doing a much heavier job. She [Quanee] states that she was doing a lot of wrapping and she was assigned to much heavier trays to lift, push, and pull them. She [Quanee] also described putting her right arm down on the tray to hold the wrapping with her elbow and then completing the wrapping. She [Quanee] stated that she noted by the end of that day the onset of shoulder pain, arm pain, numbness and tingling that would radiate. She [Quanee] states that up until that point no other previous issue had occurred with that arm. (PX 1 @ 51).
>
> I had a long discussion with Quanee [the patient]. We had treated her elbow for cubital tunnel, which has alleviated symptoms while we were treating, but as soon as we stopped treating, recurred back to its previous level. That therefore is the basis of surgical intervention, to stabilize and decompress the nerve at the elbow in addition to the EMG findings of neuropathy that occurs at the level of the elbow, consistent with cubital tunnel.

> Given Dr. Cohen's concern about cervical radiculitis or radiculopathy, I have recommended we order an MRI of the cervical spine, so as to determine if there is any pathology that could be related to continued symptomatology. If indeed there is no pathology seen in her neck, then I would continue to recommend surgical decompression and transposition of the ulnar nerve to alleviate her symptomatology, which in my opinion was caused and exacerbated by the incident of her change in activity on September 3, 2020. The patient will be seen back for the results of the MRI once obtained. She [Quanee] will be kept off work until that date. (PX 1 @ 51).

The MRI of the cervical spine on June 21, 2021 demonstrated loss of cervical lordosis, indicating paraspinal muscle spasm, mild cervical degeneration, and partial loss of hydration between C2 and C6, which is a new finding from the prior scan. No signification herniations, central stenosis or neural foraminal narrowing at any level. (PX 9).

On June 28, 2021, Dr. Dworsky reported that the cervical MRI appeared normal, and that the source of Petitioner's continued symptoms is the ulnar nerve, both the subluxation and compression, and Petitioner requires the proposed surgical intervention to restore her back to her previous level. Dr. Dworsky continued Petitioner's work restrictions, noting, "the patient will be continued with significant limitations until her surgery. (PX 1 @ 58). Dr. Dworsky also referred Petitioner to Dr. Cary Templin, an orthopedic spine surgeon. (PX 1 @ 62).

Dr. Templin examined Petitioner on September 14, 2021. (PX 1 @ 63). The chart note states:

> Sensation is diminished to the ulnar digits of the right hand. She does have a positive Tinel's at the right elbow. Both MRIs of the neck demonstrate no evidence of central or foraminal stenosis whatsoever. The patient has a clean cervical spine. I discussed with her that I do not feel her cervical spine is contributing to these issues whatsoever. That said, I think she can continue to treat the ulnar neuropathy with the appropriate provider, but from a cervical standpoint, I do not have anything to offer. She will see me on an as-needed basis. (PX 1 @ 64).

On September 15, 2021, Petitioner returned to Dr. Dworsky, who continued the physical restrictions and diagnosed a lesion of the ulnar nerve in the right arm, and again, ordered surgery to be performed as soon as possible. (PX 1 @ 66).

Following these exams of September 2021, the depositions of Dr. Dworsky (PX 11) and Dr. Cohen (RX 3) were taken.

On April 7, 2022, Petitioner returned to Dr. Dworsky for pre-surgical consult. (PX 1 @ 69-71).

On May 10, 2022, Petitioner underwent right arm cubital tunnel surgery, which was performed by Dr. Dworsky at the Center for Minimally Invasive Surgery. (PX 2 @ 45). The procedure performed was an ulnar nerve transposition and decompression of the right elbow, with a postoperative diagnosis of cubital tunnel syndrome. (PX 10). After the surgery, Dr. Dworsky restricted Petitioner from all work. (PX 2 @ 48-49).

On May 26, 2022, Petitioner returned to Dr. Dworsky, two weeks post op. (PX 1 @ 77-79). The records indicate that Petitioner was doing very well. She remained in a sling, coming off for gentle range of motion. Dr. Dworsky recommended Petitioner start physical therapy for gentle range of motion on June 1, 2022. (PX 1 @ 79).

On July 21, 2022, Petitioner followed up with Dr. Dworsky, who ordered continued physical therapy and stated that he expected she is to return to work in 12 to 16 weeks, once she has completed physical therapy. (PX 1 @ 89).

On July 22, 2022, the ReLive physical therapy records indicate that the patient told the therapist that the prior nerve pain was no longer hindering her and that she could use her arm more, also that her strength was improving. (PX 3). On July 27, 2022, Petitioner reported that she does get nerve pain, but it does not limit her. The nerve pain is reduced, comes and goes. (PX 3).

Evidence Deposition testimony of Dr. Dworsky – 12/7/2021 (PX 11):

Dr. Bradley Dworsky is an orthopedic surgeon (PX 11 @ 6). He is Board Certified in Orthopedic Surgery and Sports Medicine. (PX 11, EX 1). Dr. Dworsky is the treating physician of Petitioner and first saw her on October 21, 2020. Petitioner gave a history of a September 3, 2020, work accident wherein she was doing repetitive lifting of surgical trays, a little heavier than normal, and started noticing the onset of burning pain in posterior aspect of her shoulder all the way down to her finger. (PX 11 @ 11). Petitioner described to Dr. Dworsky the feeling of having trouble grabbing, lifting, so she stopped and reported it to her HR department. (PX 11 @ 11). PT did not improve her symptoms. (PX 11 @ 11).

On physical exam on October 21, 2020, Dr. Dworsky noted weakness to grip, or grasp involving the right arm/hand and had a working diagnosis of cervical radiculopathy, irritation of the nerve at the neck. (PX 11 @ 11-12). Her pain was more consistent with a nerve-type source. (PX 11 @ 14). He placed her on restrictions of 20-pound lifting and no overhead activity. (PX 11 @ 14).

The MRI was clear, but Petitioner's symptoms did not improve, so he ordered another round of PT and an EMG. (PX11 @16-17). The EMG was positive in the right arm indicating compression or compressive neuropathy occurring at the level of the elbow, consistent with cubital tunnel syndrome, and consistent with Petitioner's hand symptoms. (PX 11 @18). As of that visit, he did not rule out the neck, but directed his treatment (PT and restrictions) toward the cubital tunnel syndrome. (PX 11 @ 20).

She reported the same symptoms despite PT and wearing a splint at night. (PX 11 @ 21). He then took Petitioner off work for two weeks to see if the rest helped. (PX 11 @ 22). The rest did help, she had improved symptoms and was returned to work with 10-pound restriction. (PX 11 @ 23). At the March 29, 2020, visit, it was noted that the pain had recurred worse than before. Given these findings, he recommended surgery, an ulnar nerve transposition and decompression. (PX 11 @ 24). As of April 26, 2021, Dr. Dworsky was still trying to get the surgery approved by workers compensation, kept her on restrictions. (PX 11 @ 25).

Petitioner returned to see him on June 2, 2021, following an IME denying causation and surgery. (PX11 @ 26). Dr. Dworsky explained that there is no evidence that Petitioner's symptoms are

not related to work since Petitioner has no prior history of this symptomatology involving her right upper extremity or of prior injury. (PX 11 @ 28-29). He reviewed the IME with his patient, as well as her work history, including that she was assigned to "heavier" work which entailed lifting, carrying, and wrapping trays, pushing, and pulling them. (PX 11 @ 29). After reading Dr. Cohen's IME report which suggested that her pain was coming from the cervical spine, he ordered another MRI of the neck and Petitioner was kept off work until the results were read. (PX 11 @ 30).

Dr. Dworsky explained that Petitioner was working with surgical trays, specifically, orthopedic surgical trays, which tend to be a lot heavier than most of the other surgical trays used in operating rooms. (PX11 @ 30). The orthopedic trays were heavier because orthopedic surgeons tend to use heavy equipment such as hammers, drills, and guides, bulkier than urology or general surgery. (PX11 @ 31). Regarding causation, Dr. Dworsky testified that the timing of Petitioner's symptomatology, just after being tasked with a heavier workload, is consistent with how you would irritate something such as an ulnar nerve. (PX 11 @ 31). Dr. Dworsky opined that to a reasonable degree of medical and surgical certainty, Petitioner's cubital tunnel syndrome and her following treatment was caused by her work activities on September 3, 2020. (PX 11 @ 33). He also explained that the subluxation of the nerve was likely an anatomic variant and may or may not be related to the work accident, but the symptomology is related to the work accident. (PX 11 @ 33-34).

The cervical MRI of June 26, 2021 was unremarkable. (PX 11 @ 35). There is no evidence on the cervical MRI of any pathology consistent with the ulnar nerve distribution complaints that Petitioner continues to suffer from. (PX 11 @ 35). Dr. Dworsky opined that the sole source of Petitioner's symptoms are the ulnar nerve subluxation and compression and in order to restore her previous level of function, surgical intervention is necessary. (PX 11 @ 35).

Dr. Dworsky referred Petitioner to a cervical spine surgeon, Dr. Cary Templin, because Dr. Cohen had recommended a cervical spine injection. (PX 11 @ 36). Dr. Templin did not agree that Petitioner's symptomology was coming from her neck. (PX 11 @ 36).

Dr. Dworsky explained his patient needed surgery, and that at a year out from the accident and no improvement in symptoms, it is very unlikely that the Petitioner would show any improvement with the present treatments already undergone. (PX 11 @ 37). Without surgery, this symptomology could progress to further ulnar nerve damage. (PX 11 @ 37).

Dr. Dworsky testified that he felt there was a shoulder strain that had occurred which resolved, and Petitioner is at MMI for the neck and shoulder. (PX 11 @ 40-41). He further explained that flexing of the elbow is not necessary to cause Petitioner's injury, but rather the repetitive flexion-extension that engages the ulnar nerve in the tunnel, eliciting irritation. (PX 11 @ 42). There is no evidence that Petitioner had any painful ulnar nerve symptomatology prior to September 3, 2020. (PX 11 @ 42). It is his opinion that all treatment and care was related to the work accident of September 3, 2020, and that the treatment was reasonable and necessary. (PX 11 @ 42). He further opined that Petitioner's treatment, need for surgery, and physical restrictions are all related to the work accident. (PX 11 @ 43). Her prognosis is excellent for full recovery post-surgery. (PX 11 @ 44). Without surgery, prognosis is fair to poor. (PX 11 @ 44). He also opined

there is no evidence that the patient was exaggerating anything, that all records are consistent from day one, including PT records and other doctors' visits. (PX 11 @ 45).

On cross examination, Dr. Dworsky was asked whether a mild EMG could produce 10/10 pain. Dr. Dworsky testified that an EMG does not measure pain, but rather the conduction velocity in the nerve and the positive EMG indicates there is slowing of the nerve which indicates some form of pathology at that level. (PX 11 @ 50). Dr. Dworsky was asked about cubital tunnel injections, he explained he stays away from those because of the risk of injecting into the nerve, causing further irritation. (PX 11 @51). Dr. Dworsky was asked why he did not perform a Tinel's test at Petitioner's first visit on October 21, 2020 and responded that Petitioner presented with a complaint of shoulder pain radiating down from neck to whole arm, so the working diagnosis began with strain of shoulder. (PX 11 @56).

On cross examination, Dr. Dworsky said diabetes would not affect his opinion on causation. (PX 11 @ 71). He was asked whether anxiety causes patients to exaggerate symptoms, to which he said no. (PX 11 @ 72).

On redirect, Dr. Dworsky explained that anxiety results in both underreporting and overreporting. (PX 11 @ 73). He explained that the weakness documented in Petitioner's first visit is consistent with the ulnar nerve injury she was ultimately diagnosed with. (PX 11 @ 73). Dr. Dworsky agreed Dr. Templin found a positive Tinel's in her right arm. (PX 11 @ 74). He testified that Petitioner's clinical presentation, positive EMG, and subjective complaints are consistent with her diagnosis of ulnar nerve injury. (PX 11 @ 75). Dr. Dworsky testified on re-cross that Petitioner still had physical restrictions in place. (PX 11 @ 76).

Evidence Deposition of Dr. Michael Cohen – 8/11/2021 (RX 3):

Dr. Cohen is a Board-Certified Orthopedic Surgeon. (RX 3 @ 6). Dr. Cohen testified that Respondent insurance company asked him to complete an Independent Medical Evaluation of Petitioner on May 12, 2021. (RX 3 @ 7). Dr. Cohen testified that, in testifying, he relied entirely upon his Section 12 examination report, dated May 12, 2021. ("IME report") (RX 3 @ 7). Dr. Cohen testified that Petitioner gave a history of injury on September 3, 2020, wherein, after repetitively wrapping trays, "she felt pain in the right shoulder that radiated down her arm and eventually went numb and limp." (RX 3 @ 8-9).

Dr. Cohen's review of the records showed that Petitioner had a telemedicine visit and then presented to Dr. King on September 11, 2020, with significant pain in the right shoulder that she attributed to wrapping and lifting up trays. (RX 3 @ 9). She denied any previous injury and had full range of motion on physical examination by Dr. King with no impingement sign, no numbness or tingling. She had pain with abduction and Dr. King diagnosed her with a shoulder strain and started anti-inflammatories, therapy, and work restrictions. (RX 3 @ 9). Petitioner started therapy that same day and showed signs of lateral epicondylitis in the right elbow. (RX 3 @ 10). Petitioner returned to Dr. King and had improvement in pain with therapy and full range of motion of shoulder but was complaining of numbness and tingling in the right ring and little fingers. Dr. King prescribed more therapy and gave a cortisone injection in the subacromial space. Petitioner reported to Dr. Cohen that she had no relief from that injection. (RX 3 @ 10). Dr. Cohen said it could be related to a strain or impingement, "it's not very specific." (RX 3 @

11). Petitioner returned to Dr. King on September 18, 2020, with worse pain that was radiating in a larger pattern including the ribs, her back and scapula with 10/10 pain. (RX 3 @ 11). Dr. King noted some improvement from the injection and therapy, full range of motion of shoulder, no impingement signs. (RX 3 @ 11). Dr. King continued the diagnosis of strain and recommended an MRI and continued the weight restriction. (RX 3 @ 11). Petitioner had pain in her shoulder radiating into the neck and scapula and numbness and tingling into the shoulder, full range of motion and negative impingement sign, negative drop arm test, and MRI completed on October 5, 2020. (RX 3 @ 12). Dr. Cohen reviewed the MRI images himself and saw no evidence of bursitis, no evidence of any rotator cuff abnormality. Petitioner was off work for a week and dispensed amitriptyline for depression. (RX 3 @ 12).

In summarizing Dr. Dworsky's records Dr. Cohen noted Petitioner started treating with him on October 21, 2020. Dr. Dworsky documents pain in the posterior aspect of shoulder and medial aspect of the elbow, which, Dr. Cohen notes, would be the opposite of the earlier pain noted with lateral epicondylitis in the elbow. (RX 3 @ 12). Dr. Dworsky noted 5/10 pain with numbness and tingling constant into the hand, "but he does not document which fingers," and a normal shoulder exam, normal sensation and cervical spine. (RX 3 @ 13). Dr. Dworsky ordered a cervical MRI and placed Petitioner on a 20-pound weight restriction. (RX 3 @ 13). Petitioner returned to Dr. Dworsky on November 9, 2020, where the numbness and tingling was intermittent opposed to constant. The MRI of the cervical spine was normal. Dr. Dworsky prescribed therapy and work restrictions. (RX 3 @ 13). Ms. Granberry returned on November 30, 2020, with increasing pain in the right arm, numbness and tingling radiating down the right arm and increased numbness and tingling with motion of shoulder, as well as with therapy. An EMG on February 9, 2021, shows mild right ulnar neuropathy. (RX 3 @ 13). Dr. Cohen thought the EMG was, "borderline at worst." (RX 3 @ 14).

Dr. Cohen noted the chart states on March 4, 2021 "she states the splint didn't really help." (RX 3 @ 14). After being taken completely off work she had partial improvement of symptoms and was placed on 10 lb. restrictions by Dr. Dworsky. (RX 3 @ 14). With return-to-work activity her symptoms increased, with pain in her neck, shoulder, elbow and finger, per the March 29, 2021 chart note. (RX 3 @ 14). Dr. Dworsky recommended an ulnar nerve release with transposition on March 29. Dr. Cohen opined, "there is no documentation of a physical examination of the cubital tunnel". (RX 3 @14).

On the date Dr. Cohen saw Petitioner, she had been off work for 6 days prior and was complaining of numbness and tingling in the ulnar distribution of the right arm as well as what she called a little pain in the medial aspect of the elbow. (RX 3 @ 15). Ulnar neuropathy is a general term that means the ulnar nerve is not functioning properly. (RX 3 @ 15). The diagnosis that Dr. Dworsky is working on is cubital tunnel syndrome, which is a type of ulnar neuropathy related to the ulnar nerve at the level of the elbow. (RX 3 @ 15-16). Petitioner does have complaints that are consistent with ulnar neuropathy, including varying intensity of numbness and tingling in the ulnar distribution of her hand. (RX 3 @ 16). Dr. Cohen testified that on physical examination, Petitioner's shoulder was completely normal, and that the elbow has full range of motion, with some tenderness in the area of the ulnar nerve and cubital tunnel. According to Dr. Cohen, "the ulnar nerve did sublux out of the groove with elbow flexion, and on Tinel's evaluation at the cubital tunnel it did not radiate into the ulnar distribution, it was just tender locally." (RX 3 @ 17). Dr. Cohen explained that subluxation is when you bend the elbow,

the nerve comes out from behind that bone and rolls over the top of it. (RX 3 @ 18). Typically, a Tinel's test over the ulnar nerve should radiate into the ulnar distribution of the hand, which would be the little finger and part of the ring finger. However, Petitioner's did not radiate, it was just tender when he tapped that region, which is not technically a positive test. (RX 3 @ 18). On examination of Petitioner's wrist, it was normal, no Tinel's, with full biceps strength and weakness of the triceps on the right, with a positive provocative sign for cervical radiculopathy that radiated into her hand in the ulnar aspect. (RX 3 @ 19).

As to the shoulder, he had no diagnosis for Petitioner, it was normal, and that there is no shoulder diagnosis that relates to Petitioner's work duties, and she was at MMI for the shoulder. (RX 3 @ 20-21).

As to the right elbow, Petitioner had subluxation of the ulnar nerve, but no cubital tunnel syndrome. (RX 3 @ 21). He explained that most people who have subluxation of the ulnar nerve, "it's just the way they are," "it's an anatomic issue." (RX 3 @ 21). Dr. Cohen opined the subluxation to be preexisting and none of the numbness and tingling would be related to the ulnar nerve at the level of the elbow, so none of those symptoms are related to her work duties. (RX 3 @ 22). Dr. Cohen did not think that Petitioner required any additional care specific to the elbow. (RX 3 @ 22).

As far as future treatment, Dr. Cohen opined Petitioner might benefit from an epidural steroid injection to the cervical spine to resolve her symptoms or confirm that the cervical spine was the source of her symptoms. (RX 3 @ 23). Regarding her neck he opined, "I do not see any traumatic issue, but I would defer to a spine surgeon for expertise on that if, in fact, we were able to prove that that was the source of her symptoms." (RX 3 @ 23). He did not believe that Petitioner had any work restrictions regarding her right elbow. (RX 3 @ 23-24). In relation to the right hand, Dr. Cohen testified that the numbness and tingling was in an ulnar nerve distribution, but he did not see any compression at the hands or wrist and, therefore, he recommended an epidural steroid injection at the cervical spine and potentially consultation with a spine surgeon to look for paresthesia as it relates to the nerve tissue at the level of cervical spine, that it would most likely be at the disc at her age, but could be arthritis. (RX 3 @ 24).

Dr. Cohen opined that Petitioner's hand symptomology is related to the neck and he would defer to a spine surgeon on causation. (RX 3 @ 26). Dr. Cohen testified that for safety reasons, he would put Petitioner on a ten-pound weight restriction to prevent any other injuries where she might drop something that she cannot fully feel. (RX 3 @ 26).

On cross-examination, Dr. Cohen agreed that it is up to physicians to figure out what is causing patient's problems, in this case, neck, shoulder, elbow, hand symptoms. (RX 3 @ 27). Dr. Cohen agreed that the history provided by Petitioner that she was lifting heavy trays leading to her symptoms. (RX 3 @ 27). He did not have any information from Respondent that these symptoms pre-existed the September 3, 2020, work accident. (RX 3 @ 28). Dr. Cohen agreed that based on the records and patient history, there is a point in time when these symptoms began. (RX 3 @ 28). Dr. Cohen agreed that someone can be injured by repetitively lifting and wrapping heavy trays. (RX 3 @ 28). Dr. Cohen testified that the symptoms reported by Petitioner on September 14, 2020, were in an ulnar nerve distribution, which could be caused by the C8 level in the neck. (RX 3 @ 31). Dr. Cohen testified that with an ulnar nerve injury at the elbow, you would not

expect movement of the shoulder to increase the paresthesia in her hand, making it impossible to be at the level of the elbow. (RX 3 @ 32). Dr. Cohen testified that symptoms of difficulty grasping and raising the arm on September 17, 2020, are more likely related to the shoulder than the neck or ulnar nerve. (RX 3 @ 33).

Dr. Cohen agreed with Dr. Dworsky that the shoulder issues were not the source of the continuing problems experienced by Petitioner. (RX 3 @ 33). He agreed she probably had a shoulder strain that resolved prior to his examination of her. (RX 3 @ 33). He agreed with Dr. Dworsky's October 21, 2020, note that Petitioner's pain is more nerve related. (RX 3 @ 36). Dr. Cohen also agreed that there is no other precipitating event other than the September 3, 2020, work activities reported anywhere in the records leading to these symptoms. (RX 3 @ 36). Dr. Cohen testified that the cervical MRI shows a muscle spasm but does not say whether there is a nerve root compression, but it is his belief that the radiologist does not read a nerve root compression on that MRI. (RX 3 @ 37). He agreed that the EMG was read as, "mild right-sided ulnar mononeuropathy as it can be seen in the cubital tunnel" and no evidence of cervical radiculopathy. (RX 3 @ 37). He opined that Petitioner did not show classic signs of cubital tunnel, despite the positive EMG. (RX 3 @ 39). He agreed Dr. Dworsky ordered splinting of the right arm to treat possible ulnar neuropathy. (RX 3 @ 39). He thought the records showed the splint only provided minimal help. (RX 3 @ 39). Dr. Cohen stated that the March 29, 2021, assessment, documenting that rest, splinting, and PT helped could mean any of the three things and not just the splint that helped, or all of them together. (RX 3 @ 40). Dr. Cohen agreed that Dr. Dworsky diagnosed Petitioner with cubital tunnel syndrome. (RX 3 @ 40). Dr. Cohen was not aware of the second cervical MRI. He was read the result of the June 21, 2021, cervical MRI by Petitioner's attorney during cross. He stated, of the MRI results:

> Certainly not helping my argument of cervical radiculopathy because those levels are all higher than what we would expect to cause the types of symptoms she has but it also doesn't explain why her exam is the way it is, why her neurological symptoms increase with shoulder motion and why she doesn't have paresthesia in the complete distribution of the ulnar nerve that we would expect if she had cubital tunnel. (RX 3 @ 42).

Dr. Cohen did not observe the symptom of shoulder movement causing nerve pain, and that symptom has stopped, but that provocative maneuvers of the neck almost instantaneously reproduced the nerve pain. (RX 3 @ 42-43). Dr. Cohen agreed that Petitioner was probably born with subluxation of the ulnar nerve. (RX 3 @ 44). When asked whether the repetitive lifting and wrapping of the surgical trays could cause her pre-existing subluxing nerve to become painful, he stated that it depends on what she is doing. (RX 3 @ 44). Dr. Cohen testified that it is his understanding that Petitioner's arms were outreached over a tablecloth, and she was wrapping the trays, not repetitive flexing of the elbows back and forth. (RX 3 @ 44). Dr. Cohen understood the job duties to be more with her hands and her elbows flexed less than 90 degrees, "so they're mainly straight," and if that is the case then no, it would not cause the subluxing ulnar nerve to become painful. (RX 3 @ 44). Dr. Cohen testified that it is not a weight issue here, it is a motion issue, that once the elbow is at 90 degrees or less, the nerve subluxes. (RX 3 @ 44-45). He ultimately said that with his understanding of her job, the repetitive wrapping and lifting would not cause the symptoms of pain but agreed with Petitioner's counsel that the ulnar nerve pain started after the lifting episode on September 3, 2020, with no other precipitating cause. (RX 3 @ 44-46). Dr. Cohen did agree with Petitioner's counsel that "double crush syndrome"

could be a cause here, but she does not have typical complaints or physical examination for cubital tunnel making it harder to establish. (RX 3 @ 47). He agreed that Petitioner had not been pain free since her injury on September 3, 2020. (RX 3 @ 47). He agreed that the treatment to date (May 12, 2021) has been reasonable, necessary, and related to her accident of September 3, 2020. (RX 3 @ 48). He also agreed that no physician has returned Petitioner to full use of the right arm, and that her attempts at working seem to cause recurrence of symptoms, according to the patient. (RX 3 @ 48). He agreed that during the diagnostic process, a ten-pound weight restriction is reasonable. (RX 3 @ 49). Petitioner's counsel read Dr. Dworsky's recommendation of surgery following the cervical MRI of June 2021, asking whether the surgery is reasonable at this point. (RX 3 @ 49). Dr. Cohen testified that he would have probably ordered an injection of the cervical spine rather than a repeat MRI, to see whether the injection relieved her symptoms. (RX 3 @ 49-51). He agreed that he recommended that Petitioner see a spine surgeon and the injection may reveal whether the neck is the cause of her symptoms. (RX 3 @ 51).

On re-direct, Dr. Cohen testified that he would not recommend the elbow surgery because he would do the injection first, and that he would expect to see more significant symptoms on physical examination (RX 3 @ 53). He maintained that he would order the injection before performing a significant surgery, like the one suggested by Dr. Dworsky. (RX 3 @ 53-55). Dr. Cohen testified that if the injection failed, Dr. Dworsky should discuss the pros and cons of surgery with the patient. (RX 3 @ 56). Dr. Cohen stated that any activities that flex the elbow past 90 degrees could aggravate the subluxation of the ulnar nerve, including ADLs. (RX 3 @ 56). Dr. Cohen testified that the subluxation is not genetic, but may be developmental and that patients who have the subluxation are at an increased risk of cubital tunnel. (RX 3 @ 57-58).

On re-cross-examination, Dr. Cohen agreed that there were no issues with Petitioner's ADLs prior to the September 3, 2020, accident, but there were after, including brushing her teeth. (RX 3 @ 59). He said he suspected that Petitioner's subluxation has occurred for a long time, but agreed the numbness was not reported until September 3, 2020. (RX 3 @ 60).

CONCLUSIONS OF LAW

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

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

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

The Arbitrator finds the testimony of Petitioner to be credible.

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

Petitioner's current condition of ill-being, to wit: resolved shoulder strain and right elbow cubital tunnel syndrome, as described by Dr. Dworsky, is causally related to the injury.

This finding is based on the credible testimony of Petitioner, the medical records and the persuasive opinions of Dr. Dworsky.

First, it is noted that the Parties stipulated that Petitioner sustained accidental injuries which arose out of and in the course of her employment by Respondent on September 3, 2020.

Petitioner reported to all medical professionals, Concentra, Dr. Bhatt, Dr. Dworsky, and Dr. Cohen she was repetitively lifting heavy trays at work and injured her right arm, neck, shoulder on September 3, 2020. All the medical records have the same history, which is consistent with her testimony. There is no evidence of any such symptoms or treatment prior to September 3, 2020. Everyone agrees that Petitioner had ulnar nerve irritation symptoms when she was seen for the second time at Concentra on September 14, 2020. There is no evidence in the Concentra records suggesting the employer disputed the history of job duties that led to her pain and symptoms. There was no evidence submitted to Dr. Cohen, the Respondent's litigation expert, that her job duties were other than what she said. Dr. Dworsky was not supplied an alternative set of facts during cross examination.

All the medical records state Petitioner was repetitively lifting "loaner trays," or surgical trays that were heavier than normal. These were, in her words, for the "bone" surgeries, which are orthopedic trays. Dr. Dworsky explained these trays are heavier than normal because they have the tools of orthopedic surgeons, hammers, drills, etc. He opined her cubital tunnel is related to the accident of September 3, 2020. He explained that the way she lifted is exactly how one may injure the ulnar nerve, and it is not necessary to flex the elbow to 90 degrees to injure the ulnar nerve. It's the repetitive movement, not the weight of the object lifted that aggravates the nerve. Dr. Cohen thought her nerve pain may be in a C8 distribution from the neck. Dr. Dworsky ruled out the neck as a cause via the opinion of Dr. Templin, a spine surgeon. Both Drs. Dworsky and Cohen agreed the right shoulder had healed. Both Drs. Dworksy and Cohen agreed Petitioner had nerve pain in the right arm. Dr. Cohen agreed on cross-examination all medical treatment was reasonable, necessary, and related to the accident.

Petitioner was a in state of good health, she had no prior symptoms before the accident. On September 3, 2020, she was injured from repetitively lifting the loaner trays and developed what ultimately was an ulnar nerve injury necessitating a right cubital tunnel surgery, supported by an EMG and a right shoulder strain. Her consistent symptoms did not respond to conservative care, medication, rest, physical therapy and wearing a night splint around the right elbow. Dr. Cohen

agreed she could have a double crush syndrome. Dr. Cohen was of the opinion the neck should be ruled out before one considers surgery at the elbow. There is no evidence Dr. Cohen reviewed the report of Dr. Templin, who ruled out the neck as a cause of the symptoms.

The Arbitrator concludes the cervical spine was ruled out as a cause of Petitioner's symptoms by her doctors.

Respondent produced a witness, Ms. Baquero, who believes Petitioner is lying. She testified in relation to a "production report," (RX 6). She claimed Petitioner had lifted 34 trays and maybe another 11, later in the shift, based upon RX 6. She agreed she was not present when Petitioner was working on September 3, 2020.. She contended Petitioner was not wrapping and lifting the loaner trays earlier in the shift. Petitioner disputed that, and claimed she was lifting and wrapping the heavier loaner trays early in the shift and pushing and pulling carts with trays. Ms. Baquero claimed no tray was over 25 lbs., per industry standard. Petitioner thought they were heavier than normal. The orthopedic trays could certainly be heavier than the usual surgical trays that Petitioner handled as a SPT. Ms. Baquero admitted on cross the actual weights of the trays were available, but not brought to court.

Petitioner explained that RX 6 only shows the time of the scan, which only takes a few seconds. Before and after the scans she was doing her job lifting and wrapping the trays, pushing and pulling carts.

It is noted that there was a video of Petitioner's activities at the time of her accident. The video had been destroyed and was not shown to the Arbitrator or either of the testifying medical experts.

The actual weight of the trays was available, per the witness Ms. Baquero, but those weights were not offered into evidence by Respondent.

The arbitrator concludes the job activities of Petitioner on September 3, 2020, are consistent with Petitioner's version of the facts. She was doing what she told Concentra on September 11, 2020, which was the same story before the arbitrator. She lifted 100 trays or more, they were heavier than normal, and injured the right arm as explained in the medical records.

It further is obvious to this arbitrator she was doing something related to repetitively lifting trays during the work shift of September 3, 2020. It is at this time she developed right arm symptoms which are well recorded in the medical records.

Even if we adopt her supervisors version of facts, that she lift 34 trays, or 45 trays, the trays were clearly heavier per petitioner's reporting, it was repetitive, and she pulled and pushed the carts. Based upon the medical depositions this activity may have caused her injury. It's causally related under either set of facts, petitioner's version or respondents witness version. It is clear that her symptoms began while performing repetitive physical exertional activities that were part her of job for respondent. Often repetitive motion injuries are not cut and dry, or obvious, like direct trauma to a body part. This is a compensable injury.

The Arbitrator concludes Petitioner's explanation regarding her job activities after reviewing RX 6 is persuasive, credible, and consistent with all the medical records. The Arbitrator finds that Petitioner's explanation, that in between scans, she was drying, wrapping, and lifting trays, the same trays were scanned into the steamers (Steam 01, 02, 03, 04, 05, 06) is credible. Petitioner's testimony that she "handled" 100 trays is believable and not inconsistent with Baquero's testimony 45 scanned trays could have been "handled" more than once. The trays were heavier than the normal trays that Petitioner handled, even if they did not exceed the 25 pounds industry standard.

Dr Dworsky's testimony is persuasive and best comports with the evidence adduced. Petitioner has a subluxing ulnar nerve which became symptomatic with her work activities of September 3, 2020. The operative report (PX 10) shows that significant thickening of the ulnar nerve at the cubital tunnel was noted. Petitioner testified that her symptoms have improved after the surgery.

Dr. Cohen's opinions are not persuasive in this case, given the above. Petitioner exhibited ulnar nerve symptoms and a cervical etiology was ruled out by Dr. Templin. Maybe Petitioner's symptoms were not completely consistent with cubital tunnel syndrome (no Tinel sign noted by Dr. Cohen), but Dr. Templin did not a positive Tinel, the clinical findings at surgery documented thickening of the nerve and Petitioner's condition appears to have improved post surgery.

Based upon all evidence and testimony in the Record, the Arbitrator hereby finds that the accident sustained by Petitioner on September 3, 2020 caused Petitioner's current condition of ill being, that being a right shoulder strain (resolved) and injury to her right ulnar nerve thereby necessitating all the medical treatment and the right cubital tunnel surgery/ulnar nerve transposition and decompression on May 10, 2022.

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

It has already been established that Petitioner sustained injuries at work on September 3, 2020. Additionally, the Arbitrator has found that Petitioner's conditions of shoulder strain, cubital tunnel syndrome, and ulnar nerve injury with surgery are causally related to the work accident.

The Arbitrator has reviewed Petitioner's treatment records. Being that her ulnar injury is causally related, the Arbitrator concludes all treatment was reasonable, necessary, and causally related to the work accident. Respondent's expert, Dr. Cohen, agreed that Petitioner's medical treatment of PT, rest, night splint, imaging, and work restrictions were related to the work injury.

From Dr. Cohen's deposition:

> Mr. Horwitz: Is it fair to state that the treatment that she has received to date has been reasonable and necessary and related to her accident of September 3, 2020? (RX3 @ 47-48).

> Dr. Cohen: Well, yeah. I mean I think that back to your thing, she claimed an event that started the symptoms, and then her treatment for the shoulder obviously resolved the shoulder, and the remainder of what's gone on has been more – I would consider it more diagnostic in terms of trying to figure out what's going on as opposed to treating it. (RX3 @ 48).

Petitioner's treating doctor, Dr. Dworsky, testified as to the causal relation between his patient's treatment and her job duties on September 3, 2020, and that all treatment was reasonable, necessary, and related, including the anticipated cubital tunnel surgery. The treatment plan of Dr. Dworsky is consistent with the deposition testimony of Dr. Cohen, which was to rule out the cervical spine as a cause or her arm pain. The neck was ruled out. The injured ulnar nerve was the culprit and the cause of her symptoms. The surgery was reasonable, necessary, and related to the accident. Accordingly, the Arbitrator concludes upon review of the records, deposition testimony, and witness testimony, that all treatment was reasonable, necessary, and related to the accident of September 3, 2020.

The Petitioner has presented outstanding medical bills related to this claim as follows: (PX15).

Provider	**Beginning**	**Ending**	**Balance**
Center for Minimally Invasive Surgery	5/10/2022	5/10/2022	$8,487.00
Illinois Bone & Joint/HOA	3/29/2021	5/10/2022	$4,955.00
MD2X	5/10/2022	5/10/2022	$1,125.00
Molecular Imaging	6/21/2021	6/21/2021	$3,105.00
ReLive Physical Therapy	12/9/2020	8/15/2022	$27,135.00
Balance			**$44,807.00**

Having found that Petitioner's medical treatment is reasonable, necessary, and causally related to the accident, the Arbitrator hereby orders Respondent to pay to Petitioner's attorney's office $44,807.00 in outstanding medical bills as outlined above, pursuant to Sections 8(a) and 8.2 of the Act.

Regarding Issue (K), Is Petitioner Entited to Any Prospective Medical Care?, The Arbitrator Finds:

Based upon the Arbitrator's findings above on the issues of causal connections and medical expenses, Petitioner is entitled to prospective medical care regarding her cubital tunnel syndrome/ulnar nerve irritation condition, as recommended by Dr. Dworsky including physical therapy and any reasonable, necessary, and related care and services, pursuant to Sections 8(a) and 8.2 of the Act.

Regarding Issue (J), What Temporary Benefits are in Dispute?, TTD, the Arbitrator Finds:

Having found that Petitioner's current condition of ill-being, that being an ulnar nerve injury with surgery, is causally related to her work accident of September 3, 2020, the Arbitrator concludes that Petitioner is owed temporary total disability benefits. are owed to Petitioner.

Regarding Average Weekly Wage, Respondent and Petitioner have stipulated to an AWW of $780.00. This corresponds to a TTD rate of $520.00.

Petitioner worked until she was taken off work completely by Dr. Dworsky from March 5, 2021, through March 21, 2021. Petitioner was paid temporary total disability benefits during that time. Respondent stipulated to this period. (ArbX 1).

Petitioner also testified that she was let go from her job while on light duty restrictions from Dr. Dworsky on May 6, 2021. After May 6, 2021, Respondent did not provide accommodated work to her. She has not completed medical care. She is not yet at MMI. She was kept on a physical restriction to the right arm after May 6, 2021, by Dr. Dworsky, or no work at all. (PX 1). Petitioner had a recent surgery on May 10, 2022, and is still being kept off work by her doctor. She is therefore entitled to TTD for the following periods and through the date of trial.

The Arbitrator awards the following periods of temporary total disability benefits: 03/05/2021 through 03/21/2021 and 05/06/2021 through 8/19/2022 at the rate of $520.00/week, totaling 69 and 5/7 weeks or $36,251.43.

Petitioner testified that Respondent paid temporary total disability benefits from March 5, 2021, through March 21, 2021, in the amount of $1,230.48. Accordingly, Respondent is given a credit in the amount of 1,230.48, for temporary total disability benefits paid to Petitioner from 3/5/2021 through 3/21/2021. The total TTD owed as of the date of trial is $36,251.28. Respondent's credit is $1,230.48, yielding net TTD owed as of August 19, 2022, of $35,020.80.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC025542
Case Name	Kimberly S. Lewis v. Evergreen Place Assisted Living-Champaign
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b) Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	24IWCC0157
Number of Pages of Decision	21
Decision Issued By	Stephen Mathis, Commissioner

Petitioner Attorney	Jeffrey Frederick
Respondent Attorney	Peter Donahue

DATE FILED: 4/5/2024

/s/Stephen Mathis, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF CHAMPAIGN)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Kimberly S. Lewis,

Petitioner,

vs. NO. 21WC 25542

Evergreen Place Assisted Living-Champaign

Respondent.

DECISION AND OPINION ON REVIEW

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

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed May 23, 2023 is hereby affirmed and adopted.

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

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

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

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

April 5, 2024
SJM/sj
o-3/20/2024
44

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

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

/s/ *Raychel A. Wesley*
Raychel A. Wesley

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC025542
Case Name	Kimberly S. Lewis v. Evergreen Place Assisted Living-Champaign
Consolidated Cases	
Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	18
Decision Issued By	Jeanne AuBuchon, Arbitrator

Petitioner Attorney	Jeffrey Frederick
Respondent Attorney	Peter Donahue

DATE FILED: 5/23/2023

THE INTEREST RATE FOR THE WEEK OF MAY 23, 2023 5.17%

/s/ Jeanne AuBuchon, Arbitrator

Signature

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

KIMBERLY S. LEWIS
Employee/Petitioner

v.

EVERGREEN PLACE ASSISTED LIVING-CHAMPAIGN
Employer/Respondent

Case # **21** WC **025542**

Consolidated cases: _____

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Jeanne L. AuBuchon**, Arbitrator of the Commission, in the city of **Champaign**, on **March 14, 2023**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On the date of accident, **September 13, 2021**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $**29,872.20**; the average weekly wage was $**573.60**.

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

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

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

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

ORDER

Respondent shall authorize and pay for medical treatment to the low back, including surgery, as recommended by Dr. Kern Singh, as provided in Section 8(a) of the Act.

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

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

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

Jeanne L. AuBuchon

Signature of Arbitrator

MAY 23, 2023

PROCEDURAL HISTORY

This matter proceeded to trial on March 14, 2023, pursuant to Sections 19(b) and 8(a) of the Illinois Workers' Compensation Act (hereinafter "the Act"). The issues in dispute are: 1) whether the Petitioner sustained accidental injuries that arose out of and in the course of her employment; 2) the causal connection between the accident and the Petitioner's low back condition; and 3) entitlement to prospective medical care to the Petitioner's low back – specifically surgery.

FINDINGS OF FACT

At the time of the accident, the Petitioner was 53 years old and employed by the Respondent as a housekeeper, cleaning 50 apartments, each on a weekly basis. (AX1, T. 11, 13) Her duties included dusting, sanitizing bathrooms, cleaning floors, dusting, vacuuming and making beds. (T. 14)

The Petitioner acknowledged seeing doctors for low back pain prior to the accident but said she had not seen a doctor for back pain since February 7, 2011. (T. 15) She agreed that she had a prior accident at another assisted nursing facility on March 22, 2006, involving her low back and was treated at Christie Clinic with medication. (T. 44, RX2) On February 15, 2007, and June 10, 2007, was again treated with medication from Christie Clinic for low back pain. (RX2) On February 26, 2009, the Petitioner returned to Christie Clinic and reported that the pain flared recently and was always across the bilateral low back, right equal to left, which could radiate toward the buttock, but not down the leg. The Petitioner underwent an MRI of the lumbar spine on July 15, 2009, that showed a left disc herniation at L5-S1 with minimal displacement of the left nerve root and abnormal increased signal in the right iliac bone and sacrum. (Id.) The Petitioner underwent an injection and was released to return as needed. (Id.) She returned on August 18,

2010, with low back pain in the sacroiliac (SI) joint (linking the pelvis and lower spine) on the left and was diagnosed with sacroiliitis (inflammation of the SI joint). (Id.) She had injections and was recommended to undergo physical therapy. (Id.) She complained of low back pain on February 7, 2011. (Id.) She denied any new injury and reported having back pain for many years. (Id.) The pain did not radiate and was rated at 5/10. The diagnosis was acute low back pain. (Id.) The Petitioner testified that she never had physical therapy for her back pain. (T. 17)

On September 13, 2021, the Petitioner was cleaning her first room of the day and putting sheets on a full-sized bed. (T. 22) She said she was putting on a fitted sheet that did not have deep pockets and was older and had shrunk over time, causing her to push, pull, tug and twist. (T. 23-25) She said she had put the top on first and was leaning over to put the corner on the foot of the bed diagonally with one foot on the floor when she twisted, heard a pop and felt excruciating pain in her low back. (T. 25) She said she had to stand for a few seconds because she couldn't move, then told her supervisor what happened. (Id.) She said she felt pain in her right leg that she had never experienced before. (T. 26) She said her supervisor told her to make an appointment with Carle Hospital's occupational medicine department. (T. 27, 71)

Ryan Grussing, administrative and building services director for the Respondent testified that he is the Petitioner's direct supervisor and that on September 13, 2021, the Petitioner reported to him that she hurt her back while changing a sheet on a bed. (T. 74-76) He said he told the Petitioner she was free to go anywhere for treatment. (T. 78) He said that in response to her asking if she had to go to the emergency room, he said "no," she did not have to go anywhere. (T. 79) He said he told her that Carle Occupational Medicine usually sees people faster than some other clinics but did not tell her she had to go there. (Id.)

Following the accident, the Petitioner saw Dr. William Scott, an occupational medicine specialist at Carle Health Services. (PX5) She reported making a bed at work, stretching too far, hearing a pop and feeling sharp pain in her back. (Id.) She informed Dr. Scott that she had a history of low back pain, degenerative disc disease and right sciatica (pain, weakness, numbness or tingling in the leg). (Id.) An examination showed diminished deep tendon reflexes and a negative straight-leg-raising test. (Id.) Dr. Scott diagnosed right-sided low back pain with sciatica-like symptoms and a history of degenerative disc disease. (Id.) She received a pain-medication injection and was recommended to take an anti-inflammatory. (Id.) At a follow-up visit on September 16, 2021, the Petitioner reported that her pain was about the same. (Id.) Dr. Scott recommended physical therapy and anti-inflammatories. (Id.) The Petitioner underwent physical therapy from September 17, 2021, to October 25, 2021, at Carle Therapy Services with no substantial change in her symptoms. (Id.)

While undergoing therapy, the Petitioner had follow-up visits with Dr. Scott, during which she reported no improvement. (Id.) She reported occasional pain going down the right leg that sometimes would switch to the left leg. (Id.) On October 12, 2021, Dr. Scott noted "it is unclear what causes the pain to travel sometimes." (Id.) An X-ray showed moderate lumbar spondylosis (age-related degeneration of the vertebra and discs) most prominent at L5-S1 and to a lesser extent at L4-L5. (Id.) She was diagnosed with low back pain persisting with no subjective improvement, ongoing etiology unclear and degenerative disc disease of the lumbar spine at L5-S1 with some arthritis. (Id.) Dr. Scott wanted the Petitioner to continue physical therapy, encouraged walking and exercise, recommended a transcutaneous electrical nerve stimulation (TENS) unit and an anti-inflammatory. (Id.) He was concerned about depression affecting her recovery. (Id.)

The Petitioner underwent a Section 12 examination on November 5, 2021, by Dr. Timothy VanFleet, an orthopedic surgeon at the Orthopedic Center of Illinois. (RX1, Deposition Exhibit 2) The Petitioner described the accident consistently with her testimony and reports to other healthcare providers. (Id.) Dr. VanFleet opined that the work accident caused the Petitioner's low back condition due to her complaint of a pop across the back. (Id.) He noted no radicular findings or neurological abnormalities and significant degeneration at the L5-S1 level. (Id.) Strength testing was normal. (Id.) He said it was most likely that the Petitioner experienced a strain of the lumbar spine, although it was hard to nail down exactly what occurred because there was such a benign mechanism of injury and no appreciable physical examination findings. (Id.) He believed the treatment provided had been reasonable and necessary and recommended an MRI. (Id.)

The Petitioner returned to Dr. Scott on November 9, 2021, with persistent low back pain mostly on the right side and into the right leg down past her knee from time to time. (Id.) She also had occasional pain in the left leg. (Id.) She rated her pain at 10/10. (Id.) Dr. Scott noted that none of the treatments – including rest, heat, physical therapy, anti-inflammatory, and TENS unit – had worked for her. (Id.) He did not believe the Petitioner had any significant radiculopathy. (Id.) Dr. Scott diagnosed persistent ongoing chronic low back pain with episodes of right-sided sciatica-like symptoms and a history of degenerative disc disease, especially spondylosis at L5-S1. (Id.) She was also diagnosed with depression and smoking. (Id.) Dr. Scott noted that she had exhausted his non-surgical treatment and referred her to the Spine Center to see Dr. James Harms, an orthopedic surgeon at Carle Health, for a possible epidural steroid injection. (Id.) Dr. Scott prescribed an anti-inflammatory, recommended continued home exercises of strengthening and walking and continued light-duty restrictions. (Id.)

The Petitioner testified that she never went to Dr. Harms. (T 61) On November 29, 2021, she returned to Dr. Scott, who ordered an MRI. (PX5) Dr. Scott believed the main reason for Petitioner's complaints were subjective symptoms of soft tissue injury based on the mechanism of injury and the physical examination. (Id.) The MRI was performed on December 9, 2021, and revealed degenerative disc disease and spondylosis. (Id.) At L5-S1, there was disc bulging and uncovering with right paracentral protrusion contributing to moderate canal stenosis (narrowing of the spinal canal compressing the nerves), right significantly greater than left, with potential compromise of the right S1 nerve root. (Id.)

On December 13, 2021, Dr. Scott reviewed the MRI and agreed with the findings. (Id.) He referred the Petitioner for evaluation with a Dr. Harris at the Carle Spine Center, and to the pain center for possible injections. (Id.) He continued work restrictions. (Id.) The Petitioner testified that she never went to see Dr. Harris. (T 62) She did go to the Interventional Pain Center on February 1, 2022, and saw Dr. Shabeera Rauther, a pain medicine specialist at the Carle Health Interventional Pain Center on the referral from Dr. Scott. (PX5) Dr. Rauther recommended tobacco cessation, home exercises and an L5-S1 epidural steroid injection, which was performed on February 7, 2022. (Id.)

Also on February 1, 2022, Dr. VanFleet issued an addendum report after reviewing the MRI and additional records. (RX1, Deposition Exhibit 3) He opined that the traumatic incident caused an exacerbation – but not acceleration or aggravation – of the Petitioner's underlying degenerative disc condition and was a material contributory factor in her condition onset or progression. (Id.) He again found the past treatment to be reasonable and necessary and suggested an injection. (Id.)

On March 2, 2022, the Petitioner saw Dr. Scott, who prescribed a nerve-pain medication, again recommended a consult with Dr. Harris and continued work restrictions. (Id.) On March 7, 2022, the Petitioner returned to Dr. Rauther and reported that the injection had not helped. (Id.) She was still smoking four cigarettes per day and had not started taking the nerve-pain medication. (Id.) Dr. Rauther instructed the Petitioner to see an orthopedic spine surgeon. (Id.)

On March 30, 2022, the Petitioner presented to the office of Dr. Kern Singh, an orthopedic surgeon at Midwest Orthopaedics at Rush, for a telemedicine visit with Physician Assistant Christopher McGee. (PX4) She testified that she found Dr. Singh through a friend. (T. 32) She described the work accident consistently with her testimony and reports to other medical providers. (PX4) She rated her pain at 7-8/10 and described it as sharp, stabbing pain across the lower back into both buttocks, favoring the left side, with intermittent but rare radiating symptoms past the knee into the feet. (Id.) She was taking over the counter NSAIDs as needed and sparingly for the pain, but they became less effective. (Id.) She reported that therapy provided only minimal improvement in her pain and the injection provided no improvement. (Id.) The diagnosis was L5-S1 right herniated nucleus pulposus (inner region of the disc) and L5-S1 degenerative disc disease. (Id.) Dr. Singh recommended 2-4 weeks of work conditioning and work restrictions. (Id.) The Petitioner underwent work conditioning at ATI Physical Therapy from April 11, 2022, through April 22, 2022. (PX 6) She was discharged from therapy due to lack of ability to progress in work hardening and was deemed not appropriate to continue. (Id.) The therapist noted that the petitioner would benefit from further treatment and may be a candidate for surgical intervention. (Id.)

The Petitioner had another telemedicine visit with PA McGee on April 27, 2022. (PX4) She rated her pain at 8/10 and reported left posterolateral thigh pain, numbness, and tingling extending to the outer foot and plantar aspect of the foot. (Id.) She also reported weakness with

ambulating and stair climbing. (Id.) She was diagnosed with an L5-S1 herniated nucleus pulposus and degenerative disc disease, and she was scheduled for a preoperative appointment to discuss a possible right L5-S1 laminectomy (removal of bone on the spinal canal) and microdiscectomy (removal of part or all of a disc) surgery. (Id.)

On May 9, 2022, the Petitioner saw Dr. Singh with continued pain that was worse on the right. (Id.) She reported she could not continue work conditioning due to back and leg pain. (Id.) An examination revealed positive sitting tension sign (straight-leg raise) right greater than left, bilateral weakness in two of the lower leg muscles and diminished Achilles reflex consistent with an L5 and S1 nerve root distribution. (Id.) Dr. Singh stated that the radiography findings confirmed an L5-S1 decreased disc space collapse resulting in central and bilateral neural foraminal stenosis. (Id.) He said the Petitioner had an L5-S1 history and physical examination consistent with her symptomatology. (Id.) He diagnosed L5-S1 degenerative disc disease, right herniated nucleus pulposus, and spinal stenosis. (Id.) He and recommended L5-S1 laminectomy and fusion surgery. (Id.)

The Petitioner underwent a second examination by Dr. Van Fleet on June 15, 2022. (RX1, Deposition Exhibit 4) Upon examination, he found symmetric reflexes at the knees and ankles, normal strength testing, no clonus (abnormal stretch reflex) and no evidence of tension signs. (Id.) Dr. Van Fleet diagnosed lumbar degenerative disc disease with chronic low back pain, as well as questionable radiculopathy. (Id.) He said treatment to date had been reasonable and necessary. (Id.) He did not believe that the Petitioner's current condition was causally related to the work accident and said it was most likely related to underlying degenerative disc disease. (Id.) He said the Petitioner was not a candidate for fusion as she continued to smoke cigarettes, which would preclude her from any kind of fusion procedure. (Id.) He said she might be a candidate for a

lumbar discectomy, but it was unlikely that procedure would improve her current symptoms. (Id.) He recommended no surgical treatment at that time and found the Petitioner at MMI based upon her continued tobacco use, which precluded her from fusion surgery. (Id.)

Dr. Singh testified consistently with his records at a deposition on November 16, 2022. (PX3) He said that after comparing the December 9, 2021, MRI with the MRI report from July 15, 2009, he believed the right-sided central/paracentral disc herniation was caused by the work accident. (Id.) He said the 2009 MRI report described a left-sided disc protrusion, which was different than the right-sided herniation he identified on the 2021 MRI. (Id.) He also believed the underlying disc degeneration was permanently aggravated by the work injury and the Petitioner had unequivocal radiculopathy. (Id.) He pointed out that the Petitioner was working full duty without any neurological deficits, there was an identifiable event, and thereafter she had an identifiable weakness that correlated with the MRI, as well as subjective pain that correlated with the neurological compression on the MRI and examination. (Id.) He said the Petitioner had back and leg pain complaints with an identifiable neurological deficit in an L5 and S1 distribution that correlated with her radiographic and examination findings. (Id.)

As to the mechanism of injury, Dr. Singh stated that with the Petitioner's pre-existing condition, any activity of daily living could have tipped her over the edge. (Id.) He said the mechanism of injury described may seem minimal or trivial, but it was an identifiable point and would be a plausible mechanism for becoming symptomatic. (Id.)

Regarding treatment, Dr. Singh testified that the need for surgery was causally related to the work injury. (Id.) He disagreed with Dr. VanFleet's opinion that the Petitioner was not a candidate for a fusion, stating that the Petitioner had single-level disease, identifiable nerve root weakness bilaterally, correlating pain complaints and a correlating MRI demonstrating stenosis

and narrowing. (Id.) Regarding the issue of the Petitioner's smoking, Dr. Singh acknowledged that smoking can decrease the likelihood of a successful fusion but is not an absolute contraindication for someone for a fusion for a neurological deficit. (Id.) He said he would not be doing for surgery for back pain, which becomes elective, but for a neurological deficit. (Id.) He said that surgical fusion rates even in smokers still approach 90-95 percent. (Id.)

On cross-examination, Dr. Singh was asked about the Petitioner having a negative straight-leg-raise test with Dr. Scott but a positive test with him. (Id.) He said he could not comment on the veracity of Dr. Scott's examination. (Id.) He also said the Petitioner would not necessarily have had a positive straight-leg-raise test in the days or weeks after the accident because there could be a progression of a neurological finding. (Id.) Regarding the Petitioner having symptoms on the left leg with a right-sided herniation, Dr. Singh testified there could be a paracentral component to the herniation that can cause bilaterality to the symptoms. (Id.)

Dr. VanFleet testified consistently with his reports at a deposition on December 21, 2022. (RX1) He distinguished an aggravation from an exacerbation by saying an aggravation is permanent while an exacerbation is temporary. (Id.) He explained his finding of questionable radiculopathy by saying the Petitioner complained of pain but there was no physical examination findings of it – no tension signs, no evidence of strength deficits and her symptoms were more back pain than leg pain. (Id.) He said his opinion that the Petitioner's current low back condition was not causally related to the accident was based on the mechanism of injury, the Petitioner's pre-existing conditions, surveillance video (which was not produced at arbitration), physical examination findings and his education, training and experience. (Id.) He opined that the accident did not cause a material change in the Petitioner's low back condition because it did not structurally alter her physical anatomy. (Id.)

On cross-examination, Dr. VanFleet admitted that he never saw any video of the Petitioner. (Id.) He acknowledged that people can suffer trauma that causes an asymptomatic degenerative disc disease to become symptomatic. (Id.)

Regarding his recommendation against surgery being due to the Petitioner's smoking, Dr. VanFleet added that in general doing a fusion for back pain is not a very specific treatment because the results are variable, and the Petitioner had multilevel disc disease. (Id.) He also said the Petitioner was not a fusion candidate because she had not had a lumbar discogram (test for pain generating discs) and she had a secondary gain interest. (Id.)

The Petitioner testified that the pain medication, physical therapy, work conditioning and injection did not alleviate her symptoms. (T. 28-29) She said that since the accident, she has had low back pain, sharp pains going down her right leg with tingling in her toe and down the left buttock in the back of the leg. (T. 28) She said she would like to have the surgery recommended by Dr. Singh because the pain is pretty bad and she would like to get some relief. (T. 33)

On cross-examination, the Petitioner acknowledged that the accident occurred during the COVID pandemic and that the Respondent's employees were told they had to get vaccinated unless they had an exemption. (T. 39-40) She said she had an exemption and did not get vaccinated. (T. 44) Mr. Grussing testified that all employees were mandated to either be vaccinated or have a religious or medical exemption before November 1, 2021, or they would be terminated. (T. 78) On cross-examination, Mr. Grussing said he had no evidence that the Petitioner fabricated the accident in an attempt to avoid a COVID shot. (T. 87)

CONCLUSIONS OF LAW

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

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

As to the initial issue of credibility of the Petitioner, the Arbitrator finds her to be credible. She consistently described the accident in her testimony and her reports to the medical providers.

In order to obtain compensation under the Act, a claimant bears the burden of proving by a preponderance of the evidence two elements: (1) that the injury occurred in the course of the claimant's employment and (2) that the injury arose out of the claimant's employment. *McAllister v. Ill. Workers' Comp. Com'n,* 2020 IL 12484, ¶ 32.

If an accident did occur as the Petitioner said it did, there is no reason for a risk analysis under *McAllister,* as it is apparent that the incident would have occurred in the course of and arose out of the Petitioner's employment. The only question is whether an incident occurred. The Petitioner consistently reported the accident to the Respondent and her medical providers and described it in her testimony. There was no evidence to the contrary.

As a reason to find the Petitioner was not truthful about the accident, the Respondent offered testimony that the Petitioner would not get vaccinated for COVID per the Respondent's policies. She was excused from the required vaccination by reason of exemption. The Arbitrator notes that Mr. Grussing said he had no evidence that the Petitioner fabricated the accident in an attempt to avoid a COVID shot. To find that this was a reason for the Petitioner to fabricate an accident would be speculative without more evidence.

Therefore, the Arbitrator finds that the Petitioner has proved by a preponderance of the evidence that the Petitioner's injuries occurred in the course of and arose out of her employment.

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

The crux of the dispute in this case is whether the Petitioner's current condition is causally related to the accident. A claim is not denied simply because a claimant suffers from a preexisting condition. An accidental injury need not be the sole causative factor, nor even the primary causative factor, as long as it is a causative factor in the resulting condition of ill-being. *Sisbro, Inc. v. Indus. Comm'n*, 207 Ill. 2d 193, 205, 797 N.E.2d 665, 672-673 (2003). Employers are to take their employees as they find them. *A.C. & S. v. Indus. Comm'n*, 304 Ill. App. 3d 875, 710 N.E.2d 837 (1999) citing *General Electric Co. v. Indus. Comm'n*, 89 Ill. 2d 432, 434, 433 N.E.2d 671, 672 (1982).

When a preexisting condition is present, a claimant must show that "a work-related accidental injury aggravated or accelerated the preexisting [condition] such that the employee's current condition of ill-being can be said to have been causally connected to the work-related injury and not simply the result of a normal degenerative process of the preexisting condition." *St. Elizabeth's Hospital*, 371 Ill.App.3d at 888.

In addition to or aside from expert medical testimony, circumstantial evidence, especially when entirely in favor of the Petitioner, is sufficient to prove a causal nexus between an accident and the resulting injury, such as a chain of events showing a claimant's ability to perform manual duties before accident but decreased ability to still perform immediately after accident. *Pulliam Masonry v. Indus. Comm'n*, 77 Ill. 2d 469, 397 N.E.2d 834 (1979); *Gano Electric Contracting v. Indus. Comm'n*, 260 III.App.3d 92, 96-97, 631 N.E.2d 724 (1994); *International Harvester v. Indus. Comm'n*, 93 111.2d 59, 442 N.E.2d 908 (1982).

Dr. VanFleet initially found the Petitioner's condition was causally related to the accident. After the second examination, he found it was not. His causation opinion rests on his distinction between an aggravation or an exacerbation of the Petitioner's underlying condition. He said the

injury was an exacerbation – meaning temporary – as opposed to an aggravation – meaning permanent. Dr. Singh found the right-sided central/paracentral disc herniation was caused by the work accident and was different from the left-sided disc protrusion noted on the 2009 MRI report. He also believed the underlying disc degeneration was permanently aggravated by the work injury and the Petitioner had unequivocal radiculopathy. He pointed out that the Petitioner was working full duty without any neurological deficits, there was an identifiable event, and thereafter she had an identifiable weakness that correlated with the MRI, as well as subjective pain that correlated with the neurological compression on the MRI and examination.

The appellate courts have relied on *Sisbro* in affirming Commission decisions finding causation where doctors have opined that work accidents have exacerbated pre-existing conditions – especially when circumstantial evidence showed that a claimant was able to perform work duties before an accident but was unable to afterwards. E.g. *Corn Belt Energy Corp. v. Ill. Workers' Comp. Comm'n*, 2016 IL App (3d) 150311WC, ¶36-37, 56 N.E.3d 1101, 404 Ill. Dec. 688; *Boyd Elec. v. Dee*, 356 Ill. App. 3d 851, 861-862, 826 N.E.2d 493, 292 Ill. Dec. 352 (1st Dist. 2005); and *St. Elizabeth's Hosp. v. Workers' Comp. Comm'n*, 371 Ill. App. 3d 882, 889, 864 N.E.2d 266, 309 Ill. Dec. 400 (5th Dist. 2007).

The Arbitrator also finds the circumstantial evidence to be compelling. Despite the Petitioner having a degenerative spine condition since at least 2006, she worked full duty and had no treatment for her low back since 2011. After the accident, she was no longer able to do so and was given work restrictions. Her symptoms continued and have not returned to their baseline from before the accident. In addition, Dr. Singh sufficiently explained the bases for his opinions regarding causation in the face of a minimal mechanism of injury, and his opinions deserve greater weight as the Petitioner's treating physician. The Arbitrator also notes that Dr. VanFleet

apparently did not discern the difference between the 2009 and 2021 MRIs that Dr. Singh noted, and he based his opinion, in part, on surveillance that was never introduced as evidence at Arbitration.

Therefore, the Arbitrator finds that the Petitioner has proved by a preponderance of the evidence that her current low-back condition is causally related to the work accident.

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

Upon establishing causal connection and the reasonableness and the necessity of recommended medical treatment, employers are responsible for necessary prospective medical care required by their employees. *Plantation Mfg. Co. v. Indus. Comm'n*, 294 Ill.App.3d 705, 691 N.E.2d. 13 (1997). This includes treatment required to diagnose, relieve, or cure the effects of claimant's injury. *F & B Mfg. Co. v. Indus. Comm'n*, 325 Ill. App. 3d 527, 758 N.E.2d 18 (2001).

The Petitioner has continued to experience pain in her low back and down to her legs. In his report, Dr. VanFleet did not believe the Petitioner was a candidate for fusion surgery because she continued to smoke. In his testimony, he added that fusion was not indicated for back pain because the results are variable, the Petitioner had multilevel disc disease, she had not had a discogram and she had a secondary gain interest. Dr. Singh addressed these issues – except secondary gain – and testified that surgery was indicated because the Petitioner had single-level disease, identifiable nerve root weakness bilaterally, correlating pain complaints and a correlating MRI demonstrating stenosis and narrowing. He did not believe smoking was a significant contraindication because the surgery was not an elective procedure to solely address pain but to also address the neurological deficit. There was no evidence that the Petitioner had any secondary gain interests than any other injured worker would have.

Therefore, the Arbitrator finds that the Petitioner is entitled to prospective medical care, including surgery, as recommended by Dr. Singh. The Respondent shall authorize and pay for such.

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC002549
Case Name	Douglas G Beasley v. Prairie Farms Dairy Inc
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b) Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	24IWCC0158
Number of Pages of Decision	22
Decision Issued By	Stephen Mathis, Commissioner

Petitioner Attorney	Joshua Humbrecht
Respondent Attorney	Matthew Terry

DATE FILED: 4/5/2024

/s/Stephen Mathis, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF JEFFERSON)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Douglas G. Beasley,

Petitioner,

vs. NO. 21WC 002549

Prairie Farms Dairy, Inc.,

Respondent.

DECISION AND OPINION ON REVIEW

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

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed March 6, 2023, is hereby affirmed and adopted.

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

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

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

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

April 5, 2024
SJM/sj
o-3/20/2024
44

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

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

/s/ *Raychel A. Wesley*
Raychel A. Wesley

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC002549
Case Name	Douglas G Beasley v. Prairie Farms Dairy Inc
Consolidated Cases	
Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	19
Decision Issued By	Linda Cantrell, Arbitrator

Petitioner Attorney	Joshua Humbrecht
Respondent Attorney	Matthew Terry

DATE FILED: 3/6/2023

THE INTEREST RATE FOR THE WEEK OF FEBRUARY 28, 2023 4.98%

/s/Linda Cantrell, Arbitrator

Signature

STATE OF ILLINOIS)
)SS.
COUNTY OF JEFFERSON)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

Douglas G. Beasley
Employee/Petitioner

v.

Prairie Farms Dairy, Inc.
Employer/Respondent

Case No. **21-WC-002549**

Consolidated cases:

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Linda J. Cantrell**, Arbitrator of the Commission, in the city of **Mr. Vernon**, on **1/19/23**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On the date of accident, **1/2/21**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned **$64,563.49**; the average weekly wage was $**925.00**.

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

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

Respondent shall be given a credit of $**0** for TTD, $**0** for TPD, $**0** for maintenance, and $**Any and all medical bills paid**, for a total credit of $**Any and all medical bills paid**.

Respondent is entitled to a credit of $**TBD and any and all paid** under Section 8(j) of the Act, pursuant to the stipulation of the parties.

ORDER

Respondent shall pay the medical expenses outlined in Petitioner's Exhibit 5, as provided in Sections 8(a) and 8.2 of the Act, pursuant to the Illinois medical fee schedule. The parties stipulate that Respondent is entitled to a credit for any and all medical expenses paid to date and a credit for any and all medical expenses paid through its group medical plan, pursuant to Section 8(j) of the Act. Respondent shall indemnify and hold Petitioner harmless from any claims arising out of the expenses for which it is entitled to an 8(j) credit.

The Arbitrator further finds Petitioner is entitled to receive the additional care recommended by Dr. Sasso. Therefore, Respondent shall authorize and pay for prospective medical treatment, including, but not limited to, surgical intervention for the conditions of bilateral carpal and cubital tunnel syndrome and right-sided ulnar neuropathy at the elbow, and post-operative treatment until Petitioner reaches maximum medical improvement.

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

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

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

MARCH 6, 2023

Arbitrator Linda J. Cantrell

ICArbDec19(b)

STATE OF ILLINOIS)
) **SS**
COUNTY OF JEFFERSON)

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

DOUGLAS G. BEASLEY,	)	
	)	
Employee/Petitioner,	)	
	)	Case No.: 21-WC-002549
v.	)	
	)	
PRAIRIE FARMS DAIRY, INC.,	)	
	)	
Employer/Respondent.	)	
	)	

FINDINGS OF FACT

This claim came before Arbitrator Linda J. Cantrell for trial in Mt. Vernon on 1/19/23, pursuant to Section 19(b) of the Act. On 2/1/21, Petitioner filed an Application for Adjustment of Claim alleging injuries to his bilateral arms, elbows, hands, and other body parts as a result of repetitive work activities that manifested on 1/2/21. The issues in dispute are accident, causal connection, medical expenses, and prospective medical care.

TESTIMONY

Petitioner was 48 years old, married, with no dependent children at the time of the alleged accident. Petitioner was employed by Respondent for approximately 24 years. He was employed as a lead man at the time of his alleged accident and held that position for 14 to 15 years. Petitioner held a variety of positions prior to becoming a lead man and works overtime which involves working other positions.

Petitioner testified he reported numbness and tingling in his hands on 1/2/21. He was examined by Dr. Atwood on 1/5/21 and reported worsening symptoms for about one year. He testified that in early 2020 he had occasional symptoms when "dragging milk" at work and his symptoms progressively worsened over the course of a year. Petitioner was referred to Dr. Sasso. Petitioner testified he had a history of gout in his right great toe prior to 2021 and Dr. Sasso prescribed him medication on 1/29/21 to control his flare-ups. Approximately two weeks later Dr. Sasso prescribed a different medication for gout that improved his upper extremity symptoms.

Petitioner underwent an EMG/NCS and Dr. Sasso recommended cock-up splints which he wore at nighttime. Petitioner was examined by Dr. Kostman pursuant to Section 12 of the Act on 2/16/22. Petitioner reviewed Dr. Kostman's report and his medical records from 2001 from Dr. Naam that were mentioned in Dr. Kostman's report. Petitioner admitted he had complaints of numbness and tingling in 2001 and wore cock-up splints at that time. He also underwent an EMG/NCS on 9/5/01 and Dr. Naam ordered him to return in eight weeks. Petitioner testified he never returned to Dr. Naam's office because he never had any more trouble. He testified that surgery was never recommended in 2001. Petitioner testified he did not have issues with numbness or tingling again until 2020. Petitioner testified he was not trying to mislead Dr. Kostman about his history, but he did not recall treating with Dr. Naam twenty years ago until he read Dr. Kostman's report. He agreed that the symptoms he had in 2001 are similar to his current symptoms.

Petitioner testified he reviewed the job descriptions provided to Dr. Kostman of lead, picker, and pull off and they contain a generic version of his actual job duties. He testified he has performed these positions over the past 14 years. He stated Dr. Kostman did not review the three job descriptions with him, and Petitioner did not have an opportunity to review Dr. Kostman's job description he wrote of Petitioner's day-to-day job duties. Petitioner testified that Dr. Kostman's report does not provide the weights or volume of milk he dragged, how much pallet work he performed, or the quantity of items he picked or pulled.

Petitioner testified that as a lead man he set up orders for the pickers and trailer man to load the trailers, and he loaded pallets. He serves as a manager over a five-member crew. Petitioner testified he works in a cold environment which is 34 degrees cooler where milk products are stored. His job duties include dragging stacks of milk that weigh up to 230 pounds. The milk crates are stacked six high for a total height of over five feet. Petitioner described the dragging process as gripping the handle on a metal hook that is attached to the bottom of the milk stack, while taking his other hand to balance the stack, and he physically drags it on or off a chain or into a trailer. He testified it takes significant force to pull the stack with the hook. The distance he drags crates ranges from 20 to 50 feet. Petitioner testified that the duration of time he drags milk depends on what position he is working. With some job positions, he drags milk crates the entire shift. When serving as lead man, he drags crates one to three hours per shift.

Petitioner also works with pallets and electric pallet jacks on a daily basis. The pallet jack has a handle he squeezes with a throttle that adjusts with his thumb. On any given day, Petitioner moves 75 to 175 pallets and spends 3 to 4 hours per shift operating a pallet jack. He spends another hour performing computer data entry which transfers orders to pickers' headsets. At the end of his shift, Petitioner spends a half an hour cleaning up his work area, or longer if there is a spill. He uses a water hose and a squeegee to clean. The hose is a little bigger than a garden hose and he has to keep a good hold on it because it is pressurized.

Petitioner testified he typically works overtime on Saturdays and some Sundays. He stated that some overtime is mandatory and some voluntary. During overtime hours, Petitioner works as a picker or on pull off. The pickers work multiple lines of product. They wear a headset that tells them an order and they pick crates full of product and place them on a line to fill the

order. Pickers manually lift and stack six crates high. He stated that some lines require more stacking because the orders require only one or two cases of product, and they have to be stacked on other cases to make them six high. Petitioner testified he lifts/drags the product the entire eight-hour shift.

Petitioner testified that the pull off position requires the use of a metal hook to drag product as it comes down a chain. He drags the product to a designated area. Petitioner testified he performs these duties eight hours per day when working this position. Petitioner has also worked the "unload" position where he unloads product from semi-trailers. He explained that some of Respondent's products are prepared at other facilities and brought to his facility in Olney, Illinois to be distributed. He testified that if the product being unloaded is already in crates, then it is unloaded from the trailer with a pallet jack and then dragged off the pallet and placed onto a chain to be sent to the cooler. Some product has to be placed into cases as it is being unloaded and the cases are then physically stacked and sent to the cooler.

Petitioner testified that all of his job duties irritate his hands at some point. He is right hand dominant and switches the use of his hands because his right hand goes numb. He testified that none of his job duties require the use of vibratory tools, except the pressurized hose he uses during clean up.

Petitioner testified that in 2020 he rode a bicycle to work which is two miles from his home. The ride took eight minutes each way. He denied that he stopped riding his bike in December 2020 because it bothered his hands as Dr. Kostman indicated in his Section 12 report. Petitioner testified he stopped riding it in July 2020 secondary to a family incident. He testified he has never ridden his bike on trails or performed any type of "trail riding" as indicted by Dr. Kostman. Petitioner testified he started riding a bike to lose weight, not for pleasure.

Petitioner has owned two Harley motorcycles in the past five years. His arms are extended straight out in front of his body when he rides. He stated he has always owned motorcycles, except for a 10-year period after his children were born. He currently rides a motorcycle, and he has to stop after an hour because it irritates his symptoms. He agreed that motorcycles generally vibrate quite a bit when riding.

Petitioner testified that his hands are numb, and he drops things because he has no grip. He notices his symptoms are worse in his thumb, index finger, and long finger on both hands. He stated his pinky and ring fingers always feel cold. He stated that his right, dominant hand is worse than his left hand and they both feel numb and swollen. He has a dull aching pain in his elbows. Petitioner testified he feels like his job duties for Respondent are hand and arm intensive. His hands and arms are sore at the end of his shifts. The main activity that bothers him is dragging and pulling off the milk. He raises his hands over his head to try to reduce his symptoms. The numbness and tingling wakes him every two hours every night. His hands go numb while driving and he switches hands on the steering wheel to alleviate his symptoms. Petitioner testified he does not currently wear cock-up splints. He testified there is not a single day in which he does not have numbness and tingling while performing his job duties.

Petitioner testified he did not really recall a work incident in July 2014 where he struck his elbow on the inside of a trailer and underwent an x-ray. He testified he has not had any long-standing issues with his elbow related to that event. He vaguely recalled another incident in June 2015 where a steel bar fell on his wrist, and he underwent an x-ray. Petitioner stated he has not had any long-standing issues with his wrist related to that event.

Petitioner testified he thought his work activities aggravated his upper extremities around December 2020 or January 2021 when he spoke to his supervisor Ron Wilke and requested to be seen by Dr. Atwood.

MEDICAL HISTORY

Medical records that pre-date Petitioner's alleged accident were admitted into evidence. On 8/22/2001, Petitioner presented to the Southern Illinois Hand Center with complaints of hand and wrist pain and radiating pain and numbness in his thumbs over the past 4 to 5 months. (RX2, p. 1-2) He complained of numbness in his thumbs when he wakes, and his hands go numb while driving. He denied any specific trauma or history of similar problems. Dr. Naam noted Petitioner previously underwent injections of the carpal tunnels with steroids on each side by Mr. Eric Bailey at Richland Memorial Hospital, who referred him to Dr. Naam. Petitioner noted some improvement, but reported his symptoms were worse than before. Physical examination revealed strongly positive Tinel's, Phalen's, and median nerve compression tests bilaterally. Dr. Naam diagnosed bilateral carpal tunnel syndrome, worse on the right, and recommended an EMG/NCS and wrist splints. Petitioner was fitted for cock-up splints that day.

On 9/5/2001, Petitioner underwent an EMG/NCS of his bilateral upper extremities that was completely normal. (RX3, p. 1, RX2, p. 5) Dr. Naam recommended continued use of the splints and Vitamin B6. He ordered Petitioner to return in eight weeks.

On 6/15/09, Petitioner presented to Dr. Brian Atwood to follow up on his diagnosis of gout in his right great toe which began three days ago. (RX4, p. 1-2) Dr. Atwood assessed gouty arthropathy and prescribed Indocin.

On 7/8/14, Petitioner presented to Dr. Atwood with left elbow pain as a result of a work-related accident. (RX4, p. 5-6) Dr. Atwood reviewed a left elbow x-ray performed at Richland Memorial Hospital that showed mild osteoarthritic changes.

On 6/22/15, Petitioner presented to Dr. Atwood with right wrist pain as a result of being struck by metal at work. (RX4, p. 7-8). Dr. Atwood noted an x-ray of Petitioner's right wrist performed at Richland Memorial Hospital. Physical examination revealed 5/5 graded muscle strength of the wrist flexors, extensors, pronators, and supinators. Petitioner had full active and passive range of motion. Phalen's, Tinel's, and Finkelstein tests were negative. He was advised to take over-the-counter Tylenol, wear a wrist splint as needed, and return to full duty work.

On 6/7/19, Petitioner presented to Dr. Atwood for a gout flare-up in his right great toe. (RX4, p. 9-10) Dr. Atwood diagnosed idiopathic gout and prescribed Indomethacin.

On 1/5/21, Petitioner presented to Dr. Atwood with complaints of tingling to his bilateral hands up to his elbows that woke him at night. (PX3, p. 3) Petitioner reported his symptoms started about one year ago and was progressively worsening. He described a numbness in his fingers and pain in his wrists and elbows. Physical examination was positive for 3/5 muscular strength to his thumb abductors and 3/5 thumb-little finger opposors. Dr. Atwood assessed bilateral carpal tunnel syndrome and lesion of the ulnar nerve. He referred Petitioner to Dr. Sasso at the Southern Illinois Hand Center.

On 1/25/21, Petitioner was examined by Dr. Lisa Sasso. (PX2) He reported complaints of right greater than left hand pain and numbness, and bilateral elbow pain. He filled out a questionnaire stating he had symptoms in all five fingers that woke him at night, and he dropped things as he had no grip. (PX2, p. 35) Petitioner reported his symptoms had been going on for over a year and felt they occurred from work. He described his duties of setting up orders for pickers, loading pallets, and dragging milk. (PX2, p. 36-41) Petitioner reported symptoms with driving and during sleep. He felt as though something was poking his fingers and they were cold. Dr. Sasso noted Petitioner's 2001 evaluation with Dr. Naam and the normal findings on his EMG/NCS. Physical examination revealed decreased sensation on the right compared to the left, positive Tinel's on the right and negative on the left, and a positive median compression and Phalen's test of the left wrist, and negative on the right. He had bilateral Tinel's at his elbows bilaterally, with negative elbow flexion. Dr. Sasso assessed "possible gout" and bilateral carpal and cubital tunnel syndrome. She ordered cock-up splints, uric acid check to assess gout, and an EMG/NCS. The splints were fabricated that day. (PX2, p. 21)

On 1/27/21, Petitioner underwent an EMG/NCS that revealed possible mild right superficial sensory neuropathy, possible minimal right ulnar neuropathy at the elbow, and mild bilateral ulnar neuropathy at the wrist. The interpreter noted Petitioner's right ulnar inching motor study showed focal slowing across his elbow. (PX3, p. 26) The interpreter also performed a brief neurological examination that showed no focal weakness or atrophy of muscles or fasciculation of either upper extremity.

On 1/29/21, Petitioner returned to Dr. Sasso and examination revealed negative Tinel's, median compression, and Phalen's testing of the wrists, with a negative Tinel's and elbow flexion test. Dr. Sasso noted the EMG/NCS showed possible mild right radial sensory neuropathy, possible minimal right ulnar neuropathy at the elbow, and possible right bilateral ulnar neuropathy at his wrist. His lab results confirmed a high uric acid level. Dr. Sasso assessed bilateral carpal and ulnar tunnel syndrome and possible cubital tunnel syndrome. Petitioner was prescribed medication for gout to see if that was causing his symptoms; however, Dr. Sasso suspected carpal tunnel syndrome due to the symptoms in Petitioner's radial three digits. Dr. Sasso noted Petitioner did not have symptoms in his ulnar distribution.

On 2/11/21, Petitioner reported to Dr. Sasso his hands felt worse and were still numb. He stated that his radial three digits felt dead, and he had tingling in his two ulnar digits. He had a negative Tinel's, median compression, and Phalen's test at the wrist and slightly positive Tinel's and flexion test of the elbows. Dr. Sasso thought gout was the main issue and she changed his

gout medication. Dr. Sasso diagnosed gout of Petitioner's bilateral hands, early carpal tunnel syndrome, ulnar tunnel syndrome, and cubital tunnel bilaterally.

On 2/25/21, Petitioner reported his hand pain was much better with the gout medication, but he continued to have numbness and tingling, worse on the right, with numbness in his thumb, index, and long fingers. He also had tingling in his small fingers with cramping. Examination revealed positive Tinel's at his left elbow and negative on the right, and positive elbow flexion test bilaterally. Dr. Sasso noted his pain was better secondary to the treatment of gout and she recommended moving forward with bilateral carpal and cubital tunnel releases, which would include the ulnar tunnel being released at the wrist.

On 4/14/21, Dr. Sasso authored a letter to Petitioner's counsel addressing her treatment, diagnosis, and causal connection. Dr. Sasso stated Petitioner had decreased grip and numbness and tingling. The EMG showed mild right superficial radial sensory neuropathy. Based on the EMG, Petitioner's subjective complaints, and her examination, she diagnosed Petitioner with right carpal tunnel syndrome, ulnar tunnel syndrome, and cubital tunnel syndrome. She opined that Petitioner failed conservative treatment and required bilateral carpal and cubital tunnel releases. She noted Petitioner has worked for Respondent for 22 years, with the last 12 years working in the "cooler" position. She stated Petitioner lifts milk crates all day, most of the time manually, and the crates are very heavy. He manually drags six crates almost 200 pounds to trailers. He works 5:30 to 2:30, five days per week. Dr. Sasso opined that the amount of heavy lifting and gripping Petitioner does on a continuous daily basis caused or at least contributed to his symptoms and diagnoses. (PX2, p. 10-11)

Dr. Lisa Sasso testified by way of deposition on 1/31/22. (PX1) Dr. Sasso is a board-certified, fellowship trained hand and arm specialist. He explained that Petitioner's inching study as a component of the EMG/NCS had a reading at one-half velocity as the other segments of his right ulnar nerve, which led to the interpreter Dr. Nemani's impression of possible minimal ulnar neuropathy at the elbow. The finding of right superficial sensory nerve was in Dr. Sasso's opinion an incidental finding and did not correlate with Petitioner's subjective complaints. In regard to the findings on EMG/NCS of mild bilateral ulnar neuropathy at the wrist, Dr. Sasso noted that was consistent with the ulnar nerve distribution to Petitioner's pinky and ring finger. It was noted that the study was negative for median nerve irregularities. Dr. Sasso explained she does have patients that present with signs and symptoms of carpal tunnel on exam, but that due to the sensitivity of the EMG/NCS, those studies have a false negative/false positive rate of 75%, or 1 out of 4 being a false negative or positive. Dr. Sasso explained that Petitioner's subjective complaints associated with his ring and pinky fingers were supported objectively by the EMG/NCS.

Dr. Sasso testified that Petitioner's subjective complaints of radial (median nerve) complaints have remained constant. She had objective indication through EMG/NCS that Petitioner had ulnar symptoms and accordingly, recommended releases of Petitioner's bilateral carpal tunnels, which would include releases of his ulnar nerve at the wrist and cubital tunnel releases at his elbow. Dr. Sasso testified that prolonged exposure to cold is a risk factor for peripheral compression. She was not sure what duration was necessary to create such risk. Dr.

Sasso understood that Petitioner had been working in the cooler for Respondent for a prolonged period of time. She believed that Petitioner's job duties of heavy repetitive lifting contributed to cause his carpal and cubital tunnel syndrome and need for surgical intervention.

She felt that Petitioner's early assessment of gout contributed to his changing examinations. When she was able to get the gout under control and his pain improved, he was still suffering from the sensory component. Given his subjective complaints, clinical findings, objective evidence from the EMG/NCS, and physical examination, Dr. Sasso opined Petitioner was suffering from bilateral carpal and cubital tunnel syndrome. Dr. Sasso testified she reviewed Petitioner's prior records from Dr. Naan and the negative EMG/NCS performed in 2001. She testified that Petitioner could have had carpal tunnel syndrome in 2001 and it resolved following conservative treatment. She testified that Petitioner obviously exacerbated his symptoms, and his condition has progressed as a result of his heavy, repetitive work activities and possibly outside activities.

Dr. Sasso testified that her causation opinions are based on the work activities described to her by Petitioner and she has not reviewed a written job description. She agreed that if Petitioner's job duty description was inaccurate it would change her opinion. She agreed that Petitioner's job duties did not involve driving. She testified that Petitioner repetitively lifted heavy milk crates at work. She did not know what percentage of time the crates were moved manually or with a machine. She did not know how Petitioner physically lifted or moved the milk crates. She did not know how many hours per shift Petitioner lifted the crates or what force was required. Dr. Sasso did not know what flexion Petitioner used in lifting the milk crates. She testified that heavy lifting is considered lifting over ten pounds. She agreed that a body mass index at or above 30 is considered obese, which is a risk factor for developing carpal, ulnar, and cubital tunnel syndrome. She confirmed that Petitioner was 6'3" tall and weighed 280 pounds in January 2021, with a BMI of 35. Dr. Sasso testified that smoking and gout are risk factors for developing all three conditions. Petitioner was a current smoker. She testified that gout is an inflammatory condition and causes compression. She stated that if the inflammatory condition is resolved and a person still has paresthesias, then it is not gout that is causing the symptoms. She stated that Petitioner's pain decreased with the gout medication, but he continued to have the sensory component.

Dr. Sasso agreed that not all of her objective findings correlated with Petitioner's subjective complaints on 1/25/21 because she found decreased sensation in all of the fingers on his right side compared to the left, but Petitioner complained of some parethesias in all of the fingers in his left hand. She testified that approximately 20% of the time an EMG/NCS does not correlate with clinical findings. She agreed that her examination of Petitioner's wrists and elbows on 1/29/21 was pretty normal.

Dr. Sasso testified that Petitioner's labs showed he definitely had gout. She testified that elevated uric acid could cause pain similar to what Petitioner described in his upper extremities. She agreed she was not completely sure Petitioner had carpal, ulnar, and cubital issues when she examined him on 1/29/21. She testified that on 2/11/21, examination showed Petitioner had slight positive bilateral Tinel's and elbow flexion, with normal examination of the wrists. On

2/25/21, examination of the wrists was again normal, he had a negative Tinel's on the left which was changed from the last exam, a positive Tinel's on the right, and bilateral positive elbow flexion tests. Dr. Sasso has not seen Petitioner since 2/25/21.

Dr. Sasso testified that although the objective-subjective complaints do not line up perfectly and the EMG/NCS was negative with an 80% accuracy rate, she continued to recommend surgical releases based on Petitioner's subjective complaints and examination findings over multiple visits. She stated that Petitioner has subjective and objective evidence of right cubital tunnel syndrome.

Dr. William Kostman testified by way of deposition on 2/16/22. (RX1) Dr. Kostman is a board-certified orthopedic surgeon. He examined Petitioner on 5/9/21 pursuant to Section 12 of the Act. (RX1, Ex. 2) Dr. Kostman testified that Petitioner denied any symptoms or evaluations prior to November 2020. His examination revealed a positive Tinel's over the bilateral wrists, tenderness to palpation at the wrists, subjective decreased sensation of the thumb, index, and long fingers bilaterally, and increased symptoms of tingling with wrist flexion. He testified that Petitioner had subjective findings consistent with bilateral carpal tunnel syndrome. Examination showed some sensitivity over the ulnar nerve bilaterally and joint space of the elbow. He had no findings distally that were consistent with ulnar nerve entrapment, with some sensitivity with Tinel's.

Dr. Kostman ordered x-rays that revealed degenerative changes of Petitioner's bilateral elbows, wrists, and hands. Dr. Kostman testified that the EMG/NCS dated 1/27/21 described mild superficial radial sensory neuropathy, possible minimal right ulnar neuropathy at the elbow, and possibly mild bilateral ulnar neuropathy at the wrist. Dr. Kostman testified that Petitioner's subjective complaints were median nerve in nature, but the EMG/NCS did not show slowing for the median nerve. He testified that the EMG/NCS mentioned very mild radial sensory neuropathy, but Petitioner did not exhibit numbness in the radial sensory nerve and did not have symptoms consistent with ulnar neuropathy of the wrist. Dr. Kostman testified that the focal slowing across the elbow was insignificant as Petitioner did not have any motor weakness or distribution of numbness in the ulnar nerve distribution, which related to cubital tunnel syndrome.

Dr. Kostman testified that smoking, obesity, gout, and bicycle and motorcycle riding can be risk factors for the development of carpal, ulnar, and cubital tunnel syndrome in and of itself. He testified that leaning forward and gripping standard handlebars on a bicycle can cause symptoms. He testified that extreme cold exposure that damages tissue can exacerbate symptoms, but he has never seen cold exposure as a primary cause of the conditions.

Dr. Kostman believed Petitioner's symptoms are consistent with mild bilateral carpal tunnel syndrome and bilateral elbow and hand arthritis which may be related to his gout due to calcification and ossification evidenced by x-ray. Dr. Kostman testified that Petitioner has a long history of hand numbness and pain with possible carpal tunnel syndrome dating back to 2001. He believes that Petitioner's condition is idiopathic. He testified that Petitioner does heavy lifting and pulling activities at work, but he does not use vibratory machines. He opined that

Petitioner's work activities did not cause or exacerbate his carpal tunnel or elbow conditions. Dr. Kostman found the EMG/NCS demonstrated possible minimal right ulnar neuropathy at the elbow and possible mild bilateral ulnar neuropathy at the wrist, and he does not believe Petitioner is diagnostic of either condition. He testified that Petitioner does not require treatment for his elbows as he has bilateral degenerative arthritis of the elbows without clear evidence of sensory or motor involvement.

Dr. Kostman testified that both nerve conduction studies were negative for carpal tunnel syndrome for which Petitioner has had symptoms since 2001 with minimal benefit from conservative treatment. Dr. Kostman testified that Petitioner may proceed with carpal tunnel releases despite the negative studies.

Dr. Kostman testified he did not know who created the job duty description he reviewed, and he did not review it with Petitioner for accuracy. He agrees that Petitioner performs heavy lifting and significant pulling activities at work. He testified he has seen the hook that Petitioner uses to drag milk crates. He understood that Petitioner pulled the crates by gripping the handle on the hook and used his other hand to steady or grab the tower of crates. He testified that this gripping is different that gripping handlebars on a bicycle. He explained that with bicycle riding, a person's weight is shifted forward and compresses the carpal tunnel in a constant position and compression. He understood that Petitioner rode his bicycle to and from work, two miles each way. He testified that Petitioner last rode his bicycle in December 2020 and stopped because of his hands. He stated that Petitioner told him he rode bike trails occasionally on the weekends which aggravated his symptoms.

Petitioner reported to Dr. Kostman he operated a pallet jack five hours per day and dragged milk two hours per day. Dr. Kostman understood the pallet jack was electric and a walk-behind. Petitioner reported he lifted crates of milk that weighed 30 to 39 pounds. Dr. Kostman did not know how long or the specifics of repetitive lifting of smaller product that Petitioner performed. He did not believe that repetitive flexion of the elbow under weight or strain is an independent causative factor of cubital tunnel syndrome. He testified that heavy repetitive lifting can contribute to symptoms of carpal tunnel syndrome, but not cubital tunnel syndrome. He testified he did not believe Petitioner's work activities caused Petitioner's carpal tunnel condition because he had symptoms since 2001, performed outside activities, and had risk factors, but stated an environment where he does a lot of heavy grasping and lifting can bring about some symptoms.

He testified that Petitioner's symptoms and clinical findings do not match the EMG findings of mild right-sided cubital tunnel syndrome. He testified he does not review EMG studies, but only the report, and EMGs are variable depending on the equipment, room temperatures, normal values, etc. He agreed the interpreter of the EMG study found some mild nerve compression with slowing on a portion of the cubital tunnel on the right and mild bilateral ulnar neuropathy of the wrist, which would produce symptoms in the pinky and ring fingers. He agreed that Petitioner's office visit of 1/5/21 reflects complaints in his first, fourth, and fifth fingers in his left hand which is consistent with ulnar nerve pathology. He agreed that at Petitioner's first medical visit he complained of symptoms that were consistent with the EMG

findings of some mild ulnar compression at the wrist and elbow on the right. Dr. Kostman testified that Petitioner described some sensitivity of the ulnar nerve with Tinel's testing, but he did not have reproduction of symptoms and he did not complain of distal numbness. He agreed Petitioner complained of distribution that followed the median nerve bilaterally. Dr. Kostman's clinical exam revealed positive Tinel's and Phalen's testing and reduced light and sharp touch.

Dr. Kostman testified that Petitioner's first EMG in 2001 did not demonstrate any ulnar nerve involvement. He testified that if the mild conduction velocity discrepancies on the 2021 EMG study is truly related to the ulnar nerve, he would agree that it is a new finding, but he did not believe it is consistent. He testified he had no evidence that Petitioner had symptoms after he treated conservatively in 2001 until 2020. He did not believe Petitioner was credible because he did not recall or disclose that he had similar symptoms twenty years ago and had an EMG and injections. He testified that typically there is atrophy if a person has long-standing severe carpal tunnel syndrome that is diagnosed by EMG and goes untreated. He stated Petitioner did not have evidence of atrophy when he examined him.

Dr. Kostman testified that a patient such as Petitioner who has numbness and tingling that affects every aspect of his life, a negative EMG/NCS, and a positive clinical examination, it would not be unreasonable for him to elect to have surgery. He testified that in his examination he did not find anything specifically unreliable.

CONCLUSIONS OF LAW

ISSUE (C): Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
ISSUE (F): Is Petitioner's current condition of ill-being causally related to the injury?

In a repetitive trauma case, issues of accident and causation are intertwined. *Elizabeth Boettcher v. Spectrum Property Group and First Merit Venture*, 99 I.I.C. 0961. In order to better define "repetitive trauma" the Commission has stated: "The term "repetitive trauma" should not be measured by the frequency and duration of a single work activity, but by the totality of work activity that requires a specific movement that is associated with the development of a condition. Thus, the variance in job duties is not as important as the specific flexion and vibratory movements requisite in Petitioner's job." *Craig Briley v. Pinckneyville Corr. Ctr.,* 13 I.W.C.C. 0519 (2013).

"[I]n no way can quantitative proof be held as the *sine qua non* of repetitive trauma cases." *Christopher Parker v. IDOT*, 15 I.W.C.C. 0302 (2015). The Appellate Court's decision in *Edward Hines Precision Components v. Indus. Comm'n* further highlights that there is no standard threshold which a claimant must meet in order for his or her job to classify as sufficiently "repetitive" to establish causal connection. *Edward Hines*, 365 Ill.App.3d 186, 825 N.E.2d 773, 292 Ill.Dec. 185 (Ill.App.2d Dist. 2005). In fact, the Court expressly stated, "There is no legal requirement that a certain percentage of the workday be spent on a task in order to support a finding of repetitive trauma." *Id.* at N.E.2d 780. Similarly, the Commission noted

in *Dorhesca Ranclell v. St. Alexius Medical Center*, 13 I.W.C.C. 0135 (2013), a claimant must show that work activities are a cause of his or her condition; the claimant does not have to establish that the work activities are the sole or primary cause, and there is no requirement that a claimant must spend a certain amount of time each day on a specific task before a finding of repetitive trauma can be made. *Randell* citing *All Steel, Inc. v. Indus. Comm'n*, 582 N.E.2d 240 (1991) and *Edward Hines, supra.*

The Appellate Court in *Darling v. Indus. Comm'n* held that quantitative evidence of the exact nature of repetitive work duties is not required to establish repetitive trauma injury in reversing a denial of benefits, stating that demanding such evidence was improper. *Darling v. Industrial Comm'n*, 530 N.E.2d 1135, 1142 (1st Dist. 1988). The Appellate Court found that requiring specific quantitative evidence of amount, time, duration, exposure, or "dosage", would expand the requirements for proving causal connection by demanding more specific proof requirements, and the Appellate Court refused to do so. *Id.* at 1143. The Court further noted, "To demand proof of 'the effort required' or the 'exertion needed' . . . would be meaningless" in a case where such evidence is neither dispositive nor the basis of the claim of repetitive trauma." *Id.* at 1142. Additionally, the Court noted that such information "*may*" carry great weight "only where the work duty complained of is a common movement made by the general public. *Id. at 1142.* The evidence shows that Petitioner's job duties involve the performance of tasks distinctly related to his employment for Respondent, many of which are not activities that are even performed by the general public, let alone ones to which the public would be equally exposed.

In *City of Springfield v. Illinois Workers' Comp. Comm'n*, the Appellate Court issued a favorable decision in a repetitive case to a claimant in which the claimant's work was "varied" but also "repetitive" or "intensive" in that he used his hands, albeit for different task, for at least five hours out of an eight hour work day. *City of Springfield v. Illinois Workers' Comp. Comm'n*, 901 N.E. 2d 1066, (Ill. App. 4th Dist., 2009). As was noted by the Commission and reiterated in the Appellate Court decision in the *City of Springfield,* "while [claimant's] duties may not have been 'repetitive' in a sense that the same thing was done over and over again as on an assembly line, the Commission finds that his duties required an intensive use of his hands and arms and his injuries were certainly cumulative." *Id.*

Under Illinois law an injury need not be the sole factor, or even the primary factor of an injury, as long as it is **a** causative factor. *Sisbro, Inc. v. Indus. Comm'n*, 207 Ill.2d 193, 205 (Ill. 2003) [Emphasis added]. Even when other non-occupational factors contribute to the condition of ill-being, "[*A*] Petitioner need only show that some act or phase of the employment was a causative factor of the resulting injury." *Fierke v. Indus. Comm'n*, 309 Ill.App.3d 1037 (3rd Dist. 2000). Allowing a claimant to recover under such circumstances is a corollary of the principle that employment need not be the sole or primary cause of a claimant's condition. *Land & Lakes Co. v. Indus. Comm'n*, 834 N.E.2d 583 (2d Dist. 2005). Employers are to take their employees as they find them. *A.C. & S. v. Industrial Comm'n*, 710 N.E.2d 837 (Ill. App. 1 Dist. 1999), citing *General Electric Co. v. Industrial Comm'n*, 433 N.E.2d 671, 672 (1982). The Supreme Court in *Durand v. Indus. Comm'n* noted that the purpose of the Illinois Workers' Compensation Act is best served by allowing compensation where an injury is gradual but linked to the employee's work. *Durand v. Indus. Comm'n*, 862 N.E.2d 918, 925 (Ill. 2006).

The Commission has also recognized that a claimant's employment may not be the only factor in his or her development of a condition of ill-being. The Commission awarded benefits in a case where the claimant was involved in martial arts activity outside of his employment (*see Samuel Burns v. Pinckneyville Corr. Ctr.*, 14 0482 (2014)), and in another case where the claimant was involved in weight-lifting outside of his employment. *See* Kent Brookman v. State of Illinois/Menard Corr. Ctr., 15 I.W.C.C. 0707 (2015). In the repetitive trauma case of *Fierke*, the Appellate Court specifically held that non-employment related factors that contribute to a compensable injury do not break the causal connection between the employment and a claimant's condition of ill-being. *Id.* at N.E.2d at 849. The Court stated, "The fact that other incidents, whether work related or not, may have aggravated a claimant's condition is irrelevant" *Id.*

Dr. Kostman testified he did not review the job descriptions he received with Petitioner for accuracy. He noted Petitioner's lead job description as "Lead on feet the entire shift, has to drag some stacks of milk. Stacks of milk he drags can weight up to 230 pounds. Stack of cases is about 66 inches tall, has to stack some cases on top of other cases. Cases of milk weighs 38 pounds. He operates an electric pallet jack. He does bending and twisting when stacking and dragging milk." Dr. Kostman described Petitioner's picker job as, "Picker. He picks orders. He is on his feet the whole shift except on a break. He drags stacks of milk that weigh up to 230 pounds. He has to drag stacks up to 30 feet. He has to walk backwards when dragging milk. He stacks up cases that weigh 38 pounds. He does some bending and twisting when dragging stacks and stacking up." Dr. Kostman described Petitioner's pull off job as, "Pull off. He is on his feet standing or dragging milk the entire shift. He stacks milk that he drags can weight up to 230 pounds, a stack of cases about 66 inches tall. He does stack some cases on top of other cases. A case of milk weighs 38 pounds." Dr. Kostman indicated that Petitioner believed his symptoms related to his work activities and described loading and unloading trailers, using pallet jacks, computer work, dragging 200 pounds of milk six crates high. He performs these duties 8 hours per day, 5 days per week. He estimated out of an 8-hour day he drags for two hours, operates a pallet jack for five hours, and performs one hour of computer work. He has been employed by Respondent for 23 years and has performed the above job duties for 12 years.

Respondent offered the job descriptions of lead, picker, and pull off into evidence. (RX6) It is not clear if these job descriptions are the same descriptions reviewed by Dr. Kostman but they are consistent with his summaries. Petitioner testified he reviewed the job descriptions provided to Dr. Kostman and stated they are a generic version of his job duties. He did not review the job descriptions with Dr. Kostman. Petitioner provided credible and unrebutted testimony as to his work activities. He described the process of dragging milk crates by gripping the handle of a metal hook that is attached to the bottom of the stack, while taking his other hand to balance the stack, and dragging it on or off a chain or into a trailer. The milk stacks weigh up to 230 pounds and are dragged 20 to 50 feet. Petitioner testified it takes significant force to pull the stacks with the hook. Petitioner testified that the duration of time he drags milk depends on what position he is working. He can drag milk the entire shift or one to three hours per shift.

Petitioner described having to squeeze the handle on the pallet jack and adjust the throttle with his thumb. He operates a pallet jack on a daily basis and moves 75 to 175 pallets for 3 to 4

hours per shift. Petitioner uses a water hose at the end of every shift to clean his work area. He testified that the hose is pressurized, and he uses both hands to keep a good hold on it. Petitioner testified he typically works overtime on Saturdays and some Sundays. Throughout the week he is a leadman, and usually works as a picker or pull off on the weekends. As a picker, Petitioner pulls and drags crates onto a line and stacks the crates six high for the entire 8-hour shift. When performing the pull off position, he uses a metal hook to drag the product as it comes down the line for an 8-hour period.

Petitioner testified that all of his job duties irritate his hands and his hands and arms are sore at the end of his shifts. The main activity that bothers him is dragging and pulling off the milk. He switches the use of his hands while working to alleviate his symptoms. The Arbitrator finds that the frequency of Petitioner's physical upper extremity activities, the nature of his work, the weights involved, and the duration of his day-to-day activities, support, at a minimum, that his work activities have contributed to cause his current upper extremity conditions.

Drs. Sasso and Kostman agree that Petitioner lifts, pulls, drags, and does hand and arm intensive work. The Arbitrator is not persuaded by Dr. Kostman's opinion that the manifestation of Petitioner's carpal tunnel syndrome is potentially related to his bicycle or motorcycle riding and not his work activities. Petitioner testified that up until July 2020, he rode a bicycle to and from work to lose weight. He rode two miles or approximately eight minutes each way. Petitioner testified that he stopped riding due to a family incident and it had nothing to do with his hand symptoms. He denied telling Dr. Kostman or ever having engaged in trail riding. The Arbitrator does not find Petitioner's history of riding a bicycle four miles or 16 minutes a day comparable to the significant upper extremity intensive work he performed for Respondent for at least 12 years. If Petitioner dragged a minimum of 100 stacks of milk crates a day for a minimum of 30 feet per stack, he is dragging in excess of 200 pounds over a half mile every workday, all while squeezing a metal hook attached to the base of the stacks. Some days Petitioner drags the milk stacks the entire 8-hour shift. It is unrebutted that Petitioner's job duties over the past 12 years involve forceful and repetitive gripping, grasping, and lifting.

Dr. Atwood, Dr. Sasso, and Dr. Kostman all had positive clinical examinations that identified Petitioner was suffering from bilateral carpal tunnel syndrome. Dr. Kostman did not believe Petitioner's work activities caused his carpal tunnel conditions because he had symptoms since 2001, performed outside activities, and had risk factors, but stated an environment where he does a lot of heavy grasping and lifting can bring about some symptoms. Despite causation, Dr. Kostman testified that a patient such as Petitioner who has numbness and tingling that affects every aspect of his life, a negative EMG/NCS, and a positive clinical examination, it would not be unreasonable for him to elect to have surgery. He testified that in his examination of Petitioner he did not find anything specifically unreliable.

With respect to Petitioner's elbow conditions, Dr. Kostman testified that Petitioner's symptoms and clinical findings do not match the EMG findings of mild right-sided cubital tunnel syndrome. He testified he does not review EMG studies, but only the reports, and EMGs are variable depending on the equipment, room temperatures, normal values, etc. He agreed the interpreter of the 2021 EMG/NCS found some mild nerve compression with slowing on a portion

of the cubital tunnel on the right and mild bilateral ulnar neuropathy of the wrist, which would produce symptoms in the pinky and ring fingers. He agreed that Petitioner's office visit of 1/5/21 reflects complaints in his first, fourth, and fifth fingers in his left hand which is consistent with ulnar nerve pathology. He agreed that at Petitioner's first medical visit he complained of symptoms that were consistent with the EMG findings of some mild ulnar compression at the wrist and elbow on the right. Dr. Kostman testified that Petitioner described some sensitivity of the ulnar nerve with Tinel's testing, but he did not have reproduction of symptoms and he did not complain of distal numbness. He agreed Petitioner complained of distribution that followed the median nerve bilaterally. Dr. Kostman's clinical exam revealed positive Tinel's and Phalen's testing and reduced light and sharp touch.

Dr. Kostman agreed that Petitioner's first EMG in 2001 did not demonstrate any ulnar nerve involvement. He testified that if the mild conduction velocity discrepancies on the 2021 EMG study is truly related to the ulnar nerve, he would agree that it is a new finding, but he did not believe it is consistent. He testified he had no evidence that Petitioner had symptoms after he treated conservatively in 2001 until 2020. He testified that typically there is atrophy if a person has long-standing severe carpal tunnel syndrome that is diagnosed by EMG and goes untreated. He found no evidence of atrophy when he examined Petitioner.

Petitioner's 2021 EMG/NCS was positive for possible mild bilateral ulnar neuropathy at the wrist. Dr. Sasso explained that compression of the ulnar nerve at the wrist invokes the nerve distribution to the ring and pinky fingers. From the start of his care, Petitioner has had subjective and objective pathology along his ulnar never distribution. The EMG/NCS objectively supports his subjective complaints associated with his ring and pinky fingers. As to his ulnar nerve compression at his elbows, the EMG/NCS indicated possible minimal right ulnar neuropathy at his right elbow and no findings referrable to his left elbow. Petitioner had positive clinic examinations involving elbow flexion and Tinel's testing at his elbows. Subjectively, Petitioner's complaints into his ulnar distribution and clinical examinations by Dr. Sasso and Dr. Kostman have been positive for right-sided ulnar neuropathy at the elbow.

Based on the testimony and objective medical evidence, the Arbitrator finds that Petitioner sustained accidental injuries that arose out of and in the course of his employment with Respondent and that his current conditions of ill-being, namely bilateral carpal and cubital tunnel syndrome, and right-sided ulnar neuropathy at the elbow, are causally connected to his work injuries that manifested on 1/2/21.

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

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

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

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

Based upon the above findings as to accident and causal connection, the Arbitrator finds that the care and treatment Petitioner received has been reasonable and necessary which is supported by the testimony of Dr. Sasso and Dr. Kostman. Despite Dr. Kostman's causation opinion, he opined that Petitioner may elect to have bilateral carpal tunnel releases. Respondent shall therefore pay the medical expenses outlined in Petitioner's Exhibit 5, as provided in Sections 8(a) and 8.2 of the Act, pursuant to the Illinois medical fee schedule. The parties stipulate that Respondent is entitled to a credit for any and all medical expenses paid to date and any and all medical expenses paid through its group medical plan, pursuant to Section 8(j) of the Act. Respondent shall indemnify and hold Petitioner harmless from any claims arising out of the expenses for which it is entitled to an 8(j) credit.

The Arbitrator further finds Petitioner is entitled to receive the additional care recommended by Dr. Sasso. Therefore, Respondent shall authorize and pay for prospective medical treatment, including, but not limited to, surgical intervention for the conditions of bilateral carpal and cubital tunnel syndrome, and right-sided ulnar neuropathy at the elbow, and post-operative treatment until Petitioner reaches maximum medical improvement.

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

Arbitrator Linda J. Cantrell DATE

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	19WC033110
Case Name	Ciro Servin Cabrera v. Source One Staffing and Greco & Sons Inc.
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b) Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	24IWCC0159
Number of Pages of Decision	30
Decision Issued By	Deborah Simpson, Commissioner

Petitioner Attorney	John Castaneda
Respondent Attorney	Joseph R. Needham

DATE FILED: 4/8/2024

/s/ Deborah Simpson, Commissioner

Signature

THE INTEREST RATE FOR THE WEEK OF APRIL 2, 2024 5.125%

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

CIRO SERVIN CABRERA,

Petitioner,

vs. NO: 19 WC 33110

SOURCE ONE STAFFING,

Respondent.

DECISION AND OPINION ON REVIEW

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

Petitioner testified he was injured on October 11, 2019 when he was standing on pallets when a forklift crashed into the pallets causing him to fall. The Arbitrator found accident and causation and awarded him 185 weeks of TTD, medical expenses submitted into evidence ($9,665.92), and ordered Respondent to authorize and pay for prospective treatment recommended by Dr. Ross including cervical spine surgery. The Commission agrees with the reasoning of the Arbitrator on the issues of accident, causation, and medical expenses both current and prospective. Therefore, the Commission affirms and adopts those aspects of the Decision of the Arbitrator.

We agree with the Arbitrator that overtime should be included in the calculation of Petitioner's average weekly wage ("AWW"). Petitioner testified that he worked more than 40 hours a week and it was obligatory to stay until all orders were filled. Respondent provided no evidence to rebut Petitioner's testimony. The Arbitrator calculated Petitioner's AWW to be 768.13. She noted that during a portion of the period he earned $11.33 an hour and during other times $11.83. She noted that of the 52 weeks period prior to the accident, Petitioner worked overtime for all but three weeks. She concluded that overtime "hours shall be included at straight time pay for purposes of calculative" AWW. However, in her calculation, she appears to multiply overtime hours worked by 1.5 to arrive at the number of overtime worked.

While overtime should be included, it should be included at the regular rate of pay rather than the time and a half at which the employee is actually paid. By multiplying the overtime hours by 1.5, the Arbitrator inadvertently increased hours of overtime in the calculations of his average weekly wage. In looking at the calculations of the Arbitrator, the Commission concludes that the actual annual income from which we derive the AWW should be $36,067.50 rather than $39,942.72 as determined by the Arbitrator. Therefore, the Commission calculates Petitioner's average weekly wage to be $693.61

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed August 1, 2023 is hereby modified as specified above and otherwise affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay all reasonable and necessary medical bills presented in PX10 pursuant to §8(a), subject to the applicable medical fee schedule in §8.2, of the Act.

IT IS FURTHER ORDERED BY THE COMMISISON that Respondent authorize and pay for prospective medical treatment, including surgery, recommended by Dr. Matthew Ross, pursuant to §8(a), and subject to the applicable medical fees schedule pursuant to §8.2, of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay Petitioner $462.41 per week for 185 weeks from 11/4/19 through 5/25/13, 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 Commission remands this case to the Arbitrator for further proceedings for a determination of a further amount of temporary total compensation or of compensation for permanent disability, if any, pursuant to *Thomas v. Industrial Commission*, 78 Ill.2d 327, 399 N.E.2d 1322, 35 Ill.Dec. 794 (1980).

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

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

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

April 8, 2024
O-2/7/24
DLS/dw
046

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

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

/s/*Marc Parker*
Marc Parker

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	19WC033110
Case Name	Ciro Servin Cabrera v. Source One Staffing and Greco & Sons Inc.
Consolidated Cases	
Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	26
Decision Issued By	Nina Mariano, Arbitrator

Petitioner Attorney	John Castaneda
Respondent Attorney	Joseph R. Needham

DATE FILED: 8/1/2023

THE INTEREST RATE FOR THE WEEK OF AAUGUST 1, 2023 5.27%

/s/Nina Mariano, Arbitrator

Signature

STATE OF ILLINOIS)
)SS.
COUNTY OF COOK)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

Ciro Servin Cabrera
Employee/Petitioner

v.

Source One Staffing and Greco & Sons Inc.
Employer/Respondent

Case # 19 WC 033110

Consolidated cases:

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable Nina Mariano, Arbitrator of the Commission, in the city of CHICAGO, on MAY 25, 2023. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On the date of accident, October 14, 2019, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $39,942.76; the average weekly wage was $768.13.

On the date of accident, Petitioner was 64 years of age, single, with no 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 $2,982.05 for TTD, $0 for TPD, $0 for maintenance, and $0 for other benefits, for a total credit of $2,982.05.

ORDER

Respondent shall pay reasonable and necessary medical services, pursuant to the medical fee schedule, of $677.98 to Midwest Neurosurgery, $3,336.23 to Team Rehabilitation, $3,025.57 to Hinsdale Orthopaedics/Illinois Bone and Joint, $1,316.54 to American Diagnostic, $37.77 to Associated Imaging Specialists, $132.14 to Physicians Immediate Care, $565.52 to CEP America and $574.17 to IWP, as provided in Sections 8(a) and 8.2 of the Act.

Respondent shall pay Petitioner temporary total disability benefits of $512.09/week for 185 weeks, commencing 11/4/2019 through 5/25/2023, as provided in Section 8(b) of the Act.

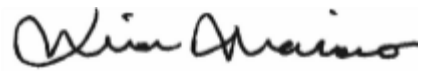
Respondent shall authorize and pay for all reasonable, necessary and related hospital, surgical, therapeutic and other medical expenses for surgical procedures performed by Dr. Matthew Ross to the petitioner’s cervical spine.

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

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

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

AUGUST 1, 2023



Signature of Arbitrator

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

ILLINOIS WORKERS' COMPENSATION COMMISSION

Ciro Servin Cabrera, Employee/Petitioner, v. Source One Staffing and Greco & Sons, Inc., Respondents.	))))))))	Case# 19 WC 033110 Arbitrator: Nina Mariano

FINDINGS OF FACT

This matter proceeded to hearing on May 25, 2023, pursuant to a Section 19b petition filed by petitioner. At arbitration hearing the following issues were in dispute: C) whether an accident occurred that arose out of and in the course of employment; D) date of any alleged accident; E) whether timely notice was provided of any alleged accident; F) whether petitioner's condition of ill-being is causally related to an alleged accident; G) what were petitioner's earnings for the period next preceding the alleged accident date; J.) whether medical services provided to petitioner were causally related to the alleged accident; K) whether the petitioner is entitled to any prospective medical care; L) whether any temporary total disability benefits are due to the petitioner; and M) whether penalties or fees should be imposed upon the respondent. The parties also stipulated that if the Arbitrator finds and concludes that petitioner is not entitled to prospective medical care and has reached maximum medical improvement, the Arbitrator may enter a final award for permanency. Petitioner was the sole witness at arbitration hearing.

Petitioner, Ciro Servin Cabrera, testified via a Spanish interpreter. (T: 9). Petitioner was born on May 18, 1955. (T: 11) On the date of the alleged accident of October 14, 2019, Source One Staffing

employed petitioner but loaned petitioner to Greco & Sons, Inc. (T: 11). Petitioner's hourly wage was 11.33 but he did earn 11.83. (T: 12). On the alleged date of accident petitioner worked second shift – starting work at 5:00 p.m. until 6:00 or 7:00 a.m. the next day. (T: 12). Petitioner worked more than 40 hours per week. (T: 13). Petitioner testified working more than 40 hours per week was obligatory. (T: 14). Petitioner worked Monday through Friday only. (T: 17). Petitioner had to wear steel-toed shoes while working but no other clothing or hard hat. (T: 18).

On the date of the alleged accident petitioner's job was piling and placing the pallets. (T: 15). Petitioner would pile up the pallets in order for a forklift to come and pick them up and fill orders. (T: 15). Petitioner would put the pallets in order so the forklift could come pick up two piles at a time and move them where needed. (T: 16). Petitioner indicated the pallets were stacked 10 high and petitioner would push them and put them in line and in order. (T: 16). Then the forklift driver would take two at a time and then petitioner would again put the pallets in order. (T: 16). Petitioner had about 15 or 18 locations where he had to put the pallets and he would perform these duties the entire shift. (T: 16).

On cross-examination petitioner described his work area in greater detail. (T: 45). Petitioner worked in a warehouse that contained a large open space. (T: 46). Petitioner noted before any alleged injury pallets were orderly stacked in front of him. (T: 46). These pallets were stacked 10 pallets high. (T: 47). Petitioner could see beyond the stack of pallets. (T: 47). To petitioner's immediate right were more stacks of pallets. (T: 47). The pallets on the right were 20 to 30 inches from petitioner. (T: 48). The pallets in front of petitioner were the same distance. (T: 48). To petitioner's left was a stack of pallets except for a space where the pallet jack would go through. (T: 48). Immediately behind petitioner were more pallets. (T: 48). The pallets behind him were only stacked one pallet high so the pallet jack could come and pick them up. (T: 49). Just prior to his alleged accident petitioner was

standing on top of a pallet. (T: 49-50). Petitioner stood on the pallet because he was aligning the pallets. (T: 50).

On October 14, 2019, as petitioner stood on a pallet a pallet jack came in front of him and came too fast such that the other employee struck the pallets causing petitioner to lose his balance and fall forward. (T: 19). The pallet jack kept going around and didn't stop and petitioner was knocked again. (T: 19). Petitioner's head was stuck on the pallets and his shoulder and head were against the pallets. (T: 19). Petitioner referred to his right shoulder. (T: 19). Petitioner indicated the right shoulder was twisted and the right side of his head was against the pallets. (T: 20).

On cross-examination petitioner explained that the pallet jack that struck the pallets did not have any pallets on the fork. (T: 50). The first thing petitioner felt when the pallet jack struck the pallets was pain in the petitioner's chest and back when petitioner landed going forward. (T: 51). When petitioner landed, he struck his chest on the pallets in front. (T: 53).

Petitioner was against the pallets for about 15 minutes before the second shift supervisor arrived named Alvaro Garcia. (T: 20-21). The supervisor initially advised an ambulance would come but later told him the ambulance was not going to come because the agency was not taking responsibility for the accident as there was no blood on his body. (T: 21). Petitioner was taken to the cafeteria to see if his pain would go away. (T: 21-22). Petitioner was in the cafeteria for an hour to an hour and 45 minutes but petitioner felt worse. (T: 22). Petitioner asked his co-workers to help him go down to the main level as the cafeteria was on the second level. (T: 22). Petitioner asked his supervisor if one of the co-workers could take him but the supervisor said no one was willing to take him so he advised petitioner to do paperwork so he could go to the hospital. (T: 22). Petitioner eventually went to the hospital. (T: 23). Petitioner noted the accident occurred around 11:00 p.m. and he arrived at Amita Health Saint Joseph Hospital around 3:00 a.m. (T: 23).

On October 15, 2019 at 2:33 a.m. petitioner arrived at the emergency room of Amita Health St. Joseph Hospital. PX1: 13. The history taken by the triage nurse noted the following:

"Pt was at work when he got pushed by a fork lift driver and fell backwards onto wooden palets (sic). Pt then got up lost balance and fell forward on to wooden pallets. Pt complains of torso pain and head pain. Pt was at a standing height. No loc." PX1: 15.

Petitioner confirmed x-rays were performed at the hospital and he received medication. (T: 24).

Petitioner then went to Physicians Immediate Care upon recommendation of a friend. (T: 24).

Petitioner presented to Physicians Immediate Care on the same day October 15, 2019. PX2. The triage notes from that visit indicated:

"pt here post accident to (sic) work states he got injured yesterday by fork lift driver. He hit him with some pallets 2 times first time he fell straight forward and 2nd time he fell towards right side." PX2: 3.

Petitioner presented with a chief complaint of constant back pain. PX2: 3. During the physical examination the nurse practitioner noted petitioner's chest wall was tender and muscle spasms at left posterior upper thorax just below his scapula. PX2: 4-5. A trigger point injection was applied to the back just under the right scapula. PX2: 5. Diagnoses included strain of muscle and tendon of back wall of the thorax and strain of the shoulder and upper arm level, left arm. PX2: 5. Petitioner received work restrictions and advised to return to the clinic. PX2: 7. Petitioner returned to work. (T: 26).

Petitioner's next medical provider was Tyler Medical Services. (T: 26). Petitioner indicated the respondent, Source One, referred him to that facility. (T: 26). On October 16, 2019, petitioner presented to Tyler Medical Services in St. Charles, Illinois. PX3. The history noted at that visit indicated as follows:

"Patient presents today for initial evaluation of an injury to his head, left shoulder and chest. . . Two days ago on Monday, 10/14/2019, he was struck by an electronic pallet jack at work. He fell, striking the right side of his face, left shoulder and chest area. . . The pain is just on the right side of his face, left shoulder and chest area." PX3: 2.

Petitioner was restricted to light duty and continued to work and follow up with Tyler Medical Services. (T: 27-29). As of October 23, 2019, Dr. Long at Tyler Medical Services diagnosed petitioner as suffering from right facial contusion, left shoulder contusion, anterior chest contusion and posttraumatic cephalgia. PX3: 8. On October 28, 2019, two weeks after the described injury, Dr. Pappas noted in the history that petitioner originally had right facial contusion with cephalgia, anterior chest contusions, bilateral shoulder contusions but now had "neck pain and numbness, tingling and weakness in the upper extremities." PX3: 10.

On November 4, 2019, petitioner saw Dr. Patel on recommendation of a friend. (T: 29). Petitioner explained he went to see Dr. Patel because he was not feeling well, and the other doctors were not doing anything, and he was still working. (T: 29-30). Dr. Patel noted petitioner complained of neck pain, head pain and shoulder pain. PX5: 9. Dr. Patel referred to the petitioner for physical therapy and recommended an orthopedic consultant. PX5: 7-8. Dr. Patel also prescribed petitioner off work. PX5: 6. Petitioner's light duty originally consisted of doing paperwork but later he had to do sweeping pushing a big broom working 3-5 hours per day. (T: 30-31). Petitioner was having a lot of pain in his shoulders, his neck and his back. (T: 31). Petitioner confirmed that since Dr. Patel removed him from work on November 4, 2019, he has not returned to work anywhere. (T: 32-33).

On November 11, 2019, petitioner underwent MRIs of his neck and both shoulders. (T: 33), PX4. The MRI of the cervical spine indicated reversal of the normal cervical lordosis, indentation of the spinal cord at C4-C5, C5-C6 and C6-C7 secondary to disc bulges, disc desiccation at C2-C3, C3-C4, C4-C5. C5-C6 and C6-C7 indicating disc desiccation, moderate disc space narrowing, and diffuse disc bulge with small superimposed central disc protrusion causing moderate to severe spinal canal stenosis abutting the ventral aspect of the spinal cord. PX4: 1-2. The MRI of the right shoulder indicated moderate acromioclavicular hypertrophy with moderate edema, Type II acromion and moderate fluid in

the bursa with focal full-thickness tear of the distal supraspinatus tendon and tear of the superior labrum extending into the posterior superior labrum. PX4: 3-4. The MRI of the left shoulder indicated similar findings with added mild tendinosis of the intra-articular long head biceps tendon. PX4: 5. A CT scan of the brain revealed no acute intracranial abnormality. PX4: 7. Petitioner returned to Dr. Long at Tyler Medical Services at which time Dr. Long referred petitioner for a neurosurgery evaluation regarding the cervical spine and an orthopedic surgeon regarding the bilateral shoulder findings. PX3: 14. Petitioner indicated Dr. Long referred petitioner to neurosurgeon Dr. Matthew Ross. (T: 33).

Petitioner consulted with Dr. Ross initially on December 5, 2019. (T: 33). Petitioner has continued to treat with Dr. Ross including most recently on May 17, 2023. (T: 33). Petitioner also consulted with orthopedic surgeon Dr. Steven Chudik. (T: 34). Petitioner recalled Dr. Ross referred petitioner to Dr. Chudik. (T: 34). Petitioner initially consulted with Dr. Chudik on January 6, 2020, and most recently on February 27, 2023. (T: 34). Petitioner saw Dr. Ross for issues relating to his neck and back and Dr. Chudik for his shoulders. (T: 34).

Petitioner confirmed that he attended a respondent Section 12 examination with Dr. Thomas Stanley on January 30, 2020, and a respondent Section 12 examination with Dr. Joshua Alpert on October 18, 2021. (T: 35). Petitioner wants neck surgery recommended by Dr. Matthew Ross because he wants to feel better and alleviate his pain. (T: 36). His pain starts at the top of his spine at the middle of his neck to the base of the spine towards the end of his lower back. (T: 36). Petitioner takes ibuprofen once or twice a day for pain and tramadol once or twice a day for pain. (T: 37). Petitioner also takes Gabapentin three times a day. (T: 37).

Petitioner confirmed since his alleged injury of October 14, 2019, he has had no other accidents or injuries. (T: 38). Petitioner also confirmed prior to the alleged injury of October 14, 2019, he had no prior injuries to his neck, back, his shoulders or his head. (T: 38-39). Petitioner's job for Greco & Sons

required him to lift pallets and when the pallets were wet they were heavier. (T: 39). Petitioner indicated he has survived without pay by borrowing money from his family and owing rent of $440/month since January 2020. (T: 40).

Counsel for co-respondent, Source One, cross-examined the petitioner. Petitioner confirmed prior to his alleged injury he did not suffer from chronic headaches. (T: 40). Petitioner confirmed that while he was employed by Source One he also worked in a factory named NTN. (T: 43). Petitioner confirmed he did not work 12 hours every day. (T: 43).

On cross-examination petitioner confirmed he was not crushed between two pallets. (T: 54). Petitioner insisted he fell on top of the pallets and not into the pallets. (T: 54). Petitioner corrected his description that the pallets in front of him were only stacked three high while on the sides the pallets were stacked 10 high. (T: 55). Petitioner confirmed he completed a report of accident. (T: 57). The Spanish interpreter read the contents of the report. (T: 59). The description of what happened was as follows:

"I was putting together the pallets when a coworker was driving a pallet jack. Accidentally, he hit the pallets. The pallets hit me on my feet and I landed on top of the pallets. Before getting up, he went around with a pallet jack and then hit them again and I landed on the floor. Before I lost, gotten up, the pallet jack turned around and hit them again and I ended up on the floor. I hit the right side of my body, arm, right arm, head. I had pain on my arm, on my right arm, pain in the head and pain in my chest. I reported it to Alvaro, my supervisor. He gave me time to sit down to see if the pain will go away. The pain got worse. I asked for an ambulance because I did not feel well to drive. He told me that they called the ambulance, but the ambulance never came, and he told me that they could not transport me. I drove to Saint Joseph Hospital so they could see me." (T: 60-62).

On cross-examination counsel inquired regarding records from VNA Health Care that contained a history from December 19, 2019, with a description as follows: "Office visit: hx MVA, thyroid check, dm." RX4: 8. Under history of present illness, the record reads in part as follows:

"He had accident at wok (sic) on 10/14/19. He had fallen down and had hurt his chest and back. He starts work from tomm (sic). Pain is improved but shoulder still hurts. He is still looking for a referral for orthopedic from lawyer. He is currently taking LTH 25 mcg. He is also taking metformin. He did not notice a ig (sic) difference in his energy level because he got into MVA at the same time as

starting the meds and that made him get new sx of pain. Home BS readings diff in both hands 130-160 checked at the same time, not sure why that is happenning (sic) and wondering if that is because of MVA." RX4: 10.

Respondent's counsel asked petitioner what car accident he was involved in, and the petitioner answered "none." (T: 67). Petitioner again stated he never had a motor vehicle accident. (T: 68). Petitioner confirmed that part of his job duties included operating a forklift. (T: 68). Petitioner confirmed he has had no income since he stopped working at Greco for Source One. (T: 69).

Deposition of Dr. Steven Chudik:

Dr. Chudik testified via deposition on June 24, 2020. PX12. Dr. Chudik is a board-certified orthopedic surgeon concentrating on the treatment of shoulders and knees. PX12: 7. Dr. Chudik noted the mechanism of injury described to him by petitioner was as follows: "someone was operating a pallet jack and pushed pallets towards him causing him to be crushed between pallets . . . and caused Ciro to fall down." PX12: 11. Dr. Chudik noted petitioner injured his head, neck and both shoulders when he fell. PX12: 11. Dr. Chudik noted that due to petitioner's age he is susceptible to rotator cuff tears in the shoulders from a fall. PX12: 13. Dr. Chudik diagnosed petitioner as suffering from bilateral rotator cuff tears of the supraspinatus which Dr. Chudik attributed to petitioner's injury. PX12: 15. The basis of Dr. Chudik's opinion is a competent mechanism of injury and objective findings on examination. PX12: 17. Dr. Chudik explained that rotator cuff tears can happen without specific trauma to the shoulder by just a "quick, abrupt moving of the arm which required the muscles to contract and pull violently to capture themselves or brace themselves. . ." PX12: 18. Dr. Chudik in reference to petitioner explained that "he may be trying to brace himself or as he falls, he is reaching out for the floor, one shoulder may be hitting the floor." PX12: 19.

Dr. Chudik also noted that a two-week delay of symptoms is not uncommon for these types of injuries and not an issue in his opinion. PX12: 21-22. Dr. Chudik recommended surgical repair of both

shoulders but deferred this treatment until the petitioner's neck issues have been treated. PX12: 23. Dr. Chudik also recommended petitioner not return to manual work until his shoulders are treated. PX12: 24.

Dr. Chudik disagreed with Dr. Stanley's opinion regarding the age of the rotator cuff tears stating, "the tears and acute symptoms I believe are related to the accident and are acute and new and not preexisting." PX12: 26. Dr. Chudik also disagreed with Dr. Stanley's opinion that petitioner's symptoms are not consistent with his diagnosis stating, "it's very clear on my examination of the patient that he has pain and symptoms consistent with a rotator cuff pathology and on physical exam findings as well." PX12: 27.

On cross-examination Dr. Chudik disagreed with Dr. Stanley that a person with rotator cuff tears would have difficulty removing clothing stating, "there's four muscles to the rotator cuff that control the shoulder and having a tear of a portion of one of them doesn't change your ability to move your shoulders and take your shirt on and off." PX12: 39. Dr. Chudik also explained that "old rotator cuff tears are retracted. Old rotator cuff tears have atrophy. These do not have that. So there's nothing on the MRI that suggests that these things are old tears and given the scenario and the clinical context these are new injuries." PX12: 48. Dr. Chudik also explained why he disagreed with Dr. Stanley's observations that the petitioner could push up from his seat or take off a jacket and sweatshirt: "the types (of tears) that Mr. Servin (Cabrera) has . . . he totally can do that just fine. . . even taking off a T-shirt is doable . . .people can do these things with these tears." PX12: 50.

Deposition of Dr. Joshua Alpert:

Dr. Alpert testified via deposition on January 20, 2023. RX2. Dr. Alpert is a board-certified orthopedic surgeon focusing on treatment of the shoulder and knee. RX2: 6. Dr. Alpert described the mechanism of injury as relayed by the petitioner as follows: "He says on October 14, 2019, he was in a

factory and a person with a pallet jack hit him. He fell on top of the pallet pile. His foot got caught in the pallet. He fell onto his right side and hit the right side of his neck on the pallet. His right arm went behind his back. His chest hit the floor." RX2: 10-11. Dr. Alpert testified he agreed with Dr. Stanley that blunt-force trauma to petitioner's shoulder would not cause symptoms, that Dr. Alpert's examination revealed the same inconsistent symptoms with rotator cuff tears and that the MRIs of the shoulders did not show any tears recently and traumatically induced. RX2: 19-21.

Dr. Alpert testified he did not see any symptom magnification or malingering when examining the shoulders of petitioner. RX2: 21-22. Dr. Alpert stated he had no opinion as to the examination results of petitioner as related to the cervical spine. RX2: 22. Dr. Alpert could not render an opinion on whether petitioner's symptoms down the arms with numbness and tingling were from shoulder pathology versus cervical pathology. RX2:22.

Dr. Alpert diagnosed petitioner as suffering from right-shoulder pain referred from cervical radiculopathy. RX2: 25. Dr. Alpert admitted that whether the referred pain is from the October 14, 2019, accidental injury "I just don't know." RX2: 26. Dr. Alpert would not perform surgery on either shoulder for these symptoms and opined that petitioner is at maximum medical improvement for the shoulder conditions. RX2: 26. Dr. Alpert also noted relating to the shoulder conditions only, petitioner could perform full duty work. RX2: 28.

On cross-examination Dr. Alpert noted he was not aware of petitioner's required weight requirements of his job, not aware whether petitioner had to perform any repetitive movements at work and not aware petitioner had to maneuver and stack pallets. RX2: 30-31. Dr. Alpert did agree that the standard weight for one pallet may be 35-50 lbs. RX2: 31. Dr. Alpert admitted that if petitioner had to maneuver and stack pallets over a course of a two-year period this type of activity might or could aggravate or accelerate preexisting degenerative changes of the upper extremities. RX2: 32. Dr. Alpert

also agreed that regardless of causation, petitioner is unable to perform the essential functions of his prior employment. RX2: 33.

Deposition of Dr. Thomas Stanley:

Dr. Thomas Stanley testified via deposition on October 14, 2022. RX1. Dr. Stanley is a board-certified orthopedic surgeon performing 300-400 surgeries per year on the neck, upper back, low back, deformities or infections. RX1: 7. Dr. Stanley noted the history of petitioner's accident as follows: "his job involved fixing pallets and that during his normal duties he actually fell twice and hit his right side. He described a blunt trauma to his shoulder after the fall." RX1: 10. Dr. Stanley noted he was aware of a more detailed history from Tyler Medical Services as petitioner "struck by a loaded stand-up pallet jack traveling an estimated 20 miles per hour, it was thrown chest first into pallets and then twisted onto his side." RX: 10. Despite respondent's counsel suggesting conflicting mechanisms of injuries, Dr. Stanley referred to his notes which indicated petitioner injured his "head, left shoulder and chest after being struck by an electric pallet jack at work." RX1: 11-12.

Dr. Stanley opined petitioner had positive Waddell signs and failed distraction tests reflective of non-organic pain. RX1: 14. Dr. Stanley opined that the mechanism of injury doesn't support acute bilateral rotator cuff tears which is consistent with the MRI revealing chronic degenerative process. RX1: 20. Thus, Dr. Stanley opined treatment to the shoulders is unrelated to the incidence of the fall or blunt trauma. RX1:20-21.

Dr. Stanley opined that petitioner suffered cervical radiculopathy from the work incident, but that petitioner's ongoing pain complaints were not cervical radiculopathy and consistent with non-organic pain. RX1: 21. The basis of Dr. Stanley's causal connection opinion is because there is evidence of spinal stenosis in his neck and there is documentation of numbness and tingling pretty soon after the work incident. RX1: 22. Dr. Stanley confirmed petitioner had symptoms of radiculopathy and

an MRI of stenosis predisposes him to radiculopathy. RX1: 22. Dr. Stanley opined, however, that petitioner's radiculopathy was no longer present by December 5, 2019, as Dr. Ross, a spine surgeon, did not have that opinion on that date. RX1:22-23. Irrespective of Dr. Ross' opinion, Dr. Stanley opined petitioner did not have cervical radiculopathy by the date of his examination. RX1: 23. Dr. Stanley concluded that the petitioner's shoulder contusion and cervical radiculopathy had been resolved by the time of Dr. Stanley's evaluation. RX1: 28.

On cross-examination Dr. Stanley admitted he does about 100 Section 12 examinations a year averaging between 5 and 10 examinations a month. RX1: 30. Dr. Stanley charges approximately $1200 per examination so earns $120,000 per year for Section 12 examinations. RX1: 30. Dr. Stanley also charges $700 for a record review and $2000 for his deposition time. RX1: 30-31. Dr. Stanley does about 1-2 depositions per month or 24 per year so earns $48,000 per year for depositions. RX1: 31.

Dr. Stanley agreed that "the most contemporaneous documentation is the most accurate reflection of what actually happened" in response to petitioner's recall of the mechanism of injury. RX1: 32. Dr. Stanley admitted that pre-injury petitioner did not have any neck or upper extremity complaints. RX1: 33. Dr. Stanley admitted that no other physician wrote petitioner had positive Waddell signs. RX1:40.

Deposition of Dr. Matthew Ross

Dr. Ross testified via deposition on June 28, 2022. PX12. Dr. Ross is a board-certified neurosurgeon whose practice consists of 90 percent of patients with spinal issues. PX12: 8. Dr. Ross confirmed that Tyler Medical Services referred petitioner for treatment with Dr. Ross. PX12: 9, PX6: 214. Dr. Ross noted the history of petitioner's injury as follows: "(t)he date of injury he was struck by a loaded stand-up motorized pallet jack. He estimates that the jack was traveling approximately 20 miles an hour. He was thrown chest first onto the pallet, then twisted onto his side." PX12: 10-11. Dr. Ross

admitted on the initial evaluation of petitioner he could only partially make a diagnosis as "his biggest or dominant problem was to his shoulders, and so it was hard to say whether the weakness he was showing was actual true neurologic weakness or whether it was simply guarding. . ." PX12: 14-15. Dr. Ross opined on the initial evaluation that petitioner "might have either cervical radiculopathy, damage to one of the nerve roots, or an injury to his brachial plexus. . . he also appeared to have neck and upper back strain injuries." PX12: 15. Dr. Ross thought all of the diagnoses were causally connected to petitioner's injury. PX12: 15.

Dr. Ross explained the basis of his opinion: "He certainly had some preexisting arthritis in his neck but there is no evidence that he was actively symptomatic from the neck arthritis prior to the accident. His cervical spine was traumatized, his cervical spinal cord may have been traumatized and . . . potentially his brachial plexus." PX12: 16. Dr. Ross placed a sedentary restriction on petitioner because of petitioner's "significant weakness in his arms, the inability to raise his arms overhead and pain." PX12: 17.

Dr. Ross did not see petitioner until almost a year later but petitioner's complaints "were pretty much the same as they had been." PX12: 18. The negative EMG of petitioner on October 20, 2020, indicated to Dr. Ross that petitioner did not have "an injury to his brachial plexus" and "most likely does not have a cervical radiculopathy" suggesting his "weakness and neurologic problems were either shoulder related, or spinal cord related . . ." PX12: 18-19.

Petitioner had an updated cervical MRI on January 19, 2021. PX12: 208. Dr. Ross interpreted the MRI as suggesting disk herniations at C4-5, C5-6, C6-7 levels and the spinal stenosis "appeared to be more severe than what was seen on the original MRI and there seemed to be evidence of injury to the spinal cord at the C5-C6 level." PX12:20-21. Dr. Ross explained that the "spinal cord is showing increased signal on T2 weighted image, which suggests edema, water, softening of the spinal cord. . .

that's usually an indication of trouble." PX12: 21. Dr. Ross opined that petitioner was "myelopathic, meaning he was having trouble in his spinal cord from the pathology in his neck, and that he needed something done." PX12: 21. Dr. Ross opined that the disk herniations "were caused by the work injury or caused to become symptomatic by the work injury." PX12: 21. Dr. Ross recommended surgery "removing the disks in their entirety, including the portion in the spinal canal that's putting pressure on the spinal cord, and then stabilizing or fusing that area of the spine so that it - - at least at that area it's permanently protected." PX12: 22-23.

Dr. Ross reviewed the report of Dr. Stanley. PX12: 30-31. Dr. Ross stated, "I did not find there was evidence that (petitioner) was malingering or had nonorganic symptomatology." PX12: 31.

On cross-examination Dr. Ross admitted he did not know the details of the injury to a specificity but stated "when you're dealing with traumatized patients, getting that kind of specificity is sometimes difficult. It happens in a split second and you're asking them to try to reconstruct. . .. You've got somebody who is essentially healthy, you run into him with a pallet jack having him thrown forward. It doesn't matter whether he lands on his right shoulder, his left shoulder, or his chest. If he's now symptomatic, the proximate cause is the trauma." PX12: 36-37. On cross-examination Dr. Ross further explained the reason for the increased severity of the C-spine condition is that "(n)atural progression of traumatized joints is to get worse, so some of it is certainly due to natural progression of the traumatized joints." PX12: 43. Dr. Ross confirmed the first time he diagnosed petitioner with myelopathy occurred on February 2, 2021. PX12: 45. Dr. Ross admitted that petitioner potentially may have needed surgery in the future as a result of disk degeneration but "it just occurred much sooner as a result of the work injury." PX12: 46.

On cross-examination Dr. Ross confirmed that the petitioner's complaint of tingling in the legs is from his cervical spinal cord injury and related to the work accident. PX12: 48-51. Dr. Ross confirmed

that the causes of petitioner's condition are disk herniations, spondylosis and spinal foraminal stenosis. PX12: 57. Dr. Ross explained that petitioner's diagnosis of myelopathy "became clear in the fullness of time. . . (petitioner's) evolved in a fashion that clearly indicated that the cervical spine pathology was a significant and I would argue more significant component to his problem than his shoulders even though in the beginning it seemed the reverse." PX12: 60-61. Dr. Ross clarified for purposes of a Waddell sign that since petitioner primary problem is a spinal cord injury, myelopathy, "that doesn't follow a dermatomal pattern." PX12: 66-67.

CONCLUSIONS OF LAW

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

Decisions of an arbitrator shall be based exclusively on the evidence in the record of the proceeding and material that has been officially noticed. 820 ILCS 305/1.1(e). Credibility is the quality of a witness which renders his evidence worthy of belief. The Arbitrator, whose province it is to evaluate witness credibility, evaluates the demeanor of the witness and any external inconsistencies with his/her testimony. Where a claimant's testimony is inconsistent with his/her actual behavior and conduct, the Commission has held that an award cannot stand. McDonald v. Industrial Commission, 39 Ill. 2d 396 (1968); Swift v. Industrial Commission, 52 Ill. 2d 490 (1972).

It is the function of the Commission to judge the credibility of the witnesses and to resolve conflicts in the medical evidence and assign weight to witness testimony. O'Dette v. Industrial Commission, 79 Ill.2d 249, 253, 403 N.E.2d 221, 223 (1980); Hosteny v. Workers' Compensation Commission, 397 Ill. App. 3d 665, 674 (2009). Internal inconsistencies in a claimant's testimony, as well as conflicts between the claimant's testimony and medical records, may be taken to indicate unreliability. Gilbert v. Martin & Bayley/Hucks, 08 ILWC 004187 (2010).

In the case at hand, the Arbitrator observed Petitioner during the hearing and finds him to be a credible witness. The Arbitrator compared Petitioner's testimony with the totality of the evidence submitted and did not find any material contradictions that would deem the witness unreliable. While there is mention of a motor vehicle accident in the VA records of 12/19/19, there is no other indication in the voluminous amounts of medical records and evidence presented that a motor vehicle accident in fact

occurred. Petitioner also denied being in a motor vehicle accident and Arbitrator found him to answer this question in a forthright manner. Further, there could also be confusion with the VA as to the forklift accident being a motor vehicle accident so overall the Arbitrator does not find the mention of a motor vehicle accident in the one VA record to be significant when compared to the totality of the evidence.

As far as the minor inconsistencies in accident histories given to different providers, the Arbitrator finds them to be insignificant against the totality of the evidence and also unintentional on the part of Petitioner in attempting to explain the details of the accident to several different providers over a matter of years considering the added issue of a language barrier.

IN SUPPORT OF THE ARBITRATOR'S DECISION REGARDING (C.) WHETHER AN ACCIDENT AROSE OUT OF AND IN THE COURSE OF PETITIONER'S EMPLOYMENT AND (D.) THE DATE OF ACCIDENT, THE ARBITRATOR FINDS AND CONCLUDES AS FOLLOWS:

Petitioner described in detail during direct and cross-examination what occurred on October 14, 2019, while he worked at Greco & Sons, Inc. while employed by Source One. (T: 19-20, 50-53). The initial treating medical records from Amita Health St. Joseph Hospital, Physicians Immediate Care and Tyler Medical Services all contain a history of injury that is consistent with the date of injury and the mechanism of injury, though brief in description. **See**, PX1: 15, PX2: 3, PX3: 2. In essence, the petitioner worked as a palletizer for the co-respondent Greco & Sons, Inc. and while stacking, maneuvering and aligning pallets a forklift driver struck the pallets and caused the petitioner to fall forward and a second strike by the forklift driver caused petitioner to fall to the right side and land on his right shoulder and right side of the face. Considering the totality of the evidence, including the unrebutted testimony of petitioner and the medical evidence, the Arbitrator finds and concludes that the petitioner, Mr. Cabrera incurred a traumatic accident arising out of and in the course of his employment on October 14, 2019.

IN SUPPORT OF THE ARBITRATOR'S DECISION REGARDING (E.) NOTICE OF THE ACCIDENT, THE ARBITRATOR FINDS AND CONCLUDES AS FOLLOWS:

Petitioner's unrebutted testimony indicated that he informed a supervisor from Greco & Sons, Inc. approximately 15 minutes after the accidental injury of October 14, 2019, what had occurred. (T: 20-21). Although the accident report presented to the petitioner by respondent's counsel for Source One was not offered into evidence, the Spanish translator read into the record the occurrence of October 14, 2019, as written in the report by petitioner. (T: 60-62). The date of this report was not read into the record but whether the report was made the same day or at a later date, the Arbitrator finds and concludes petitioner gave timely and sufficient notice of the accidental injury.

IN SUPPORT OF THE ARBITRATOR'S DECISION REGARDING (F.) WHETHER OR NOT THE PETITIONER'S CURRENT CONDITION OF ILL-BEING IS CAUSALLY RELATED TO THE ACCIDENTAL INJURY THE ARBITRATOR FINDS AND CONCLUDES AS FOLLOWS:

Petitioner, Mr. Cabrera, claimed prior to October 14, 2019, he had suffered no injuries or accidents involving his neck, back, shoulders or head. (T: 38-39). Since the date of accident, petitioner has suffered no new accidents or injuries. (T: 38).

In hearing the Spanish interpreter read the report of accident, and in reviewing the initial medical histories of Amita Health St. Joseph Hospital and Physicians Immediate Care, the petitioner injured both shoulders, back, head and chest as a result of his October 14, 2019, accidental injury. (T: 62), PX1: 15, PX2: 3, PX3: 2. The Arbitrator notes that the first documented report of neck pain occurred on October 28, 2019, when petitioner consulted with Dr. George Pappas at Tyler Medical Services. (PX3: 10). Dr. Pappas noted the following: ". . . Now, he states he has neck pain and numbness, tingling and weakness in the upper extremities." PX3: 10. Dr. Pappas noted on examination that petitioner had tenderness with flexion/extension of the cervical spine and spasms in the cervical and trapezius bilaterally. PX3: 10. Dr. Pappas diagnosed petitioner with "right facial contusion with cephalgia, anterior chest wall contusions, bilateral shoulder and neck pain with numbness, tingling and weakness." PX3: 10. Dr.

Pappas noted petitioner "has diffuse symptoms from his traumatic injury." As a result, Dr. Pappas ordered MRIs of the neck and bilateral shoulders. PX3: 10.

The parties submitted the depositions of Dr. Stanley, Dr. Alpert, Dr. Chudik and Dr. Ross to address whether or not petitioner's injuries are causally related to his accidental injury and even if related, whether surgical intervention is warranted.

"In cases involving a preexisting condition, recovery will depend on the employee's ability to show that a work-related accidental injury aggravated or accelerated the preexisting disease such that the employee's current condition of ill being can be said to be causally connected to the work-related injury." *Sisbro, Inc. v. Industrial Comm'n*, 207 Ill. 2d 193, 204, 797 N.E.2d 665, 278 Ill. Dec. 70 (2003). "The accidental injury need neither be the sole causative factor nor the primary causative factor as long as it was a causative factor in the resulting condition of ill-being." *Sisbro*, Inc., 207 Ill. 2d at 205. "Whether an employee's condition of ill-being is attributable to a work-related accident that aggravated or accelerated a preexisting condition or whether the condition is attributable to some other cause is a question of fact for the Commission to decide." *P.I. & I Motor Express, Inc./For U, LLC v. Industrial Comm'n*, 368 Ill. App. 3d 230, 240, 857 N.E.2d 784, 306 Ill. Dec. 385 (1993). "In deciding questions of fact, it is the function of the Commission to resolve conflicting medical evidence, judge the credibility of the witnesses, and assign weight to the witnesses' testimony." *R & D Thiel*, 398 Ill. App. 3d at 868; *Hosteny v. Workers' Compensation Comm'n*, 397 Ill. App. 3d 665, 674, 928 N.E.2d 474, 340 Ill. Dec. 475 (2009).

Based upon the medical records and reviewing the testimony of the physicians involved in this case, the Arbitrator finds and concludes that the petitioner did incur injury to his face, neck, back, bilateral shoulders and chest as a result of his accidental injury of October 14, 2019. The Arbitrator finds the opinions of Section 12 Examiner Dr. Stanley not as credible as the treating physician, Dr. Ross,

nor as persuasive. Although Dr. Stanley found petitioner's neck injury to be causally related to the accident injury of October 14, 2019, Dr. Stanley proceeded to explain how his diagnosis of the neck injury no longer exists and claims to find support in the opinions of Dr. Ross. Dr. Ross' opinion is mischaracterized. Dr. Ross indicated he initially thought petitioner had cervical radiculopathy but later found petitioner's injury to be a spinal cord issue. Also, Dr. Stanley was the only physician involved in this case to find positive Waddell signs or to render an opinion that the petitioner was malingering or had non-organic pain. For these reasons, the Arbitrator places lesser weight on his opinion.

Dr. Alpert, respondent's other Section 12 examiner, rendered no opinions regarding the causality or condition of petitioner's cervical spine. "Of note, my focus on this visit was for his right and left shoulder, as I am not a spine surgeon." PX2: DepEX2: 6. Dr. Alpert confirmed that he is deferring any opinions to the spine physicians. Despite this, Dr. Alpert did make note in his report, "the symptoms that he is having, in my opinion, given the foraminal stenosis and the degenerative disk disease in his neck, all of his complaints are related to his neck condition . . . I recommend he gets his neck surgery as recommended per Dr. Matthew Ross." PX2: DepEX2: 7-8.

The Arbitrator finds and concludes that the opinions of treating physician Dr. Matthew Ross are more persuasive and reliable in explaining the progression of petitioner's injuries which originally were diagnosed and treated as rotator cuff tears in the shoulders but subsequently revealed to be related to a spinal cord injury which Dr. Ross opined is causally related to petitioner's accident of October 14, 2019. Thus, the Arbitrator finds and concludes that the petitioner's injuries to his neck, back, shoulders, face and chest are causally related to his work injury of October 14, 2019.

IN SUPPORT OF THE ARBITRATOR'S DECISION REGARDING G. (EARNINGS), THE ARBITRATOR FINDS AND CONCLUDES AS FOLLOWS:

Petitioner's unrebutted testimony indicated that he worked more than 40 hours per week, five days a week. (T: 13, 17). The petitioner also indicated that working over 40 hours per week was

obligatory. The Arbitrator notes from the wage records submitted that other than three isolated weeks for the 52-week period preceding the date of accident, petitioner worked overtime. Based upon this testimony and documentation, the Arbitrator finds and concludes that overtime hours shall be included at straight time pay for purposes of calculating an average weekly wage.

In reviewing the wage records submitted by petitioner, the Arbitrator notes overtime pay is not delineated from the total gross earnings of petitioner. PX11. Also, the records do not indicate the hourly wage petitioner earned for the relevant time periods included in the document. Petitioner indicated he earned $11.33 per hour and also earned $11.83 per hour. (T: 12). However, this information is not helpful as no dates are defined for these hourly rates. Page five of the exhibit has earnings post-accident, so those earnings are ignored. These records appear to be sent by respondent via facsimile, so the writing is not very clear, but the Arbitrator is able to determine the records show weekly payments.

Method of Average Weekly Wage Calculation:

- Starting on page four and counting backwards 52 weeks means the first four entries on page three will be excluded.
- Petitioner worked various hours of overtime each week and not all of the overtime hours are legible, but the total hours are revealed to equal 1,515.81. PX11: 4. Subtracting the first four entries of overtime hours leaves 1451.33 hours of overtime. Dividing these hours by 52 leaves approximately 27 hours of overtime on average per week (This method is only being used since the individual hours of overtime are not all legible).
- In order to find out the hourly rate we use the following method for each entry:
  1. Overtime hours worked and multiply by 1.5 (time and half)
  2. Add this total back to the regular hours worked total (usually 40) to arrive at total hours.
  3. Take the total gross wage for that week and divide it by the total hours.
  4. As an example, for the period 11/11/2018 through 11/14/2018 the total overtime hours for this week equaled 11.38. PX11: 3. Multiplying 11.38 x 1.5 = 17.07. Adding these hours to the 40 hours of regular work for that week equals 57.07 total hours. Dividing the gross wages for that week of $646.88 by 57.07 equals $11.33 per hour. This is what petitioner earned per his testimony.
- Using this method, petitioner earned 11.33 per hour from the weeks of 11/11/2018 through the week ending 7/6/2019. This is a total of 38 weeks. Multiplying 67 [40 regular hours x 27 average overtime hours] hours x $11.33 by 38 equals $28,846.18. The petitioner earned 11.83

per hour from 7/7/2019 through 10/9/2019 a period of 14 weeks. Multiplying 67 hours x $11.83 x 14 equals $11,096.54.

- Adding the total earnings of $28,846.18 and $11,096.54 equals $39,942.72. Dividing by 52 weeks equals an average weekly wage of $768.13. TTD rate of $512.09 and PPD rate of $460.88.

Based upon the unrebutted testimony of petitioner and the above calculations, the petitioner's average weekly is $768.13.

IN SUPPORT OF THE ARBITRATOR'S DECISION RELATING TO (J.) WHETHER THE MEDICAL SERVICES PROVIDED TO PETITIONER WERE REASONABLE AND NECESSARY, THE ARBITRATOR FINDS AND CONCLUDES AS FOLLOWS:

The Arbitrator notes respondent's objection of submission of the medical bills was to liability only. The Arbitrator, having found petitioner suffered an accidental injury arising out of and in the course of his employment on October 14, 2019; and that petitioner's current conditions of ill-being are causally related to his injury, the Arbitrator finds and concludes that the medical services provided to the petitioner were reasonable and necessary in an attempt to alleviate his condition of ill-being. Therefore, the Arbitrator orders respondent Source One to pay to petitioner those medical expenses submitted as PX10 subject to the Medical Fee Schedule as follows:

Provider	Date of Service	Billed	Fee Schedule Amount
Midwest Neurosurgery	2/2/21-2/23/23	$1024.00	$677.98
Team Rehabilitation	1/30/23-3/3/23	$7045.00	$3336.23
Hinsdale Ortho	1/6/20-11/8/21	$5166.00	$3025.57
American Diagnostic	1/19/21	$2250.00	$1316.54
Associated Imaging	10/15/2019	$57.00	$37.77
Physicians Immediate Care	10/15/19	$395.64	$132.14
CEP America LLP	10/15/19-12/31/19	$1063	$565.52
IWP	4/27/21-5/9/23	$574.17	$574.17

The total medical expenses awarded pursuant to Section 8(a) equals **$9,665.92**.

IN SUPPORT OF THE ARBITRATOR'S DECISION RELATING TO (K.) WHETHER THE PETITIONER IS ENTITLED TO PROSPECTIVE MEDICAL CARE, THE ARBITRATOR FINDS AND CONCLUDES AS FOLLOWS:

The Arbitrator finds and concludes that the cervical spine surgery prescribed by Dr. Matthew Ross is reasonable and medically necessary in an attempt to alleviate the petitioner's condition of ill-being causally related to his accidental injury of October 14, 2019. Dr. Ross explained the medical basis for surgery in his deposition:

"What it involves is going in from the front of the neck so that you come down directly onto the disks, removing the disks in their entirety, including the portion in the spinal canal that's putting pressure on the spinal cord, and then stabilizing or fusing that area of the spine so that it - - at least at that area it's permanently protected. . . Certainly (fusing) three, possibly four."

PX12: 22-23. Dr. Alpert agreed with the surgery stating, "I recommend he gets his neck surgery as recommended by Dr. Matthew Ross." RX2, DepEX2: 8. The petitioner confirmed that he requests approval of this procedure because he wants to feel better, and he has a lot of pain. (T: 36). The Arbitrator notes that no utilization review report was submitted into evidence regarding this procedure. Having reviewed the medical evidence, and considering the petitioner's credible testimony at arbitration, and the testimony of the physicians involved in this case, the Arbitrator finds the surgery recommended by Dr. Matthew Ross shall be authorized by Respondent and Respondent shall pay all related reasonable and necessary medical charges pertaining to such medical treatment.

IN SUPPORT OF THE ARBITRATOR'S DECISION RELATING TO (L.) WHAT, IF ANY TEMPORARY TOTAL DISABILITY BENEFITS ARE DUE, THE ARBITRATOR FINDS AND CONCLUDES AS FOLLOWS:

The Arbitrator finds and concludes that the petitioner was temporarily and totally disabled from November 4, 2019, through May 25, 2023, a period of 185 weeks. The Arbitrator bases this conclusion on the medical records beginning with Dr. Patel that placed petitioner off work as of November 4, 2019, and the continuing restrictions to refrain from any work as provided by Dr. Steven Chudik and Dr. Matthew Ross. PX5, PX7, PX6, 9. While Respondent argues that Dr. Chudik's opinions should be invalidated because he was under the impression that Petitioner was pinned between pallets at some point during the accident, Dr. Chudik mostly recognized the injuries to the shoulders as a result of the

actual fall and bracing himself for said fall as opposed to being the result of any pinning that might have occurred. The Arbitrator does not find this to be a significant deviation from how the accident occurred nor affecting what injuries resulted and therefore, does not invalidate his opinions. Further, Dr. Alpert agreed Petitioner could not perform the essential functions of his previous job. The Arbitrator finds and concludes petitioner has not reached maximum medical improvement and therefore he is entitled to these benefits. Therefore, the Arbitrator finds and concludes that the petitioner is entitled to receive $512.09 per week for 185 weeks as provided in Section 8(b) of the Act as he was temporarily and totally disabled from November 4, 2019, through May 25, 2023.

IN SUPPORT OF THE ARBITRATOR'S DECISION RELATING TO (M.) WHETHER PENALTIES OR FEES SHOULD BE IMPOSED UPON THE RESPONDENT, THE ARBITRATOR FINDS AND CONCLUDES AS FOLLOWS:

An employer's reasonable and good faith challenge to liability ordinarily will not subject it to penalties under the Act. *Matlock v. Industrial Commission*, 321 Ill.App.3d 167 (1st D. 2001). Further, penalties are generally not imposed when there are conflicting medical opinions or when an employer acts in reliance upon responsible medical opinion. *Matlock v. Industrial Commission*, 321 Ill.App.3d at 173. Here, the respondent asserts that its reliance on the Section 12 report of Dr. Thomas Stanley of January 30, 2020 justified no further temporary total disability benefits or medical benefits owed to petitioner. For purposes of whether to impose penalties and fees, the Arbitrator finds that Respondent reasonably relied upon his medical opinions to deny benefits in good faith. Therefore, Petitioner's claim for penalties and attorney's fees is denied.

IN SUPPORT OF THE ARBITRATOR'S DECISION RELATING TO (N.) IS RESPONDENT DUE A CREDIT, THE ARBITRATOR FINDS AND CONCLUDES AS FOLLOWS:

Respondent's Temporary Total Disability payment ledger reflects total payment of $2,982.05 through December 15, 2019 and Arbitrator finds Respondent is entitled to credit for same. Res. Ex. 3.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC010537
Case Name	John Lutz v. Aramark
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b) Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	24IWCC0160
Number of Pages of Decision	13
Decision Issued By	Raychel Wesley, Commissioner

Petitioner Attorney	Michael Scanlon
Respondent Attorney	Patrick D. Duffy

DATE FILED: 4/9/2024

/s/ Raychel Wesley, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

JOHN LUTZ,

Petitioner,

vs. NO: 21 WC 10537

ARAMARK,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) and §8(a) having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of causal connection, medical expenses, prospective medical care, and temporary total disability, and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof. The Commission remands this case to the Arbitrator for further proceedings for a determination of a further amount of temporary total compensation or of compensation for permanent disability, if any, pursuant to *Thomas v. Industrial Commission*, 78 Ill. 2d 327 (1980).

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed May 26, 2023 is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay the sum of $6,692.98 for medical expenses as provided in §8(a), subject to §8.2 of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall authorize and pay for a second opinion evaluation by Dr. Ahmad Elakil, as provided in §8(a) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $1,158.67 per week for a period of 32 & 1/7ths weeks, representing January 6, 2022

through August 19, 2022, that being the period of temporary total incapacity for work under §8(b), and that as provided in §19(b), this award in no instance shall be a bar to a further hearing and determination of a further amount of temporary total compensation or of compensation for permanent disability, if any.

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

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

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

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $44,000.00. 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.

April 9, 2024

/s/ *Raychel A. Wesley*

RAW/wde

O: 3/6/24

43

/s/ *Stephen J. Mathis*

/s/ *Deborah L. Simpson*

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC010537
Case Name	John Lutz v. Aramark
Consolidated Cases	21WC010535;
Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	10
Decision Issued By	Elaine Llerena, Arbitrator

Petitioner Attorney	Matthew Gannon
Respondent Attorney	Patrick D. Duffy

DATE FILED: 5/26/2023

/s/Elaine Llerena, Arbitrator

Signature

THE INTEREST RATE FOR THE WEEK OF MAY 23, 2023 5.17%

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

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

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

John Lutz
Employee/Petitioner
v.
Aramark
Employer/Respondent

Case # **21** WC **010537**

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Elaine Llerena**, Arbitrator of the Commission, in the city of **Chicago**, on **August 19, 2022**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On the date of accident, **March 22, 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 $**90,376.00**; the average weekly wage was $**1,738.00**.

On the date of accident, Petitioner was **31** years of age, ***single*** with **0** dependent children.

Respondent shall be given a credit of $**46,793.31** for TTD, $**0** for TPD, $**0** for maintenance, and $**0** for other benefits, for a total credit of $**46,793.31**.

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

ORDER

Respondent shall pay Petitioner temporary total disability benefits of $1,158.67 per week for 32 & 1/7 weeks, commencing January 6, 2022, through August 19, 2022, as provided in Section 8(b) of the Act.

Respondent shall pay reasonable and necessary medical services of $6,692.98, as provided in Sections 8(a) and 8.2 of the Act.

Respondent shall authorize and pay for prospective medical care in the form of a second opinion evaluation by Dr. Elkahil.

Petitioner's claim for penalties and attorney's 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.

Elaine Llerena
Signature of Arbitrator

ICArbDec19(b)

May 26, 2023

STATEMENT OF FACTS:

Petitioner was hired by Respondent as a plant operator in March of 2020. (T. 12, 14) (PX22) As a plant operator, Petitioner was responsible for operating and maintaining machinery and equipment in buildings for which Respondent had maintenance contracts. (T. 15) (PX22) Petitioner monitored and operated high-pressure steam boilers and provided services for electrical, plumbing, heating, air conditioning, carpentry and painting. (T. 16) Petitioner's job required him to climb ladders to change light bulbs and transport chemicals to the high-pressure steam boilers' chemical feeds. (T. 17)

Petitioner had issues with his neck prior to his first injury on December 15, 2020. (T. 21) Petitioner received a cervical fusion in 2014 and underwent revision of the fusion in 2017. (T. 20-21) Both surgeries were performed by Dr. Theodore Fisher from Illinois Bone and Joint. (T. 20). Petitioner's last appointment with Dr. Fisher prior to the injuries at issue was on December 5, 2018. (RX7, P. 87) During that visit Petitioner reported mild neck pain. (RX7, P. 87) Dr. Fisher discharged Petitioner and instructed Petitioner to return on an as needed basis. (RX7, P. 87) Petitioner was working fully duty and he could go on runs. (T. 24-25)

I. December 15, 2020, Injury

On December 15, 2020, Petitioner was using a six-foot A-frame ladder to change an overhead light. (T. 25-26) When Petitioner was on the third rung of the ladder, the ladder kicked out and he fell back and to the left. (T. 26) Petitioner was unsuccessful in his attempt to brace the fall with his left arm and his left knee, hip, and shoulder slammed to the ground. (T. 27) The ground was a hard composite tile. (T. 27) Petitioner did not seek treatment immediately after the fall. (T. 28) Petitioner testified that he did not want any adverse action taken against him for seeking treatment, so he continued to work following the fall. (T. 29) Petitioner testified that if there was something overhead, a fellow engineer would assist him. (T. 29)

Petitioner called the office of his primary care physician, Dr. Kanwarpreet Dhami, on December 30, 2020. (T. 30; PX 2, P. 7-8) Petitioner spoke to Dr. Anthony Del Priore, Dr. Dhami's partner, via telephone visit. (PX 2, P. 7-8) Petitioner requested a Norco refill which was approved by Dr. Del Priore. (PEX 2, P. 7-8) Petitioner returned to Dr. Del Priore via telephone visit on January 8, 2021, requesting a refill on his chronic pain medication. (PX2, P. 9) Dr. Del Priore diagnosed Petitioner as having chronic low back pain with sciatica and prescribed hydrocodone-acetaminophen. (PX2, P. 9) On March 4, 2021, Petitioner had a telephone visit with Dr. Dhami and reported chills, cold sweats, myalgias, purulent nasal drainage, cough, low grade fever, and resolved diarrhea. (PX2, P. 11-12) Dr. Dhami diagnosed Petitioner as having acute sinusitis and bronchitis and suspected Covid-19 virus infection. There was no mention of any work accident or injury on December 15, 2020, or any complaints of left arm, left knee, hip, shoulder, or back pain during any of these visits.

II. March 22, 2021, Injury

On March 22, 2021, Petitioner had to change the boiler treatment because it was running low. (T. 33-34) The treatment chemicals were contained in a 30-gallon coupling barrel. (T. 35; PX20) Petitioner had to roll the barrel on a 45-degree angle to transport it from the storage room to the feed pump about 20-25 feet away. (T. 35, 38) While Petitioner was rolling the barrel to the feed pump, the barrel got caught on a chunk of concrete on the floor that was in disrepair. (T. 38-39) The barrel began to fall to the ground and Petitioner reached out with his right arm to grab it. (T. 39). When Petitioner grabbed the falling barrel, he immediately felt a pop in his elbow and neck. (T. 39) Petitioner felt a shooting pain going up his right arm as well as a sharp pain in the middle of his back on the right side of his spine. (T. 39) Petitioner sent an email to one of his supervisors, Sheena Walker, reporting and detailing the accident on that day. (PX18) Petitioner attempted to return to work the next day, but had to leave after a few hours because he was in too much pain. (T. 42)

Petitioner saw Dr. Dhami on March 24, 2021. (PX2, P. 13) Dr. Dhami noted that Petitioner reported a twisting trauma in the right arm, more so in the right forearm, when he suddenly pulled some weight while supinating, and now had pain from the elbow down to the medial aspect of the forearm, sometimes radiating into his hand. (PX2, P. 13) Dr. Dhami also noted that Petitioner reported falling off a ladder. (PX2, P. 13) Dr. Dhami ordered x-rays, which were negative for fractures. (P 2, P. 35-39) He also prescribed tramadol and cyclobenzaprine and ordered physical therapy. (PX2, P. 14-15)

Petitioner returned to Dr. Dhami on March 26, 2021, complaining of continued shooting pain in his right arm and numbness in the right hand. (PX2, P. 17-18) Dr. Dhami ordered an MRI of the right arm and prescribed a Medrol Dosepak. (PX2, P. 17)

On March 29, 2021, Petitioner emailed his supervisors, Jared Bailey and Sheena Walker, and requested claim information for his work injury. (PX17). They did not provide the information. (T. 78)

On March 30, 2021, Dr. Dhami prescribed Petitioner Norco, noting the tramadol was not working. (PX2, P. 20) Dr. Dhami noted that the MRI and physical therapy had not been approved. (PX2, P. 20) On April 6, 2021, Dr. Dhami noted Petitioner's back pain was worsening and referred Petitioner to an orthopedic. (PX2, P. 23)

On April 11, 2021, Petitioner received an email from Mr. Bailey indicating that Sedgwick had contacted Petitioner and that Petitioner was returning to work without restrictions. (PX15) Petitioner responded on April 12, 2021, indicating that he had a doctor's appointment and the doctor had taken him off work for 2 weeks. (PX15) On April 13, 2021, Petitioner received an email from Sedgwick's adjuster, Tracy Friedman, indicating that temporary total disability benefits and authorization for treatment were denied because she did not have the signed HIPAA authorization from Petitioner that she had previously sent him. (PX19) Petitioner responded that his benefits should not be withheld due to lack of medical records and noted that medical notes from his physician had been previously sent and acknowledged as received. (PX19)

Petitioner presented to Dr. Robert Strugala on April 16, 2021. (PX3, P. 17) Petitioner described the March 22, 2021, work accident and complained of right elbow and mid to lower back pain following the accident. (PX3, P. 17) Dr. Strugala advised Petitioner to proceed with the right elbow MRI. (PX3, P. 17)

Petitioner underwent an MRI of his right arm on April 19, 2021, at Mercy Hospital, the results of which showed Petitioner's right elbow to be within normal limits with a small amount of physiologic joint fluid in the lateral joint space. (PX2, P. 40)

Dr. Dhami reviewed the MRI on April 27, 2021. (PX2, P. 29) Dr. Dhami noted that Petitioner was still experiencing back pain, discontinued cyclobenzaprine and Norco and prescribed diclofenac and methocarbamol. (PX2, P. 29-30)

On April 28, 2021, Petitioner received an FMLA packet from Sedgwick. (PX10)

On April 29, 2021, Dr. Strugala reviewed the MRI. (PX3, P. 16) Dr. Strugala examined Petitioner and noted a positive Tinel's test at the right cubital tunnel. (PX3, P. 16). Dr. Strugala recommended Petitioner undergo electrodiagnostic studies because he suspected ulnar neuritis and prescribed a cubital tunnel brace. (PX3, P. 16) Respondent did not approve the brace, so Petitioner went through a series of braces he purchased on his own. (T. 49-50) The medical record where Dr. Strugala ordered the brace indicates that the order was sent to Tracy Freidman at Sedgwick. (PX3, P. 16)

Petitioner continued to follow up with Dr. Strugala, who noted that Petitioner was struggling with his arm, neck, and back pain. (PX3, P. 14-15) Dr. Strugula also prescribed meloxicam and gabapentin. (PX3, P. 15) On June 16, 2021, authorization was granted for the EMG. (PX11) On July 16, 2021, Dr. Strugala noted that Petitioner had undergone the EMG and that the results revealed some changes suggestive of carpal tunnel syndrome and a suspicion of cubital tunnel syndrome. (PX3, P. 13) (The EMG was not entered into evidence.) Dr. Strugala diagnosed Petitioner as having right elbow and arm pain. (PX3, P. 13) Dr. Strugala referred Petitioner to Dr. William Heller regarding his right upper extremity. (PX3, P. 13) As to Petitioner's ongoing neck pain, Dr. Strugala ordered a cervical MRI and kept Petitioner off work. (PX3, P. 13)

On July 23, 2021, Petitioner underwent the cervical MRI, the results of which revealed bulging at C4-5 and C5-6 and the prior fusion at C6-7. (PX1, P. 17-18) After reviewing the MRI, Dr. Strugala referred Petitioner to Dr. Theodore Fisher, who had performed the fusion, and Dr. Baljinder Bathla to discuss pain management. (PX3, P. 11)

Petitioner testified that he saw Dr. William Heller on August 20, 2021. (T. 53-54) On August 20, 2021, a Utilization Review was conducted following Petitioner's visits with Dr. Heller where Dr. Heller administered an injection and prescribed gabapentin, ketoprofen, lidocaine and alba-derm. (PX8) The Utilization Review denied the prescriptions. (PX8) (Dr. Heller's records were not introduced into evidence.)

On August 26, 2021, Dr. Strugula recommended an MRI of the lumbar spine and referred Petitioner to pain management.

Petitioner began physical therapy on August 30, 2021, and was discharged on October 5, 2021. (RX7)

Petitioner saw Dr. Bathla on September 13, 2021. (PX4, P. 23) Dr. Bathla recommended that Petitioner try acupuncture. (PX4, P. 23) Petitioner received acupuncture on September 25, 2021. (PX4, P. 156) On October 14, 2021, Petitioner followed up with Dr. Bathla and reported that the acupuncture did not help. (PX4, P. 19) Dr. Bathla noted that the efficacy of acupuncture is greater with subsequent sessions, so another was scheduled which was done on October 26, 2021. (PX4, P. 18-19, 153)

Petitioner saw Dr. Fisher on November 5, 2021. (PX1, P. 10-11) Dr. Fisher noted Petitioner's continued tenderness at C4-5, C5-6 and C6-7, sensitivity at his cubital tunnels, and positive Tinel's sign. (PX1, P. 10-11) Dr. Fisher recommended physical therapy, a medial branch block, and possible radiofrequency ablations. (PX1, P. 11).

On November 15, 2021, Dr. Bathla scheduled Petitioner for a trigger point injection, done on December 1, 2021, and referred Petitioner to Dr. Elkahil, an orthopedic surgeon, for a second opinion. (PX4, P. 14, 16) Petitioner followed up with Dr. Bathla on December 15, 2021, who noted that the trigger point injections helped significantly and provided about 25% relief for one week, but the pain gradually came back. (PX4, P. 12; PX25, P. 23) On December 29, 2021, Petitioner received more trigger point injections. (PX4, P. 10) On January 7, 2022, Dr. Bathla noted Petitioner's neck and shoulder pain was 50% better. (PX4, P. 8) Petitioner reported that the day before this appointment he was vacuuming and extended his arm outward causing intense back pain that caused Petitioner to drop to the ground. (T. 61-62; PX4, P. 8) Dr. Bathla recommended a lumbar MRI. (PX4, P. 8-9)

Petitioner underwent the lumbar MRI on January 14, 2022, the results of which revealed a disc bulge at L4-5 and L5-S1 and disc bulge at L5-S1 that contacted the traversing S1 nerve root. (PX4, P. 90)

Petitioner received additional acupuncture on January 19, 2022. (PX4, P. 33). On January 21, 2022, and February 9, 2022, Petitioner followed up with Dr. Bathla who prescribed medication refills and ordered a lumbar epidural steroid injection and an occipital neuralgia nerve block. (PX4, P. 2)

Petitioner stopped receiving workers' compensation benefits at this point and Dr. Bathla's office turned Petitioner away due to a lack of payment. (PX4, P. 62-63). Petitioner does not have health insurance. (T. 64)

Respondent lost its contract for school maintenance in June of 2021. (T. 72) The contract was picked up by Jones Lang LaSalle (JLL). (T. 72). JLL hired Petitioner when it picked up the contract, however Petitioner remained off work. (T. 72). As an employee of JLL, Petitioner's health insurance would cost him $514.00 a month. (T. 73)

Dr. Bathla's evidence deposition was taken on June 6, 2022. (PEX 25). Dr. Bathla's testimony was consistent with his records. Dr. Bathla testified that he was aware of Petitioner's prior medical history, including Petitioner's fusion and revision surgeries with Dr. Fisher. (PX25, P. 8) Dr. Bathla explained that he believed Petitioner's pain was a combination of myofascial pain, or muscle pain, and cervical radiculopathy, radiating pain down his arm. (PX25, P. 20-21) Dr. Bathla testified that a fall from a ladder can render disc protrusions at C5-6 and arthropathy at C5-6 and C6-7 symptomatic, cause lumbar disc bulges at L5-S1 and L4-5 and arthropathy to become symptomatic, and cause myofascial pain. (PX25, P. 29-30) Dr. Bathla agreed to a reasonable degree of medical certainty that it is more likely true than not that Petitioner's fall from the ladder caused his pain. (PX25, P. 29-30) Dr. Bathla agreed that Petitioner's action of catching the barrel on March 22, 2021, could cause neck pain, myofascial pain, ulnar neuropathy, carpal tunnel, and aggravate protruding discs. (PX25, P. 30-31) Dr. Bathla opined that the barrel incident more likely than not caused Petitioner's neck and arm pain. (PX25, P. 31) Dr. Bathla explained that throughout his treatment of Petitioner, Petitioner was not in a condition to work. (PX25, P. 33). When Dr. Bathla was asked if Petitioner was at maximum medical improvement (MMI) in February 2022, Dr. Bathla stated that Petitioner could be better, but he felt that Petitioner needed proper care and where Petitioner's pain was coming from needed to be determined. (PX25, P. 34) Dr. Bathla testified that it would be a good idea for Petitioner to receive a second opinion from a spine surgeon. (PX25, P. 35) Dr. Bathla testified that all of the treatment Petitioner received, including office visits, EMGs, MRIs, acupuncture, and trigger point injections, were all reasonable and necessary. (PX25, P. 36)

Petitioner underwent a Section 12 examination (IME) with Dr. Mark Levin at Respondent's request on November 10, 2021. (RX1, DEX2 & DEX3) Dr. Levin examined Petitioner and reviewed Petitioner's medical records, including those from Dr. Heller. Regarding the December 15, 2020, work accident, Dr. Levin found that Petitioner had restricted left shoulder motion but did not find it causally related to the December 15, 2020, work accident. Dr. Levin did not find any traumatic pathology and, as such, did not find that Petitioner sustained a left shoulder injury or aggravated any left shoulder condition on December 15, 2020. Regarding the March 22, 2021, work accident, Dr. Levin found that Petitioner had chronic preexisting cervical fusion with revision surgery, but no acute changes or radiculopathy due to the March 22, 2021, work accident. Dr. Levin also found no objective pathology regarding the right wrist and elbow. Dr. Levin opined that Petitioner had subjective discomforts, but found that the March 22, 2021, work accident did not cause or aggravate Petitioner's right wrist, right elbow, cervical and lumbar conditions. Dr. Levin noted that Petitioner had difficulty and discomfort with above shoulder level activity and, as a result, would have difficulty doing his job, but Dr. Levin did not attribute these restrictions to the March 22, 2021, work accident. Dr. Levin opined that Petitioner did not require any additional treatment for either accident.

Petitioner was taken off of work by Dr. Del Priore on March 24, 2021. (PX14) Petitioner stopped receiving his benefits in late December 2021. (T. 71). Petitioner explained that while he is now employed by JLL, they will not let him begin to work until he receives proper authorization from his doctors. (T. 72)

On April 20, 2022, Dr. Levin's evidence deposition was taken. (RX1) Dr. Levin's testimony was consistent with his November 10, 2021, IME reports. Dr. Levin agreed that Petitioner's last date of treatment for neck problems prior to the injuries at issue was in December of 2018. (RX1, P. 65-66) He agreed that Petitioner's pain at that time was mild. (RX1, P. 66) Dr. Levin agreed that there was a two-year period where there was no record of Petitioner complaining of neck pain. (RX1, P. 68)

Jose Flores, an investigator for Frasco Investigative Services, conducted surveillance of Petitioner at Respondent's request. (T. 119, RX9) On June 21, 2022, Flores videotaped Petitioner watering the lawn, walking, getting into the passenger side of a car, driving, getting in/out of driver seat of a car, entering and leaving Denny's, entering/leaving/walking through Bass Pro Shop and squatting down to see something in aisle, pumping gas, running a bit to catch up to his companion to enter Home shop, loading groceries into trunk of a car, returning the empty cart to the cart area, and carrying groceries into his home. (RX9) When Petitioner was carrying objects, he more often than not carried objects in his left hand. (RX9) On June 22, 2022, Mr. Flores videotaped Petitioner at his home. (T. 122, RX9) Petitioner was installing a security camera at the top corner his garage because someone had broken into his back fence earlier that day. (T. 143-144, RX9) Petitioner used his left hand to operate the power drill. (RX9) Petitioner also moved trash and recycling containers outside his home by rolling, pushing, and kicking the containers. (RX9) Petitioner was also videotaped getting out of the driver seat of vehicle (RX9)

Petitioner has outstanding charges from Dr. Dhami for $1,095.00. (PX9) Petitioner's outstanding bill from Dr. Strugala is for $443.00. (PX3) Petitioner's charges from Dr. Bathla total $4,669.98. (PX5) Petitioner received a bill from Labcorp, Dr. Dhami's drug compliance company, for $545.00 and $746.00. (PX6) Petitioner received a collection notice from Alexian Brothers for $846.78 relating to the MRI Petitioner received. (PX6) Petitioner received a collection for $388.00 from Elk Grove Village Radiology, which fails to indicate a date of service, and a bill for $69.00 from Elk Grove Radiology with a service date of March 24, 2021. (PX6)

WITH RESPECT TO ISSUE (F), IS THE PETITIONER'S PRESENT CONDITION OF ILL-BEING CAUSALLY RELATED TO THE INJURY, THE ARBITRATOR FINDS AS FOLLOWS:

It is well-settled that an employee need only show that some act of employment was a causative factor, not the sole or principal cause, of his injury. *Alderson v. Select Beverage, Inc.*, 06 I.W.C.C. 0095, 01 W.C. 33435 (2006). "Every natural consequence that flows from an injury that arose out of and in the course of one's employment is compensable under the Act absent the occurrence of an independent intervening accident that breaks the chain of causation between the work-related injury and an ensuing disability or injury." *Dunteman v. Illinois Workers' Comp. Comm'n*, 2016 IL App (4th) 150543WC, ¶ 42. The fact that the employee had a preexisting condition, even though the same result may not have occurred had the employee been in normal health, does not preclude a finding that the employment was a causative factor. *Id.* The question is whether the evidence supports an inference that the accident aggravated or accelerated the process which led to the employee's current condition of ill-being. *Id.* A work-related injury "need not be the sole causative factor, nor even the primary causative factor, as long as it was a causative factor in the resulting condition of ill-being." *Id.* ¶ 43.

Petitioner testified credibly that he sustained a work accident on March 22, 2021, when he reached out to grab a falling barrel filled with chemicals. Dr. Bathla testified credibly and persuasively that Petitioner's March 22, 2021, work accident was more likely than not a cause of his pain. Although Dr. Levin did not believe that Petitioner sustained any objective injury on March 22, 2021, Petitioner's treating doctors found otherwise.

Dr. Dhami, Dr. Strugala, and Dr. Fisher believed that Petitioner sustained an injury on March 22, 2021. Therefore, the Arbitrator finds Dr. Bathla's findings and opinions more persuasive than those of Dr. Levin.

Based on the above, the Arbitrator finds that Petitioner's current condition of ill being is causally related to the March 22, 2021, work accident.

WITH RESPECT TO ISSUE (J), WERE THE MEDICAL SERVICES THAT WERE PROVIDED TO PETITIONER REASONABLE AND NECESSARY AND HAS RESPONDENT PAID ALL APPROPRIATE CHARGES FOR ALL REASONABLE AND NECESSARY MEDICAL SERVICES, THE ARBITRATOR FINDS AS FOLLOWS:

Section 8(a) of the Act (820 ILCS 305/8(a) (West 2002)) states, in relevant part: "The employer shall provide and pay all the necessary first aid, medical and surgical services, and all necessary medical, surgical and hospital services thereafter incurred, limited, however, to that which is reasonably required to cure or relieve from the effects of the accidental injury." 820 ILCS 305/8(a) (West 2002).

Dr. Bathla testified credibly that all of the treatment Petitioner received was reasonable and necessary. Petitioner submitted his medical bills and collection notices into evidence. (See PX1, PX2, PX3, PX5, PX6, and PX9). Respondent submitted a payment ledger showing all the medical expenses it paid on Petitioner's claim. (RX3) The Arbitrator finds the following are the outstanding medical expenses: Dr. Dhami ($1,095.00), Dr. Strugala ($443.00), Dr. Bathla ($4,669.98), Labcorp ($545.00 and $746.00), Alexian Brothers ($846.78), and Elk Grove Village Radiology ($69.00). The Arbitrator notes there is also a collection notice from Elk Grove Village Radiology for $388.00, which fails to list a date of service and, as such, cannot be awarded.

Based on the above, the outstanding amount of unpaid medical bills totals $8,414.76. However, the Arbitrator notes that Petitioner stipulated on the Request for Hearing form (AX1) that the total of unpaid medical bills is $6,692.98. Therefore, pursuant to *Walker v. Industrial Commission*, 345 Ill. App. 3d 1084 (2004), the Arbitrator finds that Respondent is liable to Petitioner for unpaid medical bills totaling $6,692.98.

WITH RESPECT TO ISSUE (K), IS PETITIONER ENTITLED TO ANY PROSPECTIVE MEDICAL CARE, THE ARBITRATOR FINDS AS FOLLOWS:

The Arbitrator notes that on November 15, 2021, Dr. Bathla referred Petitioner to Dr. Elkahil, an orthopedic surgeon, for a second opinion. Based on the finding above that Petitioner's current condition of ill-being is causally related to the March 22, 2021, work accident, the Arbitrator finds that Petitioner is entitled to prospective medical care in the form of a second opinion evaluation by Dr. Elkahil.

WITH RESPECT TO ISSUE (L), WHAT AMOUNT OF COMPENSATION IS DUE FOR TEMPORARY TOTAL DISABILITY, TEMPORARY PARTIAL DISABILITY AND/OR MAINTENANCE, THE ARBITRATOR FINDS AS FOLLOWS:

"TTD compensation is provided for in section 8(b) of the Workers' Compensation Act, which provides, '[W]eekly compensation * * * shall be paid * * * as long as the total temporary incapacity lasts,' which [Illinois courts have] interpreted to mean that an employee is temporarily totally incapacitated from the time an injury incapacitates him for work until such time as he is as far recovered or restored as the permanent character of his injury will permit." *Interstate Scaffolding, Inc. v. Illinois Workers' Comp. Comm'n*, 236 Ill. 2d 132, 142 (2010).

The Arbitrator notes that Dr. Bathla testified that Petitioner could further improve. He stated that more work needs to be done to cure the source of Petitioner's pain. Further, Petitioner has not been released to return

to work. The Arbitrator further notes that Respondent's temporary total disability benefits ledger indicates that the last date of benefit payments to Petitioner was on January 6, 2022. (RX2)

Based on the above, he Arbitrator finds that Respondent is liable for unpaid temporary total disability from January 6, 2022, through August 19, 2022.

WITH RESPECT TO ISSUE (M), SHOULD PENALTIES BE IMPOSED UPON THE RESPONDENT, THE ARBITRATOR FINDS AS FOLLOWS:

The Arbitrator finds that Respondent had a valid dispute regarding causation in this matter. Further, the Arbitrator notes that Respondent relied on the findings and opinions of Dr. Levin in denying benefits. Therefore, the Arbitrator finds that Respondent's behavior was not unreasonable or vexatious in this matter. Petitioner's claim for penalties and attorney's fees is denied.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	18WC009908
Case Name	Reginald Ball v. Enterprise Leasing Co. of Chicago, LLC,
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b) Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	24IWCC0161
Number of Pages of Decision	27
Decision Issued By	Carolyn Doherty, Commissioner

Petitioner Attorney	Jordan Browen
Respondent Attorney	Joseph R. Needham

DATE FILED: 4/9/2024

/s/Carolyn Doherty, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF DuPAGE)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

REGINALD BALL,

Petitioner,

vs. NO: 18 WC 9908

ENTERPRISE LEASING CO.
OF CHICAGO,

Respondent.

DECISION AND OPINION ON REVIEW

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

I. **Causal Connection**

The Arbitrator found that Petitioner established a causal connection between his March 13, 2018, work injury and his right shoulder contusion and cervical and thoracic strains, which he found had resolved to a state of unrestricted maximum medical improvement by July 20, 2018. However, the Arbitrator further found that Petitioner did not prove a causal connection regarding the lumbar spine (with subsequent complaints of lower extremity radiculopathy) or the left shoulder.

The Commission affirms the finding that Petitioner established a causal connection between his March 13, 2018, work injury and his right shoulder contusion and cervical and thoracic strains, producing neck, shoulder, and lumbar pain. However, the Commission modifies

the Decision of the Arbitrator, additionally finding that the condition of ill-being in Petitioner's lumbar spine, including radiculopathy, is also causally connected to the stipulated accident. Lastly, the modifies the Arbitrator Decision and finds that the condition of Petitioner's left shoulder was connected to the accident through July 20, 2018.

The Commission first finds that the current condition of Petitioner's lumbar spine is and remains causally connected to the work accident based on the treatment records and expert medical opinions submitted into evidence.[1] Petitioner's treatment records include reports of radicular symptoms beginning on May 9, 2018, less than two months after the accident. At that time, Dr. Dabah did not diagnose a radiculopathy, but referred Petitioner for a neurosurgical consultation. On July 2, 2018, Petitioner visited Dr. Gulati, complaining of severe back pain radiating into his left leg. During that examination, Petitioner had a straight leg raising sign present on the left at 60 degrees. Dr. Gulati lacked Petitioner's diagnostic testing and therefore recommended that Petitioner provide the lumbar MRI and requested an EMG/NCV of the lower extremities. On August 10, 2018, Dr. Elton Dixon performed an EMG/NCS, with the impression that it was an abnormal study of the left leg, with findings indicative of L5-S1 radiculopathy. On October 8, 2018, Dr. Geoffrey Dixon, after finding a positive straight leg raise on the left with no positive Waddell's sign, reviewed the lumbar MRI and CT reports, as well as the EMG/NCS report, and diagnosed Petitioner with L5-S1 spondylolisthesis with associated radiculopathy, opining that this diagnosis, while congenital in nature, was exacerbated and made symptomatic by the events of March 13, 2018. Dr. Chanduri also reviewed the lumbar MRI and EMG/NCS, and diagnosed Petitioner with lumbar spondylosis with left leg radiculopathy.

Dr. Zelby, the Section 12 examiner, dismissed Petitioner's early reports of radicular symptoms because Drs. Dabah and Gulati did not diagnose a radiculopathy, but their treatment of Petitioner led to obtaining an EMG/NCS report which disclosed radiculopathy. Dr. Zelby, opining that there was no objective evidence to support finding a radiculopathy, dismissed the EMG/NCS results because they were not confirmed by his examination, ignoring that the EMG/NCS was sought due to the prior treatment of Petitioner's radicular symptoms. The nature of Petitioner's known grade I spondylolisthesis, as well as the ability to discern a progression of the condition from a 2015 lumbar CT scan to a 2018 lumbar MRI, were contested by Dr. Zelby and Dr. Geoffrey Dixon. Given the record of Petitioner's reported radicular symptoms, the positive straight leg tests recorded during Petitioner's treatment, and the objective findings of radiculopathy in the EMG/NCS report, the Commission accepts the opinion of Dr. Geoffrey Dixon over that of Dr. Zelby and finds that there is a causal connection between the stipulated accident and Petitioner's current condition of ill-being in the lumbar spine.

The Commission also finds that the condition of Petitioner's left shoulder was causally related to the work accident through July 20, 2018, but not thereafter. The treatment records indicate that Petitioner initially complained of right upper extremity pain following the accident.

---

[1] The Arbitrator erroneously concluded that bills for Petitioner's unrelated July 28, 2018 hospitalization revealed "a host of diagnostic testing performed to assess spinal injury, including charges for cervical CT scan, thoracic and lumbar spine MRI, and lumbar spine x-ray." Decision, p. 17 (citing PX1, pp. 12-13). The Commission finds that the bills upon which the Arbitrator relied bear the dates of March 14, 2018, and March 19, 2018, *not* July 28, 2018. The record does not support the Arbitrator's conclusion that Petitioner's current lumbar condition was causally related to the conditions treated in the July 28, 2018 hospitalization.

However, five days later, Petitioner returned to emergency room, complaining that his lower back pain had not improved and radiated to his shoulders, worse on the left side. Ten days later, Dr. Murtaza recommended physical therapy due to the L5-S1 spondylolisthesis, prescribing a course of physical therapy for the low back and left shoulder at Total Rehab through July 20, 2018, when he was discharged from therapy by his physician. No further treatment of the left shoulder appears in the treatment records. Based on the chain of events and the treatment records, the Commission concludes that Petitioner established a causal connection between the accident and the condition of his left shoulder through July 20, 2018.

II. **Medical Expenses**

The Arbitrator disallowed medical bills for services rendered after July 20, 2018, based on the erroneous finding that Petitioner reached maximum medical improvement on that date. The Arbitrator also disallowed the medical bills from Glenn Oaks Hospital contained in Petitioner's Exhibit 1, other than for March 14, 2018 and March 19, 2018, per Petitioner's stipulation.[2] Given the Commission's additional findings regarding causation, the Commission modifies the Decision of the Arbitrator to award Petitioner's claimed reasonable and necessary medical expenses, representing a total of $109,782.37 in medical charges, pursuant to the medical fee schedule and Sections 8(a) and 8.2 of the Act. Respondent shall be given a credit for any awarded medical benefits that have been paid by Respondent.

III. **Prospective Care**

The Arbitrator denied Petitioner's claim for prospective care, based on the conclusion that Petitioner reached maximum medical improvement on July 20, 2018. Given the Commission's modified findings regarding causation, and Petitioner's testimony that he wished to proceed with surgery, the Commission modifies the Decision of the Arbitrator to order Respondent to authorize and pay for the L5-S1 decompression with interbody fusion surgery recommended by Dr. Geoffrey Dixon.

IV. **Temporary Total Disability**

The Arbitrator awarded Petitioner 19 and 5/7ths weeks of temporary total disability (TTD) benefits for the period from March 28, 2018, through August 12, 2018, stating that Respondent stipulated to this liability and paid benefits. Respondent was awarded credit for payments made.

The Request for Hearing indicates that Petitioner claimed 280 and 2/7ths weeks of TTD benefits for the period from March 14, 2018, through the hearing date of July 27, 2023. Respondent disputed this claim. There is no indication that Respondent stipulated to the period awarded by the Arbitrator, though the parties stipulated that Respondent had paid $7,996.90 in TTD benefits, which corresponds to $405.65 per week for the period awarded, based on the

[2] Although unrelated bills were inadvertently included in Petitioner's Exhibit 1, a review of the exhibit attached to the Request for Hearing, as well as a review of Petitioner's Exhibit 1, indicates that Petitioner only sought reimbursement for treatment on March 14, 2018 and March 19, 2018, and did not seek reimbursement for the unrelated July 28, 2018 hospitalization in this case.

stipulated average weekly wage of $608.47.

In this case, Petitioner testified that he had been off work since his initial evaluation on March 14, 2018. This testimony is generally corroborated by the records from Adventist Glen Oaks Hospital, Dr. Murtaza, Dr. Dabah, and Dr. Dixon. Moreover, the Commission does not accept Dr. Zelby's opinion that Petitioner reached maximum medical improvement for his lumbar condition by July 2018, concluding that Petitioner is entitled to surgery and has not reached maximum medical improvement. Accordingly, the Commission modifies the Decision of the Arbitrator to award Petitioner 280 and 2/7ths weeks of TTD benefits, for the period from March 14, 2018, through July 27, 2023. Respondent shall receive a credit for TTD benefits already paid.

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

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator dated October 20, 2023, is modified as stated herein. The Commission otherwise affirms and adopts the Decision of the Arbitrator.

IT IS THEREFORE FOUND BY THE COMMISSION that Petitioner established a causal connection between the stipulated March 13, 2018 accident and the current condition of ill-being of his lumbar spine.

IT IS FURTHER FOUND BY THE COMMISSION that Petitioner established a causal connection between the stipulated March 13, 2018 accident and the condition of his left shoulder through July 20, 2018.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay for Petitioner's reasonable and necessary medical services in the amount of $109,782.37, pursuant to the medical fee schedule and Sections 8(a) and 8.2 of the Act. Respondent shall be given a credit for any awarded medical benefits that have been paid by Respondent.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall authorize and pay for the L5-S1 decompression with interbody fusion surgery recommended by Dr. Geoffrey Dixon, and necessary and reasonable associated care.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay Petitioner temporary total disability benefits of $405.65 per week for 280 and 2/7ths weeks, commencing March 14, 2018, through July 27, 2023, as provided in Section 8(b) of the Act. Respondent shall be given a credit of $7,996.90 for temporary total disability benefits that have been paid, as stipulated by the parties.

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

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

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

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

April 9, 2024

o: 3/21/24
CMD/kcb
045

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

/s/ *Amylee H. Simonovich*
Amylee H. Simonovich

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	18WC009908
Case Name	Reginald Ball v. Enterprise Leasing Co. of Chicago, LLC,
Consolidated Cases	
Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	21
Decision Issued By	Michael Glaub, Arbitrator

Petitioner Attorney	Jordan Browen
Respondent Attorney	Joseph R. Needham

DATE FILED: 10/20/2023

THE INTEREST RATE FOR THE WEEK OF OCTOBER 17, 2023 5.33%

/s/Michael Glaub, Arbitrator

Signature

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
19(B) ARBITRATION DECISION

Reginald Ball
Employee/Petitioner

v.

Enterprise Leasing Co. of Chicago, LLC,
Employer/Respondent

Case # **18** WC **9908**

Consolidated cases:

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Michael Glaub**, Arbitrator of the Commission, in the city of **Wheataon**, on **July 27, 2023**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On the date of accident **March 13, 2018** Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injuries, Petitioner earned $**31,640.64**; the average weekly wage was **$608.47**.

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

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

Respondent shall be given a credit of $**7,996.90** for TTD, $**0** for TPD, $**0** for maintenance, and $**0** for other benefits, for a total credit of $**7,996.90**. Respondent is entitled to a credit of $**29,264.04** for medical payments outlined in Respondent's Exhibit 3.

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

ORDER

Causal Connection

Petitioner established causal connection of his March 13, 2018, work injury and his right shoulder contusion and cervical and thoracic strains, producing neck, shoulder, and lumbar pain, resolved to a state of unrestricted MMI by July 20, 2018. Petitioner stipulated treatment received July 28, 2018, is unrelated to this claim; his claim of lumbar radiculopathy surfacing July 28, 2018, is unrelated to this claim.

Medical Bills

Respondent shall owe payment at the Section 8.2 Fee Schedule rate for all treatment rendered and received before July 20, 2018, for all spine and shoulder treatment related to this claim of injury, as outlined in Petitioner's Exhibit 2, pages 158 and 159, for treatment rendered by Illinois Orthopedic Network March 29, 2018, and April 29, 2018. Respondent shall owe none of the remainder of the bills contained in Respondent's Exhibit 2, being unrelated to this claim. Respondent shall owe physical therapy bills of Total Rehab for treatment rendered April 5, 2018, through July 20, 2018, reflected in p3-24 of Petitioner's Exhibit 3. Respondent shall owe none of the remainder of the bills contained in Respondent's Exhibit 3, reflecting unreasonable and excessive levels of therapy, and as unrelated to this claim. Respondent shall owe no payment for medical services rendered by Glenn Oaks Hospital contained in Petitioner's Exhibit 1, as treatment Petitioner stipulated is unrelated to this claim. Respondent shall owe no payment for October 11, 2018, and December 6, 2018, services of Metro Anesthesiology in Petitioner's Exhibit 4 for services rendered by Premiere Healthcare Services November 13, 2018, in Petitioner's Exhibit 5, or for services rendered by Suburban Pain Care August 10, 2018 contained in Petitioner's Exhibit 7, being treatment unrelated to this claim.

Temporary Total Disability

Petitioner proved entitlement to 19-5/7 weeks TTD March 28, 2018, through August 12, 2018, to which Respondent stipulated to liability. Petitioner established disability related to the work injury beginning March 28, 2018, resolved by July 20, 2018, after which Petitioner stipulated spinal treatment received July 28, 2018, through August 3, 2018, was unrelated to this claim.

Other – Prospective medical treatment

Respondent shall owe no medical treatment subsequent to Petitioner's MMI date July 20, 2018.

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

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

MICHAEL GLAUB **OCTOBER 20, 2023**

Signature of Arbitrator

STATEMENT OF FACTS

Petitioner testified that on March 13, 2018, he was employed with Respondent Enterprise and a second employer, Ray Graham. He worked for Respondent as a porter, which required him to cleans rental cars and transport customers. Cleaning the cars is physical labor that requires him to put water in a bucket and add soap, then physically clean the cars' exteriors and interiors. Tr. 14-15. Soap is applied with a long-handled brush instead of a sponge. Tr. 50-51. He worked from 7am to noon, then worked his second job assisting mentally challenged adults with tasks such as shopping, from 2:30pm to 11pm. Tr. 15-18. His job at Ray Graham allowed him to sit down all day, at least on the day of injury. Tr. 63.

On March 13, 2018, he was working for Respondent washing a car when he slipped on ice created by soapy water and fell on his back. He called a co-worker for help, who notified a manager. He stayed seated on the ground for roughly 20 minutes before being assisted to his feet. He finished his workday with Respondent. He completed a full workday with Ray Graham. However, on the next morning, he had his wife rush him to the hospital at about 8am as he could not get out of bed. His pain level was 10/10. Tr. 18-22. At the hospital he received an MRI and pain medications and was discharged with referral for physical therapy. He received physical therapy with Total Rehab and followed up for treatment with Illinois Orthopedic Network. Petitioner only remembered treating with Dr. Dixon; he also remembered receiving injections from someone other than Dr. Dixon but did not recall with which doctor. His doctors prescribed gabapentin for pain, which precluded him from driving. He did not return to work after March 13, 2018.

On July 28, 2018, Petitioner was hospitalized, but could not remember the reason. Tr. 69. Petitioner stipulated the spinal treatment received during this period in July and August 2018, represented in his Exhibit 1, was unrelated to the work injury. Tr. 72-74, 78.

Petitioner received his first injection in October of 2018, and a second in December of 2018, but was uncertain of the timeframe but remained off work the entire time. Tr. 22-26. He initially saw Dr. Dixon in October of 2018, and into 2019. After reviewing Petitioner's imaging, Dr. Dixon recommended a surgical procedure to put screws in his back. Petitioner last saw Dr. Dixon in September of 2019, and has not received the surgery. During this period, he was not working, was taking pain medications and receiving physical therapy. Physical therapy provided little relief with his pain level, but heat compressions and massage were beneficial in reducing pain from 10/10 to 8/10. Tr. 26-30.

In 2015 Petitioner was involved in a motor vehicle accident wherein he was rear-ended, causing muscle spasm down his back. He received therapeutic massage but no injection or surgical recommendation. He did not require treatment or work restriction in 2016 or 2017, until his March 2018 injury. Petitioner continues to feel pain, has trouble standing for long periods, driving for long periods, and performing home chores. Going to stores and the laundromat test his endurance. Petitioner uses a cane every day, but the cane was not

recommended or prescribed by any physician. Tr. 31-39. At home, he uses a heating pad for comfort, and mostly lies on his back and his stomach. Sitting is difficult, but he doesn't limit his driving because he pushes himself. He also goes to the laundromat. Tr. 40. He stopped taking pain medications at the same time he ceased physical therapy but does not remember when that was. Tr. 42-43. No doctor ever outlined what activities Petitioner can or cannot perform. However, petitioner was authorized to be work. Tr. 47, 50. No doctor has assessed petitioner's medical condition since September 2019. Tr. 47.

Surveillance investigator Dan Lindblad testified to surveillance conducted on Petitioner June 13, 2023, June 15, 2023, and June 20, 2023. Mr Lindblad is a private investigator with 33 years of experience and holds the requisite registration and credentials for private investigations in the State of Illinois. Tr. 89. Mr. Lindblad testified to the surveillance process, including background checks and vehicle registration searches performed to ensure the correct individual is surveilled. Tr. 90. He identified Respondent's Exhibit 5 as the report documenting his surveillance efforts and identified Respondent's Exhibit 6 as the video surveillance capturing Petitioner's activity. Tr. 89. The June 13 footage is 2 minutes long, June 15 footage is 13 minutes long, and the June 20, 2023, footage is just over 16 minutes long. Tr. 93, Res. Ex 6. None of the videos has been edited. Tr. 92. During airing of the surveillance video, Mr. Lindblad described his use of a bag cam; a smaller camera that allowed him to obtain video of Petitioner shopping inside a convenient store. He also described a period of footage secured later the same day where Petitioner walked a substantial distance, departing from his home on foot and walked across several streets back to the Dollar Store to which he had earlier driven. Tr. 106.

Surveillance footage is brief; only 30 minutes over three days June 13, 15, and 30, 2013. Petitioner's activity is limited, involving little more than driving and walking. He appears unencumbered in his ability to drive, but walked with a slow and deliberate gait, at all times carrying a cane. Petitioner is shown taking trash to his residential apartment dumpster, shopping at a local convenient store, and walking several blocks through his residential neighborhood. Res. Ex 6. The accompanying investigator's report contains a detailed description of the investigation measures performed. Res. Ex. 5.

Records admitted into evidence reveal treatment prior to injury. The most relevant records reveal a May 22, 2015 lumbar spine CT, compared with May 15, 2015 CT scans of the abdomen, and chest with abdomen, revealed mild spondylolisthesis L5 on S1 with bilateral spondylosis similar to the prior study, with disc bulging and osteophyte complex at L1-2, circumferential disc bulging and osteophyte complex at L2-3 with minimal ventral effacement of the thecal sac with facet hypertrophy, and L3-4 disc space narrowing and diffuse disc bulge and disc osteophyte complex, producing an impression of bilateral L5 spondylosis with spondylolisthesis and degenerative disc disease most severe at L3-4. Pet. Ex 2, p34-35; 58-59.

Petitioner was seen as a walk-in patient at Adventist Glen Oaks Hospital Emergency Room at 11:22am March 14, 2018 (the day following the accident) with right upper extremity pain and back pain following a fall on ice the day prior, in which he tried to brace himself with his right arm. He had moderate back pain radiating from the low back to his neck with no exacerbating or relieving factors. He was fatigued, but denied head injury of head symptoms; his neurologic exam revealed no weakness, with normal range of motion of the spine. Pet. Ex 1, p22. Examination was negative for bruising or bone injury. Id. at 23. X-rays revealed L5 spondylosis with 5mm anterolisthesis, and CT revealed a congenitally underdeveloped C1 variation and a large degenerative spondylosis with foraminal stenosis. Id. at 24,37-38. He was discharged with a diagnosis of right arm and back contusion. No left arm injury, leg pain, or leg symptoms were recorded. Id. at 24.

Cervical CT scan performed March 14, 2018 at Adventist Glen Oaks Hospital revealed no fracture, a congenital variation at C1, and a large interior degenerative spondylosis with foraminal stenosis, worse on the left. Pet. Ex 2, p10, 30, 53; Pet. Ex 6, p21.

Lumbar x-ray performed March 14, 2018 at Adventist Glen Oaks Hospital revealed moderate calcified atherosclerosis, bilateral pars defects at L5 with anterolisthesis at L5 and S1, and disc height loss with vacuum phenomenon at L1-L2. Pet. Ex 2, p11,31, 54; Pet. Ex 6, p22.

Lumbar MRI performed March 19, 2018 at Adventist Glen Oaks Hospital with comparison to lumbar x-ray and lumbar CT performed that day revealed Grade 1 anterolisthesis L5 on S1, with lumbar lordosis relatively preserved. Pet. Ex 6, p9,14. Specified is no acute osseous formation within the spine, with multi-level spondylosis most advanced at L5-S1; small disc bulges and facet arthropathy were identified at levels L1-2, L2-3, L3-4 and L5-S1, while level L4-5 showed no evidence for herniation, stenosis or foraminal compromise. Pet. Ex 2, p8-9; Pet. Ex 6, p10,15. Petitioner stipulated at trial Respondent was not liable for this treatment.

Thoracic spine x-ray performed March 19, 2018 at Adventist Glen Oaks Hospital revealed mild wedging of lower thoracic vertebral body, with vertebral body heights maintained. Mild widening of the anterior intervertebral disc height within the lower thoracic spine likely unchanged and likely degenerative. Pet. Ex 2, p5-6, 25-26, 48-49; Pet. Ex 6, p11,16. Petitioner stipulated at trial Respondent was not liable for this treatment.

Thoracic MRI performed March 19, 2018 at Adventist Glen Oaks Hospital with comparison to thoracic x-ray performed that day revealed no acute fracture, normal alignment, mild endplate degeneration with otherwise normal height and signal intensity of the vertebral bodies, without significant edema. Levels T-through T8 showed no disc herniation, stenosis or foraminal compromise. T8-9 revealed a small disc protrusion causing no significant central canal narrowing or foraminal compromise. Level T9-10 revealed a disc bulge causing mild central canal narrowing and mild foraminal narrowing. Level T10-11 revealed a disc bulge causing mild thecal sac effacement and mild foraminal narrowing. Level T11-12 revealed a disc bulge causing no significant canal narrowing, with mild foraminal narrowing. The impression was no acute osseous

abnormality and mild spondylosis from T8 through T12. Pet. Ex 2, p6-7, 27-29, 50-52; Pet. Ex 6, p13,18. Petitioner stipulated at trial Respondent was not liable for this treatment.

On March 29, 2018, Petitioner was seen for Initial Consultation by Dr. Sajjad Murtaza, with a history of a fall on ice. Petitioner specifically denied lower extremity leg pain, his straight leg raise was negative on the left and right leg, and he exhibited full strength in both legs. X-rays, MRIs, and CT scans performed immediately show no evidence of disc herniation or fracture. His pain was 9/10 despite taking Flexeril. Physical therapy was recommended to address L5-S1 spondylolisthesis, his medication was changed to Celebrex, and he was to remain off work. Pet. Ex 2, p12-13; Pet. Ex 6, p19-20, 23-24. Physical therapy was ordered for four weeks. Pet. Ex 1, p5.

Petitioner initiated physical therapy April 3, 2018, reporting a fall at work onto his back and left side the month prior. Pet. Ex 3, p444, 524. His initial evaluation revealed no issue of leg pain or lower extremity symptoms, and no right shoulder symptoms. Records reflect a total of 90 weeks physical therapy performed between April 5, 2018, and December 20, 2019. Id. at 440-525. Initial treatment addressed left shoulder and low back pain and mobility (Id. at 440-525, 529) until discharged from therapy July 20, 2018, by his physician. Pet. Ex 3, p441. On October 19, 2018, he resumed physical therapy focused only on his spine, having been taken off therapy by a different physician in favor of epidural spinal injection, then referred for additional therapy by a new physician. Id. p432.

Petitioner elected to see Dr. Wajde Dabah May 9, 2018; under Chief Complaint is listed “none recorded” and he placed treatment under his private insurance. Listed problems included sciatica, low back pain, hypertensive disorder, and diabetes mellitus, all with an onset date of May 9, 2018. Dr. Dabah records Petitioner’s first report of leg pain symptoms. He reported his March 13, 2018 work injury for which MRI, x-ray and CT scans performed the following day all were negative for acute injury or fracture. His pain was 9/10 but his gait was normal without limp, and he ambulated without assistive devices. Lumbar spine was tender at L5 while motor strength was full. Reflexes and sensation were normal, and straight leg raise testing was negative. His BMI was out of range and his excessive blood pressure required return to his primary care physician for re-screening. He was assessed with acute on chronic arthritic facet disease for which neurosurgical consultation was warranted. His diagnosis was low back pain. Pet. Ex 2, p15-17; Pet. Ex 6, p7-8.

On July 2, 2018, Petitioner treated with Dr. Anil Gulti with complaints of severe back pain radiating into his chest and left leg, following a fall at work March 13, 2018. Physical therapy provided no relief. He denied incontinence. Dr. Gulati lacked Petitioner’s diagnostic testing and was concerned for possible fracture. EMG/NCV had not been performed and was requested. Gabapentin was prescribed, OTC Celebrex was recommended. Petitioner was to return after diagnostic work up. Pet. Ex 2, p19-21.

Pelvis and abdomen CT performed at Adventist Glen Oaks Hospital July 28, 2018 due to left groin pain and swelling revealed extensive soft tissue edema and fluid of the scrotal sac, potentially diabetic related and

unchanged from prior study performed July 28, 2018. Pet. Ex 2, p23-24, 46-47. Pelvis CT repeated July 29, 2018 was unchanged from prior study performed July 28, 2018. Pet. Ex 2, p22,45. Petitioner stipulated at trial Respondent was not liable for this treatment.

Nerve Conduction Study performed by Dr. Elton Dixon of Suburban PainCare Center August 10, 2018 based on low back and left lower extremity symptoms was abnormal in the left lower extremity, indicative of L5-S1 radiculopathy. The report identifies a compromised motor nerve study with only distal stimulations ascertained, with loss amplitude in both motor and sensory nerve studies. Pet. Ex 2, p72-75; Pet Ex 7, p4-7.

Petitioner returned to Dr. Gulti September 24, 2018 with persistent back pain and trouble walking, sleeping and showering due to pain. Petitioner had been seen by a neurosurgeon and pain clinic physician, but MRI results were not available. EMG revealed L5-S1 radiculopathy. Pet. Ex 2, p76.

On October 8, 2018, Petitioner was seen by Dr. Geoffrey Dixon, complaining only of back pain. His lumbar MRI and CT reports were assessed, with EMG revealing radiculopathy, which Dr. Dixon related to the work injury according to the diagnostic studies. Petitioner was to return in one week so Dr. Dixon could review actual images and not just reports. Surgical fusion surgery at L5-S1 was a consideration. Pet. Ex 2, p79.

Petitioner saw Dr. Krishna Chanduri on October 11, 2018. Petitioner reported injury in a slip and fall onto his left side and his back; surgical intervention was recommended but had not yet attempted injection therapy. Pet. Ex 2, p84-86. Left L5 and S1 transforaminal epidural steroid injection was performed. Id. at 87.

Petitioner returned to Dr. Dixon October 15, 2018; his MRI confirmed L5-S1 pars defect causing grade I spondylolisthesis. A single ESI had been helpful; he was to begin physical therapy shortly and be reassessed in one month. Pet. Ex 2, p90. Petitioner began physical therapy with initial evaluation October 19, 2018. Id. at 92.

Drug testing performed November 13, 2018 at the request of Dr. Krishna Chunduri of Illinois Orthopaedic Network revealed toxicologically elevated levels of hydrocodone, hydromorphone and norhydrocodone, not expected as a result of his listed medications. Pet. Ex 2, p94-96; Pet. Ex 5, p5. The purpose of the testing is not indicated.

Petitioner returned to Dr. Chanduri November 30, 2018, again reporting injury in a slip and fall onto his left side, on his back; surgical intervention had been recommended, but he had not yet attempted injection therapy. 84-86. Left L5 and S1 transforaminal epidural steroid injection was performed. Pet. Ex 2, p87. His response reportedly was immediate, with near complete resolution of his left lower extremity paresthesia. Repeat injection was recommended. Pet. Ex 2, p99.

Petitioner received his second Left L5 and S1 epidural steroid injection with Dr. Chanduri December 6, 2018, for a diagnosis of lumbar spondylosis with left radiculopathy. On December 18, 2018 Dr. Chanduri documented complete resolution of Petitioner lower leg pain, with continued low back symptoms. Petitioner's condition appeared discogenic and spine surgery consultation was recommended. Pet. Ex 2, p103.

Petitioner returned to Dr. Dixon of Illinois Orthopedic Network January 14, 2019, after a series of two epidural and facet injections, which were helpful with his radiating leg pain but had no effect on his lumbar pain. He presented using a cane but exhibited normal strength in both legs, with normal reflexes. Left leg raise was positive on the left, with no positive Waddell signs. Lumbar MRI revealed grade I spondylolisthesis at L5-S1 with bilateral spondylosis, and EMG was positive for bilateral L5-S1 radiculopathy. Dr. Dixon disagreed with Dr. Zelby's IME finding Petitioner exhibited no radiculopathy. Dr. Dixon told this to Petitioner and reiterated his opinion Petitioner possessed grade I L5-S1 spondylolisthesis and radiculopathy causally related to the work injury and requiring L5-S1 decompression with interbody fusion surgery. Petitioner wished to proceed with surgery and was recommended to continue physical therapy and return in a month to determine whether additional treatments were necessary. Pet. Ex 2, p105.

Petitioner returned to Dr. Dixon February 11, 2019; therapy had allowed him to maintain his current level of function, but surgical authorization had not been received. Dr. Dixon reiterated his recommendation for L5-S1 decompression and fusion surgery. Pet. Ex 2, p108. Petitioner returned to Dr. Dixon March 11, 2019, having completed another month of physical therapy without change in his condition and without surgical authorization. He anticipated an upcoming court hearing might produce surgical authorization. Pet. Ex 2, p111. On April 8, 2019, Petitioner returned, having completed another month of physical therapy with daily severe pain limiting his range of motion. Petitioner was to continue his course of treatment until surgical repair was authorized. Work restrictions were continued. Pet. Ex 2, p114. Upon returning June 6, 2019, Petitioner had discontinued physical therapy and had regressed to 10/10 pain. His need for surgery was unchanged. He was provided additional gabapentin, restricted from work, and instructed to return in three months. Pet. Ex 2, p117.

Petitioner returned to Dr. Dixon September 18, 2019 complaining of increasing pain which was interfering with sleep. He was taking tramadol, gabapentin and muscle relaxers, and requested additional medications. His pain had increased significantly since his prior visit, but straight leg raise was negative bilaterally, and was positive only for axial pain. He was to remain off work until seen again. Pet. Ex 2, p120.

Neurological surgeon Dr. Geoffrey Dixon began treating Petitioner October 18, 2018, and provided testimony via deposition on October 5, 2022. Dr. Dixon remains board certified, but was on hiatus at the time of testimony. Pet. Ex. 8, p5-6. Petitioner reported low back pain after a slip-and-fall at work March 13, 2018; he had a prior diagnosis of Grade 1 spondylolisthesis at L5-S1 but had returned to unrestricted activities without symptoms prior to the March 2018 injury. Physical examination normal strength in both legs, intact sensation and a mildly positive straight leg raise on the left side, without any Waddell signs. Pet. Ex 8, p6-7. Petitioner's positive straight leg raise on the left side indicated Petitioner's lumbar radiculopathy. Id. at p8. Dr. Dixon diagnosed Petitioner with L5-S1 spondylolisthesis with likely associated radiculopathy. Id. at p9.

On October 15, 2018 Dr. Dixon reviewed Petitioner's MRI showing bilateral pars defects at L5-S1, causing a Grade 1 spondylolisthesis. CT scan of the lumbar spine and lower extremity EMG were reviewed, after which Dr. Dixon diagnosed L5-S1 spondylolisthesis with likely radiculopathy and recommended epidural steroid injection. P9-10 Dr. Dixon could not address the comparison of Petitioner's images from 2015 because they were not available to him. Id. at p24. He recalled reviewing none of Petitioner's prior treatment records, other than the reports of Petitioner's ESIs administered by Dr. Chanduri. Id. at p24-25. He did not review either of Petitioner's CT scans from 2015 or May of 2020, nor his hospitalization on July 28, 2018. Id. at p27-28.

By January 14, 2019, Petitioner had received two epidural and facet injections performed by Dr. Chunduri, which were helpful with his radicular pain but had no effect on his low back. Petitioner was using a cane to walk and continued to participate in physical therapy. Left straight leg raise again was positive, and lumbar spine x-rays done with flexion and extension demonstrated Grade 1 spondylolisthesis with bilateral spondylolysis consistent with the pars defects noted previously. P10-11 He discussed the results with Petitioner, his diagnosis, and his recommended L5-S1 decompression with interbody fusion and pedicle screw instrumentation, as well as his disagreement with Dr. Zelby's IME finding Petitioner exhibited no radiculopathy. Pet. Ex 8, p12-13. Petitioner remained off work, and by June 3, 2019, had regressed to 10/10 pain after ceasing physical therapy. Id. at p13-16. Dr. Dixon believed Petitioner possessed grade I L5-S1 spondylolisthesis and radiculopathy causally related to the work injury and requiring L5-S1 decompression with interbody fusion surgery with all treatment necessitated by the work injury. Id. at p17-19.

Dr. Dixon performed no physical examination of Petitioner's condition in February, March, or April, 2019. Id. at p35. On June 3, 2019 Petitioner's straight leg raise produced only axial pain; Dr. Dixon could not say whether than meant Petitioner had no radicular pain at that point. Id. at p36-37. He stated there are limitations in comparing soft tissue, neurologic, and bone structures based on CT and MRI, but allowed for a close comparison of structural alignment. Id. at p22. Dr. Dixon disagreed spondylolisthesis is a degenerative condition, distinguishing it as a congenital malformation and represents a defect present prior to birth. Id. at p23, 32. Spondylosis is a progressive condition and likely to worsen over time. Id. at p36. Eventually, all patients with Petitioner's condition require surgery. Id. at p39.

Board Certified Neurosurgeon and Professor of Neurosurgery Dr. Andrew Zelby examined Petitioner pursuant to Section 12 on September 12, 2018, and authored written reports bearing that date, as well as August 18, 2019 (Res. Ex 1) and February 8, 2023. Res. Ex 2. He provided sworn deposition testimony August 8, 2022, (Res. Ex 1) before issuing his February 8, 2023 report, to address questions about his opinions raised by Dr. Dixon. Res. Ex 2; Tr. 10-11.

Petitioner described his fall on ice, landing on his low back and producing low back pain shooting to the left side of his back to the upper part of his left shoulder blade, without symptoms into the legs. He worked his

second job and went to an emergency department the following day, was evaluated, and released. His pain worsened and he returned to the emergency department a few days later, had more x-rays, and was again sent home. He went to his personal physician who recommended physical therapy, but this was not approved. His attorney referred him to a clinic and sent him to a specialist downtown; he then received over two months of physical therapy, which he said provided no benefit. Therapy ended in July, and a week later he developed pain going down the entire circumference of the left thigh to the knee. This pain followed no dermatomal or nerve distribution, so it was not a radiculopathy, and pain throughout the entire thigh is not a symptom arising from the spine. Petitioner's new pain wasn't related to his work injury; it surfaced four months after the occurrence, and didn't follow any distribution related to the spine. Spinal injury would produce pain down a nerve root or dermatomal and would constitute a radiculopathy, but pain through the entire thigh is not a radiculopathy. Res. Ex 1, p8-10. Petitioner informed Dr. Zelby he had no prior back conditions, but his medical records indicated that that was not the case. Id. at 14.

Dr. Zelby reviewed Petitioner's x-rays from 2018, CT scan of cervical spine from 2018, a CT scan of the lumbar spine from 2015, MRIs of thoracic and lumbar spine from 2018, and an EMG from August of 2018. Those diagnostics showed that in 2015, Petitioner had a degenerative condition, and in 2018 he had no acute or post-traumatic abnormalities on his study, revealing the same degenerative finding with the same mild spondylolisthesis at L5-S1 and a bulging disk at L4-L5 with trace stenosis. Res. Ex 1, p17 Comparing the 2015 CT with the 2018 was an MRI showed no post-traumatic abnormalities; a different type of diagnostic study demonstrating the same degenerative condition with the same degree of spondylolisthesis, which hadn't progressed. Spondylolisthesis causes back pain, but Petitioner had the same spondylolisthesis with the same degree of slip that he had in 2015, clearly not unstable, just a degenerative condition. Id. at 18.

Dr. Zelby confirmed pain radiating from the lower back to the left paraspinal region can occur in an acute period following injury, but as a result of a soft tissue muscular strain. Res. Ex 1, p11. Petitioner's 2018 injury could produce severe pain for a couple weeks, but his diagnostic studies show no change in his condition, so beyond a week or two after injury, his objective spinal condition provided no basis for his 9/10 pain. Id at 14. Petitioner's complaint of worsening pain with any activity, even sitting and doing nothing, was an exaggeration of his objective condition, and inconsistent with his spinal condition. It would be nearly impossible for him to be doing nothing and have exacerbated pain. Id. at 11. His inability to straighten, poor range of motion and only being able to walk with a walker reflected dramatic symptom amplification unrelated to his spine. Id. at 14. Toe walking and heel walking is a good functional test of strength; Petitioner's was deemed abnormal because he refused to perform it, and Dr. Zelby could not point to any condition that would preclude him from performing the test. Dr. Zelby testified someone with a true L5 radiculopathy would have foot drop wouldn't be able to heel walk, but Petitioner didn't have any of these. His Patrick's maneuver test for hips and SI joints was normal, and while his gait was very slow and forward flexed and he said he required a rolling walker equipped with a seat to

walk, there was no medical need for this walker and his gait did not match his objective findings Id. at 20-21. Sitting straight leg raise and lying straight leg raise is the same test of the spine and nerves and should produce the same response; that Petitioner had a positive lying straight leg raise test but no complaints with sitting straight leg raise on either side is an inconsistent finding. Id. at 19-20.

Petitioner's thoracic examination revealed tenderness even with touch so lightly that it is not a sufficient stimulus to elicit any kind of pain, no matter the condition. The same was true in the lumbar spine; Petitioner demonstrated a dramatic inability to move, said he couldn't stand up straight, said he couldn't squat and wouldn't try, and said he was unable to toe walk or heel walk and didn't try. Res. Ex 1, p14-15. Petitioner's strength was normal, his reflexes were normal, and measurements of the extremities demonstrated they were symmetric and without atrophy. Sensation was diminished in the entire left lower extremity, with 5 out of 5 Waddell signs. Based on Petitioner's objective condition, his history, his imaging that hadn't changed in three years, Petitioner's limitations were volitional, and had nothing to do with the degenerative condition in his spine. Id. at 16. The degree of injury producing Petitioner's symptoms would require something more dramatic, such as an unstable fracture or other bony instability. Id. at 17. His spinal condition was no different than it had been for the preceding three years, and his lower extremities strength was normal. That his gait was so disordered had nothing to do with his spine, his nervous system, or his injury. Id. at 22.

Petitioner's diminished sensory exam and vibratory sensation reported in the entire right lower extremity was unrelated to his spine or his nervous system, and was a subjective complaint that could not be corroborated, with even EMG. His nonorganic findings referred to inconsistencies in Petitioner's exam, including pain on superficial light touch, pain on simulation, meaning you simulate a load on the spine, but you're actually loading the hips; diminished pain on distraction being the disparity between the sitting straight leg raise and the lying straight leg raise, and the nonanatomic sensory changes were the reported loss of sensation in the entire limb. His overreaction was described colloquially as the Oscar-winning performance. His EMG showed L5 to S1 radiculopathy, but he had no L5-S1 radiculopathy findings on clinical exam, and had symmetric ankle reflexes, meaning the EMG finding had no clinical correlation; most EMG studies say clinical correlation is advised as a means of confirming the study findings. Id. at 23-24. Were there correlation, it would involve pain down the back of the thigh, the back of the calf, and the bottom and outside of the foot in an S1 dermatomal distribution, with loss of the left ankle reflex compared to the right. Petitioner's reflexes were symmetric, and his symptoms did not follow the S1 distribution down the back of his leg; he said he had pain in his entire thigh, which had nothing to do with the suggested finding on EMG of L5-S1 radiculopathy. Id. at 24-25.

On this information, Dr. Zelby diagnosed Petitioner with lumbar spondylosis, which is a degenerative condition, but he did not have radiculopathy; he also had a lumbosacral spondylolisthesis. His history, his symptoms, his findings on diagnostic studies in 2015, his symptoms, his findings on exam, and his findings on diagnostic study in 2018 all suggest Petitioner most likely sustained a lumbar strain in the context of his pre-

existing degenerative condition, with the lumbar strain resulting from his slip and fall on March 13, 2018. Id. at 26. It was possible but less likely Petitioner sustained a temporary exacerbation of his pre-existing condition; unlikely because the diagnostic studies reveal the condition was not aggravated, accelerated, or altered as a consequence of his work injury. In 2015 and 2018 he reported the same 10/10 pain, with the same findings of mild spondylolisthesis and with studies confirming no change in the condition. Id. at 27. Had the condition been accelerated, exacerbated, or altered as a consequence of the work injury, his March 19, 2018, lumbar MRI would reflect a structural change; something new, something acute, compared to his May 22, 2015, lumbar CT. Nothing had structurally changed, the degree of slip was the same, and MRI showed no acute abnormalities to suggest that the condition was altered as a result of his fall. Id. at 28-29.

Treatment Petitioner's received to address his spondylolisthesis was not necessitated by the work incident because the spondylolisthesis condition in 2018 was unchanged from 2015; that treatment addressed only the pre-existing degenerative condition. There's no medical evidence to suggest any such treatment would be necessary or more likely to become necessary because of his March 2018 fall at work, including surgical decompression. Res. Ex 1, p31. Given the lack of any change in his condition between 2015 and 2018, there is no basis to determine Petitioner's condition requires surgical repair today not previously required. Based on his objective findings, the known symptoms, and the consistent findings in 2015 and 2018, Petitioner did not require the surgical decompression, and by mid-July 2018, required no treatment or restriction relative to his work injury. Id. at p32-33 Petitioner's alleged inability to return to work could not be explained by his actual medical history, his actual diagnostic studies, and his findings on exam. His various symptoms could not be corroborated with any of his objective medical findings. Id. at p30.

Challenged with suggestion "petitioner could work before this incident, and now he can't, so his current condition is related to the March 2018 work accident." Dr. Zelby responded "The correct question to ask is, given the fact that his condition is unchanged objectively, and given the fact that he was able to work prior to March 18 of 2018, what is any objective basis to suggest that he can't do so again? Because there isn't one." Dr. Zelby found Petitioner fit to return to regular work duties by mid-July 2018. Id. at p33. He clarified Petitioner's motor vehicle accident was not the cause of his degenerative findings, but appears to be the onset of his back pain and caused that pre-existing degenerative condition to become symptomatic. Id. at p36.

Dr. Zelby knew of no treatment records documenting Petitioner had back pain in 2016 or 2017, was not treating for his condition before the march 2018 work injury, and was able to complete his regular work duties before the work injury, which is why Dr. Zelby stated there is no medical reason would need restrictions now. Id. at p38. Petitioner had no complaints of radicular symptom, either in 2015 or 2018. Res. Ex. 1, p39. While the 2018 EMG showed an L5-S1 radiculopathy, Petitioner had no clinical evidence for it in any of his examinations. Dr. Zelby noted Dr. Murtaza recorded Petitioner's reports of radiating pain, but did not diagnose Petitioner with radiculopathy or document radicular findings; simply having symptoms radiating down an

extremity is not by default a radiculopathy. It has to follow a dermatomal distribution, and Petitioner's did not. Just because someone describes pain shooting down their leg does not render it a radiculopathy. Id. at 40. While Dr. Dabah recorded complaints of pain radiating down the left leg, he also did not record radicular findings, and diagnosed Petitioner with low back pain, not radiculopathy. Id. at 41. Dr. Mohiuddin also recorded Petitioner's complaints of pain radiating down the leg; he too recorded no radicular findings, and diagnosed Petitioner with low back pain, not radiculopathy. Id. at 42.

Following Dr. Dixon's testimony, Dr. Zelby authored an addendum report addressing critiques of his opinions. He noted Dr. Dixon reviewed none of Petitioner's prior medical records showing Petitioner's known history of a spondylolisthesis at L5-S1, (Res. Ex 2, p1) and that Dr. Dixon stated he did not compare the images to realize there was no progression of the spondylolisthesis as a result of the fall at work. Dr. Dixon related Petitioner's condition to the fall at work based on what Petitioner informed him about his history. Id. at p2.

Dr. Zelby recounted that when Dr. Dixon first examined Petitioner, Petitioner was neurologically intact, but Dr. Dixon felt his mildly positive straight leg raise on the left presented a radicular finding. Following physical therapy, Petitioner's straight leg raise test was positive in the back only, which Dr. Dixon considered to be a negative test, and documented Petitioner had no complaints of pain in the leg. Dr. Dixon believed Petitioner's fall at work caused his spondylolisthesis to become symptomatic, and believed L5-S1 decompression and fusion would allow Petitioner to return to his prior activities. Res. Ex 2, p1-2 He did not think ongoing complaints of back pain prior to the fall would have made any difference in his opinions, although a prior history of radiating symptoms would make a difference. Dr. Zelby found no medical reason lumbar decompression and fusion were necessary or more likely to have become necessary due to his March 2018 fall because his pre-existing and already symptomatic condition was not aggravated or accelerated beyond its normal progression. His work injury was most likely a soft tissue strain, and at most was a temporary exacerbation of his pre-existing an already symptomatic degenerative condition.

While Dr. Dixon described Petitioner's spondylolisthesis as congenital and not degenerative, Dr. Zelby stated Dr. Dixon was incorrect; a congenital spondylolisthesis at L5-S1 is a completely different condition from Petitioner's and is associated with a dysplastic and domed abnormality in shape of the sacrum along with a defect in the neural arch, not simply a bilateral spondylolysis as exhibited by Petitioner. Petitioner exhibited a typical spondylolisthesis arising from his bilateral spondylolysis that is not a congenital abnormality but an acquired condition. Res. Ex 2, p2. Dr. Dixon's understanding of Dr. Zelby's opinions also was incorrect; Dr. Zelby's August 19, 2019 report stated Petitioner's objective findings on exam cannot be disregarded even in the context of multiple positive Waddell signs. Dr. Zelby stated his opinions are based on the fact Petitioner's MRIs show his condition of a grade 1 spondylolisthesis was unchanged on March 19, 2018 compared to its condition in 2015, revealed by his lumbar CT, documenting there was no progression of the spondylolisthesis. Dr. Dixon was not given the images to compare, to realize there was no progression of his spondylolisthesis as a result of

his reported fall at work. There would be no medical reason Petitioner would have difficulty localizing his pain as Dr. Dixon suggests, and bad pain is easier to localize than mild pain. Nor is there a reason Petitioner would not be able to describe pain in multiple areas of the body. His subjective complaints and their severity cannot be corroborated with his objective findings and his degenerative condition, which was not aggravated or accelerated beyond its normal progression by the fall sustained March 13, 2018. Id.

With or without positive Waddell's signs, Petitioner's condition is chronic and degenerative, documented since 2015, with a normal neurologic exam. The majority of spondylolisthesis are Grade 1, and do not progress to grade 2. Because it is a degenerative condition, it can become worse over time, but such progression is gradual and can lead to autofusion. This is not a scenario that requires surgical intervention, and most people with this objective condition manage this conservatively without surgery, even those with positive EMG findings. Res. Ex 2, p2-3 A positive finding on EMG is not a basis to pursue surgery, and would not take precedence over his physical exam. A straight leg raise test would typically be positive in a patient with radiculopathy, although that alone would also not be a factor to suggest or pursue surgical intervention. Dr. Zelby noted all these factors were considered in the formulation of his opinions. Res. Ex 2, p3.

Treatment bills from Glen Oaks Hospital reflect total charges of $11,869.16 for services rendered July 28, 2018 through August 3, 2018 including lumbar spine x-ray, thoracic spine x-ray, lumbar spine MRI, thoracic spine MRI, abdomen/pelvis ultrasound, abdominal CT, pelvis CT, cervical spine CT, and physical therapy services. Pet. Ex 1, p4-13. Petitioner stipulated at trial Respondent was not liable for these unrelated treatments, that the treatment received in July and August 2018 was not claimed as related to the work injury, and that the treatment bills submitted into evidence for treatment received in July and August 2018 were for treatment not related to the work injury. Tr. 72-74, 78. Treatment bills from Metro Anesthesia Consultants for injection treatments received October 11, 2018 and December 6, 2018 total $4,173.28. Pe. Ex. 4. November 13, 2018 toxicology screening ordered by Dr. Chunduri Premier and performed by Healthcare Services total $3,263.66. Pe. Ex. 5. Suburban Pain Care EMG services performed August 10, 2018 reflect charges of $2,009.00, contained in Petitioner's Exhibit 7. Total Rehab bills for 90 weeks physical therapy performed between April 5, 2018 and December 20, 2019 reflect total charges of $66,638.09. Pet. Ex. 3, p3-101.

Respondent's payment evidence reflects payment to Adventist Glen Oaks Hospital for services rendered March 14 & 19, 2018, (Id. p8) to Illinois Emergency Medical Services for services rendered March 14 & 19, 2018, (Id. p8) to Glendale Heights Healthcare for services rendered March 23, 2018, (Id. p8) to Midwest Specialty Pharmacy for services rendered March 29, 2018 through August 31, 2018, (Id. p3-5, 7-8) to Illinois Orthopedic Network for services March 29, 2018 through September 24, 2019, (Res. Ex 3, p1-2, 7-8) to Total

Rehab for services rendered April 3, 2018 through June 29, 2018, (Id. p7-8) and to Suburban Paincare Specialists for services rendered August 10, 2018, (Id. p7) all in the total amount of $29,264.04.

CONCLUSIONS OF LAW

WITH REGARD TO ISSUES (F), WHETHER PETITIONER'S CURRENT CONDITION OF ILL-BEING IS CAUSALLY RELATED TO THE INJURY, THE ARBITRATOR RENDERS THE FOLLOWING FINDINGS:

Every Petitioner bears the burden to establish with evidence every disputed issue litigated at trial, including the issues establishing Respondent's liability for benefits. Board of Trustees of the University of Illinois v. Industrial Commission (1969), 44 Ill.2d 207 at 214, 254 N.E.2d 522, Edward Don v Industrial Commission (2003) 344 Ill.App.3d 643, 801 N.E.2d 18. A Petitioner seeking an award before the Commission must prove by a preponderance of credible evidence each element of the claim. Illinois Institute of Technology v Industrial Commission, 68 Ill.2d 236, 369 N.E.2d 853, 12 Ill.Dec. 146. Unless the evidence considered in its entirety supports a finding that the condition relates to a cause connected with the employment, there is no right to recover. Hansel & Gretel Day Care Center v Industrial Commission, (1991) 215 Ill.App.3d 284, 574 N.E.2d 1244. The Commission is not required to accept the opinion of a treating physician over that of an examining physician, and may give greater weight to an IME physician where the facts warrant. Prairie Farms Dairy v. Industrial Commission, 279 Ill.App. 3d 546, 664 N.E.2d 1150 (1996).

Petitioner testified he fell on ice injuring his back and required assistance getting up after 20 minutes of recovery. He completed his workday with Respondent at noon, (Tr. 15, 20) and started his second job at 2:30pm. He worked his second job until 11pm, (Tr. 16, 20) retuned home, and sought treatment at roughly 8am the next day when his pain made difficult getting out of bed. He testified to 10/10 back and leg pain requiring lumbar fusion surgery, necessitated by the work injury. Petitioner never testified to injuring either arm.

Initial treatment records show Petitioner was seen as a walk-in patient at Adventist Glen Oaks Hospital Emergency Room at 11:22am, not 8am, March 14, 2018. He reported right upper extremity pain and moderate back pain radiating from his lower back to his neck, with no exacerbating or relieving factors. Neurologic exam revealed no weakness, no numbness/tingling, and normal spinal motion; musculoskeletal examination revealed right upper arm pain, and back pain without joint pain, bruising or bone injury, (Pet. Ex 1, p22-23) and his diagnostic imaging showed preexisting degenerative L5 spondylosis with 5mm anterolisthesis without acute findings. His March 14, 2018 diagnosis was right arm and back contusion. No leg pain or leg symptoms were recorded. No limp was recorded. No left arm injury or symptom was recorded. Id. at 24. Additional diagnostics performed March 19, 2018 at Adventist Glen Oaks Hospital with comparison to lumbar x-ray and lumbar CT confirmed the x-ray finding Grade 1 anterolisthesis L5 on S1, with MRI specifying the absence of acute findings. On March 29, 2018, to Dr. Sajjad Murtaza Petitioner specifically denied experiencing lower extremity

pain; his straight leg raise was negative both on the left and right leg, and his strength was full in both legs. X-rays, MRIs and CT scans showed no evidence of disc herniations or fractures. He was discharged from physical therapy by his physician July 20, 2018 (Pet. Ex 3, p441) in favor of epidural steroid injection. Id. at 432. This marks Petitioner's condition causally connected to the March 13, 2018, work injury.

Following his July 20, 2018 discharge from therapy, Petitioner was hospitalized July 28, 2018. Petitioner could not or would not recall the event that precipitated this hospitalization, but treatment records reveal a host of diagnostic testing performed to assess spinal injury, including charges for cervical CT scan, thoracic and lumbar spine MRI, and lumbar spine x-ray. Pet. Ex 1, p12-13. At trial Petitioner stipulated this treatment was unrelated to his work injury. Tr. 78. Whatever the cause, hospitalization and treatment addressing Petitioner lumbar, thoracic, and cervical spine are unrelated to the work injury by Petitioner's admission; it also precipitated Petitioner's new complaints of lower extremity radiculopathy not recorded throughout Petitioner's prior treatment. Prior to July 20, 2018 Petitioner required no assistive devices; he walked without a limp, with full motor strength. On May 9, 2018, Dr. Dabah recorded Petitioner's gait was normal without limp and without need for assistive devices, with full motor strength, normal reflexes, negative straight leg raise test, and no change in his diagnoses of left shoulder pain and low back pain. His May 11, 2018 physical therapy record makes no mention of leg pain, (Pet. Ex 3, p485) and his May 15, 2018 record states he was feeling good after a restful weekend, with no mention of leg pain and no change in his diagnoses. Id. at 483. It was not until Petitioner's unrelated hospitalization that he began using a cane or walker, or surgical intervention to address L5 radiculopathy ever was considered.

This timeline is confirmed by Respondent's IME Physician, Dr. Zelby. Dr. Zelby noted Petitioner would have reached MMI by mid-July 2018 based on his initial injury, symptoms, and the lack of any identifiable change in his objective spinal condition. Petitioner's symptoms following the injury were musculoskeletal, representing muscle strain based on the pattern of symptoms radiating from the lower spine into the thoracic and cervical spine, not into the legs. While Petitioner clearly presents with subjective complaints of spinal pain and lower legs symptoms, his March 13, 2018 spinal injury does not account for that condition. His 2018 diagnostic testing reveal a stable L5-S1 spondylolisthesis, unchanged from its 2015 condition. All diagnostics describe the condition as degenerative, without a single acute finding on imaging to the lumbar, thoracic, and cervical spine. Had the work injury worsened the condition, his March 19, 2018, lumbar MRI would reflect a structural change or acute pathology, but in 2018 nothing had structurally changed; the degree of slip was the same, and MRI showed no acute abnormalities to suggest any change in his condition. Res. Ex 1, p28-29.

While Dr. Dixon believes the work injury advanced Petitioner's L5 condition, he does so without any knowledge of Petitioner's baseline condition. Dr. Dixon testified he had none of Petitioner's prior treatment records to assess Petitioner's pre-injury condition. He could not compare Petitioner's images from 2015 and 2018 because the 2015 images were not available to him. Pet. Ex 8, p24. He reviewed none of Petitioner's prior

treatment records other than the ESI operative reports, (Id. at p24-25) and reviewed neither of Petitioner's CT scans from 2015 or May of 2020, nor his hospitalization records from July 28, 2018. Id. at p27-28.

Dr. Zelby assessed Petitioner's 2015 car accident treatment records from his personal physician, Dr. Sia. He reviewed all of Petitioner's 2018 diagnostics and was able to compare them to Petitioner's 2015 CT scan of the lumbar spine, which Dr. Dixon didn't possess. With knowledge of Petitioner's prior diagnostic imaging not possessed by Dr. Dixon, Dr. Zelby was able to visually confirm the 2018 condition involved the same degenerative finding, with the same mild spondylolisthesis at L5-S1, and a bulging disk at L4-L5 with trace stenosis. Res. Ex 1, p17 Comparing the 2015 and 2018 studies showed no post-traumatic abnormalities, each demonstrating the same degenerative condition with the same degree of spondylolisthesis, without progression. The March 13, 2018 fall did nothing to change Petitioner L5-S1 condition. This is confirmed by Petitioner's complete lack of lower leg symptoms throughout his first several months of treatment.

To Dr. Dixon, Petitioner is a patient in pain who can be improved with surgery, but our inquiry goes further than whether Petitioner's condition can be improved with surgery; we must determine whether the condition to be improved bears a causal connection to his work injury, and whether the work injury necessitated the treatment. That is; whether his condition of ill-being was caused or meaningfully advanced by the work-related injury. Here, the evidence fails to establish that element. On the issue of Petitioner's need for treatment, the Arbitrator finds Dr. Dixon more credible. Regarding the cause of the condition to be treated, the Arbitrator finds Dr. Zelby more credible, with his opinions supported by the medical records and Petitioner's stipulation.

Whatever unrelated event precipitated the July 28, 2018 hospitalization and multiple spinal diagnostic testing, it presents a new condition; the current condition of ill-being involving L5 radiculopathy with surgical referral, unrelated to the March 13, 2018 injury, which caused right arm pain and back pain radiating into the cervical spine without lower extremity radiculopathy. Whatever unrelated event precipitated Petitioner's need for July 28, 2018 hospitalization and spinal treatment, it represents the cause of Petitioner's recommendation for surgical repair, unrelated to the march 13, 2018 slip and fall at work.

Regarding Petitioner's physical therapy received for 90 weeks through December 20, 2019, the Arbitrator finds the majority of this treatment both excessive and unrelated to Petitioner's March 13, 2018 work injury. While Petitioner initial treatment addressed injury to his back and right arm with a March 14, 2018 diagnosis of right arm contusion and back contusion, his April 3, 2018 physical therapy initial evaluation states he reported a fall onto his back *left* side the month prior. Pet. Ex 3, p444, 529. His PT evaluation revealed no leg pain or lower extremity symptoms, and no right shoulder symptoms, only back pain and *left* shoulder pain. Physical therapy efforts addressed *left* shoulder and low back pain and mobility (Id. at 440-525, 529) until he was discharged from therapy July 20, 2018 by his physician. Pet. Ex 3, p441. For this entire period through July 20, 2018, Petitioner's physical therapy addressing *left* shoulder modalities is unrelated to Petitioner's claim for March 13, 2018 back and right shoulder injuries. Respondent shall be liable only for physical therapy modalities

aimed to advance his spinal recovery, not for therapy to Petitioner's left shoulder, through July 20, 2018. Regarding therapy initiated October 19, 2018 through December 20, 2019, the Arbitrator finds this period of therapy unrelated to Petitioner's claim, excessive in its duration, unnecessary, and exceeding Petitioner's period of Maximum Medical Improvement reached July 20, 2018.

WITH REGARD TO ISSUES (J), WHETHER RESPONDENT HAS PAID ALL APPROPRIATE CHARGES FOR ALL REASONABLE AND NECESSARY MEDICAL SERVICES, THE ARBITRATOR RENDERS THE FOLLOWING FINDINGS:

The claimant bears the burden of proving, by a preponderance of the evidence, his entitlement to an award of medical benefits under section 8(a). Max Shepard, Inc. v. Industrial Comm'n, 348 Ill.App.3d 893, 903, 284 Ill.Dec. 401, 810 N.E.2d 54 (2004). Unless the evidence considered in its entirety supports a finding that the condition relates to a cause connected with the employment, there is no right to recover. Hansel & Gretel Day Care Center v Industrial Commission, (1991) 215 Ill.App.3d 284, 574 N.E.2d 1244.

Respondent has paid all charges for the reasonable and necessary medical services related to the March 13, 2018 work injury. Petitioner submitted bills from Glen Oaks Hospital addressing treatment rendered July 28, 2018 through August 3, 2018. For these charges Petitioner stipulated Respondent is not liable. Tr. 72-74, 78.

Suburban Pain Care billed $2,009.00 for EMG services performed August 10, 2018. Respondent's payment evidence reflects fee schedule adjusted payment in the amount of $1,260.83 tendered August 23, 2018. Respondent has satisfied payment of this bill in full.

Total Rehab records and bills for 90 weeks physical therapy performed April 5, 2018 through December 20, 2019 reflect left shoulder therapy unrelated to the March 13, 2018 claim of back and right arm injury, as well as treatment rendered months after MMI. Respondent shall be liable for physical therapy to Petitioner's spine, but not for therapy to Petitioner's left shoulder, through July 20, 2018. Respondent's payment evidence reflects fee scheduled adjusted payments totaling $8,288.14, Respondent has satisfied full payment of these bills. Respondent shall owe no payment for therapy initiated October 19, 2018 and lasting through December 20, 2019, said treatment being unrelated to Petitioner's claim. Respondent shall be liable for no other medical treatment.

Respondent shall not be liable for payment of bills held by Metro Anesthesia Consultants, for treatments rendered October 11, 2018, and December 6, 2018, denied as unrelated to Petitioner's March 13, 2018 work injury, for which MMI was reached July 10, 2018.

For Petitioner's November 13, 2018, toxicology screening ordered by Dr. Chunduri and billed by Premier Healthcare Services, not only was the treatment rendered four months after MMI, absent from the trial record is any support for its necessity. Unclear is the reason testing was ordered, why it would be necessary, or

what transpired November 13, 2018, to relate drug screening to the March 13, 2018 injury. Necessity of treatment remains unproven for this bill. Respondent shall not be liable for its payment.

WITH REGARD TO ISSUES (K), WHETHER PETITIONER IS ENTITLED TO TEMPORARY TOTAL DISABILITY BENEFITS, THE ARBITRATOR RENDERS THE FOLLOWING FINDINGS:

The burden of proof is on the claimant under the Workmen's Compensation Act to prove all the elements of his right to compensation. Eyzen v. Industrial Comm., Ill., 263 N.E.2d 827 (1970); Beletz v. Industrial Comm., 42 Ill.2d 188, 246 N.E.2d 262 (1969); City of Chicago v. Industrial Comm., 41 Ill.2d 143, 242 N.E.2d 189 (1968).

The Arbitrator finds Petitioner's work-related conditions of spinal strain/sprain/contusion to his spine and right arm reached Maximum Medical Improvement July 20, 2018. Respondent stipulated to TTD liability of 19-5/7 weeks TTD March 28, 2018 through August 12, 2018, and paid benefits for this period. Respondent shall be liable to Petitioner for 19-5/7 weeks TTD March 28, 2018 through August 12, 2018, and shall receive credit for all payments made.

WITH REGARD TO ISSUES (O), WHETHER PETITIONER IS ENTITLED TO FUTURE MEDICAL CARE AT RESPONDENT'S EXPENSE, THE ARBITRATOR RENDERS THE FOLLOWING FINDINGS:

The claimant bears the burden of proving, by a preponderance of the evidence, his entitlement to an award of medical benefits under section 8(a). Max Shepard, Inc. v. Industrial Comm'n, 348 Ill.App.3d 893, 903, 284 Ill.Dec. 401, 810 N.E.2d 54 (2004). The Commission is not required to accept the opinion of a treating physician over that of an examining physician, and may give greater weight to an IME physician where the facts warrant. Prairie Farms Dairy v. Industrial Commission, 279 Ill.App. 3d 546, 664 N.E.2d 1150 (1996).

The medical experts disagree on the type and duration of care Petitioner requires as a consequence of his March 13, 2018 work injury. Dr. Dixon believes Petitioner requires surgical spinal fusion to rectify L5 radiculopathy causing Petitioner leg pain. Dr. Zelby opined Petitioner does not have a radiculopathy and his condition does not require surgical intervention, irrespective of cause. According to Dr. Chanduri's records, the two left L5 and S1 transforaminal epidural steroid injections Petitioner received produced complete resolution of his lower leg pain in December 2018, but not his low back symptoms. Pet. Ex 2, p103.

Dr. Dixon established a straight leg raise test producing only axial pain is a negative test, (Pet Ex 8, p34) and that Petitioner's June 3, 2019 test producing only axial pain was a negative test. Id. at p36. Although a negative straight leg raise is not definitive proof against radiculopathy, Dr. Dixon stated a positive straight leg raise test is how radiculopathy is confirmed. Id. at 34. Dr. Dixon could not say whether the negative test June 3, 2019 established the absence of radiculopathy, because his PA performed the exam. Id. at 36-37. Dr. Dixon last physically examined Petitioner October 15, 2018; his PA performed her last physical examination of Petitioner

June 3, 2019. Id. at 31, 35-37. He stated the reason he stopped examining Petitioner is he had already determined Petitioner's treatment plan. Id. at 35. No physical examination was performed by Dr. Dixon or his PA after the June 3, 2019 exam produced a negative straight leg raise that might interrupt the surgical plan.

While Dr. Dixon believes Petitioner's L5-S1 spondylolisthesis is a congenital condition, treatment records repeatedly diagnosed the condition as degenerative, including his cervical CT scan (Pet Ex 1, p24) and his thoracic x-ray reports. Pet. Ex 2, p6. No physician documented Petitioner's lumbar condition as congenital. Dr. Zelby outlined a congenital spondylolisthesis is associated with a dysplastic and domed abnormality in shape of the sacrum along with a defect in the neural arch not exhibited by Petitioner. Res. Ex 2, p2. Petitioner's condition is chronic and degenerative, documented since 2015, with a normal neurologic exam. This is not a scenario that requires surgical intervention, and most people with this objective condition manage it conservatively without surgery, even those with positive EMG findings. Res. Ex 2, p2-3. A positive finding on EMG is not a basis to pursue surgery, and would not take precedence over his physical exam. Someone with a true L5 radiculopathy would have foot drop; Petitioner didn't, and his Patrick's maneuver test of the hips and SI joints was normal. Dr. Zelby found Petitioner to be self-limiting, with a level of displayed disability not supported by his objective condition, and no basis for the walker Petitioner purported to need at the time of examination. This is in line with Petitioner's treatment records, reflecting months of treatment addressing muscle pain radiating from the lower back into the upper back and neck, not L5 radiculopathy with lower limb symptoms, or any disability require Petitioner's use of a walker or cane.

To Dr. Dixon, Petitioner is a patient whose advancing lumbar condition can be improved with surgery, but his opinion is rendered without any objective information regarding Petitioner's baseline condition, and with his admitted uncertainty whether Petitioner's June 3, 2019, condition involved a radiculopathy surgery is intended to resolve. Pt. Ex 8, p36-37. With Dr. Dixon being incapable of stating Petitioner possesses the radiculopathy necessitating surgical repair, coupled with diagnostic proof of a spinal condition unchanged since 2015, Dr. Dixon's opinion Petitioner requires fusion surgery as a result of the work injury lacks medical support. Petitioner has failed to establish his March 13, 2018, work injury necessitates treatment in the form of surgical intervention related to this claim, having reached MMI July 20, 2018, for the right arm and spinal strains diagnosed through July 20, 2018. Respondent shall owe Petitioner no additional treatment.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	20WC014820
Case Name	Jose Francisco Barahona v. Tafco Corporation
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b) Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	24IWCC0162
Number of Pages of Decision	20
Decision Issued By	Carolyn Doherty, Commissioner

Petitioner Attorney	Damian Flores
Respondent Attorney	Peter Havighorst

DATE FILED: 4/9/2024

/s/Carolyn Doherty, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

JOSE FRANCISCO BARAHONA,

Petitioner,

vs. NO: 20 WC 14820

TAFCO CORPORATION,

Respondent.

DECISION AND OPINION ON REVIEW

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

The Commission writes additionally on the issue of accident to note that the Arbitrator's initial Findings form states that the accident date is May 4, 2022, while her Conclusions of Law correctly states that the accident date is May 27, 2020. The Commission notes as a clerical correction that the accident date is May 27, 2020.

The Commission also writes to note that the initial Order form at the outset of the Decision of the Arbitrator makes two awards of penalties pursuant to section 19(k) of the Act, while the Conclusions of Law reflects awards of $4,286.71 in penalties under section 19(k) and $9,720.00 in penalties under section 19(l) of the Act. The Commission notes as a clerical correction that these amounts were awarded respectively pursuant to sections 19(k) and 19(l) of the Act, and the $2,801.34 in attorney's fees awarded under section 16 of the Act remains unchanged.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed September 5, 2023, is hereby affirmed and adopted with the clerical corrections noted herein.

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

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

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

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

April 9, 2024

o: 3/21/24
CMD/kcb
045

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

/s/ *Amylee H. Simonovich*
Amylee H. Simonovich

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	20WC014820
Case Name	Jose Francisco Barahona v. Tafco Corporation
Consolidated Cases	
Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	17
Decision Issued By	Antara Nath Rivera, Arbitrator

Petitioner Attorney	Damian Flores
Respondent Attorney	Peter Havighorst

DATE FILED: 9/5/2023

THE INTEREST RATE FOR THE WEEK OF AUGUST 29, 2023 5.35%

/s/Antara Nath Rivera, Arbitrator

Signature

STATE OF ILLINOIS)
)SS.
COUNTY OF COOK)

24IWCC0162

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(B)

Case # **20 WC 14820**

JOSE FRANCISCO BARAHONA
Employee/Petitioner

Consolidated cases: _____

v.

TAFCO CORPORATION
Employer/Respondent

Setting **CHICAGO**

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Antara Nath Rivera**, Arbitrator of the Commission, in the city of **Chicago**, on **July 13, 2023**. 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: Prospective Medical-Spinal cord stimulator

FINDINGS **24IWCC0162**

On the date of accident, **5/4/22**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $**48,346.48**; the average weekly wage was **$929.74**.

On the date of accident, Petitioner was **41** years of age, ***single*** with **2** dependent children.

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

Respondent shall be given a credit of $**65,312.45** for TTD, $**0.00** for TPD, $**0.00** for maintenance, and $**0.00** for other benefits, for a total credit of $**65,312.45**.

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

ORDER

Respondent shall pay all reasonable and necessary medical services, totaling $54,562.37, pursuant to the medical fee schedule and as outlined in PX 5, PX 6, PX 7, PX 8, PX 9, PX 10, PX 11, PX 12, and PX 13, as provided in Sections 8(a) and 8.2 of the Act.

Respondent shall authorize and provide payment for the spinal cord stimulator as recommended by Dr. Mohiuddin, as provided in Section 8(a) and 8.2 of the Act.

Respondent shall pay Petitioner TTD and TPD benefits of $8,573.41, as provided in Section 8(b) of the Act.

Respondent shall pay penalties, in the amount of $9,720.00, under Section 19(k).

Arbitrator fines Respondent $4,286.71 in penalties under Section 19(k).

Arbitrator imposes $2,801.34 in attorney's fees and costs under §16 against Respondent.

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

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

SEPTEMBER 5, 2023

Signature of Arbitrator
ICArbDec19(b)

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

ILLINOIS WORKERS' COMPENSATION COMMISSION

Jose Francisco Barahona, Petitioner,	)	
v.	)	Case No. 20 WC 14820
Tafco Corporation, Respondent.	)	

This matter proceeded to hearing on July 13, 2023, in Chicago, Illinois before Arbitrator Antara Nath Rivera on Petitioner's Request for Hearing. Issues in dispute include accident, causation, medical expenses, temporary total disability ("TTD"), temporary partial disability ("TPD"), prospective medical, and penalties/attorney fees. (Arbitrator's Exhibit "AX" 1)

FINDINGS OF FACT

Jose Francisco Barahona ("Petitioner") testified that he was employed by Tafco Corporation ("Respondent") for eight years as a window warehouse supervisor. (Transcript "T." at 15) Petitioner testified that he was charge of inventory, receiving and shipping windows. (T. 16) Petitioner testified that, as part of his job duties, he used a forklift. *Id*. Petitioner testified that he worked 14 hours a day. *Id*. Petitioner testified that he was on his feet 13 hours. *Id*.

Petitioner testified that prior to May 27, 2020, he did not have any left foot pain history or injury. (T. 16-17) Petitioner testified that he never had any medical care for his left foot. Petitioner testified that he was in good health before May 27, 2020. (T. 17)

Accident

Petitioner testified that he was working on May 27, 2020. *Id*. Petitioner testified that he was driving a forklift to unload a container. *Id.* Petitioner testified that when he got off the forklift, to remove garbage and debris that was on the concrete, the forklift went over his foot. (T. 17-18) Petitioner testified that the body of the forklift hit the heel on his ankle and went over his foot. (T. 18) Petitioner testified that his left ankle was twisted and was under the forklift for about 4 seconds. *Id.* Petitioner testified that he was in a lot of pain and swelling of foot. (T. 19)

Petitioner testified that he immediately called his supervisor, West, via cell phone. *Id*. Petitioner testified that he reported it at 9:00 am and that the accident occurred just minutes before 9:00 am. (T. 20) Petitioner testified that after West arrived, he saw Petitioner's foot and told Petitioner to go home to rest. Petitioner testified that he went to Walgreens for pain medication before going home. *Id*. Petitioner testified that later that night, at 8:37pm, he texted West and told him that his foot was swollen, that he was in a lot of pain, and that he was not going into work the next day. (T. 22; Petitioner's Exhibit "PX" 29)

Petitioner testified that he did not go to work the next day and remained off work. (T. 22) Petitioner testified that his level of pain was 10/10. (T. 23) Petitioner testified that he did not seek medical care because that was his job and he did not want to have issues at work. *Id.*

Petitioner testified that the next time he communicated with West was May 31, 2020. (T. 23-24) Petitioner testified that West texted him and asked him how he was doing. (T. 24) Petitioner testified that he responded that his foot is swollen and purple and sent West photographs via cell phone. (T. 24; PX 29)

Petitioner testified that he went back to work June 9, 2020. (T. 24-25) Petitioner testified that his foot was not normal and still swollen. (T. 25) Petitioner testified that he returned to work because he is a responsible person, that he did not want to remain at home, and that he wanted to help the company. *Id*. Petitioner testified that when he returned to work, Respondent changed his role and had him in the main plant packaging items. *Id*. Petitioner testified that he was on his feet, in the beginning, but due to his foot pain and swelling, he was allowed to sit down. (T. 25-26)

Summary of Medical Records

Petitioner testified that he sought medical care on June 22, 2020, to better his health because he could not tolerate the pain in his foot. (T. 26) Petitioner testified that he went to Grandview Medical and provided them with a history of the accident. (T. 26; PX 1 at 6, 8, 183) Dr. Lee De Las Casas, M.D., diagnosed Petitioner with left ankle and foot disorder of synovium and tendon, ligament, and effusion of left ankle. (PX 1 at 6) Dr. De Las Casas recommended a left ankle MRI, neuromuscular stimulator, heating pad, a home exercise kit, and referred him to an orthopedist. *Id.* Dr. De Las Casas also recommended modified work duty. (PX at 7)

On June 30, 2020, Petitioner testified that he underwent an MRI of the left ankle at Lakeshore Open MRI and CT. (T. 28)

On July 2, 2020, Dr. George Kuritza, M.D., radiologist, reviewed the June 30, 2020, MRI and noted that MRI revealed a mild soft tissue swelling through the ankle, especially posterior to the calcaneus. (PX 2 at 107) Dr. Kuritza also opined that the MRI revealed significant posttraumatic soft tissue bruising. *Id*.

On July 22, 2020, Petitioner presented to Dr. John Mazzarella, M.D., at Lakeshore Medical Center, after being referred by Dr. De Las Casas. (PX 2) Dr. Mazzarella diagnosed Petitioner with tenosynovitis with bone bruising of the left ankle, recommended physical therapy, prescribed pain medication and the use of a CAM walker. (PX 2 at 2) Dr. Mazzarella also instructed Petitioner to remain off work. (PX 2 at 83)

Petitioner testified that he did not stop working because he works hard and is responsible for his family and did not feel like he could stay at home to provide for family. (T. 29) Petitioner testified that his foot was not getting better. *Id*.

On January 6, 2021, Dr. Mazzarella diagnosed Petitioner with tenosynovitis of the left ankle with a microfracture of the left calcaneus. (PX 2 at 6) Dr. Mazzarella further advised Petitioner that if the pain continued, he may be a candidate for a left ankle arthroscopy with debridement. *Id.*

On February 10, 2021, Petitioner returned to Dr. Mazzarella and reported ongoing ankle and foot pain which was worse due to the weather. (PX 2 at 7) Dr. Mazzarella recommended surgery. *Id.* Petitioner testified that he wanted to have surgery. (T. 30)

On March 17, 2021, Dr. Mazzarella noted that Petitioner continued to work despite continued pain and swelling of his left ankle. (PX 2 at 9) The MRI continued to show bone bruising. *Id*. Cryotherapy was used to reduce pain and swelling and Petitioner has benefited from this type of treatment. *Id*. The records indicated that ankle arthroscopy can be used to address the synovitis inflammation, pain, arthritis, and swelling to improve Petitioner's condition. *Id*.

On March 25, 2021, Dr. Mazzarella performed a left ankle arthroscopy with debridement of hypertrophic synovitis of the left ankle at Lakeshore Surgery Center upon receiving authorization. (PX 2 at 10) Dr. Mazzarella kept Petitioner off work. (PX 2 at 89-90) Petitioner testified that he felt slightly better but the pain and swelling did not completely go away. (T. 32)

On July 21, 2021, Petitioner testified that he still had pain swelling and limited range of motion. *Id*. Petitioner testified that he had another MRI and continued physical therapy. *Id.*

On August 23, 2021, Dr. Mazzarella ordered a repeat MRI of the left ankle, which took place on August 25, 2021. (PX 2 at 16; 108) The MRI revealed mild nonspecific soft tissue swelling on the dorsum of the left foot. *Id*.

On November 1, 2021, Dr. Mazzarella noted that Petitioner stopped physical therapy due to increased pain. (PX 2 at 18) Dr. Mazzarella administered a lidocaine injection into Petitioner's medial plantar aspect of the left foot and Petitioner was told to follow up in a month. *Id*.

Petitioner testified that he returned to work with light duty work restrictions, including working on a computer, around February 10, 2022. (T. 32-33) Petitioner testified that he worked less hours during this time. (T. 33)

On February 22, 2022, Petitioner presented to Dr. Anish Kadakia, M.D., a section 12 doctor, for an independent medical examination ("IME"). Dr. Kadakia documented that Petitioner walked with a considerable limp due to intense pain; he also noted Petitioner had sensitivity to deep and light touch along the lower left leg, ankle and foot which made it difficult for Petitioner to wear any type of shoe. (RX 1) Dr. Kadakia reviewed both MRI scans and noted persistent edema in the lateral ankle and dorsal lateral foot. *Id*. Dr. Kadakia diagnosed Petitioner with a crush injury to the left foot, neuritis of the superficial peroneal, deep peroneal and saphenous nerves. (RX 1; Answer 1, under Conclusions) Dr. Kadakia opined Petitioner's condition of ill-being was directly related to the work accident in question. (RX 1, Answer 2, under Conclusions) Dr. Kadakia also recommended an EMG in order to determine if there was objective evidence of nerve damage and also to determine if there was an objective basis for the ongoing motor weakness in the left lower extremity. (RX 1; Answer 3, under Conclusions)

Dr. Kadakia opined that Petitioner was at maximum medical improvement ("MMI") from a musculoskeletal standpoint, but not in regard to possible nerve pathology. (RX 1; Answer 4, under Conclusions) Dr. Kadakia noted that if the EMG was negative, Petitioner would be at MMI. *Id*. Dr. Kadakia further opined that a functional capacity exam ("FCE") would be appropriate to determine work restrictions. (RX 1; Answer 5, under Conclusions) If the EMG was positive, Dr. Kadakia recommended a referral to a pain specialist for treatment of the nerve condition or a plastic surgeon to address possible nerve decompression. (RX 1; Answer 4, under Conclusions) Dr. Kadakia recommended ongoing restrictions. Petitioner testified that Dr. Kadakia recommended the use of a cane which he used moving forward, even while at work. (T. 35)

Petitioner testified that he underwent an EMG on March 2, 2022. (T. 35) The EMG showed decreased sensory of the left later plantar nerve. (PX 2 at 21) Dr. Mazzarella referred Petitioner to pain management doctor, Dr. Bernard Rerri, M.D., at Lakeshore Surgery Center. *Id*.

On May 23, 2022, Petitioner presented to Dr. Rerri. (PX 2 at 23-24) Dr. Rerri documented persistent pain and numbness in the left foot with an exaggerated reaction to touch. *Id*. Dr. Rerri diagnosed Petitioner with chronic pain int the left ankle. *Id*. Dr. Rerri kept Petitioner off work and referred him out for possible lumbar sympathetic blockade *Id*.

On July 13, 2022, Petitioner presented to Dr. Shoeb Mohiuddin, M.D., upon referral. (PX 3) Dr. Mohiuddin opined the EMG revealed abnormal sensory findings in the bilateral lateral plantar nerve; he also identified an abnormal motor study finding in the left peroneal nerve. (PX 3 at 2) Dr. Mohiuddin diagnosed Petitioner with chronic regional pain syndrome ("CRPS") based on the fact that Petitioner

exhibited 3 of the 4 factors of the Budapest Diagnostic Criteria. (PX 3 at 4) Dr. Mohiuddin recommended a left Lumbar Sympathetic Block. (PX 3 at 6)

On July 20, 2022, Dr. Mohiuddin administered the Lumbar Sympathetic Block which confirmed Petitioner's diagnosis of CRPS. (PX 3 at 7) Petitioner testified that the injection made him feel slightly better for two days. (T. 39)

On August 15, 2022, Dr. Mohiuddin noted that the sympathetic block provided 40% relief with a decrease of numbness, tingling and burning the left foot for 5 days. (PX 3 at 9) Dr. Mohiuddin opined that a spinal cord stimulator was warranted. (T. 40; PX 3 at 12) Prior to moving forward with the permanent implantation of the spinal cord stimulator, Dr. Mohiuddin recommended a psychological evaluation followed by a trial using a spinal cord stimulator with an external battery over a 7-day period. (PX 3 at 12-13)

On September 16, 2022, psychologist, Dr. Katarzyna Pilewicz, examined Petitioner and determined that he was an appropriate candidate for the spinal cord stimulator. (T. 40; PX 4 at 7) Petitioner testified that he remained off work after subsequent visits with Dr. Mohiuddin, while he waited for the approval of the back device. (T.41)

On February 16, 2023, Petitioner presented to Dr. Richard Noren, M.D., for an IME at Respondent's request (RX 2) Petitioner reported foot pain which ranged from 6 -10/10. (RX 2 at 2) Dr. Noren noted that Petitioner ambulated with a cane and had undergone left ankle surgery. Dr. Noren noted that the March 2, 2022, EMG demonstrated lateral plantar sensory conduction abnormalities with no evidence of plantar nerve injury and decreased amplitudes of the plantar sensory nerves. (RX 2 at 4)

During the clinical exam, Dr. Noren documented left foot swelling, allodynia, hyperalgesia and increased cool sensation which was confirmed with testing. (RX 2 at 3, 5) Dr. Noren noted, however, that Petitioner put his sock back on, post exam, with no apparent hesitancy; a finding Dr. Noren found to be inconsistent with the clinical exam. (RX 2 at 4) Despite the clinical findings of left foot swelling, allodynia, hyperalgesia and increased cool sensation, Dr. Noren opined there was no objective evidence of a neuropathic pain syndrome such as CRPS. (RX 2 at 5) Dr. Noren noted that Petitioner's high pain levels were inconsistent with lack of use of medication. Dr. Noren concluded Petitioner's complaints were inconsistent and were most likely symptom magnification. (RX 2 at 5)

Dr. Noren diagnosed Petitioner with an ankle sprain. *Id*. Dr. Noren opined that Petitioner could return to work in his position as a forklift driver; and that Petitioner has been capable of returning to work since his injury. (RX 2 at 6)

On May 15, 2023, Dr. Mohiuddin performed the trial spinal cord stimulator placement. (RX 3 at 45) Petitioner testified that he noted improvement and that his pain was reduced to a 4/10. (T. 43) Petitioner testified that the reduction in pain allowed him to ambulate and sleep better. (T. 44)

On May 22, 2023, Dr. Mohiuddin documented 50% relief with the trial stimulator. (RX 3 at 40) He also noted that Petitioner was able to place his left foot on the ground without pain and was able to sleep through the night (PX 3 at 40) In light of the relief provided by the trial stimulator for 7 days, Dr. Mohiuddin recommended moving forward with the permanent spinal cord stimulator implant. (PX 3 at 42)

Petitioner testified that, after the trial stimulator was removed, his pain came back completely. (T. 44) Petitioner testified that he wanted to move forward with the permanent spinal cord stimulator because the trial helped significantly and he wanted to better his health *Id*.

On June 6, 2023, Petitioner presented to Dr. Mohiuddin for the last time. (PX 3 at 46) Dr. Mohiuddin continued to keep Petitioner off work and continued recommending the permanent spinal cord stimulator. *Id*. Petitioner testified that he wants to undergo the permanent spinal cord stimulator because it helped significantly and to better his health. (T. 45)

Petitioner testified that he has not received correspondence from Respondent offering him work. (T. 42) Petitioner testified that if he were provided work with restrictions, he would go back to work. *Id*. Petitioner further testified that he wants to go back to work because he has a family, has too many responsibilities, and that this has affected him financially and psychologically. (T. 41)

TTD and TPD Benefits

Petitioner claims that he is entitled to TTD benefits from March 25, 2021, through February 9, 2022, which amounts to 46 weeks. (AX line 8) Medical records demonstrated that Petitioner continued working until he underwent the approved surgery on March 25, 2021. Petitioner presented evidence that he remained off work until Dr. Mazzarella sent him back to work with restrictions on February 7, 2022. (PX 2 at 99) Petitioner claims that the TTD award for this time period amounts to $28,512.18.

Petitioner also claims that he is entitled TTD from May 23, 2022, through July 13, 2023, amounting to 59 4/7th weeks. (AX line 8) The medical records noted that Dr. Mazzarella, Dr. Rerri and Dr. Mohiuddin instructed Petitioner to remain off work pending approval of the spinal cord stimulator. (PX 1; PX 2; PX 3) Records also indicated that Petitioner was willing to return to work if a light duty job offer was made. (PX 24; PX 25) Petitioner presented evidence that, despite various requests and a written assurance that a job offer was forthcoming, Respondent never offered Petitioner a light duty position. *Id*. Petitioner claims that the amount of TTD he is entitled to during this period is $36,924.16.

Petitioner claims that he is entitled to TPD benefits from June 22, 2020, through March 24, 2021, which amounts to 39 & 3/7th weeks. (AX line 8) The records indicated that, during this time, Petitioner continued to work for Respondent, either with restrictions or against the recommendations of his doctors. (PX 1; PX 2; PX 3) Petitioner submitted check stubs and a wage overview demonstrating that he is entitled to TPD benefits for this period of time in the amount of $6,136.05. (PX 26; 28) Petitioner further claims that he is entitled to TPD benefits from February 10, 2022, through May 22, 2022, which amounts to 14 & 4/7th weeks. (AX line 8) Records indicated that while he worked with restrictions, he earned less than he did in the full capacity of his work duties. (PX 26; 28) Petitioner claims he is entitled to a TPD award of $2,313.47 for this period of time. Petitioner claims that the total TTD and TPD award amounts to $73,885.86.

Penalties

Petitioner presented evidence of his 2022 W-2 form and testified that it accurately reflected his earnings with Respondent during the time period of February 10, 2022, through May 22, 2022. (PX 27) Petitioner also presented evidence that on August 23, 2022, the parties advised the Arbitrator, via email, that Respondent agreed to pay TTD. (PX 17) Petitioner presented evidence that on September 21, 2022, Petitioner's counsel reached out to Respondent's counsel requesting the status of the TTD check. (PX 18) Respondent's counsel replied that he was still waiting to hear back from the adjuster. *Id*. Petitioner presented evidence that Petitioner followed up regarding the unpaid benefits on October 4, 2022, October 10, 2022, October 19, 2022, and October 20, 2022. *Id*.

Petitioner presented evidence that there was discussion regarding the status of the TTD checks for the dates of June 20, 2022, to August 2, 2022; August 17, 2022, to August 21, 2022, and September 26, 2022, to October 9, 2022, as missing. (PX 18; PX 19 at 4)

Petitioner presented evidence that as of November 21, 2022, TTD payments had not been received (PX 19 at 4) Petitioner presented evidence that Respondent assured Petitioner that payment was issued. *Id*. Petitioner presented evidence that on November 28, 2022, partial payment had been received and Petitioner was still owed benefits from July 13, 2022, through August 2, 2022. (PX 19 at 3) Petitioner presented evidence that as of December 6, 2022, Petitioner was owed TTD payments from July 13, 2022, through August 2, 2022; October 17, 2022, through October 20, 2022; November 14, 2022, through November 27, 2022. (PX 19 at 2)

Petitioner presented evidence that on January 28, 2023, Petitioner's counsel and Respondent's counsel had a discussion about a balance of $6,623.64 which was still owed by Respondent. (PX 21 at 2) Respondent's counsel advised Petitioner that he calculated the underpayment to be $6,624.64 ($1.00 more) and that the underpayment would be issued directly to Petitioner's counsel. *Id*. Petitioner presented

evidence that on February 13, 2023, Petitioner's counsel confirmed receipt of a check amounting to $3,718.98. (PX 22; pg. 2)

Petitioner presented evidence that on March 8, 2023, Petitioner's counsel again followed up with Respondent regarding the underpayment of benefits (PX 22 at 1)

Petitioner presented evidence that although Respondent's counsel and Petitioner's counsel reached a consensus, on June 8, 2023, regarding the back pay, Petitioner's counsel was still awaiting confirmation as to what benefits had been paid to date. (PX 25 at 4) Petitioner presented evidence that by June 20, 2023, Respondent failed to provide an explanation as to Respondent's calculations regarding the claimed back-due TTD. (PX 25 at 3)

CONCLUSIONS OF LAW

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

Decisions of an Arbitrator shall be based exclusively on the evidence in the record of the proceeding and material that has been officially noticed. 820 ILCS 305/1.1(e). The burden of proof is on a claimant to establish the elements of his right to compensation, and unless the evidence considered in its entirety supports a finding that the injury resulted from a cause connected with the employment, there is no right to recover. *Board of Trustees v. Industrial Commission,* 44 Ill. 2d 214 (1969).

Credibility is the quality of a witness which renders his evidence worthy of belief. The Arbitrator, whose province it is to evaluate witness credibility, evaluates the demeanor of the witness and any external inconsistencies with his testimony. Where a claimant's testimony is inconsistent with his actual behavior and conduct, the Commission has held that an award cannot stand. *McDonald v. Industrial Commission,* 39 Ill. 2d 396 (1968); *Swift v. Industrial Commission,* 52 Ill. 2d 490 (1972).

It is the function of the Commission to judge the credibility of the witnesses and to resolve conflicts in the medical evidence and assign weight to witness testimony. *O'Dette v. Industrial Commission*, 79 Ill.2d 249, 253, 403 N.E.2d 221, 223 (1980); *Hosteny v. Workers' Compensation Commission*, 397 Ill. App. 3d 665, 674 (2009). Internal inconsistencies in a claimant's testimony, as well as conflicts between the claimant's testimony and medical records, may be taken to indicate unreliability. *Gilbert v. Martin & Bayley/Hucks,* 08 ILWC 004187 (2010).

In the case at hand, the Arbitrator observed Petitioner during the hearing and finds the Petitioner credible and that he was calm, well-mannered, and composed. The Arbitrator compared Petitioner's testimony with the totality of the evidence submitted and did not find material contradictions that would deem the witness unreliable.

WITH RESPECT TO ISSUE (C), DID AN ACCIDENT OCCUR THAT AROSE OUT OF AND IN THE COURSE OF PETITIONER'S EMPLOYMENT BY RESPONDENT, THE ARBITRATOR FINDS AS FOLLOWS:

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

To be compensable under the Act, an injury must "arise out of" and be "in the course of" the employee's employment. *Kochilas v. Industrial Comm'n*, 274 Ill.App.3d 1088, 1090 (1995) The burden of establishing that the injury "arose out of" and was "in the course of the employment" rests with the applicant. *Rockford Cabinet Co. v. Industrial Comm'n*., 295 III. 332, 335 (1920)

The Arbitrator notes that Petitioner testified that he was working on May 27, 2020. *Id*. The Arbitrator notes that Petitioner testified that he was driving a forklift to unload a container. *Id.* The Arbitrator notes that Petitioner testified that when he got off to remove garbage and debris that was on the concrete, the forklift went over his foot. (T. 17-18) The Arbitrator notes that Petitioner testified that the body of the forklift hit the heel on his ankle and went over his foot. (T. 18) The Arbitrator notes that Petitioner testified that his left ankle was twisted and that he was in a lot of pain and that he had swelling in his foot. (T. 18-19)

The Arbitrator notes that, as a result, Petitioner was diagnosed Petitioner with left ankle and foot disorder of synovium and tendon, ligament, and effusion of left ankle by Dr. De las Casas. (PX 1 at 6) The Arbitrator also notes that radiologist, Dr. Kuritza, opined that Petitioner's MRI represented significant posttraumatic soft tissue bruising. (PX 2 at 107)

The Arbitrator notes that Petitioner testified that he immediately called West to notify him. (T. 19) Petitioner testified that later that night, at 8:37pm, he texted West and told him that his foot was swollen and in a lot of pain and that he was not going into work the next day. (T. 22; Petitioner's Exhibit "PX" 29) The Arbitrator further notes that Petitioner testified that he did not seek medical care because he did not want to have issues at work and that was his job. (T. 23)

Based on the Petitioner's testimony and medical records, the Arbitrator finds that the accident arose out of and in the course of Petitioner's employment by Respondent on May 27, 2020.

WITH RESPECT TO ISSUE (F), IS PETITIONER'S CURRENT CONDITION OF ILL-BEING CASUALLY RELATED TO THE INJURY, THE ARBITRATOR FINDS AS FOLLOWS:

Petitioner bears the burden of proving, by a preponderance of the evidence, every element of the claim. *O'Dette v. Industrial Comm'n*, 79 Ill. 2d 249, 253 (1980). To obtain compensation under the Illinois Workers' Compensation Act, a claimant must prove that some act or phase of his employment was a causative factor in his ensuing injuries. A work-related injury need not be the sole or principal causative factor, as long as it was *a* causative factor in the resulting condition of ill-being. Causation between the work-related accident and condition of ill-being can be established by showing prior history of good health, followed by a work-related accident in which petitioner is unable to perform his physical duties. *Kawa v. Illinois Workers' Comp. Comm'n*, 991 N.E.2d 430, 448 (2013).

It is well established law that proof of prior good health and change immediately following and continuing after an injury may establish that an impaired condition was due to the injury. *Navistar International Transportation Corporation*, 315 Ill. App. 3d 1197, 1206 (2000) The Court specifically stated that causal connection between work duties and a condition may be established by a chain of events, including Petitioner's ability to perform duties before the date of the accident and inability to perform the same duties following that date. *Id.*

The Arbitrator notes that, Petitioner was diagnosed Petitioner with left ankle and foot disorder of synovium and tendon, ligament, and effusion of left ankle by Dr. De las Casas. (PX 1 at 6) The Arbitrator notes that radiologist, Dr. Kuritza, opined that Petitioner's MRI represented significant posttraumatic soft tissue bruising. (PX 2 at 107) The Arbitrator further notes that Dr. Kadakia opined Petitioner's condition of ill-being was directly related to the work accident in question. (RX 1, Answer 2, under Conclusions)

The Arbitrator notes that Dr. Rerri diagnosed Petitioner with chronic left ankle pain. *Id*. The Arbitrator further notes that Dr. Mohiuddin diagnosed Petitioner with CRPS. (PX 3 at 4) The Arbitrator notes that Dr. Mohiuddin administered the Lumbar Sympathetic Block and confirmed Petitioner's diagnosis of CRPS. (PX 3 at 7) The Arbitrator notes that Petitioner testified that the injection made him feel slightly better for two days. (T. 39)

The Arbitrator notes that Dr. Mohiuddin opined that a spinal cord stimulator was warranted. (T. 40; PX 3 at 12) The Arbitrator notes that Petitioner underwent a procedure with Dr. Mohiuddin at which time the trial spinal cord stimulator was placed. (PX 3 at 45) The Arbitrator notes that Petitioner testified that he noted improvement and his pain was reduced to a 4/10. (T. 43) The Arbitrator notes that Petitioner testified that the reduction in pain allowed him to ambulate and sleep better and place his left foot on the ground without pain. (T. 44; PX 3 at 40) The Arbitrator notes that Petitioner testified that, after the trial stimulator was removed, his pain came back completely. (T. 44) Petitioner testified that he wanted to move forward with the permanent spinal cord stimulator because the trial helped significantly and he wanted to better his health *Id*.

The Arbitrator finds the medical opinions of Dr. Mazzarella, Dr. Rerri, Dr. Mohiuddin and Dr. Kadakia to be persuasive. After hearing the testimony of Petitioner and reviewing Petitioner's medical

records, the Arbitrator finds Petitioner's current condition of ill-being, with respect to his left ankle and foot, is causally related to the accident of May 27, 2020.

WITH RESPECT TO ISSUE (J), WERE THE MEDICAL SERVICES THAT WERE PROVIDED TO PETITIONER REASONABLE AND NECESSARY AND HAS RESPONDENT PAID ALL APPROPRIATE CHARGES FOR ALL REASONABLE AND NECESSARY MEDICAL SERVICES, THE ARBITRATOR FINDS AS FOLLOWS:

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).

As the Arbitrator found that Petitioner's current condition of ill-being was causally connected to the work-related accident, the Arbitrator finds that the medical treatment and services Petitioner received were reasonable and necessary. (PX 5, PX 6, PX 7, PX 8, PX 9, PX 10, PX 11, PX 12, and PX 13) Petitioner presented evidence whereby Respondent is liable for the following medical bills totaling $55,494.45 as a result of the following bills: Grandview Health Partners ($1,519.61); PX 5; John Mazzarella ($440.72); PX 6; RX Development ($9,385.22); PX 7; Lakeshore Surgery Center – Facility ($29,031.02); PX 8; Lakeshore Surgery Center – Physicians ($114.40); PX 9; Western Touhy Anesthesia – ($817.68); PX 10; Delaware Physicians ($5,401.16); PX 11; Regenerative Spine & Pain ($8,334.64); PX 12; and Psychological Counseling Center ($450.00); PX 13.

Based on the above, the Arbitrator finds that Respondent shall pay all reasonable and necessary medical services, totaling $54,562.37, pursuant to the medical fee schedule and as outlined in PX 5, PX 6, PX 7, PX 8, PX 9, PX 10, PX 11, PX 12, and PX 13, as provided in Sections 8(a) and 8.2 of the Act.

WITH RESPECT TO ISSUE (K), WHETHER PETITIONER IS ENTITLED TO ANY PROSPECTIVE MEDICAL CARE, THE ARBITRATOR FINDS AS FOLLOWS:

As the Arbitrator found that Petitioner's current condition of ill-being, with respect to his left foot and ankle, was causally related to the injuries sustained on May 27, 2020, and that medical services provided, thus far, were reasonable and necessary, the Arbitrator finds that the Petitioner is entitled to the spinal cord stimulator as recommended by Dr. Mohiuddin. (PX 3) The Arbitrator notes that Dr. Mohiuddin diagnosed Petitioner with CRPS. The Arbitrator notes that Petitioner underwent a procedure with Dr. Mohiuddin at which time the trial spinal cord stimulator was placed. (PX 3 at 45) The Arbitrator notes that Petitioner testified that he noted improvement and that the reduction in pain allowed him to ambulate and sleep better. (T. 43-44; PX 3 at 40) The Arbitrator notes that Petitioner testified that, after the trial stimulator was removed, his pain came back completely. (T. 44) Petitioner testified that he wanted to move forward

with the permanent spinal cord stimulator because the trial helped significantly and he wanted to better his health and provide for his family. *Id*.

As such, the Arbitrator finds that Respondent shall authorize and provide payment for the spinal cord stimulator as recommended by Dr. Mohiuddin, as provided in Section 8(a) and 8.2 of the Act.

WITH RESPECT TO ISSUE (L), WHAT TEMPORARY BENEFITS ARE IN DISPUTE, THE ARBITRATOR FINDS AS FOLLOWS:

A claimant is temporarily totally disabled from the time an injury incapacitates him from work until such time as he is as far recovered or restored as the permanent character of his injury will permit. *Westin Hotel v. Indus. Comm'n*, 372 Ill.App.3d 527, 542 (1st Dist. 2007).

As the Arbitrator found that Petitioner's current condition of ill-being was causally connected to the work-related accident, the Arbitrator finds that Petitioner met his burden and is entitled to receive TTD benefits. The Arbitrator notes that, based on Petitioner's testimony and records submitted, Petitioner is entitled to a total of $73,885.86 in TTD and TPD benefits. The Arbitrator notes that the parties agreed that Respondent is entitled to a credit of $65,312.45 in benefits paid, and thus, accordingly, Petitioner is awarded $8,573.41 in unpaid TTD and TPD benefits. (PX 18; PX 19; PX 24; PX 25; PX 26; PX 28; AX 1 line 9)

Thus, the Arbitrator finds that Respondent shall pay Petitioner TTD and TPD benefits of $8,573.41, as provided in Section 8(b) of the Act.

WITH RESPECT TO ISSUE (M), SHOULD PENALTIES OR FEES BE IMPOSED UPON RESPONDENT, THE ARBITRATOR FINDS AS FOLLOWS:

Section 19(l) Penalties

With regards to Section 19(1), the Act reads, "[i]n case the employer or his or her insurance carrier shall without good and just cause fail, neglect, refuse, or unreasonably delay the payment of benefits under Section 8(a) or Section 8(b), the Arbitrator or the Commission shall allow to the employee additional compensation in the sum of $ 30 per day for each day that the benefits under Section 8(a) or Section 8(b) have been so withheld or refused, not to exceed $10,000. A delay in payment of 14 days or more shall create a rebuttable presumption of unreasonable delay." 820 ILCS 305/19(1)

Section 19(l) penalties are appropriate if the Respondent fails, neglects, refuses, or unreasonably delays payment of benefits due. An employer withholding benefits has the burden of proving that its delay was reasonable. *Jacobo v. Illinois Workers' Comp. Comm'n*, 959 N.E.2d 772 (2011) In *McMahan v. Indus. Comm'n*, the Supreme Court held Section 19(l) penalties are "mandatory if the payment is late, for

whatever reason, and the employer or its carrier cannot show an adequate justification for the delay." 183 Ill. 2d 499 at 515.

The standard for determining whether an employer has good and just cause for a delay in payment is defined in terms of reasonableness. *Board of Education of the City of Chicago v. Industrial Comm'n*, 442 N.E.2d 861 at 865 (1982). The employer has the burden of justifying the delay. *Id.* The employer's justification for the delay is sufficient only if a reasonable person in the employer's position would have believed that the delay was justified. *Id.*

Based on the above evidence, the Arbitrator finds that Respondent was unable to show an adequate justification for its delay and finds that an award of Section 19(1) penalties is mandatory. The Arbitrator fines Respondent $30.00 a day starting August 23, 2022. As of the date of trial, July 13, 2023, 324 days had passed. Thus, Respondent shall pay penalties, in the amount of $9,720.00, under Section 19(k).

Section 19(k) Penalties

With regards to Section 19(k), the Act reads, "[i]n cases where there has been any unreasonable or vexatious delay of payment or intentional underpayment of compensation, or proceedings have been instituted or carried on by the one liable to pay the compensation, which do not present a real controversy, but are merely frivolous or for delay, then the Commission may award compensation additional to that otherwise payable under this Act equal to 50% of the amount payable at the time of such award. Failure to pay compensation in accordance with the provisions of Section 8, paragraph (b) of this Act, shall be considered unreasonable delay. When determining whether this subsection (k) shall apply, the Commission shall consider whether an Arbitrator has determined that the claim is not compensable or whether the employer has made payments under Section 8(j)." 820 ILCS 305/19(k).

While Section 19(1) penalties apply when Respondent delays payment "without good and just cause," Section 19(k) penalties require a lack of good faith. The Commission has the discretion to impose Section 19(k) penalties where there is not only a delay in payment, but the delay was in bad faith. *McMahan*, 702 N.E.2d at 552 citing *Smith v. Industrial Comm'n*, 525 N.E.2d 81 (1988). Good faith must be assessed objectively, thus the question is whether an employer's denial of benefits was reasonable. *Id.* The employer bears the burden of demonstrating that its denial of benefits was reasonable. *Residential Carpentry, Inc. v. Workers' Compensation Comm'n*, 910 N.E.2d 109 at 117 (2009).

As the Arbitrator finds Respondent's behavior was in bad faith, penalties under Section 19(k) are warranted. At the time of trial, $8,573.41 was due in unpaid TTD and TPD; 50% of $8,573.41 is $4,286.71. As a result, the Arbitrator fines Respondent $4,286.71 in penalties under Section 19(k).

Section 16 Fees

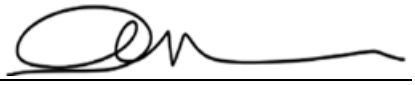
Section 16 reads, [w]henever the Commission shall find that the employer . . . or insurance carrier has been guilty of delay or unfairness towards an employee in the adjustment, settlement or payment of benefits due such employee within the purview of the provisions of paragraph (c) of Section 4 of this Act, or has been guilty of unreasonable or vexatious delay, intentional under-payment of compensation benefits, or has engaged in frivolous defenses which do not present a real controversy, within the purview of the provisions of paragraph (k) of Section 19 of this Act, the Commission may assess all or any part of the attorney's fees and costs against such employer and his or her insurance carrier." 820 ILCS 305/16

Both Sections 16 and 19(k) are similar in that they require an unreasonable or vexatious delay in payment. *Vulcan Materials Co. v. Industrial Comm'n*, 842 N.E.2d 204 (2005). Here, Respondent's nonresponse to Petitioner's requests for payment of bills was unreasonable and vexatious.

As Respondent's delay was unreasonable and vexatious, the Arbitrator will assess attorney's fees and costs under Section 16, which are 20% of the total penalties under Section 19(1) and Section 19(k). The Arbitrator awards $9,720.00 under Section 19(1) and $4,286.70 under Section 19(k), which totals $14,006.70. The Arbitrator calculates 20% of $14,006.70 equaling $2,801.34.

As a result, the Arbitrator imposes $2,801.34 in attorney's fees and costs under Section16 against Respondent. As a whole, the Arbitrator finds that Respondent is liable for Section 19(l) and Section 19(k) penalties and Section 16 attorney fees under the Act and shall pay a total of $16,808.04.

It is so ordered:



Arbitrator Antara Nath Rivera

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC000391
Case Name	Jerry Desch v. State of Illinois - Illinois Department of Transportation
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b) Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	24IWCC0163
Number of Pages of Decision	20
Decision Issued By	Deborah Simpson, Commissioner

Petitioner Attorney	James Ruppert
Respondent Attorney	Kenton Owens

DATE FILED: 4/9/2024

/s/ Deborah Simpson, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF MADISON)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Jerry Desch,
Petitioner,

vs. NO: 21 WC 391

State of Illinois, Department of Transportation,
Respondent.

DECISION AND OPINION ON REVIEW

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

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed March 13, 2023, is hereby affirmed and adopted.

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

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

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

Pursuant to §19(f)(1) of the Act, claims against the State of Illinois are not subject to judicial review. Therefore, no appeal bond is set in this case.

April 9, 2024
o3/20/24
DLS/rm
046

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

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

/s/*Raychel A. Wesley*
Raychel A. Wesley

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC000391
Case Name	Jerry Desch v. State of Illinois, Department of Transportation,
Consolidated Cases	
Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	17
Decision Issued By	Maureen Pulia, Arbitrator

Petitioner Attorney	James Ruppert
Respondent Attorney	Kenton Owens

DATE FILED: 3/13/2023

THE INTEREST RATE FOR THE WEEK OF MARCH 7, 2023 4.97%

/s/ Maureen Pulia, Arbitrator

Signature

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

March 13, 2023

/s/ Michele Kowalski

Michele Kowalski, Secretary
Illinois Workers' Compensation Commission

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

JERRY DESCH,
Employee/Petitioner

v.

STATE OF ILLINOIS, DEPARTMENT OF TRANSPORTATION,
Employer/Respondent

Case # **21** WC **391**

Consolidated cases: _____

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Maureen Pulia**, Arbitrator of the Commission, in the city of **Collinsville**, on **2/23/23**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On the date of accident, **6/4/20**, 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 $**76,161.80**; the average weekly wage was $**1,434.65**.

On the date of accident, Petitioner was **55** years of age, ***married*** with **0** dependent children.

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

Respondent shall be given a credit of $**00.00** for TTD, $**00.00** for TPD, $**00.00** for maintenance, and $**00.00** for other benefits, for a total credit of $**00.00**.

Respondent is entitled to a credit of $**00.00** under Section 8(j) of the Act.

ORDER

Respondent shall pay reasonable and necessary medical services from 6/4/20 through 2/23/23, as provided in Sections 8(a) and 8.2 of the Act.

Respondent shall pay reasonable and necessary medical services related to the cervical disc replacement at C4-C5, C5-C6, C6-C7, as well as the C7-T1 level, recommended by Dr. Gornet, as provided in Sections 8(a) and 8.2 of the Act.

Respondent shall be given a credit for medical benefits that have been paid, and Respondent shall hold petitioner harmless from any claims by any providers of the services for which Respondent is receiving this credit, as provided in Section 8(j) of the Act.

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

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

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

Signature of Arbitrator

MARCH 13, 2023

ICArbDec19(b)

THE ARBITRATOR HEREBY MAKES THE FOLLOWING FINDINGS OF FACT:

Petitioner, a 55 year old lead worker, sustained an accidental injury to his cervical spine, that arose out of and in the course of his employment by respondent on 6/4/20. Petitioner's job duties include patching holes, running equipment, and fixing anything on the road that needs to be done.

On 6/4/20 petitioner was tearing down trees on the interstate with a large track hoe. Because they wanted to move the track hoe to another place the track hoe had to be placed on the trailer. The trailer was on the side of the road. However, it was not on an even surface, and as the petitioner drove the track hoe onto the back of the trailer the track hoe tipped to the right, fell off the trailer, and landed on its side on the ground. As it fell, the door was open and petitioner grabbed the handle. When it landed, a 2 foot wide piece of glass fell and struck petitioner in the head, and the shattered glass from the cab fell around him. Petitioner reported the injury to his supervisors.

Following this incident, petitioner testified that most of his pain was in his head. He reported a lump on his head and small lacerations to his face, head and arms. He also reported that his back was hurting. He denied any pain in his neck on the date of the injury. He testified that he started having pain in his neck the following morning when he got out of bed.

On 6/4/20 petitioner presented to Sherry Locey, a Physician's Assistant at Crossroads Family Medicine. Petitioner provided a consistent history of the injury that day. He complained of some discomfort to the top of his scalp. He also reported some soreness in his back. He denied any neck pain. He stated that he removed several small slivers of glass from his face and arms. Petitioner had a 2 inch L-shaped laceration near the base of the thumb that was closed with medical adhesive. He was also assessed with a laceration of the left hand; contusion of face, scalp, and neck; and, concussion with no loss of consciousness. He was taken off work until 6/8/20.

On 6/5/20 petitioner completed an accident report. He reported a consistent history of the accident. He described his injury as "some small abrasions. Glass fell out on head large cut on left hand". Nikki. Williams also completed a TriStar Notification of Injury on 6/5/20. It was noted that petitioner had a deep cut between left thumb and forefinger; had a tender knot and indentation on front of head towards the left side; small scratch on forehead; and, that his back hurt a little and he was just kind of beat up.

On 6/12/20 petitioner followed up with Locey for his concussion and laceration of his left hand. Locey noted that petitioner's laceration was healing slowly; the top of his head was less sore, even though there was still a small bump; and, that petitioner had complaints of stiffness and soreness at the

base of his neck and across his shoulders. Following an examination, Locey assessed a laceration of the left hand, strain of the neck muscle, and contusion of the head.

On 6/26/20 petitioner returned to Locey. Petitioner had soreness in his neck, upper shoulders and his back. He had pain and tenderness with motion of his neck. It was noted that the laceration of the left hand was healed. On examination petitioner had pain and tenderness in his posterior neck and both trapezius, as well as mild restriction of neck motion. Locey assessed laceration of the left hand, and strain of the muscle, fascia, and tendon at the neck level. Locey recommended Flexeril and heat as needed. She released petitioner from her care, but told him to return if the pain and stiffness in his neck persisted. Petitioner testified that he took this to mean that he should take some time to see if it heals on its own.

On 10/28/20 petitioner followed up with Locey for persistent discomfort in the posterior of his neck and base of his neck since his injury on 6/4/20. He stated that looking up increased the pain, and at times there was radiation into his left shoulder and arm. Following an examination petitioner was assessed with a strain of the neck muscle. Locey ordered x-rays of the cervical spine and a course of physical therapy.

On 11/3/20 petitioner began a course of physical therapy at Fairfield Memorial Hospital. He was only seen on 2 occasions. He underwent manual therapy and therapeutic exercises. It was noted that petitioner was discharged because he chose to stop treatment.

On 11/4/20 petitioner underwent x-rays of his cervical spine. The impression was multilevel cervical spondylosis without acute bone pathology; straightening of the normal cervical lordosis to be correlated clinically; and, generalized decreased bone density.

On 11/30/20 petitioner returned to Locey for followup of his neck muscle strain. Petitioner reported that his neck remained stiff, and some days were worse than others. He noted that his neck was aching more that day in his right posterior shoulder. He reported that he really thought that one treatment in physical therapy had helped some. An examination revealed pain in the neck with range of motion. His side to side motion of the neck was restricted, and he was tender in the posterior neck and inner scapula. Petitioner also had tenderness of the left shoulder with range of motion, and about the right trapezius. Locey assessed strain of the muscle, fascia, and tendon at the neck level. She noted that she was unable to proceed with further testing or treatment until the workers' compensation issues were resolved.

On 1/11/21 petitioner followed-up with Locey. His complaints remained unchanged. His examination and assessment also remained unchanged. Locey advised petitioner of his need for physical therapy once approved.

On 1/19/21 petitioner underwent another physical therapy evaluation at Fairfield Memorial Hospital. On 2/22/21 after 5 visits recertification was due, and the justification for continued therapy was petitioner's functional deficits.

Petitioner returned to Locey on 3/15/21 for his ongoing neck pain and stiffness. He complained of discomfort at the base of his neck. He noted no improvement. An examination of the neck revealed pain with motion. Hyperextension of the neck also was restricted and tender. Petitioner had tenderness of his left shoulder with range of motion. Locey's assessment remained the same, and she again provided petitioner with a referral for physical therapy.

On 4/7/21, after 11 visits of physical therapy, petitioner reported no progress with therapy. He noted that nothing seemed to be getting better. It was noted that petitioner met maximum potential, and due to no progress chose to stop treatment.

Petitioner testified that in May of 2021 his right leg was clipped by the mirror of a car that passed too close to the loader he was riding on. He testified that when his right leg was hit, he was knocked off the loader. He testified that he fell about two feet to the blacktop ground on his butt. Petitioner testified that he thought this accident may have aggravated his neck. He testified that he was off work for a few days following this incident, and then did paperwork for a while, until returning to full duty work without restrictions.

Petitioner saw Locey on 5/5/21, 6/1/21, 6/16/21, 7/9/21 for unrelated medical conditions.

On 6/3/21 petitioner presented to Dr. Matthew Gornet for his ongoing pain. His main complaint was neck pain to the base of his neck, and bilateral trapezius to both shoulders with tingling in both hands to his fingertips with the left being worse than the right. He stated that his current problem began, as far as his neck pain was concerned, on 6/4/20. He provided a consistent history of the accident and treatment to date. Petitioner reported that he was recently clipped in the right leg by a car while getting into his loader in a construction zone, and felt that this had mildly flared his neck, but he continued to work full duty. Petitioner denied any previous problems of significance with his neck, but did give history of left carpal tunnel syndrome. Petitioner reported that his symptoms were constant and worse with reaching with his arms extended, and rotating to the right. He also reported bilateral arm tingling, that was initially mostly left-sided, but over time progressed both sides.

On 6/3/21 petitioner underwent an MRI of the cervical spine. The impression was bilateral lateral recess-foraminal protrusions at the C5-C5, C6-C7, and C7-T1 levels, and left recess-foraminal protrusions at the C4-C5 level, each superimposed on circumferential disc bulge; moderate C6-C7, mild

to moderate C5-C6, milder C4-C5 central canal stenosis; severe foraminal stenosis at C4-C5, C5-C6 and C6-C7 levels; moderate to severe foraminal stenosis at C7-T1; and, C3-C4 circumferential disc bulge with a left foraminal protrusion and spurring resulting in moderate left greater than right foraminal stenosis, but no central canal stenosis.

On 6/3/21 petitioner also underwent a CT of the cervical spine. The impression was disc protrusions at C3-C4, C4-C5, C5-C6 and C6-C7 levels, resulting in ventral cord flattening with moderate C5-C6, mild to moderate C6-C7 and C4-C5 central canal stenoses; foraminal stenosis present at C3-C4, C4-C5, C5-C6, and C6-C7; and, C7-T1 circumferential disc bulge with facet arthroplasty resulting in mild bilateral foraminal stenosis.

Dr. Gornet reviewed the x-rays, MRI and CT scan of cervical spine, as well as medical records from Sherry Locey and Fairfield Memorial Hospital. Following his record review and physical examination, his impression was that an accident such as the one described by petitioner could easily aggravate an underlying condition, as well as cause a disc injury. Dr. Gornet was of the opinion that petitioner probably has a combination of both, including what appears to be an acute on chronic herniation particularly on the left side at C4-C5 and C5-C6, and some aggravation of some underlying foraminal narrowing. Dr. Gornet was of the opinion that given the fact that petitioner already had significant cord compression and was showing signs of myelopathy, petitioner's best opinion was surgery that included a laminoplasty and multilevel fusion versus cervical disc replacement. Dr. Gornet was of the opinion that petitioner could work full duty. Dr. Gornet told petitioner that surgery would stop the progression of the myelopathy, but would not guarantee any recovery of his function. He opined that petitioner's current symptoms and requirement for treatment are causally connected to the accident on 6/4/20.

On 10/11/21 petitioner underwent a Section 12 examination performed by Dr. Michael Chabot, at the request of the respondent. Petitioner provided a consistent history of the accident on 6/4/20. Petitioner reported lower neck and upper thoracic soreness. He stated that when he drives for a long period of time he may experience numbness involving the left arm. In addition to his physical examination of petitioner, Dr, Chabot performed a record review which included the records from Crossroads Family Practice from 6/4/20, 6/12/20, 6/26/20, 10/28/20, 11/3/20, 11/30/20, and 1/11/21. Dr. Chabot also reviewed the records from Dr. Gornet for 6/3/21. Following his examination and record review, Dr. Chabot's impression was cranial and neck contusions, neck strain, chronic multilevel degeneration involving the cervical spine, and history of myelomalacia. Dr. Chabot requested the petitioner's cervical spine MRI and CT before addressing a lot of respondent's questions. Dr. Chabot

was of the opinion that petitioner had severe, multilevel degeneration involving his cervical spine, as well as evidence of multilevel degeneration and neural compression. Based on these findings, he was of the opinion that petitioner's prognosis was that he would likely continue to have neck and shoulder pain and aches.

On 2/24/22 Dr. Chabot drafted a supplemental report after reviewing additional records that included the Notification of Injury Form, and the CT of the cervical spine performed 6/3/21. Given that he did not have the films of the MRI of the cervical spine performed 6/3/21, he deferred any further opinions.

On 7/13/22 Dr. Chabot drafted another supplemental report after reviewing the MRI of the cervical spine performed 6/3/21. His impression was that petitioner sustained cranial and neck contusions, neck strain, history of chronic multilevel degeneration involving the cervical spine, and findings consistent with myelomalacia at C6-C7. He was of the opinion that the changes seen on the MRI were chronic, and the protrusions described on the MRI by Dr. Ruyle were actually marginal spurs. Based on these findings, Dr. Chabot was of the opinion that changes noted on the MRI were chronic and unrelated to his injury on 6/4/20. Although Dr. Chabot was of the opinion that petitioner should consider surgical intervention to the cervical spine due to his significant multilevel degeneration with spinal stenosis, he opined that the need for this surgical intervention is not related to the injury on 6/4/20. He noted that petitioner made no neck complaints when he was examined on the date of injury, and his neck exam did not note any abnormalities. Dr. Chabot also noted that on 3/15/20 petitioner was prescribed hydrocodone, a medication that is prescribed to control moderate to severe pain. Dr. Chabot did not know what condition the hydrocodone was prescribed for Dr. Chabot was of the opinion that based on his physical examination of petitioner on 10/11/21, that petitioner could return to regular work activities. He noted that on 10/11/21 petitioner told him he was performing his regular work duties without difficulty. Dr. Chabot opined that petitioner had reached maximum medical improvement.

On 11/14/22 petitioner returned to Dr. Gornet for his neck pain to the base of his neck, bilateral trapezial pain, shoulder symptoms, and tingling in his hands. Dr. Gornet noted that he was recommending surgery since petitioner was already showing signs of myelopathy. He was also of the opinion that he may need to treat C7-T1. Petitioner provided Dr. Gornet with the reports from Dr. Chabot, respondent's Section 12 examiner, dated 10/11/2 and 7/13/22. After reviewing these reports Dr. Gornet was of the opinion that it is important to note that cervical myelopathy does not necessarily produce neck pain, so Dr. Chabot's contention that this does not link his symptoms to an obvious work related injury, significant fall, striking his head, etc., is somewhat curious. Dr. Gornet reported that it

was important to note that Dr. Chabot did not detail any problems of significance with petitioner's neck, although he did have a history of carpal tunnel syndrome. Also, he noted that Dr. Chabot failed to mention that within six days petitioner did present with some issues in his neck, based on Locey's note of 6/12/20. Dr. Gornet was of the opinion that this short period of time not documented by Locey is irrelevant in the overall incident, particularly compared to the significance of his accident coupled with his obvious compelling MRI. Finally, Dr. Gornet found it significant that Dr. Chabot did not comment on the fact that even Dr. Ruyle, an independent radiologist, believed the disc herniations present were acute on chronic. Dr. Gornet also noted that Dr. Chabot agreed that surgery is probably appropriate. Dr. Gornet is seeking approval for cervical disc replacements at C4-C5, C5-C6, C6-C7, and potentially C7-T1.

On 12/9/22 the evidence deposition of Dr. Michael Chabot was taken on behalf of the respondent. Dr. Chabot is an orthopedic surgeon that focuses on treating conditions dealing with the neck, thoracic spine, lumbar spine and sacral. Dr. Chabot was of the opinion that as degeneration occurs, marginal spurs develop, and the spurs increase in size as time goes by, and they can project around the margins of the vertebral body, and the uncovertebral joints can also enlarge, and in some situations the enlargement of those bony projections can move into the spinal canal and neural foramina and result in the narrowing of those structures. Dr. Chabot was of the opinion that what he saw on petitioner's CT and MRI of his cervical spine was very longstanding, and took years to decades to develop, and predated the injury on 6/4/20. Dr. Chabot was also of the opinion that petitioner had a forward positioning of the neck due to anterior disc space collapse (kyphosis) that predated the date of injury, and took decades to develop; that petitioner had had pain in the midline of his spine that did not radiate; and, that petitioner's longstanding conditions in his cervical spine would wax and wane.

On cross examination Dr. Chabot was of the opinion that one would not see straightening of the normal cervical lordosis in a person with advanced degeneration, because they don't have movement. He said it is possible that in the setting of an acute injury that the lack of normal cervical lordosis can be caused by spasming of the muscles about the cervical spine. However, Dr. Chabot was of the opinion that the lack of normal cervical lordosis on the 11/3/20 cervical spine x-ray was associated with multi-level disc space collapse and not a muscle spasm. Dr. Chabot agreed that sometimes when a person sustains an injury, they don't have to have immediate symptoms, or even within 24 hours, because the inflammatory process can take a day or two to become significant enough for a person to have symptoms. Dr. Chabot agreed that all treatment to petitioner's cervical spine to date had been reasonable and necessary. Dr. Chabot was of the opinion that he would probably not recommend a disc replacement

surgery in the front in a person with advanced facet degeneration. He believed a laminoplasty or posterior decompression would probably be the best procedure for petitioner. Dr. Chabot agreed that if a significant weight, such as a pane of glass, strikes someone in the head, it could cause herniations in a person's cervical spine, and/or an aggravation of a preexisting condition, whether that preexisting condition is severe, mild or moderate. Dr. Chabot also agreed that he did not have any information to support a finding that petitioner's preexisting condition in his cervical spine was causing him symptoms, or causing him to seek care prior to 6/4/20. Dr. Chabot noted that he saw in the records that petitioner had a right colectomy, but did not know when. Dr. Chabot testified that he saw no evidence of malingering in petitioner, and saw no Waddell signs. He found him credible. Dr. Chabot was unaware of any injuries to petitioner's cervical spine prior to 6/4/20. Dr. Chabot testified that he did not see any of petitioner's records after 1/11/21, and did not see any of Dr. Gornet's records after 6/3/21.

On 12/19/22 the evidence deposition of Dr. Matthew Gornet was taken on behalf of petitioner's attorney. Dr. Gornet is an orthopedic surgeon, whose business is devoted to spine surgery. Dr. Gornet testified that he was the author of the largest prospective randomized clinical trial ever done for cervical disc replacement; author of the largest prospective randomized clinical trial for long-term follow-up, which is a 10 year follow-up comparing disc replacement to fusion; author of the largest series of disc replacement for neck pain; and, author of the largest series in the world on three and four level cervical disc replacements. Dr. Gornet was of the opinion that an up to six day delay in the onset or reporting of cervical symptoms after the injury petitioner had is not uncommon, especially given the fact that he initially had a head injury and concussion. He opined that a delay in onset of symptoms in this fact scenario is within the realm of normal. Dr. Gornet was of the opinion that petitioner's pain diagram of bilateral trapezial, and bilateral arm symptoms is consistent with structural neck pain, as well as some spinal cord or nerve irritation. Dr. Gornert opined that as a result of the injury on 6/4/20, petitioner had an aggravation of an underlying asymptomatic degenerative condition; an acute on chronic herniation, particularly on the left side at C4-C5 and C5-C6; and, aggravation of some underlying foraminal narrowing. He further opined that petitioner now has spinal cord compression showing signs of myelopathy, and his best option is multi-level cervical disc replacement in two stages, with the lower level first, and the upper levels second.

Dr. Gornet opined that the surgery he is proposing for the cervical spine and at T1, is reasonable and necessary, and causally related to the injury on 6/4/20. Dr. Gornet opined that at a minimum, people that have had head trauma such as being diagnosed with a concussion, could easily aggravate a person's underlying cervical condition. Dr. Gornet opined that the petitioner's work accident on 6/4/20 caused

petitioner's current neck and upper extremities symptoms, and that all of petitioner's care to date has been reasonable and necessary for the injuries he sustained on 6/4/20.

On cross-examination, Dr. Gornet was of the opinion that petitioner had myelopathy, secondary to cord compression with acute on chronic changes particularly at C6-C7; had very severe foraminal stenosis on the left that plays into the tingling in his left hand, in his fingertips; has a component of central stenosis or central canal stenosis, particularly at C6-C7, and more significant foraminal narrowing, particularly on the left side; that degeneration could develop in spinal stenosis; and, that petitioner's bone spurs, mild disc narrowing, and mild bilateral degenerative facet arthropathy in his cervical spine predated 6/4/20.

Petitioner testified that he is currently working without restrictions. He testified that his current symptoms are pain in his neck going down into his shoulder. He stated that he has radiating pain in the left arm, worse than the right. He complained of intermittent tingling in his hands. Petitioner testified that the symptoms in his cervical spine are constant, and are sometimes worse than others. Petitioner testified that he was diagnosed with carpal tunnel in his left hand.

Petitioner testified that he does not take any medicine for his pain. He stated that he was prescribed pain medications prior to his injury on 6/4/20 that were either for kidney stones, or cancer surgery.

Petitioner testified that when he goes deer hunting and looks to the left or right for an extended period of time, then rotates his neck back the other way, he experiences pain and crackling in his cervical spine. Petitioner also reported increased pain in his cervical spine when he looks up and then down. Petitioner testified that his other hobby is horseback riding. Petitioner has three horses.

Petitioner denied any neck pain that lasted more than 24 hours, and never saw anyone for neck pain prior to 6/4/20. He also denied any shoulder pain, or tingling in his arms or hands prior to 6/4/20.

With respect to his work, petitioner testified that due to his seniority he is the one who assigns jobs at work, and he is easy on himself, and does not assign the heavy lifting jobs to himself. Petitioner stated that he will usually drive a truck, or do less strenuous work duties.

Petitioner testified that he wants to undergo the surgery recommended by Dr. Gornet.

F. IS PETITIONER'S CURRENT CONDITION OF ILL-BEING CAUSALLY RELATED TO THE INJURY?

It is unrebutted that petitioner sustained an accidental injury that arose out of and in the course of his employment by respondent on 6/4/20 when the track hoe he was in fell sideways off the trailer as he was loading it onto the trialer. When the track hoe landed on the ground on its side, a 2 x 2 foot piece of

glass fell striking petitioner on the head, and shattered glass from the cab fell around him causing lacerations.

Petitioner alleges that his current condition of ill-being as it relates to his cervical spine is causally related to the injury he sustained on 6/4/20. Respondent disputes that petitioner's current condition of ill-being as it relates to his cervical spine is causally related to the injury petitioner sustained on 6/4/20.

It is unrebutted that following the incident petitioner presented to Physician's Assistant Locey on 6/4/20, and denied any neck pain. Petitioner had a lump on his head, and small lacerations to his face, head and arms, as well as back pain. He was assessed with among other things, a concussion. Petitioner testified that he first noted neck pain on 6/5/20.

At his next documented visit on 6/12/20 petitioner's complaints included stiffness and soreness at the base of his neck and across his shoulders. Petitioner followed-up with Locey on 6/26/20 and his cervical spine complaints were the same. Locey assessed him with a strain of the muscle, fascia and tendon at the neck level. She prescribed heat and Flexeril as needed, and released petitioner from her care, telling him to return if the pain and stiffness in his neck persisted.

Petitioner continued working full duty, and on 10/28/20 returned due to persistent discomfort in the posterior of his neck, and the base of his neck since 6/4/20. He stated that looking up increased the pain in his neck, and at times he experienced radiating pain into his left shoulder and arm. Locey ordered physical therapy which petitioner began on 11/3/20. Following 2 physical therapy visits, petitioner returned to Locey on 11/30/20. Although he noted that one treatment in physical therapy had helped, his neck remained stiff and sore. At this point, Locey terminated petitioner's treatment. She informed him that she was unable to proceed with any further treatment or testing without worker's compensation authority.

Petitioner resumed treatment with Locey on 1/11/21. His complaints, and her assessment, remained unchanged. Petitioner resumed physical therapy on 1/19/21. Petitioner continued in physical therapy and followed up with Locey on 3/15/21. On 4/7/21, after 11 visits, petitioner reported no progress. Although it was noted that he met maximum potential, he was not making any progress, so he terminated physical therapy.

Petitioner testified to an unrelated incident at work some time in May 2021 when he was riding on a loader and his right leg was clipped by the mirror of a passing car. He stated that when he was clipped he fell 2 feet to the blacktop ground, landing on his buttocks. Although petitioner testified that this incident

may have aggravated his cervical spine condition, when petitioner followed up with Locey on 5/5/21, 6/1/21, 6/16/21 and 7/9/21 for unrelated problems, he made no mention of any cervical spine complaints.

Petitioner was examined by Dr. Gornet on 6/3/21. He complained of ongoing cervical spine complaints. He reiterated his ongoing complaints of neck pain to the base of his neck and his bilateral shoulders. Petitioner also reported tingling in both hands to his fingertips, left worse than right. Petitioner noted the incident in May of 2021, and reported that he felt this had mildly flared his neck, but he continued to work full duty. Dr. Gornet reviewed an MRI and CT of the cervical spine. He also reviewed petitioner's medical records.

Following his examination of petitioner, as well as his record review, Dr. Gornet's impression was that an accident such as the one 6/4/20 as described by petitioner, could easily aggravate an underlying condition, as well as cause a disc injury. Dr. Gornet was of the opinion that petitioner probably has a combination of both an acute on chronic herniation, particularly on the left side at C4-C5 and C5-C6, and some aggravation of some underlying foraminal narrowing.

Dr. Chabot examined petitioner on behalf of respondent on 11/10/21. He also reviewed the treatment records of Locey from 6/4/20 through 1/11/21, and Dr. Gornet's report of 6/3/21. He assessed cranial and neck contusions, neck strain, chronic multilevel degeneration involving the cervical spine, and history of myelomalacia. He requested the MRI and CT of petitioner's cervical spine. Dr. Chabot did not receive these films for months and did not offer any further opinions to respondent until his supplemental report dated 7/13/22. At that time his impression remained the same. He found the changes on the MRI were chronic and unrelated to the injury on 6/4/20. He found it significant that petitioner did not make any neck complaints on the date of injury. He also questioned why petitioner had been prescribed hydrocodone in March of 2020, and questioned if it could be related to neck complaints. However, petitioner testified at trial that around that time any pain medication he was taking was either for his kidney stones, or related to his cancer surgery.

After Dr. Chabot's report came out, petitioner returned to Gornet on 11/14/22. His complaints remained unchanged. Dr. Gornet examined petitioner and reviewed Dr. Chabot's reports. Dr. Gornet was of the opinion that cervical myelopathy does not necessarily produce neck pain, so Dr. Chabot's contention that this does not link his symptoms to an obvious work-related injury and significant fall where he strikes his head, etc., is somewhat curious. Dr. Gornet reported that it was important to note that Dr. Chabot did not detail any problems of significance with petitioner's neck, and failed to mention that petitioner presented to Locey on 6/12/20 with some issues in his neck. Dr. Gornet was of the opinion that this short period of time, not documented by Locey, is irrelevant to the overall incident, particularly

compared to the significance of his accident coupled with his obvious compelling MRI. Finally, Dr. Gornet found it significant that Dr. Chabot did not comment on the fact that even Dr. Ruyle, an independent radiologist, believed that the disc herniations present are 'acute on chronic.'

In his deposition, Dr. Chabot was of the opinion that what he saw on petitioner's CT and MRI of his cervical spine was very longstanding, took years to decades to develop, and predated the injury on 6/4/20; that petitioner had a forward positioning of the neck due to anterior disc space collapse (kyphosis) that predated the date of injury, and took decades to develop; that petitioner had pain in the midline of his spine that did not radiate; and, that petitioner's longstanding conditions in his cervical spine would wax and wane. The arbitrator finds it significant that that the record contains no credible evidence to support Dr. Chabot's opinion that petitioner's longstanding condition in his spine would wax and wane, given that petitioner denied any complaints for treatment for his cervical spine prior to the injury on 6/4/20, and his cervical spine complaints following the injury have been consistent.

Dr. Chabot agreed that sometimes when a person sustains an injury, they don't have to have immediate symptoms, or even within 24 hours, because the inflammatory process can take a day or two to become significant enough for a person to have symptoms. Dr. Chabot also agreed that if a significant weight, such as a pane of glass, strikes someone in the head, it could cause herniations in a person's cervical spine, and/or an aggravation of a preexisting condition, whether that preexisting condition is severe, mild or moderate. Dr. Chabot agreed that he did not have any information to support a finding that petitioner's preexisting condition in his cervical spine was causing him symptoms, or causing him to seek care prior to 6/4/20. Dr. Chabot testified that he saw no evidence of malingering in petitioner, and saw no Waddell signs. He found petitioner to be credible. Dr. Chabot was unaware of any injuries to petitioner's cervical spine prior to 6/4/20. Dr. Chabot testified that he did not see any of petitioner's records after 1/11/21, and did not see any of Dr. Gornet's records after 6/3/21.

In his deposition, Dr. Gornet was of the opinion that an 'up to six day' delay in the onset or reporting of cervical symptoms after the injury petitioner had is not uncommon, especially given the fact that he initially had a head injury and concussion. He opined that a delay in onset of symptoms in this fact scenario is within the realm of normal. Dr. Gornet was of the opinion that petitioner's pain diagram of bilateral trapezial, and bilateral arm symptoms is consistent with structural neck pain, as well as some spinal cord or nerve irritation. Dr. Gornet opined that as a result of the injury on 6/4/20, petitioner had an aggravation of an underlying asymptomatic degenerative condition; an 'acute on chronic' herniation, particularly on the left side at C4-C5 and C5-C6, and, an aggravation of some underlying foraminal narrowing. Dr. Gornet opined that at a minimum, people that have had head trauma such as being

diagnosed with a concussion, could easily aggravate an underlying cervical condition. Dr. Gornet opined that petitioner's work accident on 6/4/20 caused petitioner's current neck and upper extremities symptoms.

Based on the above, as well as the credible evidence, the arbitrator finds it unrebutted that although petitioner had a preexisting degenerative cervical spine condition, there is no evidence to support a finding that petitioner had any symptoms related to, or treatment for, his cervical spine prior to 6/4/20. Additionally, the arbitrator finds it significant that although there is no documented evidence of any cervical spine complaints following the accident until 6/12/20, petitioner presented unrebutted testimony at trial that he began noticing cervical spine complaints the morning after the injury. Dr. Chabot himself agreed that sometimes when a person sustains an injury, they don't have to have immediate symptoms, or even within 24 hours, because the inflammatory process can take a day or two to become significant enough for a person to have symptoms. The arbitrator also finds it significant that Dr. Chabot agreed that if a significant weight, such as a pane of glass, strikes someone in the head, it could cause herniations in a person's cervical spine, and/or an aggravation of a preexisting condition, whether that preexisting condition is severe, mild or moderate. The arbitrator finds these opinions of Dr. Chabot consistent with those of Dr. Gornet.

The arbitrator finds these opinions of Dr. Chabot consistent with those of Dr. Gornet as they relate to the issue of causal connection between petitioner's cervical spine and the injury on 6/4/20. The arbitrator further finds the remaining opinions of Dr. Gornet more persuasive than those of Dr. Chabot with respect to whether or not there is a causal connection between petitioner's current condition of ill-being as it relates to his cervical spine and the injury on 6/4/20. The arbitrator bases this finding on Dr. Gornet's opinions that petitioner had no complaints or treatment for his cervical spine prior to the injury; that the injury to petitioner's head was significant; and, that shortly after the incident, and definitely by the time he saw Locey on 6/12/20, petitioner was already complaining of pain at the base of his neck that never went away. The arbitrator notes petitioner's reports of pain were consistent, and even Dr. Chabot found him to be credible. Lastly, the arbitrator finds Dr. Chabot's reliance on the fact that petitioner may have been using hydrocodone three months before the incident in formulating his causal connection opinion without merit, because petitioner offered unrebutted testimony that this medication was either for his kidney stones or after his cancer surgery, and not for any neck pain.

For these reasons, the arbitrator finds the opinions of Dr. Gornet, as they relate to the causal connection between petitioner's current condition of ill-being as it relates to his cervical spine and the injury on 6/4/20, more persuasive than those of Dr. Chabot, especially as they relate to causal connection.

For this reason, the arbitrator finds the petitioner has proven by a preponderance of the credible evidence that his current condition of ill-being as it relates to his cervical spine is causally related to the injury petitioner sustained on 6/4/20.

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?

Having found the petitioner's current condition of ill-being as it relates to his cervical spine causally related to the injury he sustained on 6/4/20, the arbitrator further adopts the opinions of Dr. Gornet and finds all medical services from 6/4/20 through 2/23/23 were reasonable and necessary to cure or relieve petitioner from the effects of his injury on 6/4/20. The arbitrator notes that even Dr. Chabot, during his deposition on 12/9/22, opined that all treatment to petitioner's cervical spine to date had been reasonable and necessary for the injuries he sustained on 6/4/20.

Respondent shall pay reasonable and necessary medical services from 6/4/20 through 2/23/23, as provided in Sections 8(a) and 8.2 of the Act.

Respondent shall be given a credit for medical benefits that have been paid, and Respondent shall hold petitioner harmless from any claims by any providers of the services for which Respondent is receiving this credit, as provided in Section 8(j) of the Act.

K. IS PETITIONER ENTITLED TO ANY PROSPECTIVE MEDICAL CARE?

Petitioner claims he is entitled to the prospective medical care recommended by Dr. Gornet, as it relates to his cervical spine. Respondent claims petitioner is not entitled to any further treatment for his cervical spine that is related to the injury on 6/4/20.

Opinions as to prospective medical care for petitioner's cervical spine were offered by both Dr. Chabot and Dr. Gornet. Dr. Chabot was of the opinion that petitioner should consider surgical intervention to the cervical spine, due to his significant multilevel degeneration with spinal stenosis, in the form of a laminoplasty and multilevel fusion versus cervical disc replacement. However, he opined that the need for this surgical intervention is not related to the injury on 6/4/20. Dr. Gornet recommended a cervical disc replacement at C4-C5, C5-C6, C6-C7, as well as the C7-T1 level.

Having found petitioner's current condition of ill-being as it relates to his cervical spine causally related to the injury petitioner sustained on 6/4/20, and, the fact that both Dr. Chabot and Dr. Gornet both agree that petitioner should consider surgical intervention, albeit different types of surgeries, the arbitrator finds the opinions of Dr. Gornet, petitioner's treating physician, more persuasive than those of Dr. Chabot's, given Dr. Gornet's expertise in disc replacements. For this reason, the arbitrator finds the

petitioner is entitled to the prospective medical care proposed by Dr. Gornet, and that such medical treatment is related to the injury on 6/4/20.

The arbitrator finds the respondent shall pay all reasonable and necessary medical services related to the cervical disc replacement at C4-C5, C5-C6, C6-C7, as well as the C7-T1 level, recommended by Dr. Gornet, as provided in Sections 8(a) and 8.2 of the Act.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	12WC001477
Case Name	James Dalgard v. 2M Equipment and the IWBF
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	24IWCC0164
Number of Pages of Decision	16
Decision Issued By	Carolyn Doherty, Commissioner, Amylee Simonovich, Commissioner

Petitioner Attorney	Jason Esmond
Respondent Attorney	Mohit Khare, Dan Kallio

DATE FILED: 4/9/2024

/s/Carolyn Doherty, Commissioner

Signature

DISSENT: /s/Amylee Simonovich, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF WINNEBAGO)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

JAMES DALGARD,

Petitioner,

vs. NO: 12 WC 1477

2M EQUIPMENT AND
THE INJURED WORKER BENEFIT FUND,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Petitioner herein and notice given to all parties, the Commission, after considering the issues of accident, employment, causal connection, medical expenses, temporary total disability and permanent partial disability and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed September 11, 2023 is hereby affirmed and adopted.

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

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

The Illinois State Treasurer as *ex-officio* custodian of the Injured Workers' Benefit Fund was named as a co-Respondent in this matter. The Treasurer was represented by the Illinois Attorney General. This award is hereby entered against the Fund to the extent permitted and allowed under §4(d) of the Act, in the event of the failure of Respondent-Employer to pay the

benefits due and owing the Petitioner. Respondent-Employer shall reimburse the injured Workers' Benefit Fund for any compensation obligations of Respondent-Employment that are paid to the Petitioner from the Injured Workers' Benefit Fund.

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

April 9, 2024

o: 03/21/24
CMD/jjm
045

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

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

DISSENT

After carefully considering the totality of the evidence, I respectfully dissent from the opinion of the majority and would reverse the Decision of the Arbitrator. In my view, these facts strongly suggest an employer-employee relationship.

Most cases analyzing whether a truck driver is an employee of the motor carrier involve drivers who own their own equipment and enter into a leasing agreement with the motor carrier. However, in this case, Petitioner did not own his own equipment and was provided a truck and trailer by Mr. Boos. Mr. Boos testified that the operational expenses, broker fees, and a percentage for Respondent for use of its authority and DOT numbers were deducted from Petitioner's checks. T. 61. Mr. Boos testified this was standard in the trucking industry when you lease to a company, but Petitioner was not leasing equipment to a motor carrier. T. 61-62.

Mr. Boos presented an unsigned Independent Contractor Agreement. RX1. He testified that such an agreement was customary to set out the rules and regulations of leasing your truck to a company. T. 63. He testified that Petitioner's "responsibilities were everything that any other owner-operator would have…" T. 64. This Agreement provided that the Independent Contractor was to "provide all the Equipment ready to operate and fully road worthy, including the necessary license, permits, cab cards, vehicle identification stamps, and state base plates, and shall furnish all necessary oil, fuel, tires, and other parts, supplies, and equipment necessary or required for the safe and efficient operation and maintenance of the Equipment…" RX1. Again, Petitioner was not an owner-operator, and provided none of these items.

Apart from being unsigned, the Independent Contractor Agreement is not persuasive on

the issue of the relationship of the parties. "It has been held that the label given by the parties in a written agreement will not be dispositive of the employment status, but that the facts of the case must be considered to determine what the individual's employment status." *Earley v. Indus. Comm'n*, 197 Ill. App. 3d 309, 317-18 (1990), citing *Yellow Cab Co. v. Indus. Comm'n*, 124 Ill. App. 3d 644 (1984).

Mr. Boos also contradicted himself throughout his testimony. He testified that he did not provide Petitioner with any equipment "Other than the truck that he bought from me…" T. 68-69. However, Petitioner never acquired the truck, only the trailer. T. 72, 87. Mr. Boos testified that when Petitioner was off work following the heart attack, he was taking loads for LeClaire Manufacturing, but he testified they contacted him in July or August. T. 75. The heart attack occurred on September 15, 2011, and Petitioner was only off work through October 9, 2011.

When asked whether Petitioner could work for anyone else when he was driving for Respondent, Mr. Boos testified, "It was his truck. He could do anything he wanted with it." T. 76. Again, it was never his truck. Mr. Boos acknowledges same when he was asked whether Petitioner could do a 4400-mile trip, stating, "No, not with 2M Equipment." T. 76-77. Further, on cross-examination he admits, "I owned it. He was purchasing it." T. 80.

After first claiming that he and Mr. Vogel booked the loads, Mr. Boos then claimed Petitioner booked his own outbound loads 90 percent of the time, and that he would deal with the broker on the inbound loads. T. 65-66. On cross-examination, he admitted that Mr. Vogel "took care of the paperwork, the broker end of it, and I took care of making sure the trucks were ready to go out every week." T. 84. In addition to contradicting who actually dealt with the brokers on the loads, this also contradicted the Independent Contractor Agreement which provided that it was the Independent Contractor, and not the Carrier, who was responsible for maintaining the equipment.

For these reasons, Mr. Boos' testimony on the nature of the relationship was not credible.

The facts of the instant matter are analogous to *Ware v. Indus. Comm'n*, 318 Ill. App. 3d 1117 (2000). In analyzing whether a worker is an employee or an independent contractor, the single most important factor is whether the purported employer has a right to control the actions of the employee. *Ware*, citing *Bauer v. Indus. Comm'n*, 51 Ill. 2d 169, 172 (1972). The nature of the work performed by the alleged employee in relation to the general business of the employer is also of great significance. *Ware*, citing *Ragler Motor Sales v. Indus. Comm'n*, 93 Ill. 2d 66, 71 (1982); *Peesel v. Indus. Comm'n*, 224 Ill. App. 3d 711, 716 (1992).

Petitioner testified that Mr. Boos would give him a time and place that he had to be to get the trailer loaded. T. 13, 29. He was given a confirmation sheet that he signed that would tell him where the loads were going. *Id.* Petitioner testified that when he first started, he followed Mr. Boos "and he showed me where to go and what to do." T. 33. When out on a route, he would check in with Mr. Boos throughout the day to let him know of any issues and whether he was on time for the back haul appointments. T. 56. He was instructed to avoid expensive tolls out East. T. 15-16.

As in *Ware*, Petitioner worked exclusively for Respondent, served customers designated

by Respondent, and was paid a percentage of what Respondent received from these customers. Respondent's business was hauling freight for various customers. Petitioner's job was hauling freight for Respondent's customers. Accordingly, Petitioner's work was intimately related to Respondent's business. See *Ware*, at 1125.

In addition to the two most important factors pointing toward the existence of an employment relationship, several other factors also indicate that such a relationship existed. Respondent provided the truck and trailer that Petitioner used to haul freight. Professor Larson has noted that "control may be realistically inferred even when the employer owns only a part of the equipment, if that part is of considerable size and value." 3 Larson, Workers' Compensation Law § 61.07(3), at 61-19 (2000).

The truck had Respondent's signage on it. T. 14. Respondent provided the insurance on the truck. *Id.* He was provided a company fuel card and an I-Pass for tolls. T. 15. Petitioner denied there was any contract, and he could be terminated at any time. T. 16. Such an unqualified right to discharge would be indicative of an employment relationship.

As a majority of the factors, including the two most important ones, indicate Petitioner was an employee, I would reverse the Decision of the Arbitrator and find the existence of an employer-employee relationship.

/s/ *Amylee Hogan Simonovich*
Amylee Hogan Simonovich

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	12WC001477
Case Name	James Dalgard v. 2M Equipment and the IWBF
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	11
Decision Issued By	Stephen Friedman, Arbitrator

Petitioner Attorney	Jason Esmond
Respondent Attorney	Dan Kallio, Mohit Khare

DATE FILED: 9/11/2023

THE INTEREST RATE FOR THE WEEK OF SEPTEMBER 6, 2023 3.50%

/s/Stephen Friedman, Arbitrator

Signature

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

James Dalgard
Employee/Petitioner

v.

2M Equipment and the IWBF
Employer/Respondent

Case # **12** WC **001477**

Consolidated cases: **N/A**

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Stephen J. Friedman**, Arbitrator of the Commission, in the city of **Rockford**, on **July 31, 2023**. 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 **Liability of the IWBF**

FINDINGS

On **September 15, 2011**, Respondent ***was*** operating under and subject to the provisions of the Act.

On this date, an employee-employer relationship ***did not*** exist between Petitioner and Respondent.

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

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

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

In the year preceding the injury, Petitioner earned $**26,000.00**; the average weekly wage was $**800.00.**

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

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

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

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

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

ORDER

Because Petitioner failed to prove by a preponderance of the evidence that:

1. An employer/employee relationship existed between Petitioner and Respondent 2M Equipment on September 15, 2011,
2. Petitioner suffered accidental injuries arising out of and in the course of any employment with Respondent 2M Equipment on or about September 15, 2011, and
3. Petitioner's condition of ill-being of coronary artery disease and a myocardial infarction in September 2011 were causally related to any work for Respondent 2M Equipment,

Petitioner's claim for compensation is hereby denied.

The Illinois State Treasurer, ex-officio custodian of the Injured Workers' Benefit Fund, was named as a co-respondent in this matter. The Treasurer was represented by the Illinois Attorney General. Based upon the Arbitrator's order above denying compensation no award is entered against the Fund.

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

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

/s/ Stephen J. Friedman **SEPTEMBER 11, 2023**

Signature of Arbitrator

Statement of Facts

This matter proceeded to trial on July 31, 2023. Petitioner was represented by counsel. Respondent CM Equipment (hereinafter "2M") appeared and was represented by counsel. As Respondent did not maintain workers' compensation insurance coverage, the Illinois Attorney General's Office appeared on behalf of the Illinois State Treasurer, as ex-officio custodian of the Injured Workers' Benefit Fund (PX. 3).

Petitioner James Dalgard testified that he was born 5-23-63. On September 15, 2011, he was 48 years old, single with no dependent children. He testified that he was working for 2M Equipment on September 15, 2011. He had started working for 2M in January of 2011. Petitioner testified he had worked for Mark Boos, Respondent's owner, in the past off and on as a mechanic and filled in as a driver. He was not an employee at that time. He was paid cash. He testified he was called by Mr. Boos to come to work for him. 2M is a trucking company. Petitioner testified he worked for 2M as an over the road truck driver. He drove a Western Star semi. Petitioner testified that when he started working for 2M, Mr. Boos told him that if he worked for him for a year, he would give him the Western Star he was driving.

Petitioner testified to working on a full-time basis, driving for 5-6 days a week. Petitioner testified he was paid by check, weekly, based on the percentage of the load. He testified he was paid between $800 and $1,100 per week. He did not know the percentage or how his payments were calculated. He did not have any benefits. No taxes were deducted from his pay. He did not know what expenses were taken out of his checks. Petitioner testified that 2M had up to 5 trucks operating at one point, but the year he was working for 2M, he believed it was only the owner, Mr. Boos, and himself driving.

Petitioner testified that when he started working for 2M, he was given a route. Mr. Boos told him the time and to go get loaded in Wisconsin. Once you got there you got a confirmation sheet of where the loads were going. Petitioner testified the truck he drove was owned by 2M. 2M's logo was on the side of the truck. The truck was insured by 2M. Petitioner testified that 2M owned the trailer as well. Petitioner was not required to wear a uniform. Petitioner testified that gas was paid through a fuel card that was provided by 2M. The truck had an I-Pass for tolls, paid by 2M. Petitioner testified that Mr. Boos advised him to attempt to avoid tolls on certain routes. Petitioner testified he did not have a written contract. He could be terminated at any time. Petitioner testified he did not work for any other trucking company while working for 2M, noting he did not have time to work for anyone else. He had worked for LeClaire Manufacturing in the past. He did not believe he worked for them whole working for 2M. He testified he did not book any of his own loads. Petitioner was shown Respondent's Exhibit 1, and Independent Contractor Agreement. He did not remember if he'd ever seen it before, and did not recall signing it.

Mark Boos testified that he is the owner of 2M. Mr. Boos testified that 2M existed for 11 years but has since been dissolved. He is currently driving a truck for Cotter and Company. He testified that the drivers were independent contractors. He had workers' compensation insurance for the owners, but not the drivers. He testified that he met Petitioner while doing clean-up after Hurricane Katrina. Petitioner approached him in January 2011 and "was kind of desperate" for a job due to an accident and that Petitioner's own truck had a blown motor with no way to bring in an income. Petitioner was brought on as an independent contractor. There was also an agreement for Petitioner to buy a truck and trailer from Mr. Boos. Petitioner would receive a percentage of the gross payment of each load., with deductions for payments toward the purchase and operational expenses such as fuel, tolls, lumpers. Boos testified that through this agreement, Petitioner did

purchase, and was given title to the trailer in December 2011. That was a separate agreement from RX 1. Petitioner never acquired ownership of the truck.

Usually Mr. Boos or Mike Vogel, his partner, would book the loads their own loads. The broker would tell me what's available. I would tell them which of the loads I wanted depending on how many trucks that we had working at the time. Petitioner would book his own outgoing loads 90% of the time. When he wasn't available to do it, Mr. Boos would choose the loads that he would typically choose because that was his run, the Carolinas was what he did. Petitioner's responsibilities were everything that any other owner-operator would have, the same as he has now. It's no different. The only difference was that with the reefer industry and hauling produce and food products, you have to go through certain brokers for each load. His responsibilities were to book his freight each week, to be on time, to make the deliveries. If there is problems, communicate the problems both with the broker, the company that we are hauling it for, which in this case was McCain Foods, and myself so that everybody was in the loop as to what was going on, if there was shortages, damages, overages, whatever.

Mr. Boos identified RX 1 as a copy of the form Independent Contractor Agreement 2M used, however, the copy signed by Petitioner had been misplaced (RX 1). Boos insured the truck, as he was the truck's owner. He testified that Petitioner was working as a driver at another company called LeClaire Manufacturing. He testified that they called in July or August about Petitioner having an accident in their parking lot. Petitioner was free to have outside jobs. He testified Petitioner was responsible for Workers' Compensation insurance. He never provided Mr. Boos with proof of coverage. He said he was going to take care of it, but never did.

Petitioner testified that he was typically delivering frozen foods, frozen French fries, mozzarella sticks, onion rings. The frozen food was driven and delivered to warehouses to be distributed to bars and restaurants. If there was an issue with a delivery, it would be written down and turned into 2M. He never had an issue with a load.

A week before the time of the claimed injury, Petitioner was on vacation and rented a Harley Classic motorcycle, one of the bigger ones. Petitioner drove the motorcycle from Illinois to Tennessee and back. Petitioner testified that he rode 'The Dragon's Trail" road during his trip, which is a particularly challenging motorcycle driving route in Tennessee.

Petitioner testified that in mid-September, he completed a particularly long delivery. He testified that he had a lot of stops, driving down to Columbia, South Carolina, up to Tomah, Wisconsin, and back to Sterling, Illinois. He noted there were multiple stops on the route, including Pennsylvania, Ohio. He testified that he drove approximately 4,400 miles between Tuesday morning and Saturday. He testified that he was unloading freight himself as well. That required breaking down the skids, cutting off the shrink wrap and unstacking boxes, then moving 20 to 40 pound boxes to a pallet. Then, the pallet would be moved with a handcart, and he would start on another pallet. At some of the locations, he would unload for 30 minutes and at others, he would unload for an hour and 15 minutes. He testified that there were people who would unload the freight, but that required paying them and waiting two to three hours for them to be available. He did the unloading himself. He did not recall how much time that week he spent unloading. Petitioner testified there was typically about 40,000 pounds of freight being hauled. Petitioner testified that during the trip, he was sleeping an hour here or there. He would stop on a ramp or a rest area and sleep for a short period of time in the seat instead of getting in the bunk. He testified he had no issues or problems while doing the job.

Petitioner returned home and was having breakfast with a friend and did not feel well. He testified that he felt weird and faint. Petitioner testified that he didn't feel bad during his trip other than feeling tired. He went home and had trouble walking up the stairs into his home. His daughter took him to Physician's Immediate Care. From there, he was transported to Swedish American Hospital.

Petitioner presented to Swedish American Hospital on September 19, 2011, via ambulance from Immediate Care (P X4). The records indicate that Petitioner was eating lunch when he developed a "10-15 minute episode of burning chest pressure" and had "two subsequent similar episodes since then." Petitioner was referred to inpatient observation for "cardiac rule out." The precipitating factor was "eating." (PX 4). Dr. Volety examined Petitioner and opined that he was likely in acute myocardial infarction. He notes Petitioner is a non-smoker, He drinks alcohol occasionally. Family history states his biological father had premature coronary artery disease with a heart attack at 48 years old (PX 4, p 30-36). Petitioner testified he was adopted and did not know anything about his biological father. The consult notes that Petitioner leads an unhealthy lifestyle partly due to his schedule as a truck driver and does have obesity (PX 4, p 35-36).

On September 20, 2011, Petitioner underwent left heart catheterization, left ventricular angiogram, left coronary arteriography, and placement of 2.25 x 12mm stent of the proximal to mid-left anterior descending artery (PX 4, PX 5, p 104). It was noted that Petitioner suffered from arterial blockage (PX 4). Petitioner was discharged on September 21, 2011. He was referred to follow up with Crusader Clinic in one week and to follow up with Midwest Cardiology on October 5, 2011 (PX4).

Petitioner presented to Crusader Clinic on September 28, 2011, and was prescribed a number of cardiac drugs and told to follow-up in two weeks (PX 5 at 79). On October 5, 2011, Petitioner presented to Midwest Heart Specialists and denied any new cardiac complaints (PX 6). He was released to work with a 50 pound lifting restriction and told to return in three months (PX 6). On November 14, 2011, Petitioner returned to Crusader Clinic for a follow-up evaluation and was advised to eat healthier and return in three months (PX 5). Petitioner returned to Midwest Heart Specialists on January 30, 2012 with no further complaints of chest pain. He was released to return to work without restrictions. Petitioner was told to return in six months for a check-up (PX 6).

Petitioner testified he had never had a problem with his heart prior to September 2011. He was never a smoker and did not drink alcohol. Petitioner testified that he returned to work later that year for 2M, but he was "slower" and did not unload the product at the delivery sites anymore that year. Instead, he relied on what he referred to as "lumpers," individuals at sites that will unload the product at the delivery site for a fee. Petitioner then left his position at 2M later that year. Mr. Boos testified that Petitioner returned to work, but was not making enough money and left.

Petitioner testified he told Mr. Boos he had a heart attack. Mr. Boos confirmed he was aware of Petitioner's heart attack within a few days of it happening but was not aware Petitioner was claiming it was work related until December 2011, when he received the filing with the Commission. This was 2 days after he transferred the trailer to Petitioner. Mr. Boos testified that was "impossible" that Petitioner drove 4400 miles the week prior to his heart attack. The most Petitioner could drive was approximately 3000 miles per week given the time frame and regulations surrounding how many hours a CDL holder can drive in one day.

Since the release from care in January 2012, Petitioner has not had problems with his heart. He takes medication for his heart but has required no additional treatment. He testified he continues to drive a truck, now working for himself, in a truck that he owns.

Dr. Jeffrey Coe performed a Section 12 record review on February 4, 2021. Dr. Coe opined that "[Petitioner's] work activities for 2M equipment – including prolonged driving, limited sleep, and physical exertion in multiple deliveries – were a factor causing his myocardial infarction in September 2011" PX 9, Ex. 2). Dr. Coe testified by evidence deposition taken February 22, 2022 (PX 9). Dr. Coe testified that he is Board Certified in occupational medicine. He is not a cardiologist. Dr. Coe testified that he understood that Petitioner was an over-the-road long haul delivery driver, driving over 4000 miles per week. At each stop, he was responsible for unloading boxes weighing 20 to 40 pounds. These would be moved onto pallets and moved using a pallet jack. A delivery would take 30 to 60 minutes, with fairly intense exertion. He had mental and physical stress due to weather issues, traffic, maneuvering the truck. He had limited sleep. In September 2011, Petitioner drove 4044 miles with limited sleep. He had chest pain by the time he returned home, and it increased and become more severe, so on September 19, 2011, an ambulance was called (PX 9).

Dr. Coe testified to his review of the Swedish American records. Petitioner had EKG changes consistent with a heart attack. He had elevated enzymes consistent with a myocardial infarction. He underwent coronary angiography at Swedish American, he had significant findings including obstructive occlusions with 70-90% blockage in the left anterior descending vessels and a smaller obstruction in the right coronary artery. He had 3 stents placed. (PX9). Dr. Coe also stated that Petitioner had significant risk factors including being a middle aged man who was obese. He had no history of smoking, hypertension, or lipid abnormality. Dr. Coe opined that Petitioner's work activities as a truck driver were a factor in causing his myocardial infarction due to the mental of operating the truck, physical stress of unloading, and the sleep disruption (PX 9)

On cross-examination, Dr. Coe indicated that he was not a Cardiologist. He had not personally examined Petitioner or ever met him, and that the only information he gathered was from the Swedish American records presented to him and a report from Dr. Freeman. Dr. Coe testified that it was his understanding that Petitioner had chest pain during his last drive and delivery and that pain became increasingly severe. He was unaware of a history of first chest pain when he was eating at a restaurant. He did not know when Petitioner last drove his truck before the Swedish American admission. He saw no prior medical records. The Swedish American records note no history of high cholesterol, diabetes, or hypertension. Dr. Coe testified that second hand smoke is a risk factor for heart disease. He testified that when Petitioner arrived at the emergency room, his blood pressure was high, but he had not been treated for hypertension. He believes that was a transient elevation. Family history is also a risk factor. The plaque will build up over time. The plaques can swell dramatically in a short period of time, often precipitating heart attack and heart attack symptoms (PX 9).

Conclusions of Law

In support of the Arbitrator's decision with respect to (A) Operating under the Act, the Arbitrator finds as follows:

Pursuant to Section 3 of the Illinois Workers' Compensation Act, the Act automatically applies to a Respondent who meets any one of the 17 listed "extra-hazardous" activities. Testimony at trial established that 2M was engaged in a trucking business at the time of the accident as a company which delivered goods around the state and country. This falls under Subsection 15 as a business or enterprise in which electric, gasoline or other power-driven equipment is used in the operation thereof. No evidence was presented otherwise.

Based upon the record as a whole, the Arbitrator finds that Respondent 2M Equipment was operating under the Act on September 15, 2011.

In support of the Arbitrator's decision with respect to (B) Employer/Employee, the Arbitrator finds as follows:

No rigid rule of law exists regarding whether a worker is an employee or an independent contractor. *Area Transportation Co. v. Industrial Comm'n,* 123 Ill. App. 3d 1096, 1099, 80 Ill. Dec. 421, 465 N.E.2d 533 (1984). Rather, courts have articulated a number of factors to consider in making this determination. Among the factors cited by the supreme court are: (1) whether the employer may control the manner in which the person performs the work; (2) whether the employer dictates the person's schedule; (3) whether the employer compensates the person on an hourly basis; (4) whether the employer withholds income and social security taxes from the person's compensation; (5) whether the employer may discharge the person at will; and (6) whether the employer supplies the person with materials and equipment. *Roberson*, 225 Ill. 2d at 175. Another relevant factor is the nature of the work performed by the alleged employee in relation to the general business of the employer. *Id.*; see also *Ware*, 318 Ill. App. 3d at 1122. The label the parties place on their relationship is also a consideration, although it is a factor of "lesser weight." *Ware*, 318 Ill. App. 3d at 1122. The significance of these factors rests on the totality of the circumstances, and no single factor is determinative. *Roberson*, 225 Ill. 2d at 175. Nevertheless, whether the purported employer has a right to control the actions of the employee is "[t]he single most important factor." *Ware*, 318 Ill. App. 3d at 1122; see also *Bauer v. Industrial Comm'n*, 51 Ill. 2d 169, 172, 282 N.E.2d 448 (1972). The term "employee," for purposes of the Act, should be broadly construed. *Chicago Housing Authority v. Industrial Comm'n,* 240 Ill. App. 3d 820, 822, 181 Ill. Dec. 312, 608 N.E.2d 385 (1992).

Petitioner and Mr. Boos testified to the elements of the relationship. The parties agreed that 2M Equipment is a trucking company. The parties agreed to the general route taken by Petitioner. They agreed that Petitioner was not paid hourly. No taxes were withheld from his pay. Neither parties was clear on whether Petitioner could be discharged at will. The work being performed, delivering frozen foods was the general business of 2M. Petitioner did not wear a uniform. No evidence was offered concerning who was responsible for maintenance and repair on the truck.

The witnesses also testified contrary to each other on many of the elements of the relationship. While both parties agreed that Petitioner drove a truck and trailer owned by 2M Equipment, Petitioner was purchasing it out of his earnings and did in fact receive title to the trailer, although he did not complete the purchase of the truck. Petitioner testified that he did not book his own deliveries. Mr. Boos testified that Petitioner booked his own loads about 90% of the time. The parties agreed that Petitioner determined his exact route. But Petitioner testified that he was told where to pick up his loads. Petitioner testified that he would check in with Mr. Boos multiple times a day when driving in order to confirm he would make his delivery appointments. Petitioner testified that Mr. Boos advised him to avoid tolls on certain routes. Petitioner testified that any issues with deliveries would be documented and turned into Mr. Boos. Petitioner testified that he used a company fuel card and I-pass, but Mr. Boos testified that these charges were deducted from his pay. Petitioner claimed to be unaware of what was deducted from his pay. Petitioner testified he only worked for 2M. Mr. Boos testified that Petitioner could take other jobs, and that he also worked for LeClaire, which Petitioner denied. They agreed his routes would not leave much time for any other work.

Mr. Boos clearly felt that Petitioner was an independent contractor and produced the unsigned agreement which documented this relationship. He testified that Petitioner had signed this as well as the purchase agreement for the equipment. Petitioner testified he did not remember seeing or signing any agreements.

The relationship contains elements of both employment and independent contractor. The extent of control depends in large part on the weight given to Petitioner's testimony versus that of Mr. Boos. The Arbitrator considers the additional evidence that Petitioner previously worked for 2M as an independent contractor, and that after leaving 2M, Petitioner's work for the subsequent trucking company was also as an independent contractor. The Arbitrator also notes that Mr. Boos testified that Petitioner sought work in early 2011 because his own truck was not functioning, a fact Petitioner did not rebut. He further did not rebut Mr. Boos testimony concerning the agreement to purchase the truck and trailer as part of the arrangement. Having heard the testimony, observed the witnesses, and weighed the evidence, the Arbitrator finds that the greater weight should be given to the testimony of Mr. Boos.

Based upon the record as a whole, the Arbitrator finds that Petitioner has failed to prove by a preponderance of the evidence that the relationship between Petitioner and 2M Equipment was that Employer/Employee.

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

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

A Workers' Compensation Claimant bears the burden of showing by a preponderance of credible evidence that his current condition of ill-being is causally related to the workplace injury. *Horath v. Industrial Commission*, 449 N.E.2d 1345, 1348 (Ill. 1983) citing *Rosenbaum v. Industrial Com.* (1982), 93 Ill.2d 381, 386, 67 Ill. Dec. 83, 444 N.E.2d 122). Petitioner is claiming he suffered a work related heart attack as a result of the cumulative stresses of his work with 2M as an over the road delivery driver. He does not present any specific event that was inciting factor, but rather the multiple stressors of limited sleep, the stresses of driving, and the physical exertion in unloading. In such a repetitive trauma case, issues of accident and causation are intertwined. Therefore, a review of the evidence allows both issues to be resolved together." *Boettcher v. Spectrum Property Group and First Merit Venture Realty Group*, 97 W.C. 44539, 99 I.I.C. 0961.

The treating records note various risk factors for coronary artery disease and myocardial infarction, but there is no causal connection opinion within the treating records offered. Petitioner provided the medical opinion of Dr. Coe to support his claim. Dr. Coe testified that he reviewed treating records, did not speak to Petitioner himself or examine Petitioner. His understanding was that Petitioner was an over-the-road long haul delivery driver, driving over 4000 miles per week. At each stop, he was responsible for unloading boxes weighing 20 to 40 pounds. These would be moved onto pallets and moved using a pallet jack. A delivery would take 30 to 60 minutes, with fairly intense exertion. He had mental and physical stress due to weather issues, traffic, maneuvering the truck. He had limited sleep. In September 2011, Petitioner drove 4044 miles with limited

sleep. He had chest pain by the time he returned home, and it increased and become more severe, so on September 19, 2011, an ambulance was called. Dr. Coe opined that Petitioner's work activities as a truck driver were a factor in causing his myocardial infarction due to the mental of operating the truck, physical stress of unloading, and the sleep disruption.

It is the Commission's province to assess the credibility of witnesses, draw reasonable inferences from the evidence, determine what weight to give testimony, and resolve conflicts in the evidence, particularly medical opinion evidence. *Berry v. Industrial Comm'n*, 99 Ill. 2d 401, 406-07, 459 N.E.2d 963, 76 Ill. Dec. 828 (1984); *Hosteny v. Illinois Workers' Compensation Comm'n*, 397 Ill. App. 3d 665, 675, 928 N.E.2d 474, 340 Ill. Dec. 475 (2009); *Fickas v. Industrial Comm'n*, 308 Ill. App. 3d 1037, 1041, 721 N.E.2d 1165, 242 Ill. Dec. 634 (1999). Expert testimony shall be weighed like other evidence with its weight determined by the character, capacity, skill and opportunities for observation, as well as the state of mind of the expert and the nature of the case and its facts. *Madison Mining Company v. Industrial Commission*, 309 Ill. 91, 138 N.E. 211 (1923). The proponent of expert testimony must lay a foundation sufficient to establish the reliability of the bases for the expert's opinion. *Gross v. Illinois Workers' Compensation Comm'n*, 2011 IL App (4th) 100615WC, 960 N.E.2d 587, 355 Ill. Dec. 705. If the basis of an expert's opinion is grounded in guess or surmise, it is too speculative to be reliable. Expert opinions must be supported by facts and are only as valid as the facts underlying them. *In re Joseph S.*, 339 Ill. App. 3d 599, 607, 791 N.E.2d 80, 87, 274 Ill. Dec. 284 (2003). A finder of fact is not bound by an expert opinion on an ultimate issue, but may look 'behind' the opinion to examine the underlying facts.

After reviewing the evidence, the Arbitrator finds that Dr. Coe's opinions are based on incomplete and erroneous and incomplete facts and are therefore not persuasive. He acknowledges Petitioner has risk factors for coronary artery disease, but he discounts those for which there was no prior history. However, given Petitioner's testimony that he had no prior family physician, this absence may simply be failure to diagnose. Dr. Coe states there is no family history of heart disease, but the medical records, contrary to Petitioner's testimony, specifically note his biological father (emphasis added) had a heart attack at 48 years old. Dr. Coe also lists multiple work related stress factors during driving and unloading, but admitted he had no information about how many stops were made for unloading. Petitioner did not provide any testimony to support the assumptions of stress while driving such as weather. The Arbitrator also notes Mr. Boos testimony that the 4400 mile claim was not credible.

Most importantly, Dr. Coe's opinion is based upon the assumption that Petitioner developed chest pain by the time he returned home, and it increased and become more severe. This is not the medical history in the treating records which state Petitioner was eating lunch when he developed a "10-15 minute episode of burning chest pressure" and had "two subsequent similar episodes since then." Petitioner confirmed he had no issues or problems while doing the job. Given that Dr. Coe testified that the plaque would build up over time. The plaques can swell dramatically in a short period of time, often precipitating heart attack and heart attack symptoms. Onset of symptoms 4 days after the alleged accident date would not qualify as a short period of time.

Based upon the record as a whole, the Arbitrator finds that Petitioner has failed to prove by a preponderance of the evidence that he sustained accidental injuries arising out of work for 2m on or about September 15, 2011 and further failed to prove by a preponderance of the evidence that his condition of ill-being of suffering a myocardial infarction was causally related to his work for 2M.

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

The Arbitrator finds that Petitioner provided timely notice of the accident to Respondent, 2M Equipment. Petitioner testified that he called Mr. Boos from the hospital to advise him of his heart attack. Mr. Boos confirmed Petitioner called him within days of his hospitalization, though he did not advise that his heart attack had been the result of his work activities. The Arbitrator notes that the nature of this condition does not automatically create an understanding of causation to the lay individual. While Petitioner did not specifically advise he was claiming that this was work related, this defect was cured by December 2011. Respondent demonstrated no prejudice as a result of the delay in advising of the claim of a work related condition.

In support of the Arbitrator's decision with respect to (G) Average Weekly Wage, the Arbitrator finds as follows:

Petitioner testified that worked from the end of January 2011 until mid-September. He would receive between $800 and $1,100 per week by check from 2M. No payroll records, checks or other documents were offered to establish an average weekly wage. 2M and Petitioner stipulated that his weekly wage would be $800.

Based upon the record as a whole, the Arbitrator finds that Petitioner established that he was paid $800 per week.

In support of the Arbitrator's decision with respect to (H) Age and (I) Marital Status, the Arbitrator finds as follows:

Petitioner's unrebutted testimony is that at the time of the accident he was 48 years old, single with no dependent children. The medical records corroborate his age.

In support of the Arbitrator's decision with respect to (J) Medical, (K) Temporary Compensation, (L) Nature & Extent, and (N) Credit, the Arbitrator finds as follows:

Based upon the Arbitrator's findings with respect to Employer/Employee, Accident, and Causal Connection, the remaining issues of Medical, Temporary Compensation, Nature & Extent, and Credit are moot.

Petitioner's claim for compensation is hereby denied.

In support of the Arbitrator's decision with respect to (O) Liability of the IWBF, the Arbitrator finds as follows:

The Illinois State Treasurer, ex-officio custodian of the Injured Workers' Benefit Fund, was named as a co-respondent in this matter. The Treasurer was represented by the Illinois Attorney General. Petitioner submitted the NCCI certification that Respondent was uninsured on the date of accident. Based upon the Arbitrator's finding with respect to Employer/Employee, Accident, and Causal Connection and the denial of compensation, no award is entered against the Fund.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	19WC022751
Case Name	Aubrey Duncan v. City of Peoria
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	24IWCC0165
Number of Pages of Decision	16
Decision Issued By	Deborah Simpson, Commissioner

Petitioner Attorney	Kevin Morrisson
Respondent Attorney	Kevin Day

DATE FILED: 4/9/2024

/s/ Deborah Simpson, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF PEORIA)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Aubrey Duncan,
Petitioner,

vs. NO: 19 WC 22751

City of Peoria,
Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of permanent disability and permanent total disability and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed December 19, 2022, is hereby affirmed and adopted.

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

IT IS FURTHER ORDERED BY THE COMMISSION Respondent shall pay the petitioner the sum of $869.37/week for life, commencing October 26, 2022, as provided in Section 8(f) of the Act, because the injury caused the permanent and total disability of the petitioner. Commencing on the second July 15th after the entry of this award, the petitioner may become eligible for cost-of-living adjustments, paid by the *Rate Adjustment Fund*, as provided in Section 8(g) of the Act.

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

There is no bond for the removal of this cause to the Circuit Court by Respondent pursuant to §19(f)(2) of the Act. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

April 9, 2024

o3/20/24
DLS/rm
046

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

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

/s/*Raychel A. Wesley*
Raychel A. Wesley

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	19WC022751
Case Name	Aubrey Duncan v. City of Peoria
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	13
Decision Issued By	Bradley Gillespie, Arbitrator

Petitioner Attorney	Kevin Morrisson
Respondent Attorney	Kevin Day

DATE FILED: 12/19/2022

/s/Bradley Gillespie, Arbitrator

Signature

INTEREST RATE WEEK OF DECEMBER 13, 2022 4.63%

STATE OF ILLINOIS)
)SS.
COUNTY OF PEORIA)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

AUBREY DUNCAN
Employee/Petitioner

v.

CITY OF PEORIA
Employer/Respondent

Case # 19 WC 022751

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

DISPUTED ISSUES

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

FINDINGS

On **May 23, 2019**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $**67,777.32**; the average weekly wage was $**$1,303.41**.

On the date of accident, Petitioner was **61** years of age, ***married*** with **0** dependent children.

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

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

Respondent shall be given a credit of $**139,523.38** for TTD and maintenance benefit payments.

Respondent shall also be given a credit of $**359,069.60** for medical payments made through the fee schedule.

Respondent is entitled to a credit for any payments made through Petitioner's group medical insurance under Section 8(j) of the Act.

ORDER

- Petitioner sustained an accident on May 23, 2019, while working for Respondent.
- Petitioner's conditions of ill-being are causally related to the May 23, 2019 accident.
- Petitioner reached maximum medical improvement for his conditions of ill-being on December 14, 2020.
- Petitioner received all temporary total disability benefits due and owing under the Act through the date of maximum medical improvement, December 14, 2020.
- In accordance with the evidence submitted at arbitration and the parties' stipulations, Respondent shall pay Petitioner maintenance benefits from March 29, 2021, through May 3, 2021, and February 20, 2022, through March 30, 2022, at a rate of $868.94 per week.
- Respondent shall pay all outstanding reasonable, necessary, and causally related medical expenses, if any, through the date of maximum medical improvement, December 14, 2020.
- **Respondent shall pay Petitioner permanent and total disability benefits of $869.37/week for life, commencing 10/26/2022, as provided in Section 8(f) of the Act.**
- **Commencing on the second July 15th after the entry of this award, Petitioner may become eligible for cost-of-living adjustments, paid by the *Rate Adjustment Fund*, as provided in Section 8(g) of the Act.**

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

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

Bradley D. Gillespie

Signature of Arbitrator

December 19, 2022

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

AUBREY DUNCAN,	)	
	)	
Petitioner,	)	
	)	
v.	)	**Case No: 19 WC 022751**
	)	
CITY OF PEORIA,	)	
	)	
Respondent.	)	
	)	

DECISION OF THE ARBITRATOR

On or about July 30, 2019, Aubrey Duncan (hereinafter "Petitioner") filed an Application for Adjustment of Claim alleging injuries to his right leg, left leg, and person-as-a-whole after being run over by a street sweeper while working for the City of Peoria (hereinafter "Respondent"). (Arb. Ex. 2). This matter proceeded to hearing on October 25, 2022, in Peoria, Illinois. (Arb. Ex. 1). The following issues were in dispute at arbitration:

- Medical Expenses
- Maintenance Benefits
- Nature and Extent

FINDINGS OF FACT

At the time of arbitration, Petitioner was sixty-five (65) years old and retired. Prior to his retirement, and at all times relevant to his claim, he was a Maintenance Worker for Respondent. (Arb. Tr. p. 31). As a Maintenance Worker, Petitioner was required to lift and carry heavy objects, walk on uneven surfaces, climb ladders, and operate heavy equipment. (Arb. Tr. pp. 32-33). Petitioner testified the Maintenance Worker job description submitted into evidence as Respondent's Exhibit 1 accurately described his work duties for Respondent. (Arb. Tr. p. 32; Res. Ex. 1). In May of 2019, Petitioner was performing job duties for Respondent as a foreman over a street sweeping crew. (Arb. Tr. pp. 31-32; Res. Ex. 2).

On May 23, 2019, Petitioner was backed over by a street sweeper. He testified the street sweeper hit him in the back and knocked him to the ground. The street sweeper did not have enough power to run over his left leg, so his left leg was stuck between the tire and the concrete. The rear wheel was grinding on his left thigh before the street sweeper stopped and ran over the top of his right leg. (Arb. Tr. p. 33). He had immediate, significant right ankle pain and a soft tissue injury to his left thigh. (Res. Ex. 2).

Petitioner was immediately taken to the OSF Emergency Department after the accident. (Arb. Tr. p. 33-34). He suffered a deep left thigh wound, requiring incision, drainage, and extensive debridement. He also suffered a right tibia/fibula fracture, requiring open reduction and internal fixation of the right ankle. (Pet. Ex. 3). Petitioner was hospitalized for approximately one (1) month

and underwent multiple procedures to treat his wounds, including left thigh debridements and placement of a wound VAC. (Arb. Tr. pp. 34-35; Pet. Ex. 1).

Once his condition stabilized, he was discharged and continued to receive wound care treatment at Illinois Cosmetic and Plastic Surgery. (Pet. Ex. 3). (Arb. Tr. pp. 34-35; Pet. Ex. 3). He also continued to receive treatment from Dr. Michael Merkley at Midwest Orthopedic. (Arb. Tr. 35; Pet. Ex. 4).

On August 5, 2019, Petitioner attended an examination with Dr. Merkley for a left knee injury. He provided an accident history consistent with his arbitration testimony discussed above. Dr. Merkley noted Petitioner sustained a significant left thigh wound with necrosis, requiring multiple debridements and use of a wound Vac. At the exam, Petitioner complained of continued left knee pain, which had been present since the work accident. He also complained of left groin pain. X-rays of Petitioner's left hip were unremarkable, while X-rays of Petitioner's left knee indicated medial compartment degenerative changes. Dr. Merkley's impression was left knee pain with a possible injury to the anterior cruciate ligament. He recommended a left knee MRI. (Pet. Ex. 4).

Petitioner underwent a left knee MRI scan on August 15, 2019, which revealed a chronic, complete anterior cruciate ligament tear, a small undersurface and free edge tear of the posterior horn medial meniscus, subcortical microfracturing of the medial femoral condyle and tibia, and capsulosynovitis. (Pet. Ex. 4).

On August 19, 2019, Petitioner followed-up with Dr. Merkley to review his MRI results. Dr. Merkley opined Petitioner had impaction fractures of the left medial femoral condyle and left medial tibial plateau, degenerative meniscus tearing, a complete anterior cruciate ligament tear, and partial proximal tearing of the posterior collateral ligament. However, he did not recommend bracing or any intervention due to Petitioner's healing left thigh wound. (Pet Ex. 4).

Petitioner attended his first examination with Dr. Edward Moody at OSF Occupational Health on August 29, 2019. Based on his discussion with Petitioner and review of available records, Dr. Moody noted Petitioner predominantly sustained a degloving lesion of his left thigh and hip, a right ankle bimalleolar fracture, left knee compact shin fractures, and a possible meniscal tear following a work accident on May 23, 2019. Dr. Moody opined the anterior cruciate ligament tear appeared to be chronic in nature. Dr. Moody further noted Petitioner's thigh injury initially required four (4) to five (5) debridements, but was anticipated to heal without additional surgical intervention. Dr. Moody recommended continued monitoring through OSF Occupational Health secondary to Petitioner's treatment at Illinois Cosmetic and Plastic Surgery and Midwest Orthopedic. (Pet. Ex. 4).

Petitioner continued to follow-up with Dr. James Raymond for pain management on an as needed basis. (Pet. Ex. 2).

At arbitration, Petitioner testified he received treatment from Dr. Anish Kadakia and Dr. Jason Ko at Northwestern Medicine for his right ankle and right leg nerve injuries. (Arb. Tr. pp.35-36; Pet. Ex. 5).

On July 8, 2020, Dr. Ko performed a tarsal release, tibial nerve decompression, targeted muscle reinversion transfer, peroneal nerve decompression at the tibial neck of the necrosis of the right knee, a Morton's decompression and another type of decompression. Dr. Kadakia also did a posterior tibial tenosynovectomy. (Arb. Tr. p. 36; Pet. Ex. 5).

The procedures and treatments he received did not completely resolve his issues and Dr. Merkley eventually released him with permanent restrictions on December 14, 2020 for sedentary work indefinitely. (Arb. Tr. p. 37).

On December 14, 2020, Dr. Merkley noted Petitioner was continuing to improve from his left knee injury but was medically disabled from returning to his previous level of employment. Dr. Merkley opined Petitioner was indefinitely partially disabled. He discharged Petitioner from further orthopedic care and advised he could follow-up on an as needed basis. (Pet. Ex. 4).

On March 9, 2021, Petitioner followed-up with Dr. Moody for his final examination. Based on his exam, treatment to date, and understanding of Petitioner's other medical treatment, Dr. Moody recommended indefinite sedentary work restrictions. Dr. Moody opined Petitioner was limited to a maximum workday of four (4) hours in an office-type environment with a maximum waist level lift/carry of five (5) pounds and positional changes as needed. Petitioner was recommended to not crawl, kneel, squat, or climb stairs. (Pet. Ex. 4).

At arbitration, Petitioner testified he began searching for new employment in March of 2021, due to his inability to return to work for Respondent as a Maintenance Worker. (Arb. Tr. pp. 38-39). Petitioner was offered an interview with Pepsi as a result of his self-directed search but was unable to proceed further because the job description was outside of his restrictions. (Arb. Tr. pg. 39) He testified that Petitioner's Exhibit 7 is the resumé prepared for him by Respondent's vocational expert. (Arb. Tr. pp. 39-40).

Consistent with his vocational rehabilitation records, Petitioner testified his occupational history consisted of work as a coal miner, garbage collector, and maintenance worker. He stated he could no longer perform those jobs with his current restrictions. (Arb. Tr. pp. 40-41).

According to Petitioner, he began working with Respondent's vocational counselor, David Patsavas, MA, CRC in May of 2021. He had several job interviews and received some job offers but was unable to fulfill the obligations due to his restrictions. (Arb. Tr. pp. 42-44).

When he found out he could not return to his prior employment with Respondent, Petitioner voluntarily retired utilizing an early retirement incentive offered by Respondent. (Arb. Tr. p. 44).

Petitioner testified Petitioner's Exhibit 9 is accurate regarding the number of job leads he received from Mr. Patsavas, one hundred and seventy-seven (177), and the number of actual job interviews he did, thirteen (13). (Arb. Tr. pp. 44-45).

Petitioner acknowledged he attended an independent medical examination with Dr. Mahesh Bagwe. The independent medical examination was performed on March 30, 2022.

Respondent offered Dr. Bagwe's report into evidence as Respondent's Exhibit 2. Petitioner acknowledged Dr. Bagwe raised his lifting restrictions to twenty (20) pounds and recommended he work on even surfaces. (Arb. Tr. pp. 45-46). He started working with Mr. Patsavas to look for a job with the updated restrictions but did not have any success at the time of arbitration. (Arb. Tr. p. 46).

The Arbitrator takes judicial notice of pretrials in this matter on May 26, 2021, and December 6, 2021, wherein Petitioner's requested attendance at a functional capacity evaluation was discussed. Petitioner declined to attend the FCE offered by Respondent and this Arbitrator recommended Respondent utilize Section 12 of the Act to assess Petitioner's work restrictions.

Petitioner testified he is not good with computers, his daughter helps him with that, but if any of the job opportunities would have been offered, he would have taken it. (Arb. Tr. pp. 46-47). However, at the conclusion of his testimony, Petitioner testified he "doesn't do computers." Petitioner first stated he did not attend two job fairs recommended to him, but then stated he attended one job fair at Illinois Central College. When he entered the room, there was a computer to sign him in. Petitioner testified he just turned around and left because, "he doesn't do computers." He didn't report back to Mr. Patsavas or the staff regarding this incident. (Arb. Tr. pp. 147-151).

With regard to his physical limitations at the time of arbitration, Petitioner testified he is restricted to a great degree. He cannot get on the ground and play with his grandson, work on the family farm, ride his Harley motorcycle, or do any of the wood working he likes to do. (Arb. Tr. pp. 47-50). Petitioner testified he can drive on the interstate and in rural areas for more than an hour but cannot drive around town very far due to the stopping as he cannot hold the brake with his right foot. He can run errands and pick up his grandchildren from school. (Arb. Tr. pp.54-56)

When he initially met with David Patsavas in May of 2021, Petitioner acknowledged he was receiving $1,500.00 every two weeks in medical workers' compensation benefits. He had also applied for and was receiving about $2,500.00 per month in Social Security Disability benefits. He was receiving Social Security benefits and retirement benefits at the time of arbitration. (Arb. Tr. pp. 58-59)

Respondent's vocational counselor, David Patsavas, MA, CRC, also testified at arbitration. Respondent's Exhibit 3 is a true, accurate, and up-to-date curriculum vitae for Mr. Patsavas (Arb. Tr. p. 68; Res. Ex 3)

Mr. Patsavas testified he first met with Petitioner in May of 2021. His past work history would be considered blue collar medium to very heavy category of physical demands. (Arb. Tr. pp. 69-70). According to the Oasis software program they use to determine transferrable skills, the Petitioner was at less than sedentary due to the restrictions put on Petitioner by Dr. Moody when they first met. This puts him in the fair category in percentage of job availability, meaning there may be additional educational training on the job. There were fifty-six (56) jobs identified in the fair to potential, mostly fair category. (Arb. Tr. pp. 71-72).

Petitioner had no keyboarding skills, and his computer skills were very basic. Since most jobs are applied for online, their Job Developer, Marlena Gibson, assisted him with applying for the jobs and attaching his resumé. They set him up with a specific Gmail account to which they had access if he received e-mail responses to his applications. (Arb. Tr. p. 73). His lack of technical skill made his ability to find new employment challenging since a lot of the sedentary positions were more in the technical office type settings versus blue collar. (Arb. Tr. p. 74)

He worked with Petitioner throughout 2021 and he fully complied with all of the requests made of him. (Arb. Tr., pp. 74-75). He had some interviews, but no job offers because he either did not meet the physical requirements or it was beyond his technical skills. The job interviews were for jobs within the potential category. They did not receive any negative feedback from the meetings the Petitioner attended. (Arb. Tr., p. 75-76). They worked with the restrictions given by Dr. Moody until sometime in April of 2021, when they were forwarded the IME report of Dr. Bagwe raising his weight restrictions from five (5) pounds to twenty (20) pounds. This put him in the light category which significantly increased the number of employment opportunities. (Arb. Tr. pp. 76-77)

There were approximately eighty (80) job leads from January 4 to October 17, 2022, some of which were outside of his weight restrictions. He did about sixteen (16) interviews during this period, none of which resulted in a job offer. (Arb. Tr. pp. 77-80). Mr. Patsavas and Petitioner continued to look for job opportunities since the weight restrictions and part-time to full-time changed, but there was not a large increase in response. (Arb. Tr. p. 80-83). Petitioner was getting a little frustrated with not being hired, which is not unusual. (Arb. Tr. p. 83)

Mr. Patsavas stated his Rehabilitation Plans are set up according to the Industrial Workers' Compensation Commission, which is every four (4) months. The last plan they set up was in September of 2022. If nothing happened between September and January of 2022, he may not recommend anything further. (Arb. Tr. pp. 83-84)

The job market for a 65-year-old with a singular work history of labor is more limited based on transferrable skills. (Arb. Tr. p. 85). When they went into active placement, they were looking more towards lower-skilled, unskilled, simple assembly, driving positions, clerk positions, van driver, auto parts, pharmacy, security positions and things like that, which either the Petitioner applied for, or they applied on his behalf. No offers were received. (Arb. Tr. p. 86).

Even though there a lot of job openings, it is a misconception because due to the shortage of workers, they have to do more than one job. Their recent focus has been more of a driving position less than an hour like a shuttle driver. Petitioner has applied for those positions but received no offer. (Arb. Tr. pp. 87-88). Under Dr. Moody's and Dr. Merkley's restrictions of part-time, there is not a stable job market.

Mr. Patsavas testified he did not know if they have exhausted everything under Dr. Bagwe's restrictions. (Arb. Tr. p. 88). Mr. Patsavas did not provide any training recommendations for Petitioner due to his age as he would not be a good retraining candidate. (Arb. Tr. pp. 88-89) Petitioner had not been successful so far, and Mr. Patsavas could not guarantee Petitioner would be successful with additional time. (Arb. Tr. p. 91-92).

When he met with the Petitioner on May 4, 2021, Petitioner was almost sixty-four (64) years old. Based on Social Security standards, his work life expectancy would be sixty-seven (67) years. (Arb. Tr. p. 94). Based on his meeting with the Petitioner and the transferrable skills analysis performed, he felt that vocational rehabilitation services would be successful in finding employment for him. (Arb. Tr. p. 95).

When he first met Petitioner, Petitioner confirmed he was planning on working three (3) more years, which would be consistent with the normal work life for an individual, then moving to Harrisburg, Illinois. (Arb. Tr. pp. 105-106). Throughout his time with Petitioner, the Petitioner represented he was planning on moving forward with physical therapy, but to his knowledge, Petitioner never underwent any physical therapy. (Arb. Tr. p. 106).

Four (4) vocational assistance plans had been implemented, with the last being in September 2022, with the goal being to find employment for Petitioner within the four-month time period allotted to each plan, which he feels is attainable. (Arb. Tr. pp. 95-97). A stable job market is something that isn't created by just one employer, but is one which exists in the national and/or local economy. (Arb. Tr. p. 98).

Mr. Patsavas testified jobs like dispatcher, court clerk, surveillance system monitor, bailiff, delivery driver, and courier were appropriate for Petitioner. If job placement continued, the position of delivery driver or courier would be the area of focus. (Arb. Tr. pp. 98-101).

Referencing Page 4 of his Vocational Progress Report from April 8, 2022, there was a driver position with Rail Crew Express transporting railroad crews to and from their home terminals to boats, rental cars and hotels. An application was submitted for that position. When they followed up with Rail Crew Express, they were told Petitioner would have to pass a DOT physical. He didn't feel the Petitioner would successfully pass the physical given his injuries. (Arb. Tr. pp. 102-104). There are jobs available which do not require a DOT physical which he feels Petitioner would meet the basic requirements. (Arb. Tr. pp. 104-105).

Some of the obstacles he and Petitioner had to overcome in finding suitable employment included the limited number of transferrable skills, lack of technical skills, his age, and the sedentary restrictions. (Arb. Tr. p. 107). Mr. Patsavas testified his office had applied for about eighty percent (80%) of the jobs on Petitioner's behalf, mostly because of them being listed online. Petitioner would be notified of any feedback from a potential employer, and he would establish contact. (Arb. Tr. pp. 108-109).

The August 2021 rehabilitation plan is the first plan put in place for Petitioner which contained a goal for him to be responsible for documenting five (5) to ten (10) employer contacts per week. He was to put in a good faith effort to apply for available jobs in the area either identified by them or found on his own as far as he was able to based on his technical skill set. (Arb. Tr. pp. 110-113).

Petitioner attended all of the meetings they set up, except for when he had COVID. When he talked about moving to Harrisburg, they would give him job leads for both Peoria and

Harrisburg. Job fairs dropped drastically due to COVID. If Petitioner attended a job fair, their records would reflect his attendance, because he was to turn in job search logs at the meetings. (Arb. Tr pp.113-115)

The August 1, 2022, Vocational Progress Report, No. 11, contained in Exhibit 9, reveals that about sixteen (16) job leads were provided to Petitioner. Mr. Patsavas acknowledged Vocational Progress Report No. 12 indicates Petitioner made a total of ten (10) independent employer contacts in the time period from July 22, 2022, through August 19, 2022. (Arb. Tr. pp. 116-117). Even though that is not compliant with the effort expected from a job seeker as laid out in the vocational rehabilitation plan, the number of jobs available for him to apply to has to be considered. (Arb. Tr. pp. 118-119).

Mr. Patsavas could not provide an opinion as to whether the Petitioner receiving about $5,750.00 a month directly impacted the level of effort he put into looking for a suitable job, because Petitioner did everything he was asked to do. The full-time effort depended on the jobs which were available. (Arb. Tr. pp. 119-123).

Mr. Patsavas testified Vocational Progress Report 13 reflects ten (10) applications were submitted on behalf of the Petitioner and they followed up on them. It didn't eliminate the Petitioner from doing the follow-up, but, due to the limitations Petitioner had, they provided the follow-up to those applications. (Arb. Tr. pp. 123-126).

At the time of arbitration, Mr. Patsavas recommended continued vocational assistance for Petitioner on a limited basis to complete the rehab plan. (Arb. Tr. p. 138). He felt part-time work of up to twenty (20) hours was the likely job market for the Petitioner. (Arb. Tr p. 131).

CONCLUSIONS OF LAW

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

In support of the Arbitrator's Decision relating to ***(J). Where the services provided to Petitioner Reasonable and Necessary, and has Respondent paid all appropriate charges for said services?*** *the Arbitrator finds the following:*

Based on the evidenced presented at arbitration, the Arbitrator finds Petitioner reached maximum medical improvement on December 14, 2020. On that date, Dr. Merkley noted Petitioner was continuing to improve from his injury but was medically disabled from returning to his previous level of employment. Dr. Merkley opined Petitioner was indefinitely partially disabled. He discharged Petitioner from further orthopedic care and advised he could follow-up on an as needed basis.

Based on the foregoing, and the record taken as a whole, Petitioner received all reasonable, necessary, and causally related medical treatment through and beyond December 14, 2020, the date he reached maximum medical improvement. Respondent's Exhibit 4 establishes Respondent

paid for Petitioner's medical expenses well into 2021. However, Petitioner's Exhibit #6 shows some outstanding balances.

Respondent is ordered to pay any outstanding reasonable, necessary and causally related medical bills, if any, through the December 14, 2020, according the Fee Schedule or a negotiated rate, whichever is more favorable.

In support of the Arbitrator's Decision relating to ***(K). What temporary benefits are owed to Petitioner?*** *the Arbitrator finds the following:*

Petitioner placed maintenance benefits at issue at the time of arbitration. Section 8(a) of the Act requires an employer to pay only those maintenance costs and expenses that are incidental to rehabilitation. An employer is obligated to pay maintenance benefits only "while a claimant is engaged in a prescribed vocational-rehabilitation program." *W.B. Olson, Inc.,* 2012 IL App (1st) 113129WC at ¶ 39; see also *Nascote Industries,* 353 Ill. App. 3d at 1075. Thus, if the claimant is not engaging in some type of "rehabilitation," the employer's obligation to provide maintenance is not triggered. *Jimenez v. Illinois Workers' Comp. Comm'n*, 2012 IL App (2d) 120154WC-U, ¶ 44

Based on the parties' stipulations at arbitration and the factual findings above, particularly regarding Petitioner's participation in vocational rehabilitation, the Arbitrator finds Petitioner is entitled to maintenance benefits from March 29, 2021, through May 3, 2021, and February 20, 2022, through March 30, 2022, which were the only applicable periods not paid by Respondent. Accordingly, Respondent shall pay Petitioner maintenance benefits for those periods at a rate of $868.94 per week.

In support of the Arbitrator's Decision relating to ***(L). What is the nature and extent of the injury?*** *the Arbitrator finds the following:*

At arbitration, Petitioner, through his counsel, waived his right to a wage differential award under Section 8(d)1 of the Illinois Workers' Compensation Act. Rather, Petitioner asserts he is entitled to a permanent total disability award under Section 8(f) of the Act. Respondent argues Petitioner is not permanently totally disabled and should be awarded person-as-a-whole benefits under Section 8(d)2.

In pertinent part, Section 8(f) of the Illinois Workers' Compensation Act provides as follows:

> "In case of complete disability, which renders the employee wholly and permanently incapable of work, or in the specific case of total and permanent disability as provided in subparagraph 18 of paragraph (e) of this Section, compensation shall be payable at the rate provided in subparagraph 2 of paragraph (b) of this Section for life." 820 ILCS 305/8(f).

With regard to the compensation to be paid under Section 8(f), Section 8(b)2 provides as follows:

> "The compensation rate in all cases other than for temporary total disability under this paragraph (b), and other than for serious and permanent disfigurement under paragraph (c) and other than for permanent partial disability under subparagraph (2) of paragraph (d) or under paragraph (e), of this Section shall be equal to 66 2/3% of the employee's average weekly wage computed in accordance with the provisions of Section 10, provided that it shall be not less than 66 2/3% of the sum of the Federal minimum wage under the Fair Labor Standards Act, or the Illinois minimum wage under the Minimum Wage Law, whichever is more, multiplied by 40 hours. This percentage rate shall be increased by 10% for each spouse and child, not to exceed 100% of the total minimum wage calculation, nor exceed the employee's average weekly wage computed in accordance with the provisions of Section 10, whichever is less." 820 ILCS 305/8(b)2.

In order to recover benefits under the Illinois Workers' Compensation Act, it is well settled a claimant has the burden of proving all elements of his or her case by a preponderance of the evidence, including the extent and permanency of an injury. *A.M.T.C. of Illinois, Inc. v. Industrial Comm'n,* 77 Ill. 2d 482, 488 (1979).

The Illinois Supreme Court has held an employee is totally and permanently disabled when he "is unable to make some contribution to the work force sufficient to justify the payment of wages." *Ceco Corp. v. Industrial Comm'n*, 95 Ill. 2d 278, 286 (1983); *Gates Division, Harris-Intertype Corp. v. Industrial Comm'n,* 78 Ill. 2d 264, 268 (1980); *Arcole Midwest Corp. v. Industrial Comm'n,* 81 Ill. 2d 11, 15 (1980). However, a claimant is not required to be reduced to total physical incapacity before a permanent total disability award may be granted. *Ceco Corp.*, 95 Ill. 2d at 286. "Rather, a person is totally disabled when he is incapable of performing services except those for which there is no reasonably stable market." *Id.* (citation omitted). However, the Court has held, "[A]n employee is not entitled to total and permanent disability compensation if he is qualified for and capable of obtaining gainful employment without serious risk to his health or life." *Id.* (citation omitted).

With regard to determining total permanent disability, the threshold question is whether the claimant has submitted medical evidence establishing he is totally and permanently disabled. *Valley Mould & Iron Co*., 84 Ill. 2d 538, 546-47 (1981). If there is no medical evidence offered establishing a total disability and the claimant's disability is limited in nature such that he is not obviously unemployable, the burden is upon the claimant to establish the unavailability of employment to a person in his circumstances. *Id.*

Here, the medical evidence unequivocally establishes Petitioner is indefinitely partially disabled. Dr. Merkley, Dr. Moody, and Dr. Bagwe all placed light to medium duty work restrictions on Petitioner. Petitioner presented no medical evidence he is totally disabled. Accordingly, Petitioner bears the burden of proving, by a preponderance of the evidence, there is no employment available to him in any well-known branch of the labor market. *Id.*

Based on the evidence offered at arbitration, Petitioner cannot make a *prima facie* case he falls into the "odd-lot" category, i.e. "one who, though not altogether incapacitate for work, is so handicapped he will not be employed regularly in any well-known branch of the labor market." *Id.*

As Petitioner cannot establish a *prima facie* case that he falls into the "odd-lot" category, it remains incumbent upon him to demonstrate that, given his present condition, age, training, experience, and education, he is permanently and totally disabled. *Id.* at 547. He may meet his burden by showing a diligent, but unsuccessful attempt to find work or by proof that he is unfit to perform any but the most menial tasks for which no stable market exists.

The vocational rehabilitation records in evidence and testimony of Respondent's vocational expert, David Patsavas, MA, CRC, establish Petitioner has transferable job skills and job opportunities within the work restrictions recommended by Dr. Bagwe, which the Arbitrator finds are the most recent evidence of Petitioner's work restrictions at the time of arbitration. However, it should be noted that Dr. Bagwe only saw Petitioner on one occasion and thus rendered his recommended restrictions based upon his singular physical examination and review of the records. The Arbitrator acknowledges that Petitioner continued his vocational rehabilitation consistent with Dr. Bagwe's recommended restrictions and still remained unsuccessful in obtaining employment. At arbitration, Mr. Patsavas testified he would recommend continued vocational assistance and rehabilitation for Petitioner for at least another two (2) months. Mr. Patsavas further testified he had not recommended vocational services be discontinued at the time of arbitration. Mr. Patsavas indicated Petitioner was primarily a candidate for clerical, delivery, and courier positions. In addition to these job markets, Mr. Patsavas also felt Petitioner had a stable job market for part-time work. However, Mr. Patsavas also indicated that he would likely not recommend going beyond the additional two months.

The Arbitrator finds that both Petitioner and Mr. Patsavas were credible witnesses. Based on the foregoing, the Arbitrator finds Petitioner met his burden of showing, for all practical purposes, he is unemployable. *Marathon Oil Co. v. Industrial Comm'n*, 203 Ill. App. 3d 809, 815 (1990). While Petitioner had not fully completed the vocational plan in place at the time of arbitration, he had been compliant with vocational efforts for seventeen months without obtaining employment. Petitioner engaged in a diligent but unsuccessful job search. Moreover, due to the Petitioner's age, his lack of transferrable skills and significant phyhsical restrictions, the Arbitrator finds that there is no stable job market for Petitioner.

Wherefore, based on the foregoing, the Arbitrator finds and concludes that Petitioner has established that he is permanently and totally disabled under the "odd-lot" category.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	17WC025147
Case Name	Raul Madrigal v. Chicago Meat Authority
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	24IWCC0166
Number of Pages of Decision	19
Decision Issued By	Amylee Simonovich, Commissioner

Petitioner Attorney	Jonathan Schlack
Respondent Attorney	Timothy Furman

DATE FILED: 4/10/2024

/s/ Amylee Simonovich, Commissioner

Signature

THE INTEREST RATE FOR THE WEEK OF APRIL 9, 2024 5.12%

24IWCC0166

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Raul Madrigal,

Petitioner,

vs. NO: 17 WC 25147

Chicago Meat Authority,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by Respondent herein and notice given to all parties, the Commission, after considering all issues, and being advised of the facts and law, modifies the Decision of the Arbitrator. The Commission otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

The Commission notes that this matter previously proceeded to hearing pursuant to Section 19(b) on December 21, 2018. An Arbitration Decision was filed on March 11, 2019, and Respondent filed for review. On July 13, 2020, the Commission issued a Decision and Opinion on Review (20 IWCC 0391) in which it partially reversed the Arbitration Decision.

In the interest of efficiency, the Commission relies on the detailed recitation of facts provided in the Decision of the Arbitrator. The Commission affirms the Arbitrator's conclusion that Petitioner's condition of ill-being is causally related to the August 12, 2017, work accident; however, it modifies the Arbitrator's reasoning. Additionally, the Commission modifies the Arbitrator's conclusions regarding medical expenses, temporary total disability (TTD) benefits, and permanent disability. Finally, the Commission makes certain corrections and addresses the issue of maintenance benefits.

Corrections to the Arbitration Decision

Initially, the Commission must clarify the issues that were in dispute at the arbitration hearing. A review of the Request for Hearing completed by the parties and the preliminary discussion the Arbitrator held on the record with the parties, confirms that the disputed issues were causal connection, medical expenses, TTD benefits, vocational rehabilitation and/or maintenance benefits, and permanent disability. The parties stated on the record that if the Arbitrator determined

Petitioner was not entitled to vocational rehabilitation, then the Arbitrator would issue an award addressing permanency. However, on the Arbitration Decision Form, the Arbitrator mistakenly did not identify vocational rehabilitation and/or maintenance benefits as a disputed issue.

The Commission must modify the Arbitration Decision Form so that it conforms to the Request for Hearing in this matter. Thus, the Commission adds the identification of item O, "Other" as in dispute and further adds "Vocational rehabilitation and/or maintenance benefits" to that item. In the Order section of the Arbitration Decision Form, the Arbitrator mistakenly wrote that the TTD rate is $389.49. The Commission strikes "$389.49" and replaces it with "$420.53."

Causal Connection

The Arbitrator correctly concluded that Petitioner's current condition of ill-being is causally related to the August 12, 2017, work accident. However, the Commission modifies the reasoning.

The Arbitrator's legal reasoning focused on Petitioner's work capacity and whether Petitioner could return to his original job with Respondent. However, Petitioner's ability to return to work and his work capacity is completely unrelated to the question of whether his condition of ill-being is causally related to the work accident. To determine causal connection, the Commission relies on credible evidence regarding Petitioner's physical condition and its connection to the August 12, 2017, work accident.

The totality of the credible evidence supports a finding that Petitioner's current condition is causally related to the work accident. There is no evidence of an independent intervening accident that might have severed the chain of causation. Additionally, there is no evidence that any medical professional opined that Petitioner's condition is no longer causally connected to the work accident. Dr. Wolin never changed his opinion regarding causation, and even Respondent's Section 12 Examiner, Dr. Balaram, did not deny the causal connection between Petitioner's condition and the work accident. The medical records in addition to Dr. Balaram's report also show objective findings that correlate with many of Petitioner's residual subjective complaints. Thus, after considering the evidence, the Commission affirms the Arbitrator's conclusion that Petitioner's current condition of ill-being is causally related to the August 12, 2017, work accident.

Medical Expenses

The Commission agrees with the Arbitrator's conclusion that all of Petitioner's medical treatment has been reasonable, necessary, and causally related to the August 12, 2017, work accident. However, the Commission modifies the award of medical expenses. The Commission notes that at the December 2018 hearing, the parties stipulated on the record that Respondent was liable for the medical bills included in PXA. It is undisputed that Petitioner previously submitted all the charges included in the Midwest Pain Center bill at the prior arbitration hearing. Thus, Respondent's liability for the Midwest Pain Center charges was addressed as part of the December 2018 hearing.

As such, the Arbitrator improperly included those charges in the award of medical expenses. If the charges remain outstanding as alleged by Petitioner, including the charges in the current award is not the proper remedy. For these reasons, the Commission awards all reasonable and necessary medical charges submitted into evidence by Petitioner that remain outstanding and were not included in PXA at the December 2018 hearing.

Temporary Total Disability Benefits

The parties stipulate that Respondent paid TTD benefits through May 6, 2021. Petitioner alleged she was entitled to TTD benefits from May 7, 2021, through June 29, 2022, the date of hearing. The Arbitrator concluded that Petitioner met her burden of proving an entitlement to TTD benefits from May 7, 2021, through June 29, 2022. After considering the evidence, the Commission finds Petitioner proved an entitlement to TTD benefits from May 7, 2021, through October 20, 2021, a period of 23-6/7 weeks.

The Arbitrator's analysis regarding the issue of TTD benefits primarily focused on Petitioner's ability to return to his original job; however, that is not the primary factor the Commission considers when determining whether a claimant is entitled to TTD benefits. Instead, "…the dispositive inquiry is whether the claimant's condition has stabilized, *i.e.*, whether the claimant has reached maximum medical improvement." *Interstate Scaffolding, Inc. v. Ill. Workers' Comp. Comm'n*, 236 Ill. 2d 132, 142 (2010) (internal citation omitted). To prove an entitlement to TTD benefits, a claimant must prove that they did not work and that they were unable to work. *Freeman United Coal Mining Co. v. Indus. Comm'n.*, 318 Ill. App. 3d 170, 177 (2000). A claimant is temporarily and totally disabled from the time a work injury incapacitates them from work until such time that they are "…as far recovered or restored as the permanent character of [their] injury will permit." *Shafer v. Ill. Workers' Comp. Comm'n*, 2011 IL App (4th) 100505WC at ¶ 45.

Courts consider several factors when determining whether a claimant reached maximum medical improvement (MMI) including: 1) a release to return to work; 2) medical testimony regarding the claimant's injury; 3) the extent of the injury; and 4) whether the injury has stabilized. However, the most important factor is whether the condition has stabilized. Petitioner was not entitled to TTD benefits once he reached MMI because at that point, his condition was no longer temporary. After considering the totality of the evidence, the Commission finds Petitioner reached MMI on October 20, 2021, the date of Dr. Balaram's Section 12 examination. Therefore, Petitioner proved an entitlement to TTD benefits from May 7, 2021, through October 20, 2021, a period of 23-6/7 weeks.

Maintenance Benefits

Although the Arbitrator did not address vocational rehabilitation and maintenance benefits, the Arbitrator addressed the issue of permanency. Thus, the Commission affirms the Arbitrator's implicit conclusion that Petitioner did not meet his burden of proving formal vocational rehabilitation was appropriate. However, the Commission does find that Petitioner proved an entitlement to maintenance benefits.

Pursuant to Section 8(a) of the Act, an employee must pay for treatment, instruction, and training necessary for the "physical, mental and vocational rehabilitation of the employee, including all maintenance costs and expenses incidental hereto." However, an employer must pay maintenance benefits only while the claimant engages in vocational rehabilitation. *See, e.g., W.B. Olson, Inc. v. Ill. Workers' Comp. Comm'n*, 2012 IL App (1st) 113129WC. Vocational rehabilitation may include services such as counseling for job searches, supervised job search programs, and vocational retraining programs. Illinois courts have determined that a claimant's self-directed job search may also constitute vocational rehabilitation. *See Euclid Bev. v. Ill. Workers' Comp. Comm'n*, 2019 IL App (2d) 180090WC at ¶ 30. While Petitioner did not submit any job search logs or other physical evidence regarding his job search activities, the Commission finds he testified credibly that he applied for jobs until January 2022.

Petitioner testified that when he did not hear from Respondent regarding a return to work, he began searching for a new job. He credibly testified that he had extensive experience working in the food industry and searched for work within that industry. He testified that he sought work at various businesses, including jobs in the meat department of grocery stores such as Food 4 Less and Mariano's. Petitioner testified that he also asked friends if they knew of any potential openings. He also testified that he visited different stores and asked if they were hiring. Petitioner credibly testified that he last applied for a job around January 2022. Given the credible evidence, the Commission finds Petitioner was entitled to maintenance benefits from October 21, 2021, through January 1, 2022, a period of 10-3/7 weeks.

Permanent Disability

The Arbitrator concluded Petitioner sustained a 55% loss of the whole person due to the August 12, 2017, work accident. While the Commission generally agrees with the Arbitrator's analysis of the five factors pursuant to Section 8.1b(b) of the Act, it views the evidence differently. After carefully considering the totality of the evidence, the Commission finds Petitioner met his burden of proving he sustained a 35% loss of the whole person.

The Commission finds Petitioner sustained a loss of trade due to the work accident. Following his right shoulder surgery, Petitioner attended physical therapy and work conditioning. Dr. Sikora administered a functional capacity evaluation (FCE) in April 2021. After reviewing the FCE report, Dr. Wolin wrote that Petitioner demonstrated the ability to perform 100% of his job-specific tasks, but only 91.5% of the physical demands of a butcher. However, due to Petitioner's description of his job duties, Dr. Wolin believed Petitioner might have been able to return to his normal job initially with a four hour restriction, and eventually ramping up to an eight hour day. Respondent never attempted to return Petitioner to work. In June 2021, Dr. Wolin confirmed the restrictions established by the FCE remained valid. He also cleared Petitioner to return to work within the restrictions established by the FCE for a one month trial.

The FCE credibly established that Petitioner did not meet all the physical requirements as a butcher. Additionally, Petitioner credibly testified that he continues to suffer from residual symptoms including faint right shoulder pain. Petitioner also testified that he continues to experience weakness in the right shoulder and feels a tingling sensation when he tries to lift heavy objects. He testified that he experiences tingling in the right shoulder and upper arm each day.

Petitioner testified that he occasionally has tingling in his right hand when he sleeps on his right side. He testified that he no longer plays soccer due to the risk of falling on his right arm. He also testified that he can no longer use a nail gun on drywall. Petitioner testified that he is easily fatigued when he attempts to perform overhead activities. After considering the totality of the evidence and the relevant factors, the Commission finds an award of 35% loss of the whole person is most appropriate.

The Commission otherwise affirms and adopts the Decision of the Arbitrator.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed on August 23, 2022, is modified as stated herein.

IT IS FURTHER ORDERED that Respondent shall pay Petitioner temporary total disability benefits of $420.53/week for 23-6/7 weeks commencing May 7, 2021, through October 20, 2021, as provided in Section 8(b) of the Act.

IT IS FURTHER ORDERED Respondent shall pay Petitioner maintenance benefits of $420.53/week for 10-3/7 weeks, commencing October 21, 2021, through January 1, 2022, as provided in Section 8(a) of the Act.

IT IS FURTHER ORDERED that Respondent shall pay all reasonable and necessary medical charges submitted into evidence by Petitioner that remain outstanding and were not included in PXA at the December 2018 hearing, as provided in Sections 8(a) and 8.2 of the Act.

IT IS FURTHER ORDERED Respondent shall pay Petitioner permanent partial disability benefits of $378.48/week for 175 weeks, because the injuries sustained caused the 35% loss of the whole person, as provided in Section 8(d)2 of the Act.

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

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

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

April 10, 2024

o: 2/20/24

AHS/jds

51

/s/ *Amylee H. Simonovich*

Amylee H. Simonovich

/s/ *Maria E. Portela*

Maria E. Portela

/s/ *Kathryn A. Doerries*

Kathryn A. Doerries

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	17WC025147
Case Name	Raul Madrigal v. Chicago Meat Authority
Consolidated Cases	
Proceeding Type	Request for Hearing
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	12
Decision Issued By	Raychel Wesley, Arbitrator

Petitioner Attorney	Jonathan Schlack
Respondent Attorney	JASON ALLAIN

DATE FILED: 8/23/2022

/s/ Raychel Wesley, Arbitrator

Signature

INTEREST RATE WEEK OF AUGUST 23, 2022 3.11%

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Raul Madrigal
Employee/Petitioner

v.

Chicago Meat Authority
Employer/Respondent

Case # **17** WC **025147**

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Raychel A. Wesley**, Arbitrator of the Commission, in the city of **Chicago**, on **June 29, 2022**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On **August 12, 2017**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $**32,801.60**; the average weekly wage was $**630.80**.

On the date of accident, Petitioner was **57** years of age, married, with **0** dependent children.

Petitioner ***has not*** received all reasonable and necessary medical services.

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

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

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

ORDER

The Arbitrator awards TTD benefits for 59 and 4/7 weeks at the rate of $389.49 per week, totaling $58,701.60.

All medical treatment incurred thus far, submitted at Arbitration by Petitioner and attached to the Request for Hearing form has been reasonable and necessary and the Arbitrator awards payment of same to Petitioner pursuant to the fee schedule.

The Arbitrator awards 55% loss of use to the person as a whole representing 275 weeks, which equals $104,082.00, and orders Respondent to pay the same.

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.

Raychel A. Wesley

Signature of Arbitrator

August 23, 2022

ICArbDec p. 2

RAUL MADRIGAL vs CHICAGO MEAT AUTHORITY
No. 17 WC 25147

STATEMENT OF FACT AND CONCLUSIONS OF LAW

This case was heard by the Honorable Raychel A. Wesley, Arbitrator of the Workers' Compensation Commission, in the City of Chicago, Illinois, on June 29, 2022. After hearing the testimony and reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues below and includes those findings in this document.

I. STATEMENT OF FACTS

The Arbitrator affirms and adopts the findings of the Commission Decision on July 13, 2020, and incorporates them herein by this reference. (Arb. Ex. #3)

Following the aforementioned decision, Petitioner returned to see Dr. Wolin on August 25, 2020. Dr. Wolin reiterated the need for the rotator cuff repair with possible superior capsular reconstruction. (Pet. Ex. 6, at 37-39).

On October 6, 2020, Petitioner underwent preoperative exams at Deen Health Center, and was cleared for surgery. (Pet. Ex. 7, at 3-9). Petitioner underwent the arthroscopic rotator cuff repair, arthroscopic biceps tenodesis, and arthroscopic subacromial decompression on October 9, 2020, at Rogers Park Surgery Center. (Pet. Ex. 8, at 3-4).

Following the surgery, Petitioner had a follow-up appointment with Dr. Wolin on October 10, 2020, where he was recommended physical therapy. (Pet. Ex. 6, at 40). Petitioner subsequently underwent therapy with Dr. Sikora at Center for Athletic Medicine from October 16, 2020, through March 17, 2021. (Pet. Ex. 6, at 41-140).

On October 22, 2020, November 19, 2020, December 29, 2020, and February 4, 2021, Petitioner had follow-up appointments with Dr. Wolin where he continued to recommend physical therapy and medication (Pet. Ex. 6, at 46-89). Dr. Wolin also directed Petitioner to remain off work. (Id.). On March 16, 2021, Dr. Wolin recommended Petitioner be evaluated by a functional capacity evaluation after undergoing four weeks of work conditioning. (Pet. Ex. 6, at 137-138). Petitioner was to remain off work until functional capacity evaluation follow up. (Pet. Ex. 6, at 138).

Petitioner subsequently underwent the recommended work conditioning with Dr. Sikora from March 22, 2021 through April 16, 2021. (Pet. Ex. 6, at 141-161). Petitioner underwent the functional capacity evaluation on April 21, 2021, with Dr. Sikora. (Pet. Ex. 6, at 162-163). Dr. Sikora noted that Petitioner demonstrated the ability to perform 91.5% of the job-related tasks of a butcher. (Pet. Ex. 6, at 162). Dr. Sikora further noted that the job description which he was provided said that the worker must be able to lift, push, and pull up to eighty pounds, which Petitioner was not able to meet. (Pet. Ex. 6, at 162).

Petitioner had a follow up appointment to review the functional capacity evaluation with Dr. Wolin on April 22, 2021. (Pet. Ex. 6, at 164-165). Dr. Wolin opined that Petitioner's efforts were valid. (Pet. Ex. 6, at 165). Dr. Wolin also noted that Petitioner did not demonstrate the ability to perform all the physical demands of a butcher, so he ordered Petitioner to return to work for a month on a trial basis. (Pet. Ex. 6, at 165).

Petitioner's unrebutted testimony at trial was that this work status was given to a secretary in the human resources department at Respondent who said Respondent's representative would call him back, but he never received a call. (Tr. Trans, at 23). On June 1,

2021, Petitioner returned to see Dr. Wolin who reiterated that the functional capacity evaluation restrictions were still valid, and again ordered Petitioner to return to work on a one-month trial basis. (Pet. Ex. 6, at 168). Dr. Wolin noted that Petitioner had already had a discussion with Adria regarding his return to work, but he would return to the human resource office again to get his start date. (Pet. Ex. 6, at 168). Petitioner testified that he again went to Respondent to present this work status. (Tr. Trans., at 22). Petitioner's unrebutted testimony is that the human resource assistant refused to take the work status this time. (Id.). When Petitioner inquired whether or not they were going to allow him to return to work, the assistant told him to speak to his attorney. (Id.). Petitioner testified that the Respondent never contacted him after he went to drop off the work status note in the summer of 2021. (Tr. Trans., at 24).

On October 20, 2021, Petitioner underwent an independent medical examination with Dr. Balaram. (Resp. Ex. 1, at 20-25). Dr. Balaram claimed there was "no evidence" that the patient cannot return to his job as a butcher, and further claimed that this was confirmed by the functional capacity evaluation and Petitioner's treating doctor. (Resp. Ex. 1, at 24)

II. CONCLUSIONS OF LAW

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

The Petitioner must prove that some act or phase of employment was a causative factor in a subsequent injury. The Petitioner must prove that the injury was a causative factor only, so the Petitioner does not have to prove that the injury was the sole or principal factor of the resulting injury. City of Chicago v. Industrial Commission, 45 Ill. 2d 350, 259 N.E. 2d 5 (1970). No compensation may be awarded, if the condition or injury cannot be traced to a definite time, place, and cause and no evidence shows the work activity caused the physical condition. Johnson v. Industrial Commission, 89 Ill. 2d. 438, 60 Ill. Dec. 607, 433 N.E. 2d 649 (1982). Causal

connection between an accident and a Petitioner's condition may be established by a chain of events. Sears, Roebuck & Co. v. Industrial Commission 334. Ill. 246, 165 N.E. 689 (1929).

Respondent alleges that Petitioner's present condition of ill-being is not causally related to the work-related accident August 12, 2017. Petitioner asserts that his present condition of ill-being is causally related to the accident of August 12, 2017. Respondent's denial is based on Dr. Balaram's independent medical examination report where he claims that there is "no evidence" that the patient cannot return to his job as a butcher. (Resp. Ex. 1, at 24). However, this is a misrepresentation of both the functional capacity evaluation and Dr. Wolin's opinions. Both Dr. Sikora and Dr. Wolin were very clear that Petitioner did not demonstrate the ability to do all of the tasks required of him as a butcher. This uncertainty regarding Petitioner's capacity is why Dr. Wolin recommended he return on a "trial" basis and then return to see him after to reevaluate. (Pet. Ex. 6, at 168). Even Dr. Balaram noted that from an objective standpoint that Petitioner does have some limitations, including limitations with overhead lifting. (Resp. Ex. 1, at 24). He claimed that despite this Petitioner had the appropriate functional recovery of his right upper extremity to return to his job as a butcher. (Resp. Ex. 1, at 24). However, given that Respondent was unwilling to allow Petitioner to return to work on the trial basis that Dr. Wolin recommended, these claims cannot be substantiated. For these reasons, the Arbitrator finds that Petitioner's present condition of ill being is causally related to the work injury.

b. In support of the Arbitrator's decision relating to (J), whether medical treatment rendered was reasonable and necessary, this Arbitrator finds the following:

Section 8 (a) of the Workers' Compensation Act states that an employer shall provide and pay… all necessary medical, surgical and hospital services thereafter incurred, limited, however to that which is reasonably required to cure or relieve the affects of the accidental injury…

Petitioner, through his exhibits, testified that he treated at Kedzie Urgent Care from August 12, 2017, through August 25, 2017, for his work related injuries. There are no outstanding charges for Kedzie Urgent Care.

Petitioner, through his exhibits, testified that he treated at St. Anthony Hospital on August 12, 2017, for his work related injuries. There are no outstanding charges for St. Anthony Hospital.

Petitioner, through his exhibits, testified that he received radiological physicians' services through National Radiology Consultants of IL. There are currently outstanding charges for National Radiology Consultants of IL in the amount of $80.00. (*see* Pet. Ex. 3, at 2)

Petitioner, through his exhibits, testified that he treated with Dr. Aleman at Midway Pain Center from August 30, 2017, through October 27, 2017. There are currently outstanding charges for Midway Pain Center in the amount of $4,120.00. (*see* Pet. Ex. 4, at 9).

Petitioner, through his exhibits, testified that he underwent recommended imaging at Preferred Open MRI on October 5, 2017. There are currently no outstanding charges for Preferred Open MRI.

Petitioner, through his testimony and exhibits, testified that he treated with Dr. Wolin and underwent physical therapy with Dr. Sikora at Center for Athletic Medicine from November 7, 2017, through April 22, 2021. There are currently outstanding charges for Center for Athletic Medicine in the amount of $110.00. (*see* Pet. Ex. 6, at 2).

Petitioner, through his testimony and exhibits, testified that he underwent preoperative exams at Deen Health on October 6, 2020. There are currently no outstanding charges for Deen Health.

Petitioner, through his testimony and exhibits, testified that he underwent the recommended surgery with Dr. Wolin at Rogers Park Surgery Center on October 9, 2020. There are currently no outstanding charges for Rogers Park Surgery Center.

Petitioner, through his exhibits, testified that he received anesthesia services from Paulina Anesthesia on October 9, 2020, during the surgery. There are currently outstanding charges for Paulina Anesthesia in the amount of $6,118.00. (*see* Pet. Ex. 9, at 2)

The Decision of the Commission dated July 13, 2020, which was not appealed by either party, found causal connection between the work accident of August 12, 2017 and Petitioner's right shoulder condition, awarding the surgery recommended by Dr. Wolin. (Arb. Ex. #3) This arbitrator adopts and affirms the Commission decision herein by this reference, and finds that the above mentioned bills reflect charges for reasonable and necessary medical treatment related to the ill-effects of the work injury suffered by Petitioner and accordingly awards payment of same to the Petitioner subject to the limitations of the Workers' Compensation Fee Schedule.

c. In support of the Arbitrator's decision relating to (K), whether the Petitioner is entitled to Temporary Benefits pursuant to 19(b) of the Act, this Arbitrator finds the following:

Petitioner's credible testimony, which was not rebutted, was that he has not worked since the day of the accident, August 12, 2017. Petitioner was returned to work by Dr. Wolin subject to the restriction that he be permitted to work on a trial basis only, a restriction not accommodated by Respondent, whose representative told Petitioner to "talk to his lawyer" if he had any further questions. The Arbitrator takes note of the egregious callousness of Respondent's treatment of Petitioner after Petitioner's twenty-plus years of service to Respondent. Respondent repeatedly refused to offer Petitioner work within his restrictions, which were based on a valid FCE and that the treating physician relied upon in establishing the restrictions. The IME physician, Dr. Balaram, admitted that Petitioner had some limitations, including with lifting, (Resp Ex. 1, p.24) In spite of this, Dr. Balaram released Petitioner to return to work full-duty. On this basis, the Arbitrator finds the treating physician to be more credible than the IME physician regarding Petitioner's work status. Petitioner presented the work status to Respondent on two occasions and no work was offered nor was an explanation given to this twenty plus year employee. Based on this, the Arbitrator concludes that Petitioner is entitled to TTD for a period of 254 and 3/7 weeks. Respondent paid TTD benefits from August 13, 2017, until May 6, 2021. Subtracting the

weeks which the Respondent has paid, the Arbitrator determines Petitioner is entitled to 59 and 4/7 weeks.

The parties agree that the average weekly wage is $630.80. Therefore, Petitioner has a TTD rate of $420.53. Thus, the Arbitrator orders Respondent to pay $25,051.39 to Petitioner ($420.53 x 59 and 4/7 weeks).

d. In support of the Arbitrator's decision relating to (L), the Arbitrator's decision relating to the issue of the nature and extent of the injury and an award for Petitioner's Permanent Partial Disability relating to the August 12, 2017, the Arbitrator finds as follows:

Section 8.1b(b) of the Workers' Compensation Act states that In determining the level of permanent partial disability, the Commission shall base its determination on the following factors: (i) the reported level of impairment pursuant to subsection (a); (ii) the occupation of the injured employee; (iii) the age of the employee at the time of the injury; (iv) the employee's future earning capacity; and (v) evidence of disability corroborated by the treating medical records.

Petitioner has sustained permanent partial disability to his right shoulder. The facts of this case show that Petitioner's right shoulder has been permanently partially disabled from an accident arising out of and in the course of his employment. Even four years past the onset of Petitioner's right shoulder problems, he credibly testified that he still experiences pain and expressed that he can no longer function as he did before the accident. (Tr. Trans., at 28).

Regarding the first statutory factor, the Arbitrator notes that no impairment rating has been rendered by either the IME or the treating physician. Therefore, the Arbitrator gives no weight to this factor.

Regarding the second factor, the occupation of the injured employee, Petitioner specifically testified that he did not feel that he could perform all of his job duties as he did prior to the accident. (Tr. Trans., at 24). He stated that there are some pieces of meat that are too heavy, that he would not be able to lift without assistance, such as the rib side of the cow. (Tr. Trans., at 25).

Petitioner indicated that when he attempts to lift something that is too heavy for him he feels weakness and a tingling sensation in his right shoulder. (Id.).

Additionally, Petitioner testified that his day-to-day activities have been impacted by the weakness and tingling in his right shoulder as well. (Tr. Trans., at 27). Petitioner testified that he is not able to perform work around the house that requires him to reach over the level of his head and that he cannot even mow the lawn. (Tr. Trans., at 27-29). Petitioner testified that even when he is attempting to sleep he sometimes feels the tingling. (Tr. Trans., at 28). He further testified that he is no longer able to participate in certain pastimes that he enjoyed before the accident, such as playing ball. (Tr. Trans., at 29).

These debilities to which Petitioner testified are considered by the Arbitrator in the context of Petitioner's testimony and the findings of the Commission (Arb. Ex #3) which speak to a lifetime of work performing manual labor. With further regard to the second statutory factor, this Arbitrator notes that as a manual laborer, the Petitioner depends more heavily, if not exclusively, on his physical health, strength and capabilities to be able to perform the essential functions of the work he is likely able to secure than a worker who is employed in the non-manual labor sector of the economy. The Arbitrator gives great weight to this factor.

With regard to the third statutory factor, the age of Petitioner at the time of the accident, the Arbitrator notes that Petitioner was a few weeks away from his fifty-ninth birthday when he suffered his work injury. The Arbitrator gives great weight to this factor because the Petitioner's age impacts his ability to perform in a way that would not be significant in a younger Petitioner.

Regarding the fourth factor, Petitioner's future earning capacity, Petitioner testified that prior to the accident he was constantly employed, except for a period where he lost his job due to company closure. (Tr. Trans., at 32). Petitioner testified that now, he has attempted to

look for employment but has not been successful. (Tr. Trans., at 43). Petitioner credibly testified that he attempted to look for work in the meat departments of various locations of chain supermarkets. (Tr. Trans., at 43-44). Petitioner further testified that he searched intensively, looking for work at places whether they were advertising with a help wanted sign or not. (Tr. Trans., at 53). Despite these efforts, Petitioner has not been able to find employment. The actions of Respondent in not allowing Petitioner to return to work on a trial basis speaks volumes to Petitioner's future earning capacity. Petitioner testified that he is currently receiving Social Security retirement benefits, and that he was forced by his economic circumstances to apply earlier than he had planned because of a lack of income. (Tr. Trans., at 30-31). Petitioner testified that he would rather still be working as a butcher than be collecting these benefits. (Tr. Trans., at 33-34). Further, the FCE restrictions imposed on Petitioner remain in effect. The Arbitrator gives great weight to this factor.

Based on all of the evidence, and incorporating the Commission Decision of July 13, 2020, the Arbitrator finds that pursuant to the Act, Petitioner is entitled to compensation for permanent partial disability as a result of the work related injury sustained by petitioner resulting in right shoulder surgery and a sub-optimal recovery which did not allow Petitioner to return to his pre-injury employment. Petitioner's average weekly wage was $630.80 with a permanency rate of $378.48. The Arbitrator awards 55% loss of use to the person as a whole representing 275 weeks, which equals $104,082.00.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	20WC026304
Case Name	Jacquelyn Sumner v. Placesmart/NOTS Logistics
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b)
Decision Type	Commission Decision
Commission Decision Number	24IWCC0167
Number of Pages of Decision	15
Decision Issued By	Amylee Simonovich, Commissioner

Petitioner Attorney	Angie Zinzilieta
Respondent Attorney	Natalie Christian, Matthew Terry

DATE FILED: 4/11/2024

/s/Amylee Simonovich, Commissioner

Signature

DISSENT: /s/Amylee Simonovich, Commissioner

Signature

24IWCC0167

STATE OF ILLINOIS)
) SS.
COUNTY OF MADISON)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Jacquelyn Sumner,

Petitioner,

vs. NO: 20 WC 26304

Placesmart / NOTS Logistics,

Respondent.

DECISION AND OPINION ON REVIEW

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

In the interest of efficiency, the Commission relies on the detailed recitation of facts provided in the Decision of the Arbitrator. The Commission affirms the Arbitrator's conclusion that Petitioner's condition of ill-being regarding her cervical spine is not causally related to the August 27, 2020, work accident. The Commission affirms the Arbitrator's denial of medical expenses related to Petitioner's cervical spine condition, and affirms the denial of the requested prospective medical treatment. The Commission also affirms the Arbitrator's denial of penalties in this matter.

Temporary Total Disability Benefits

The Arbitrator concluded that Petitioner did not meet her burden of proving an entitlement to additional TTD benefits. Petitioner claimed an entitlement to TTD benefits from August 28, 2020, through December 14, 2020, a period of 15-4/7 weeks. The parties stipulated that Respondent paid $1,887.28 in TTD benefits prior to the hearing, and agree that Petitioner did not receive TTD benefits from October 2, 2020, through December 14, 2020, a period of 10-4/7 weeks.

After carefully considering the totality of the evidence, the Commission agrees with the Arbitrator's denial of benefits.

To establish an entitlement to TTD benefits, Petitioner must demonstrate not only that she did not work, but also that she was unable to work. *See Mech. Devices v. Indus. Comm'n (Johnson)*, 344 Ill. App. 3d 752 (2003). There is no evidence that Petitioner worked from October 2, 2020, through December 14, 2020; however, the credible evidence does not support a finding that Petitioner was unable to work during that period.

Dr. Neighbors last examined Petitioner on September 22, 2020. On that date, the doctor's physical examination of Petitioner revealed her right shoulder condition had significantly improved. While Petitioner had not yet attended the physical therapy the doctor prescribed on September 4, 2020, Petitioner reported she felt much better and did not have any symptoms during her appointment. However, she did report intermittent pain in the right arm radiating into her hand. When Petitioner told the doctor that she would like to return to work the following week, Dr. Neighbors wrote, "…this would be up to Workmen's Comp. may need to get things going for her." (PX 3). Dr. Neighbors had no "…changes in work-up or therapy," and told Petitioner to return after she attended two weeks of physical therapy. Notably, in contrast to the August 31, 2020, and September 4, 2020, visits, Dr. Neighbors did not include a work status note and did not outright restrict Petitioner from returning to work.

Following the September 22, 2020, visit, Petitioner was not examined by any medical professional until her May 20, 2021, visit with Dr. Lee. Petitioner testified that she never returned to Dr. Neighbors because he retired; however, there is no evidence regarding when the doctor retired. The Commission is unable to assume the doctor retired before December 14, 2020. Likewise, the Commission is unpersuaded by Petitioner's testimony that she was unable to obtain any medical treatment during the prolonged gap in treatment as no doctor would agree to treat her through workers' compensation insurance. Petitioner did not present any evidence corroborating this testimony. Instead, the credible evidence reveals that Petitioner did not pursue any additional treatment before she started her new job on or around December 15, 2020. Petitioner's counsel filed the Application for Adjustment of Claim on October 27, 2020, and Petitioner signed the document on September 9, 2020. However, there is no evidence that Petitioner's counsel raised any issues with Respondent's counsel regarding the outstanding physical therapy prescription or her alleged inability to obtain additional treatment before December 14, 2020. There is also no evidence that Petitioner filed a 19(b) Petition regarding these issues before December 14, 2020.

A claimant is not entitled to TTD benefits when they are not actively treating, they do not have a current off work note from a medical professional, and they have not pursued additional treatment. Thus, Petitioner has not met her burden of proving she could not work from October 2, 2020, through December 14, 2020. After considering the totality of the credible evidence, the Commission affirms the Arbitrator's denial of TTD benefits from October 2, 2020, through December 14, 2020.

Correction to the Decision

The Commission makes the following modifications to the Decision of the Arbitrator. On

page eight (8) of the Decision, the Arbitrator refers to "…his right shoulder…" This is a scrivener's error. The Commission modifies the above-referenced sentence to read as follows:

> The Arbitrator concludes Petitioner's current condition of ill-being regarding her right shoulder is causally related to the accident of August 27, 2020, but Petitioner's current condition of ill-being regarding her neck/cervical spine is not causally related to the August 27, 2020, work accident.

The Commission otherwise affirms and adopts the Decision of the Arbitrator.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed on November 30, 2022, is modified as stated herein.

IT IS FURTHER ORDERED that Petitioner's current condition of ill-being regarding her cervical spine condition is not causally related to the August 27, 2020, work accident.

IT IS FURTHER ORDERED that Petitioner's requests for temporary total disability benefits, medical expenses, prospective medical treatment, and penalties are denied.

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

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

The bond requirement in Section 19(f)(2) of the Act is only applicable when the Commission has entered an award for the payment of money. 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.

April 11, 2024

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

d: 2/20/24
AHS/jds
51

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

DISSENT

After carefully considering the totality of the evidence, I respectfully dissent from the opinion of the majority and would reverse the Decision of the Arbitrator.

On August 27, 2020, Petitioner sustained an undisputed accident wherein she had to wrench her shirt out of the milking machine and fell backward to the floor, striking her head. The following day at St. Joseph's Health Center, the nurse practitioner noted severe ecchymosis and tenderness to palpation of the right shoulder. Petitioner also had an open skin tear over the AC joint and scattered abrasions. PX1.

By September 4, 2020—just eight days after her injury—Petitioner reported "lightning like pain" over the inner aspect of her right arm. PX2. Dr. Neighbors prescribed a course of physical therapy due to Petitioner's symptoms. Petitioner continued to complain of pain in her right arm radiating into her hand on September 22, 2020. PX3. That day, Dr. Neighbors noted that Respondent had not yet authorized the prescribed physical therapy.

Petitioner filed an Application for Adjustment of Claim alleging injuries to her right shoulder and body as a whole on October 27, 2020. Respondent's counsel received Petitioner's first 19(b) Petition on February 8, 2021. RX2. Petitioner's counsel thereafter sought authorization for physical therapy in writing on February 23, March 17, March 22, March 24, and March 30, 2021. PX14. Petitioner's counsel finally received the claim information on March 31, 2021. In April 2021, Respondent finally attempted to schedule Petitioner's therapy.

Petitioner presented to Dr. Lee on May 20, 2021 with complaints of right shoulder pain radiating into the lateral brachium of the dorsal forearm. PX5. Petitioner also complained of trapezial pain radiating toward the base of the neck as well as numbness and tingling in the arm. *Id*. Petitioner reported that her physician had retired and she was unable to find a provider that would evaluate her under workers' compensation. Petitioner finally started physical therapy for her neck and shoulder on June 16, 2021. PX7. The June 2021 cervical MRI revealed disc protrusions at multiple levels, and Dr. Lee referred Petitioner to Dr. Blake for an epidural injection at C5-C6. PX6. After Petitioner failed to experience significant relief, Dr. Lee referred her to Dr. Gornet for a surgical consultation. On November 8, 2021, Dr. Matthew Gornet examined Petitioner and wrote that her condition was causally connected to the August 27, 2020, work injury. He also recommended a three-level cervical disc replacement surgery. PX9.

Dr. Lee testified that it was "perfectly reasonable" that Petitioner's initial treatment focused on the "obvious significant trauma to the area around her shoulder." PX10 at 18. He testified that it could take up to six weeks after a traumatically induced herniated disc for a person to experience symptoms; however, in an area that overlaps pain radiating from a shoulder, the full scope of the injury could go undetected for much longer. PX10 at 29. Dr. Lee testified that Petitioner has a right foraminal protrusion at C4-C5, which overlaps a symptomatic area. PX10 at 33.

Respondent's Section 12 Examiner, Dr. Chabot, testified that Petitioner's cervical spine condition was not causally related to her work accident because Petitioner was not diagnosed with a cervical spine injury until she was seen by Dr. Lee eight or nine months after the work accident.

RX1 at 27-28. I disagree with the conclusion that Petitioner did not complain of any neck/cervical spine symptoms in September 2020. Dr. Neighbors' records document pain radiating down the right arm, an indication of a possible cervical disc injury, on September 4, 2020, and September 22, 2020. As such, I am not persuaded by the opinion of Dr. Chabot. Drs. Gornet and Lee opined that Petitioner's current condition is causally related to her fall on August 27, 2020.

Furthermore, I place no weight on the gap in treatment in this matter. Petitioner did not choose to forgo further medical treatment until May 20, 2021. Instead, Petitioner's counsel worked diligently to obtain treatment authorization from Respondent for months. I am not persuaded by Ms. Joyce's testimony that she spoke with the doctor's office to authorize physical therapy, as she was unable to provide any details as to the location or duration of the therapy she allegedly approved. T. 52-54, 62-64. Additionally, no such authorization was documented in the medical records. In fact, Dr. Neighbors' office visit notes specifically indicate that he had not received the requested authorization. Perhaps if Respondent had authorized the physical therapy when it was prescribed on September 4, 2020, the full extent of Petitioner's injuries would have been revealed much earlier.

For the foregoing reasons, I would reverse the Arbitrator and find that Petitioner's cervical spine condition and need for surgery is related to her fall on August 27, 2020.

/s/ *Amylee H. Simonovich*
Amylee H. Simonovich

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	20WC026304
Case Name	Jacquelyn Sumner v. Placesmart/NOTS Logistics
Consolidated Cases	
Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	9
Decision Issued By	William Gallagher, Arbitrator

Petitioner Attorney	Angie Zinzilieta
Respondent Attorney	Matthew Terry, Dana Djokic

DATE FILED: 11/30/2022

THE INTEREST RATE FOR THE WEEK OF NOVEMBER 29, 2022 4.55%

/s/William Gallagher, Arbitrator

Signature

STATE OF ILLINOIS)
)SS.
COUNTY OF MADISON)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

Jacquelyn Sumner
Employee/Petitioner

Case # 20 WC 26304

v.

Consolidated cases: n/a

Placesmart/NOTS Logistics
Employer/Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable William R. Gallagher, Arbitrator of the Commission, in the city of Collinsville, on September 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. ☒ Is Petitioner entitled to any prospective medical care?
L. ☒ What temporary benefits are in dispute?
☐ TPD ☐ Maintenance ☒ TTD
M. ☒ Should penalties or fees be imposed upon Respondent?
N. ☐ Is Respondent due any credit?
O. ☐ Other

FINDINGS

On the date of accident, August 27, 2020, Respondent was operating under and subject to the provisions of the Act.

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

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

Timely notice of this accident was given to Respondent.

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

In the year preceding the injury, Petitioner earned $34,507.20; the average weekly wage was $663.60.

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

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

Respondent shall be given a credit of $1,887.28 for TTD, $0.00 for TPD, $0.00 for maintenance, and $0.00 for other benefits, for a total credit of $1,887.28.

Respondent is entitled to a credit of $1,218.00 paid under Section 8(j) of the Act.

ORDER

Based upon the Arbitrator's Conclusions of Law attached hereto, Petitioner's request for payment of medical bills identified in Petitioner's Exhibit 11 is denied.

Based upon the Arbitrator's Conclusions of Law attached hereto, no additional temporary total disability benefits are awarded.

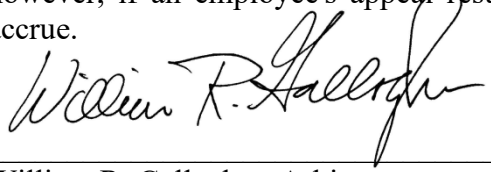
Based upon the Arbitrator's Conclusions of Law attached hereto, Petitioner's request for prospective medical treatment is denied.

Based upon the Arbitrator's Conclusions of Law attached hereto, Petitioner's Petition for Section 19(k) Penalties, Section 19(l) Penalties and Section 16 Attorneys' Fees These is denied.

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

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

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



NOVEMBER 30, 2022

William R. Gallagher, Arbitrator
ICArbDec19(b)

Findings of Fact

Petitioner filed an Application for Adjustment of Claim which alleged she sustained an accidental injury arising out of and in the course of her employment by Respondent on August 27, 2020. According to the Application, "Petitioner attempted to move from the milk cooling room when machinery grabbed ahold of Petitioner's shirt, suddenly jerking her right shoulder" which caused her to sustain an injury to her "Cervical spine/Right shoulder" (Arbitrator's Exhibit 2). This case was tried in a 19(b) proceeding and Petitioner sought an order for payment of medical bills and temporary total disability benefits as well as prospective medical treatment. Respondent stipulated Petitioner sustained a work-related accident on August 27, 2020, but disputed liability on the basis of causal relationship, primarily in regard to Petitioner's cervical spine condition (Arbitrator's Exhibit 1).

The medical bills for which Petitioner sought payment were for treatment Petitioner received in regard to her cervical spine condition. In regard to temporary total disability benefits, Petitioner claimed she was entitled to temporary total disability benefits of 15 4/7 weeks, commencing August 28, 2020, through December 14, 2020. The prospective medical treatment sought by Petitioner was a three level cervical disc replacement surgery as recommended by Dr. Matthew Gornet, an orthopedic surgeon (Arbitrator's Exhibit 1).

Petitioner was employed by Respondent, a temporary employment service, and was working as a housekeeper at the Prairie Farms facility in O'Fallon, Illinois. Petitioner testified that on August 27, 2020, she was walking on a slick surface adjacent to a piece of machinery. Petitioner stated she slipped on the floor which caused the right arm of the shirt she was wearing to become entangled in the machine. When this occurred, Petitioner pulled away from the piece of machinery which tore her shirt and caused Petitioner the fall backward to the floor striking her head on the floor.

The accident was reported to Respondent in a timely manner, and Petitioner initially sought medical treatment the following day, August 28, 2020, at Clinton County Rural Health. At that time, Petitioner was evaluated by Alison Miller, a Nurse Practitioner. Petitioner advised NP Miller of the accident and had complaints in her right upper arm/shoulder. Petitioner did not inform NP Miller that she had slipped on the floor or had struck her head. Further, Petitioner had no complaints referable to her neck/cervical spine. NP Miller ordered an x-ray of Petitioner's right shoulder which was interpreted as being normal. NP Miller diagnosed Petitioner as having acute pain of the right shoulder and an injury to the tendon of the long head of the biceps. She prescribed medication and authorized Petitioner to be off work (Petitioner's Exhibit 1).

Petitioner was subsequently seen by Dr. David Neighbors, her family physician, on August 31, 2020. At that time, Petitioner informed Dr. Neighbors of the accident, but did not advise him of having struck her head and did not inform him of having any neck/cervical spine complaints. Petitioner complained of right upper arm/shoulder pain. On examination, Dr. Neighbors noted there was ecchymosis and a moderate hematoma; however, the neurovascular function of the right arm was normal. He prescribed medication, recommended use of ice/heat and continued to authorize Petitioner to remain off work (Petitioner's Exhibit 2).

Dr. Neighbors again saw Petitioner on September 4, 2020. At that time, he noted Petitioner's condition had improved, the ecchymosis was resolving, and the range of motion was full. Petitioner still had some complaints, and Dr. Neighbors recommended Petitioner received physical therapy. Again, Petitioner had no neck/cervical spine complaints (Petitioner's Exhibit 2).

Dr. Neighbors last saw Petitioner on September 22, 2020. At that time, Petitioner advised she was not able to get into physical therapy because of workers' comp delays. However, Petitioner's condition had improved, but she still had intermittent complaints of pain in her right arm that radiated into her hand. On examination, there was normal neurovascular function, the abrasions had healed, there was no ecchymosis in the range of motion was normal, but with some residual pain at the extremes. Once again, Petitioner did not have any complaints of neck/cervical spine symptoms. Petitioner advised she wanted to try to return to work the next week. Dr. Neighbors recommended Petitioner follow up and try to get physical therapy approved (Petitioner's Exhibit 3).

Petitioner subsequently sought medical treatment from Dr. Thomas Lee, an orthopedic surgeon, who evaluated Petitioner on May 20, 2021. At that time, Petitioner advised Dr. Lee of the accident of August 27, 2020 (his record erroneously indicated that date as being August 28, 2020) and that she had ongoing symptoms of right shoulder and trapezial pain that went to the base of the neck. The shoulder pain went into the forearm and Dr. Lee opined it was in the C7 and possibly C6 nerve distribution. This was the first time Petitioner informed a medical provider that she had neck/cervical spine symptoms (Petitioner's Exhibit 5).

Dr. Lee examined Petitioner's cervical spine and noted she had a reduced range of motion, and rotation to the right caused right paraspinal pain. He also observed tenderness/spasm in the right medial trapezial region toward the base of the neck. Examination of Petitioner's right arm/shoulder revealed bicipital tendon and impingement signs, but the range of motion was well preserved. Dr. Lee ordered a right shoulder MRI arthrogram and cervical MRI scan as well as physical therapy (Petitioner's Exhibit 5).

The MRI arthrogram of Petitioner's right shoulder was performed on June 23, 2021. According to the radiologist, there was no rotator cuff pathology, the biceps tendon and glenoid labrum were intact, and there was a small amount of fluid in the subacromial subdeltoid bursa which represented bursitis (Petitioner's Exhibit 5).

The MRI of Petitioner's cervical spine was performed on June 23, 2021. According to the radiologist, there were bilateral recessed foraminal protrusions at C5-C6 resulting in mild bilateral foraminal stenosis, bilateral foraminal protrusions, larger on the left than right, at C3-C4, and a left bilateral recessed foraminal annular tear with extruded disc fragment at C4-C5 (Petitioner's Exhibit 6).

Dr. Lee saw Petitioner on July 6, 2021, and reviewed the diagnostic studies. In regard to Petitioner's right shoulder, he diagnosed Petitioner with a strain with residual subacromial bursitis/effusion. In regard to Petitioner's cervical spine, he opined the MRI revealed disc

protrusions at C3-C4, C4-C5 and C5-C6. He referred Petitioner to Dr. Helen Blake for an epidural injection at C5-C6 (Petitioner's Exhibit 6).

Dr. Blake saw Petitioner on July 20, 2021. At that time, she administered an epidural steroid injection on the right at C5-C6 (Petitioner's Exhibit 8).

Dr. Lee saw Petitioner on September 2, 2021. At that time, Petitioner informed him she did not get any relief from the epidural injection. On examination, Dr. Lee again noted a diminished range of motion of Petitioner's neck. He diagnosed Petitioner with a herniated disc at C4-C5 with adjacent disc protrusions. He referred Petitioner to Dr. Matthew Gornet for a surgical consultation (Petitioner's Exhibit 6).

Dr. Gornet evaluated Petitioner on November 8, 2021. At that time, Petitioner advised Dr. Gornet of the accident of August 27, 2020, and her main complaint was neck pain at the base of the neck and right trapezius, as well as frequent headaches. Dr. Gornet reviewed the MRI scan of the cervical spine and opined it revealed structural disc pathology on the right at C3-C4, C4-C5 and C5-C6. Dr. Gornet recommended Petitioner undergo a cervical disc replacement surgery at C3-C4, C4-C5 and C5-C6, with the possibility of a supplemental posterior foraminotomy at C3-C4. He opined Petitioner's cervical spine condition was related to the accident of August 27, 2020, and imposed light duty work restrictions of no lifting over 10 pounds and no overhead work (Petitioner's Exhibit 9).

At the direction of Respondent, Petitioner was examined by Dr. Michael Chabot, an orthopedic surgeon, on November 17, 2021. In connection with his examination of Petitioner, Dr. Chabot reviewed medical records provided to him by Respondent. At that time, Petitioner advised Dr. Chabot of the accident of August 27, 2020, and she complained of right shoulder and posterior neck pain. On examination of the neck, Dr. Chabot observed a mild loss of cervical lordosis and the cervical range of motion was reduced by 20%. He diagnosed Petitioner with a right shoulder strain and requested he be provided with copies of the diagnostic studies; however, he also opined cervical spine surgery was not indicated (Respondent's Exhibit 1; Deposition Exhibit 2).

Dr. Lee was deposed on February 8, 2022, and his deposition testimony was received into evidence at trial. On direct examination, Dr. Lee's testimony was consistent with his medical records and he reaffirmed the opinions contained therein. Specifically, Dr. Lee testified Petitioner's cervical spine and right shoulder injuries were related to the accident of August 27, 2020. In regard to Petitioner's cervical spine condition, Dr. Lee testified Petitioner had not responded to conservative care so he referred her to Dr. Gornet for consideration of cervical surgery (Petitioner's Exhibit 10; pp 11-14).

On cross-examination, Dr. Lee acknowledged that the medical records for treatment Petitioner received prior to his evaluation had no reference to Petitioner having cervical spine complaints. Further, he also acknowledged there was an eight month gap in treatment for cervical spine complaints between the time of the accident and the time of his initial evaluation. Dr. Lee stated he was not certain when Petitioner's cervical spine complaints were new, but that because of the significant trauma to her shoulder, the medical providers may have focused on that. However, Dr. Lee agreed that, typically, one would experience neck symptoms within the first six weeks

following an injury. He also testified that if the injury is and an overlapping area, such as a shoulder, "It can go under the radar for a longer period of time." (Petitioner's Exhibit 10; pp 18-19, 29).

Respondent provided additional medical records and the diagnostic tests to Dr. Chabot, who prepared a supplemental medical report dated April 20, 2022. In regard to Petitioner's right shoulder condition, Dr. Chabot reviewed the MRI arthrogram and noted minimal impingement, but he reaffirmed his opinion Petitioner had sustained a right shoulder strain. In regard to Petitioner's cervical spine, Dr. Chabot reviewed the MRI scan and opined it revealed mild disc space narrowing at C5-C6, no evidence of a disc protrusion at C3-C4, and a small left sided disc protrusion at C4-C5. He also stated the interpretation of the MRI by the radiologist was "grossly overstated." In regard to causality, Dr. Chabot again noted the initial injury was a right shoulder strain, and Petitioner had no neck complaints until she was evaluated by Dr. Lee on May 20, 2021, eight months after the accident. He specifically disagreed with Dr. Lee's opinion that neck symptoms could have "gone under the radar for a longer period of time," he noted that if a person sustains an injury in a specific location of the body, one will complain of pain in that region. If Petitioner had, in fact, sustained a cervical spine injury, she would have had neck complaints shortly after the accident (Respondent's Exhibit 1; Deposition Exhibit 3).

Dr. Chabot was deposed on July 15, 2022, and his deposition testimony was received into evidence at trial. On direct examination, Dr. Chabot's testimony was consistent with his medical reports and he reaffirmed the opinions contained therein. Specifically, in regard to causality of Petitioner's cervical spine condition, Dr. Chabot testified it was not related to the accident of August 27, 2020, because there was no documentation in the medical records of Petitioner sustaining a cervical spine injury until she was seen by Dr. Lee, eight or nine months after the accident (Respondent's Exhibit 1; pp 27-28).

On cross-examination, Dr. Chabot agreed that there was no evidence of Petitioner having any right shoulder or cervical spine symptoms prior to August, 2020, or any new injury subsequent to August, 2020. Dr. Chabot stated he only had medical records for treatment Petitioner received after the accident (Respondent's Exhibit 1; pp 54-55).

Petitioner testified the reason she did not see Dr. Neighbors after her last visit in September, 2020, was that he had retired and there was no one else for her to go to. Petitioner stated that her employment with Respondent had been terminated in October, 2020. Petitioner subsequently obtained a job with Jim's Formal Wear in Trenton, Illinois. Petitioner's job duties consist of inspecting shirts for defects, replacing buttons, etc. Petitioner described this as being a much easier job than the ones she had while employed by Respondent. Petitioner denied having sustained any further injuries while employed by Jim's Formal Wear.

Petitioner testified she still experiences right shoulder and neck pain. While she has been able to work, her pain symptoms interfere with activities of daily living. She wants to proceed with the surgery as recommended by Dr. Gornet.

Mark Veriga, Petitioner's husband, testified at trial. He has known Petitioner for approximately four years and stated she has difficulties with basic tasks on a daily basis such as doing laundry and yard work since she sustained the accident at work.

Joyce Tanner, Respondent's Executive Administrator/Director testified at trial. She spoke to Petitioner on the day of the accident and attempted to authorize the physical therapy as recommended by Dr. Neighbors, sometime in early September, 2020. However, Tanner stated she was unable to contact Petitioner in spite of having made several telephone calls to her residence.

Conclusions of Law

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

The Arbitrator concludes Petitioner's current condition of ill-being is, in part, causally related to the accident of August 27, 2020.

The Arbitrator concludes Petitioner's current condition of ill-being in regard to his right shoulder is causally related to the accident of August 27, 2020, but Petitioner's current condition of ill-being in regard to her neck/cervical spine is not causally related to the accident of August 27, 2020.

In support of these conclusions the Arbitrator notes the following:

There was no dispute Petitioner sustained a work-related accident on August 27, 2020.

Shortly after the accident, Petitioner sought medical treatment for right shoulder/arm symptoms. Petitioner was subsequently diagnosed as having sustained a right shoulder strain and bursitis.

Petitioner was treated by NP Miller and Dr. Neighbors in August/September, 2020, and Petitioner complained of right shoulder symptoms; however, Petitioner did not complain of any neck/cervical spine symptoms at that time.

Petitioner did not seek any further medical treatment until May 20, 2021, at which time she was evaluated by Dr. Lee. This was the first time Petitioner informed a medical provider that she had neck/cervical spine symptoms which she believed were related to the accident of August 27, 2020.

Dr. Lee opined Petitioner's right shoulder and cervical spine conditions were related to the accident of August 27, 2020. In regard to Petitioner's cervical spine condition, Dr. Lee's opinion regarding causality was based, in part, on his belief that the medical providers who initially treated her focused on the shoulder injury and because the shoulder was in "an overlapping area" the neck/cervical spine condition went "under the radar for a longer period of time." However, Dr. Lee agreed on cross-examination, that when one sustains an injury to the cervical spine, such an individual would typically experience cervical spine symptoms within the first six weeks following the injury.

Respondent's Section 12 examiner, Dr. Chabot, specifically noted Petitioner did not inform the medical providers who initially treated her of any cervical spine complaints. Further, he disagreed with Dr. Lee's opinion that the cervical spine condition could go under the radar.

Given the preceding, the Arbitrator finds the opinion of Dr. Chabot to be more persuasive than that of Dr. Lee in regard to causality of Petitioner's cervical spine condition.

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

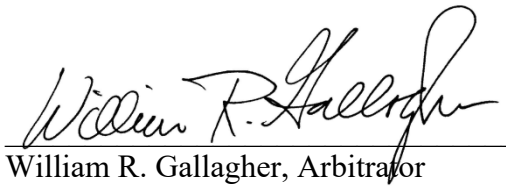
Based upon the Arbitrator's conclusion of law in disputed issue (F) the Arbitrator concludes Respondent is not liable for the medical bills tendered into evidence by Petitioner.

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

Based upon the Arbitrator's conclusion of law in disputed issue (F) the Arbitrator concludes Petitioner is not entitled to prospective medical treatment.

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

Based upon the Arbitrator's conclusion of law in disputed issue (F) the Arbitrator concludes Petitioner is not entitled to Section 19(k) penalties, Section 19(l) penalties or Section 16 Attorneys' Fees.



William R. Gallagher, Arbitrator

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	19WC022219
Case Name	Arthur Drake v. SMG Savor
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	24IWCC0168
Number of Pages of Decision	31
Decision Issued By	Amylee Simonovich, Commissioner

Petitioner Attorney	William Schmitz
Respondent Attorney	Michael Manseau

DATE FILED: 4/11/2024

/s/ Amylee Simonovich, Commissioner

Signature

24IWCC0168

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Arthur Drake,

Petitioner,

vs. NO: 19 WC 0022219

SMG Savor,

Respondent.

DECISION AND OPINION ON REVIEW

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

The Commission agrees with the Arbitrator's analysis and assessment of the temporary total disability period but corrects a clerical error with regard to the number of weeks. The Commission modifies the last sentence of the first paragraph of the Section addressing temporary benefits to read, "Therefore, the Arbitrator finds that Respondent is liable to pay temporary total disability benefits to Petitioner for the entire 99 week period." Decision, p. 22.

Additionally, the Commission modifies the first paragraph of the Temporary Total Disability section of the Order to read, "Respondent shall pay Petitioner temporary total disability benefits of $467.89/week, for the period Petitioner was temporarily and totally disabled from May 29, 2019 through April 20, 2021, representing 99 weeks."

The Commission also corrects the name of the treating physician listed in the second sentence of the first paragraph on page 12 of the Arbitration Decision, exchanging the name Dr. Edwards for Dr. Evans. Decision, p. 12. While the Arbitrator was directly quoting Dr. O'Keefe's medical record from January 2, 2020 (PX 23, p. 1-2), the Dr. Edwards reference appears to be an error by Dr. O'Keefe. The totality of the evidence demonstrates the treatment referenced within that note was actually provided by Dr. Evans. See T. 27-29, 31-32, 73-75, PX 3, 4, 5, and 6.

IT IS ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed on January 9, 2023, is modified as stated herein, and otherwise affirmed and adopted.

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

Bond for removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $60,169.00. 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.

April 11, 2024

O: 3/26/24
AHS/kjj
051

/s/ *Amylee H. Simonovich*
Amylee H. Simonovich

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	19WC022219
Case Name	Arthur Drake v. SMG Savor
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	28
Decision Issued By	Nina Mariano, Arbitrator

Petitioner Attorney	William Schmitz
Respondent Attorney	Michael Manseau

DATE FILED: 1/9/2023

THE INTEREST RATE FOR THE WEEK OF JANUARY 4, 2023 4.63%

/s/Nina Mariano, Arbitrator

Signature

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Arthur Drake
Employee/Petitioner

v.

SMG Savor
Employer/Respondent

Case # **19** WC **022219**

Consolidated cases: _____

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

DISPUTED ISSUES

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

FINDINGS

On the date of accident, **May 29, 2019**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $36,495.16; the average weekly wage was $**701.83**.

On the date of accident, Petitioner was **50** years of age, ***married*** with **1** dependent child.

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

Respondent shall be given a credit of $**22,593.36** for TTD, $**0.00** for TPD, $**0.00** for maintenance, and $**3,000.00** for other benefits, for a total credit of $**25,593.36**.

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

ORDER

Temporary Total Disability

Respondent shall pay Petitioner temporary total disability benefits of $467.89/week, for the period Petitioner was temporarily and totally disabled from May 29, 2019 through April 20, 2021, representing 98 6/7 weeks.

Respondent shall receive a credit for temporary total disability benefits previously paid, as indicated above.

Medical Benefits

Respondent shall pay reasonable and necessary medical services, as provided in Sections 8(a) and 8.2 of the Act. Respondent shall pay all bills submitted into evidence as Petitioner's Exhibits 37 through 49 pursuant to the Illinois Worker's Compensation Fee Schedule. Respondent shall receive a credit for all prior medical expenses paid pursuant to payment logs in RX14.

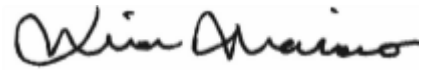
Permanent Partial Disability

Considering the factors as a whole pursuant to Section 8.1(b) of the Act, the Arbitrator finds that the Petitioner sustained accidental injuries that caused 17.5% loss of use of his left leg (37.625 weeks); 30% loss of use of his left foot/ankle (50.1 weeks); and 15% loss of use of his left great toe (5.7 weeks). Respondent shall accordingly pay a total of 93.425 weeks of permanent partial disability benefits at the permanent partial disability rate of $421.10, or $39,341.27 less PPD advance made by Respondent of $3,000.00 pursuant to RX14, as indicated above.

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

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

however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.



JANUARY 9, 2022

Signature of Arbitrator

ICArbDec19(b)

STATE OF ILLINOIS)
)SS.
COUNTY OF COOK)

ILLINOIS WORKERS' COMPENSATION COMMISSION

ARTHUR DRAKE	)	
	)	
Petitioner,	)	
	)	**Case # 19 WC 022219**
v.	)	
	)	
SMG SAVOR	)	
	)	
Respondent.	)	

SUMMARY OF ISSUES

This matter was tried to completion before Arbitrator Mariano in Chicago on May 18, 2022. The parties agree that on May 29, 2019, Petitioner and Respondent were operating under the Illinois Workers' Compensation Act, and their relationship was one of employee and employer. AX1. The parties further agree that on May 29, 2019, Petitioner sustained accidental injuries that arose out of and in the course of his employment with Respondent. AX1. It is undisputed that Respondent was given notice of the accident within the time limits stated in the Act. AX1. It is undisputed that on the date of accident, Petitioner was 50 years old, married, and had one dependent child. AX1.

Disputed Issues are as follows:

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

AX1.

FINDINGS OF FACT

It is undisputed that on May 29, 2019, Petitioner, Arthur Drake sustained accidental injuries to his left lower extremity while operating a "rider-jack" incident to the assigned duties of his employment with Respondent, SMG Savor.

Petitioner testified that he began working for Respondent in early November 2016. (Tr. 10) Petitioner testified that though he is employed by a company called SMG Savor, the location where he works is at McCormick Place. Petitioner described as "a humungous convention center." (Tr. 9)

Petitioner testified that when he first began working for Respondent in November 2016, he was hired as a warehouse attendant at McCormick Place. (Tr. 10) As a warehouse attendant, Petitioner's primary job duties involve constant manual labor such as stacking pallets, loading up pallets with materials, pulling fork trucks, wrapping pallets with industrial grade plastic wrap, and pulling the pallets to various destinations around McCormick Place. (Tr. 11)

Petitioner further testified that at the time of the May 29, 2019, work accident, he was working for Respondent as a driver, since he had recently been promoted from the position of a warehouse attendant. (Tr. 11-12, 14-15) Specifically, Petitioner testified he was promoted to the position of a driver in June or July of 2018. (Tr. 15). Regarding the promotion, Petitioner testified that he had been working "pretty good" and it was acknowledged by his supervisor, and he was offered a job as a driver. (Tr. 14) Petitioner testified that the promotion to become a driver was an opportunity to get more hours and benefits than as a warehouse attendant, so he accepted it. *Id*. Furthermore, Petitioner testified that in October 2018 (after he had already been promoted and about eight months prior to the accident) that he was performing his job duties effectively such that he received benefits, including sick days and paid time off. (Tr. 15)

Accordingly, Petitioner was employed by SMG Savor for a total time period exceeding 2.5 years (30 months) prior to the accident, and specifically was employed as a driver for approximately ten to eleven months immediately prior to the accident.

Promotions and benefits aside, Petitioner described his work environment as fast-paced, busy, chaotic, and at times when there are large trade shows or numerous conventions going on simultaneously, "mayhem." (Tr. 15). Overall, Petitioner described his job duties as a driver on busy days to mainly consisting of constantly retrieving pallets of goods that warehouse attendants have already stacked and wrapped, and then transporting the pallets throughout McCormick Place with a pallet jack or "rider jack," or otherwise loading onto a truck to transport bigger shipments. (Tr. 14-16). Moreover, Petitioner testified that on busy or "mayhem" days, that there are pallets and materials "all over the place," and it is especially chaotic. *Id.* at 15-16. Petitioner further testified that sometimes pallets that he needs to retrieve are situated inside different rooms or require he traverse through doorways; such that he must also maneuver the pallet jack or "rider jack" he is using through the doorway to retrieve the pallets. (Tr. 16)

Petitioner testified that on the date of accident, May 29, 2019, it was very busy with a large trade show or multiple conventions going on, consistent with what was previously described as a "mayhem" day, and his job duties revolved around retrieval and transport of pallets using various lifting machines or mechanisms. *Id.*

Petitioner testified that in the performance of his job duties as both a warehouse attendant and a driver, he typically must utilize one of two lifting machines. The first, which Petitioner referred to interchangeably as "fork truck," "forklift," "power jack" and "pallet jack" in his trial testimony, is a

manual jack; the only way to operate it is to walk and manually push or maneuver to transport pallets to their destinations. (Tr. 17).

The other machine referenced by Petitioner, and specifically the type of machine he was operating at the time of the May 29, 2019, work accident, is called a "rider jack." (Tr. 17) According to Petitioner's testimony, a "rider jack" is motorized and it can be ridden during operation, as opposed to having to manually walk it around all the time; however when in tight or confined spaces, it can be operated manually not unlike a typical pallet jack. *Id.* Petitioner further testified that a "rider jack: is a big, heavy jack that is big enough to stand on top and ride it." (Tr. 20-21)

On the day of the accident, Petitioner testified the work environment was "cluttered" with pallets and materials "all over." (Tr. 18, Tr. 15) He further testified that immediately prior to the accident, given the clutter present in the workplace, he was operating a "rider jack" manually so as to navigate it around all of the pallets and items strewn about and specifically in order to guide it through a doorway to transport pallets on the other side. (Tr. 18)

Petitioner testified that in so doing, he was on the ground directly ahead of the "rider jack," walking backwards, facing the "rider jack" and with his back to the doorway; and simultaneously was reaching up to operate the rider jack with his right hand. (Tr. 18-20) As he crossed the threshold of the doorway, he used his left hand to hold the door open, and with his right hand he continued to operate the "rider jack," all the while walking backwards. (Tr. 18-19) As Petitioner attempted to maneuver the "rider jack" through the doorway, the forks of the "rider jack" which are used to pick up pallets were situated on the far side of the rider jack from Petitioner, i.e., the forks were facing away from the doorway. (Tr. 21-22). Accordingly, the base or main body of the "rider jack" was nearest Petitioner.

Petitioner testified that on the underside of the "rider jack" there is a large, wide, wheel made of metal or perhaps steel, that Petitioner likened to a train wheel. (Tr. 23). As Petitioner crossed through the doorway, he took his right hand off of the rider jack handle momentarily, but the machine "kept going." (Tr. 23). The "rider jack" instantaneously lurched towards Petitioner, accelerating into and onto his left foot, ankle, and left lower leg. (Tr. 23-25). Petitioner offered credible, unrebutted testimony that the manner in which the rider jack impacted his left foot, ankle, and lower leg was such that he felt the large metal train-like wheel or roller on the underside of the rider jack roll over his foot and ankle area. Tr. 23-25. The rider jack effectively forced Petitioner to the ground, and such that his left foot/ankle/lower leg were pinned underneath the machine until assistance arrived. *Id.*

Immediately after the accident, Petitioner was provided first-aid by McCormick EMS at the scene. PX9 at 0267. A short time thereafter, the City of Chicago Fire Department responded to the scene and transported Petitioner via ambulance to University of Chicago Medicine, Mitchell Hospital. *See* City of Chicago Fire Department Patient Care Report, PX9 at 0267-0268. First responders from the City of Chicago Fire Department documented that upon arrival, Petitioner already had a cardboard splint wrapped on his left leg and his shoe was still on. PX9 at 0267. Regarding the mechanism of accident, the City of Chicago Fire Department documented that Petitioner "was moving a power jack when his foot got stuck underneath, causing him to fall and have his foot/ankle ran over. [Petitioner] stated that his foot may have been trapped under the machine for about 10 minutes." *Id.*

Upon arrival to University of Chicago, Mitchell Hospital, Petitioner was admitted to the Emergency Department. PX9 at 0110. The history of the injury as documented at the time of admission is that Petitioner presented with a left lower extremity injury; that he "operates a fork lift at work," and the "fork lift pinned him up against a wall and he sustained a [left lower extremity] injury" and as a result he suffered pain which was "most exquisitely to his left ankle." *Id.* The same ED Provider Note also contains a materially similar history; that Petitioner "stated he had a power jack at work roll over his ankle and pinned him to the ground for approximately 10 minutes." *Id.* at 0111. Petitioner's emergency physician(s) further documented Petitioner as "presenting w/LLE pain, numbness 2/2 work related injury w/ motorized pallet jack where his left ankle was trapped between the door and the edge of the pallet for 10 minutes. Pt was unable to move and fell to the ground." *Id.* at 0112.

Petitioner underwent X-rays of his left knee, left ankle, and left foot at the direction of his treating physician(s) during the May 29, 2019 admission to University of Chicago's Emergency Department. PX9 at 0163-0172. The clinical indication for the X-rays was documented as "workplace injury, left foot, ankle, and knee pain." PX9 at 0164. Petitioner was diagnosed with a left displaced lateral malleolus fracture, comminuted fracture of the proximal phalanx of the great toe, and a possible MCL sprain in his left knee. PX9 at 0143. He was placed in a short leg splint and left knee immobilizer. PX9 at 0143. Other treatment directed at discharge includes, but is not limited to: follow careful wound care (left great toe/left foot, left ankle); utilize crutches / avoid bearing weight with the left lower extremity; and follow up with an orthopedic surgeon. *Id.* Lastly, Dr. Brian C. Toolan attested as follows: "reviewed the xrays on this patient. He has a positive ankle stress test, indicating he has an unstable ankle fracture. The fracture is indicated, therefore, for operative treatment." *Id.*

On June 13, 2019, Petitioner followed up at the University of Chicago for an orthopedic consult with Dr. Brian C. Toolan. PX10. Dr. Toolan documented Petitioner's History of Present Illness as "Experienced left ankle, foot and knee pain after being pinned by a forklift at work 2 weeks ago. Per the patient the forklift ran over his foot and ankle pinning him against a wall. He is reporting pain extending from the foot all the way up to the knee." PX10 at 0277. Repeat X-rays of Petitioner's left ankle were ordered and obtained. PX10 at 0273-0274. Petitioner was diagnosed with a closed displaced fracture of the lateral malleolus of left fibula; ankle injury, left; and displaced fracture of proximal phalanx of left great toe. PX10 at 0276, 0279. Dr. Toolan prescribed fracture care for both the left ankle and left great toe, including a CAM boot, medications for pain and inflammation, and instructed Petitioner to return in 4 weeks at which time additional imaging would be obtained to assess healing. PX10 at 0270-0280.

On June 17, 2019, Petitioner presented to Dr. John F. Kane regarding his left great toe, left foot, and left ankle injuries. PX11 at 0293-0297. Dr. Kane documented the history of accident as Petitioner was working with a truck jack which accidentally fell on his left foot and ankle. PX11 at 0293. Dr. Kane reviewed Petitioner's imaging studies obtained at the University of Chicago on May 29, 2019, and June 13, 2019. *Id.* At the time Petitioner presented to Dr. Kane, he was "attempting to walk with partial weight bearing on the fracture boot that was provided to him by [the University of Chicago]" but he was "very uncomfortable and very unstable." PX11 at 0293. On physical examination Dr. Kane noted excessive inflammation in Petitioner's left foot, ankle, and lower leg. PX11 at 0293-0294. He specifically documented inflammation over the left great toe, a hematoma beneath the left great toenail, a lesion across the dorsal aspect of the left instep consistent with abrasion associated with a recent injury, and "the excessive swelling extends from the toes up past the ankle to the mid of the [calf] of the left limb."

Dr. Kane diagnosed Petitioner with (1) comminuted fracture great toe left foot; (2) Weber "C" ankle fracture with mild to moderate displacement left ankle; (3) deltoid ligament ruptures left ankle; and (4) a subluxated left ankle joint. PX11 at 0296. For short-term treatment, Dr. Kane prescribed a below the knee fracture boot and an Unna boot on the left ankle, as well as a walker. *Id.* For more definitive treatment, Dr. Kane recommended open reduction and internal fixation surgery of Petitioner's left ankle fracture with ligament repair. *Id.* Dr. Kane confirmed Petitioner's work status as "off-work" pending surgery. *Id.*

On June 24, 2019, Petitioner followed up with Dr. Kane for a preoperative consultation. PX12. Dr. Kane reviewed the recommended procedure with Petitioner and noted that he was scheduled to undergo open reduction and internal fixation of his left ankle fracture with ligament repair the following day. PX12 at 0298-0302. Petitioner's work status remained "off-work." PX12 at 0301.

On June 25, 2019, Petitioner presented to Associated Surgical Center f/k/a Garcia Surgical Center and underwent surgery on his left foot and ankle. PX13. The surgery was performed by Dr. Kane. *Id.* Petitioner's preoperative diagnosis was Weber "C" left ankle fracture with subluxation of the ankle joint. PX13 at 0304. The postoperative diagnosis was the same as the preoperative diagnosis, along with an additional diagnosis of synovitis of the left ankle joint. *Id.* The specific procedures Petitioner underwent on June 25, 2019 are as follows: (1) open reduction and internal fixation of left ankle fracture with use of 5-hole wright medical fibular plate with 4 screws; (2) manipulation and repositioning of the talus back into the ankle joint; (3) synovectomy left ankle; and (4) use of intraoperative fluoroscopic x-ray. Once the procedure was complete Petitioner was discharged and scheduled to follow-up in one week. PX13 at 0306.

On June 27, 2019, Petitioner scheduled for a follow up appointment with Dr. Toolan at University of Chicago Medicine. PX14. The appointment was cancelled given Petitioner's foot and ankle injuries were being treated by Dr. Kane, and Petitioner had just undergone surgery just two days prior. (PX14 at 0312-0313; PX13).

From June 28, 2019, through September 17, 2019, Petitioner followed up periodically with Dr. Kane for postoperative monitoring and treatment of his left foot/ankle and left great toe injuries. PX15.

During roughly the same timeframe, from July 10, 2019, through September 23, 2019, as instructed by Dr. Kane, Petitioner also attended periodic treatment and physical therapy for the left foot/ankle injuries at Advanced Physical Medicine. PX15.1 at 0338-0352.

On June 28, 2019, Petitioner followed up with Dr. Kane. PX15 at 0315-0316. Dr. Kane documented Petitioner's history as "performing his normal work duties on May 29, 2019 when he suffered a work injury resulting in a crush and twisting of his left ankle." PX15 at 0315. On examination of Petitioner's postoperative condition, Dr. Kane noted the anatomical positioning of Petitioner's talus was excellent, but the widening of the medial gutter had not been reduced since the surgical procedure. *Id.* Petitioner's fracture boot was replaced, medications were updated, and his surgical wounds were given fresh bandages. *Id.* at 0316. Petitioner's work status remained "off-work." PX15 at 0316.

On July 2, 2019, Petitioner followed up with Dr. Kane. PX 15. Dr. Kane again documented Petitioner's history as "performing his normal work duties on May 29, 2019 when he suffered a work injury resulting in a crush and twisting of his left ankle." PX15 at 0318. Petitioner's fracture boot was removed and replaced given residual bleeding. *Id.* All sutures were removed. *Id.* Given Petitioner suffered pain along the lateral aspect of his left ankle above the surgical site, X-rays were ordered and obtained. PX15 at 0318-0319. Dr. Kane ordered a physical therapy evaluation to begin early range of motion exercises, and otherwise instructed Petitioner continue use of the fracture boot, walker, cold therapy machine, and medications as directed. PX15 at 0317-0320. Petitioner was further instructed to remain "off-work," and to follow up in one week. PX15 at 0319-0320.

On July 9, 2019, Petitioner followed up with Dr. Kane. PX15 at 0321. Petitioner continued to suffer pain along the lateral aspect of his left ankle above the surgical site. PX15 at 0321. Given spasms and pain in Petitioner's left limb, he was provided an EMS unit on this date. *Id.* Petitioner's work status remained "off-work" and he was instructed to follow up in one week. *Id.* at 0322. Dr. Kane continued to recommend physical therapy. *Id.* at 0321-0332.

On July 10, 2019, Petitioner presented to Dr. Aleksandr Goldvekht at Advanced Physical Medicine for an initial evaluation. PX15.1. The history of the accident was documented as "on 5.29.19, while he was working for SMG, he stated that he was using a pallet jack when it rolled over his left foot/ankle causing him to fall." PX15.1 at 0340. Petitioner's history of his condition(s) of ill being on that date included that "since the incident, he ha[d] been experiencing pain at his lower left leg and left ankle which [wa]s aggravated by walking up or down stairs." *Id.* Dr. Goldvecht's objective findings on that date included antalgic gate, as well as swelling and tenderness around the surgical scar area. *Id.* Dr. Goldvecht diagnosed Petitioner with (1) a left ankle fracture status post ORIF surgery; and (2) left leg injury/contusion. Petitioner was dispensed Mobic, instructed to follow up with his surgeon for his left ankle injuries, and instructed to follow up in four weeks or as needed. *Id.*

On July 15, 2019, Petitioner presented to Advanced Physical Medicine for an initial physical therapy evaluation with Mitchel Bershader, PT. PX15.1 at 0345-0346. Petitioner's diagnoses as of this date included: left ankle fracture status post ORIF surgery; left leg injury; contusion; left knee pain. *Id.* Regarding the history of Petitioner's present condition, it was explicitly documented that it began following the work injury when equipment struck his left leg; that his left ankle pain was daily, constant, sore, and stiff; and that he also suffered daily, constant pain in his left knee along with swelling, achiness, soreness, stiffness, and difficulty with activities of daily living. *Id.* Petitioner's pain in his left ankle was rated as 6 out of 10, and his pain in his left knee was 7-9 out of 10. *Id.* Petitioner was instructed to undergo physical therapy 2-3 times per week with treatment modalities focused on both his left ankle as well as his left knee. *Id.*

On July 16, 2019, Petitioner followed up with Dr. Kane. PX15 at 0324. No changes were noted regarding Petitioner's condition(s) and ongoing treatment recommendations relative to the July 9, 2019, follow up visit. Petitioner's work status remained "off-work" and he was provided an updated work status note keeping him off work through August 6, 2019. *Id.* at 0325, 0327.

On July 24, 2019, Petitioner attended physical therapy at Advanced Physical Medicine. PX15.1 at 0348. On July 31, 2019, Petitioner attended physical therapy at Advanced Physical Medicine. PX15.1

at 0348. On August 5, 2019, Petitioner attended physical therapy at Advanced Physical Medicine. PX15.1 at 0349.

On August 5, 2019, Petitioner followed up with Dr. Kane. PX15 at 0328. At the time of this visit, Petitioner's surgical incision line exhibited dehiscence along the proximal aspect of the wound. *Id.* Dr. Kane recommended a debridement procedure, and Petitioner underwent the debridement of the surgical wound that same day. *Id.* The debris taken from the procedure was sent to a pathologist to investigate further for possible infection. *Id.* In addition, Petitioner continued to suffer "pain along the dorsal aspect of his left foot where there is a 2 centimeter blemish with pigmentation changes where there had been pressure across the top of his foot during the injury." *Id.* Accordingly, Dr. Kane ordered additional X-rays of Petitioner's left foot, which were obtained the same day. *Id.* Petitioner was prescribed Keflex and instructed to continue post-operative instructions including use of an AFO within his shoe. *Id.* at 0328-0329. Petitioner's work status remained "off work." *Id.* at 0329.

On August 12, 2019, Petitioner attended physical therapy at Advanced Physical Medicine. PX15.1 at 0350. Petitioner experienced left ankle pain that was rated 6 out of 10, as well as pain in his left knee that was rated 8 out of 10. *Id.*

On August 12, 2019, Petitioner also followed up with Dr. Kane. PX15 at 0330. Petitioner's surgical incision continued to exhibit dehiscence along the proximal aspect of the wound, and thus an additional debridement procedure was performed to help close the wound. *Id.* Dr. Kane further documented that Petitioner's physical therapy was going well and his postoperative foot and ankle conditions had improved significantly since the August 5, 2019, follow up visit. *Id.* Dr. Kane encouraged Petitioner to increase his activity levels as tolerated, continue physical therapy, and remain "off work." *Id.* at 0331. Though his foot and ankle conditions seemed to be improving with physical therapy, Petitioner suffered mild to moderate pain in his left knee as of the August 12, 2019, visit with Dr. Kane. PX15 at 0330-0331. Moreover, Petitioner's pain was such that he was wearing a brace on his left knee (that he had acquired from a prior injury) at the August 12, 2019 follow up appointment. *Id.* Dr. Kane explicitly documented his opinion that Petitioner's left knee pain on August 12, 2019, was causally connected to the work accident. PX15 at 0331. Specifically, Dr. Kane stated Petitioner's left knee pain is "directly related to the work injury . . . Although the patient had a prior existing injury he was working full duty without restriction and without symptoms prior to this left ankle fracture. Described by the patient was a sheering and twisting of his left leg which is likely affected meniscus of his left knee." *Id.*

On August 16, 2019, Petitioner attended physical therapy at Advanced Physical Medicine. PX15.1 at 0350. Petitioner experienced left knee pain that was rated 5 out of 10. *Id.* On August 26, 2019, Petitioner attended physical therapy at Advanced Physical Medicine. PX15.1 at 0351. Petitioner experienced left knee pain that was rated 6 out of 10. *Id.*

On August 27, 2019, Petitioner presented to Dr. Goldvekht at Advanced Physical Medicine. PX15.1 at 0341. Dr. Goldvecht administered a Kenalog/Lidocaine injection to Petitioner's left knee. *Id.* The clinical indication for the injection was persistent pain and discomfort in Petitioner's left knee. *Id.*

Later that day on August 27, 2019, Petitioner followed up with Dr. Kane. PX15 at 0332. Petitioner's surgical wounds were examined and the debridement site was significantly smaller than the

previous visit, and Dr. Kane noted it was healing well. *Id.* Petitioner was instructed to continue physical therapy and was casted for a pair of orthotic prosthetic devices. *Id.* Petitioner's work status remained "off work." *Id.* at 0333. Regarding the left knee, Dr. Kane documented that Petitioner had attended an appointment that same day specifically for his left knee injuries. PX15 at 0332. Dr. Kane documented his opinion that "There is a direct causal relationship between the recent accident at work and his left knee pain." *Id.*

On September 6, 2019, Petitioner attended physical therapy at Advanced Physical Medicine. PX15.1 at 0351. Petitioner experienced left knee pain that was rated 7 out of 10. *Id.*

On September 7, 2019, Petitioner followed up at Advanced Physical Medicine. PX15.1 at 0342. Dr. Goldvekht documented that the injection Petitioner received on August 27, 2019, did not resolve his left knee pain. *Id.* He also noted the scar from left ankle surgery was well healed. *Id.* Dr. Goldvekht instructed Petitioner to continue taking Mobic and protonix and continue following up with Dr. Kane for his left foot/ankle injuries. *Id.* Dr. Goldvekht also noted an MRI was ordered for Petitioner's left knee, and instructed Petitioner to follow up in four weeks after the MRI of the left knee is performed. *Id.*

On September 9, 2019, Petitioner attended physical therapy at Advanced Physical Medicine. PX15.1 at 0352. Petitioner experienced left knee pain that was rated 7 out of 10. *Id.* Petitioner objectively exhibited little change in knee strength from previous visits. *Id.*

On September 10, 2019, Petitioner followed up with Dr. Kane. PX15 at 0334. Petitioner was instructed to continue physical therapy and was also dispensed medications for symptoms related to the left ankle injuries. *Id.* Dr. Kane also applied a modified Unna boot to reduce localized swelling around the left ankle. *Id.* at 0335. Petitioner's work status remained "off work."

On September 17, 2019, Petitioner followed up with Dr. Kane. PX15 at 0336. Petitioner continued to suffer pain along the lateral aspect of his left ankle above the surgical site, which had persisted since his injury, though he did note improvement from the previous visit with Dr. Kane. The lateral ankle and lower leg symptoms had improved, but swelling in the surgical leg persisted. *Id.* Dr. Kane prescribed a custom support stocking with a zipper for his left leg. *Id.* at 0336-0337. Dr. Kane also noted that Petitioner was still awaiting the orthotic devices which Dr. Kane initially recommended on August 27, 2019. PX15 at 0337; PX15 at 0332.

On September 18, 2019, Petitioner underwent an MRI of the left knee. PX15.1 at 0344. According to the radiologist who administered the study, the MRI showed a large horizontal medial meniscal tear involving the midbody and posterior horn in Petitioner's left knee, as well as joint effusion. *Id.*

On September 23, 2019, Petitioner followed up at Advanced Physical Medicine. PX15.1 at 0343. Petitioner continued to experience pain in his left knee and left ankle, which were made worse from activities including walking up or down stairs or inclines. *Id.* Dr. Goldvekht instructed Petitioner to continue following up with his surgeon for the left foot/ankle injuries, and noted that Petitioner was being referred to consult an orthopedic surgeon for his left knee. *Id.*

On September 24, 2019, Petitioner followed up with Dr. Douglas Evans at Loyola Medicine for his left knee injuries. PX16 at 0353-0363. Dr. Evans summarized Petitioner's left knee treatment history beginning with December 2018, which was the last time Dr. Evans had seen Petitioner prior to September 24, 2019. PX16 at 0357. Dr. Evans noted that since the December 2018 visit, Petitioner had seen Dr. Rees who recommended a total knee arthroplasty, but also that Petitioner had been wearing his Ossur valgus unloader brace more regularly and was promoted [at work]. *Id.* Dr. Evans further documented that the brace "works when he was actually doing more walking and he felt with increased walking in the brace that he was actually doing better, so he chose not to proceed with a total knee arthroplasty. Then on 5/29/2019, he was working with. . .a router jack [and] the router jack rolled off on his left leg fracturing his left foot and ankle [and] he has noted since that time he has had increased left knee pain." PX16 at 0357. Dr. Evans also noted that the repeat MRI had been obtained "showing increased tearing of the medial meniscus." *Id.* On examination, Petitioner had varus deformity to his left knee and tenderness over his medial joint line, as well as a positive McMurray's test. *Id.* Dr. Evans diagnosed Petitioner with left knee severe medial compartment arthritis with medial meniscus tear. *Id.* Ultimately, Dr. Evans recommended Petitioner schedule another follow up with Dr. Rees to discuss a total knee arthroplasty. *Id.*

On October 1, 2019, Petitioner followed up with Dr. Kane. PX17 at 0365-0366. Dr. Kane noted pertinent history including that Petitioner "was performing his normal work duties on May 29, 2019 when he suffered a work injury resulting in a crush and twisting of his left ankle." Dr. Kane reiterated that the ORIF surgery was medically necessary to a reasonable degree of medical and surgical certainty. *Id.* Dr. Kane noted persistent pain in the lateral aspect of Petitioner's left ankle above the surgical site and recommended he continue with physical therapy. *Id.* Dr. Kane also applied a modified Unna boot to the foot, ankle, and lower leg to decrease swelling. *Id.* Finally, Dr. Kane referenced Petitioner's treatment for his left knee pain and explicitly opined there is "a direct causal relationship" between the work accident on May 29, 2019 and Petitioner's knee pain. *Id.* Petitioner's work status remained "off work." *Id.*

On October 15, 2019, Petitioner followed up with Dr. Kane. PX17 at 0367-0368. Dr. Kane noted mild to moderate ankle instability and recommended orthotic prosthetic devices and a pair of orthopedic shoes for support, which would be used when he returns to work full duty without restrictions. *Id.* at 0367. Dr. Kane also commented on Petitioner's persistent pain along the lateral aspect of the left ankle near the surgical site as seemingly related to the internal fixation hardware in that area, as Petitioner suffered a sharp shooting pain "consistent with a screw that may be backing out." *Id.* Dr. Kane documented that "there may be a need for removal of the fracture plate and screws at a later date." *Id.* Dr. Kane applied a modified Unna boot to reduce swelling and noted they were waiting on production of the prescription support stocking. *Id.* at 0368.

On October 24, 2019, Petitioner followed up with Dr. Kane. PX17 at 0369-0370. Petitioner's condition was largely unchanged from the prior visit. *Id.* Dr. Kane applied a modified Unna boot to reduce swelling in the left ankle. *Id.* at 0370. Dr. Kane also ordered a second pair of prescription stockings and Petitioner was measured for the same. *Id.* Petitioner's work status remained "off work."

On October 24, 2019, Petitioner followed up with Dr. Harold Rees at Loyola Medicine. PX18. Dr. Rees documented he last saw Petitioner regarding his left knee condition in December 2018, and that at that time Dr. Rees recommended a total knee arthroplasty but Petitioner had gotten some

improvement with an unloader brace and decided not to proceed. PX18 at 0379. Dr. Rees included pertinent history that on the date of the accident Petitioner "was at work and a Powerjack rolled over his left foot and it was pinned under it for a short time. As a result he sustained fractures of the left ankle and foot. . .In the process of this injury he twisted his knee and now it is very painful again. He has had treatment with PT, a cortisone shot, and an unloader brace, but these are no longer helping." *Id.* Dr. Rees noted his impression as: "Osteoarthritis Left knee, aggravated by work injury." *Id.* at 0380. Dr. Rees recommended Petitioner undergo a left total knee arthroplasty, but instructed Petitioner that he needs to optimize his health before scheduling surgery. *Id.*

Within the Loyola Medicine medical records are diagnostic reports from dates of service which predate the work accident. PX18 at 0389-0393. The Loyola Medicine medical records show that on August 22, 2017, Petitioner underwent X-rays of his left knee, and the report indicates an impression of left knee varus osteoarthritis. PX18 at 0389-0390.

The Loyola Medicine medical records show that on October 30, 2018, Petitioner underwent X-rays of his left knee which yielded an impression as follows: "Osteoarthritis left knee with genu varus and lateral tibial subluxation similar to examination 2017." *Id.* at 0391.

The Loyola Medicine medical records show that on November 19, 2018, Petitioner underwent an MRI of his left knee which showed a medial meniscal tear of the posterior horn and body with complete extrusion of the body, as well as tricompartmental articular cartilage degeneration greatest at the medial compartment and a focal cleft at the trochlear cartilage which was new as compared with a 2017 study. PX18 at 0393.

On November 4, 2019, Petitioner attended a Section 12 Examination with Dr. Troy Karlsson as scheduled by Respondent. RX1. Dr. Karlsson opined that Petitioner did not suffer any direct knee injury as a result of the accident other than a contusion, and that Petitioner's pre-existing arthritis in his left knee was not caused by, accelerated by, aggravated by, or made symptomatic as a result of the accident; and that the full cause of his condition of ill-being in his left knee as of the date of the examination was preexisting degenerative changes. *Id.* Dr. Karlsson also testified that as of the November 4, 2019, Section 12 Examination, Petitioner was at maximum medical improvement for his left foot and ankle condition(s) of ill-being; and that maximum medical improvement was not applicable to his left knee condition(s) of ill-being since according to Dr. Karlsson, his left knee injuries were wholly and completely and solely due to preexisting degenerative conditions and the work accident in essence had no effect at all aside from a possible contusion. *Id.*

On November 5, 2019 and November 12, 2019, Petitioner followed up with Dr. Kane. PX19 at 0408-0411. At each of these visits, Petitioner had ongoing pain near the surgical site which Dr. Kane continued to suspect could be from some loose hardware in his left foot and ankle. *Id.* At each visit, Dr. Kane applied a modified Unna boot to reduce swelling, and also instructed Petitioner to wait and see if the support stocking is effective in reducing symptoms before considering hardware removal surgery. *Id.* Petitioner's work status remained "off work." *Id.*

On November 13, 2019, Petitioner presented to Dr. John J. O'Keefe at Marian Orthopedic & Rehabilitation for an orthopedic consultation and/or second opinion for his left knee injuries per a referral from Dr. Kane. PX20 at 0433-0434. Dr. O'Keefe included a very detailed history of present

illness including that Petitioner worked in the warehouse/freight handling industry for approximately 4 years and had never missed work due to left knee problems until the accident occurred. *Id.* at 0433. Dr. O'Keefe documented the mechanism of accident: Petitioner "was working a power truck in a tight space. The truck ran up onto his left ankle producing a fracture. . .also sprained his knee and has had popping, pain, and weakness since." *Id.*

Dr. O'Keefe reviewed and interpreted the September 18, 2019, left knee MRI and authored an MRI interpretation report wherein he documented that he found articular cartilage in many of the views but that it was thinned in the medial compartment, "consistent with a traumatic cartilage injury." PX20 at 0428. Dr. O'Keefe's impression based on the MRI included a meniscal tear and a cruciate ligament sprain, and he explicitly opined the same were a result of the May 2019 work accident and not a preexisting condition. *Id.* at 0433. Dr. O'Keefe's clinical impression reiterates that Petitioner was without debility and able to work a heavy trucking/warehouse position until the accident occurred, and that since that time Petitioner has had pain and tenderness in his left knee. *Id.* For treatment, Dr. O'Keefe ordered new X-rays of the left knee, referred Petitioner to undergo physical therapy focused on the knee, prescribed Relafen and Prevacid, and instructed Petitioner to follow up thereafter. *Id.* Finally, Dr. O'Keefe documented that he suspected Petitioner had internal derangement in his left knee which might require arthroscopic assessment, and explicitly opined: "It is my expert opinion that if [arthroscopic assessment] is required it is because of his May of 2019 injury and not some preexisting condition. The patient worked 45 and 50 hour weeks with heavy freight handling without debility or problems for 5 or 7 months prior to this work injury date. Since the injury date, he has not been able to walk effectively. . ." PX20 at 0434.

On November 21, 2019, Petitioner followed up with Dr. O'Keefe at Marian Orthopedic & Rehabilitation Centers. PX20 at 0435. Dr. O'Keefe noted that Petitioner reported knee symptoms along with ankle injuries immediately after the accident to the emergency department doctor(s). *Id.* On physical examination, Dr. O'Keefe found numerous abnormalities including intense tenderness at the medial joint line and posterolaterally and positive McMurray's sign, pivot shift, and Lachman's tests. *Id.* Dr. O'Keefe's clinical impression included painful, unstable, sprained knee from work injury in May of 2019; abnormal MRI from September 2019 documenting a posterolateral meniscal tear; and cruciate ligament sprain producing laxity and instability. *Id.* Ultimately, Dr. O'Keefe reiterated his referral to Sports & Ortho, and recommended arthroscopic assessment of the left knee with possible meniscal repair. *Id.* Petitioner's work status was to remain off work from November 21, 2019, until released from care for the left knee. *Id.*

From November 21, 2019, through December 12, 2019, as instructed by Dr. O'Keefe, Petitioner underwent physical therapy with Lauren Middleton, DPT, at Sports & Ortho. PX21. Ultimately, the course of physical therapy was unsuccessful in remedying Petitioner's left knee injuries and he exhausted conservative treatment; he was instructed to forego any additional physical therapy until he has surgery as no significant progress in his symptoms or function was gained with therapy. PX21 at 0447.

Contemporaneously with the course of physical therapy for his left knee injuries, Petitioner continued to follow up postoperatively with Dr. Kane for his left foot and ankle injuries. PX22. Follow-up appointments that Petitioner attended with Dr. Kane during that time period include dates of service:

November 26, 2019, December 3, 2019, December 17, 2019, and December 30, 2019. PX22 at 0450-0457.

On January 2, 2020, Petitioner followed up with Dr. O'Keefe at Marian Orthopedic & Rehabilitation Centers. PX23. Since the November 21, 2019, visit, Dr. O'Keefe learned additional details and history; including gaining some knowledge of Petitioner's treatment at Loyola Medicine with Dr. Rees and Dr. Edwards in 2017 and 2018; and he noted his understanding of the same in his January 2, 2020, chart notes. *Id.* at 0459-0460. Dr. O'Keefe explicitly opined that Petitioner "was a high functioning, very active truck driver for McCormick Place who was working well over 50 hour weeks and never had complaints of knee pain, debility, medical treatment, or medications. Since the injury of 05/29/2019, the patient has had catching, popping, and instability [in the left knee]." *Id.* Dr. O'Keefe recommended that Petitioner proceed with arthroscopic assessment of the left knee with possible meniscus repair on an urgent basis. *Id.* Finally, Dr. O'Keefe commented as to his qualms with the opinions of Dr. Karlsson "who is oblivious to the patient's high function and no debility for 2 years prior to [the accident]. He is painting a picture where the patient had severe arthritis and poor function before the accident and that is absolutely false. . . He had high function and good safe function, at the same employment site, until [the accident]." *Id.* at 0459.

On January 20, 2020, Petitioner followed up with Dr. Kane for his left foot and ankle injuries. PX24. Petitioner had persistent pain along the surgical site, and palpation along the lateral aspect of the left ankle revealed an elevated screw which appeared loose on X-rays as well. PX24 at 0464. The ongoing pain along the surgical site negatively affected Petitioner's ability to walk, and in part based on this indication, Dr. Kane recommended Petitioner undergo a hardware removal surgery to extract the plate and screws. *See* PX24 at 0464-0465. Petitioner's work status remained "off work." *Id.* at 0465.

On January 21, 2020, Petitioner underwent left knee surgery at Associated Surgical Center, which was performed by Dr. O'Keefe. PX25. The chief complaint was left knee internal derangement with worsening symptoms of traumatic arthritis since a work injury that was well reported and documented on 05/29/2019. PX25 at 0467. Procedures performed include examination in preoperative holding area; examination with general anesthesia; arthroscopic assessment and debridement of synovitis in the medial, anterior, and lateral compartments; excision of inflamed medial plica which was thickened and impinging on the trochlea; partial meniscectomy of tear and Outerbridge Grade IV injury containing lesion in the medial compartment; repair of tear in the lateral meniscus posterior horn using Cinch Arthrex absorbable anchor system; chondroplasty excising unstable bits of full-thickness medial meniscus tear; arthroscopic heat shrink repair of anterior cruciate ligament laxity; application of VascuTherm cold compressive device; and arrangements to use a continuous passive motion (CPM) machine postoperatively for one month. PX25 at 0468-0469.

From January 23, 2020, to February 4, 2020, Petitioner underwent physical therapy and postoperative follow-ups at Marian Orthopedic & Rehabilitation Centers per the instructions of Dr. O'Keefe. *See* PX26.

On January 23, 2020, Petitioner presented to Dr. O'Keefe for his initial postoperative follow-up. PX26 at 0484-0485. Dr. O'Keefe documented that at surgery, he found traumatic meniscal tears and anterior cruciate ligament sprain. *Id.* Petitioner was prescribed medications and was recommended to undergo physical therapy three times per week; he was also instructed to use a hinged knee brace, and to

remain "off work." PX26 at 0480. That same day, as instructed, Petitioner underwent an initial physical therapy examination at Marian Orthopedic & Rehabilitation Centers. PX26 at 0475-0476.

On January 30, 2020, Petitioner followed up with Dr. O'Keefe. PX26 at 0483. Petitioner's surgical wounds exhibited good initial healing without infection and he was making acceptable progress in physical therapy. *Id.* In reviewing his intraoperative findings, Dr. O'Keefe stated that Petitioner had palpable irregularities in the medial and femoral condyles which were photographed at surgery which would be considered Outerbridge Grade IV injuries and for which Dr. O'Keefe recommended a membranous autologous cartilage implantation (MACI) procedure. *Id.*

On February 4, 2020, Petitioner attended physical therapy at Marian Orthopedic & Rehabilitation Centers. PX26 at 0492. He was able to complete all exercises safely and was progressing with therapy at an acceptable rate. *See id.*

On February 7, 2020, Petitioner followed up with Dr. Kane to evaluate his postoperative left foot and ankle injuries. PX27. Dr. Kane noted Petitioner was actively treating for the left knee with Dr. O'Keefe, and otherwise reiterated his recommendation for an outpatient surgical procedure for removal of the internal fixation hardware in Petitioner's left ankle. PX27 at 0495-0496.

From February 11, 2020, through March 5, 2020, Petitioner continued to follow up with Dr. O'Keefe at Marian Orthopedic & Rehabilitation, and also continued to attend postoperative physical therapy at the same location. PX28. On February 11, 2020, he attended physical therapy. *Id.* at 0498-0499.

On February 13, 2020, Petitioner followed up with Dr. O'Keefe at Marian Orthopedic & Rehabilitation Centers. PX28 at 0500. Dr. O'Keefe continued to emphasize his recommendation for a cartilage repair/membranous autologous cartilage implantation (MACI) procedure. PX28 at 0500-0501. Petitioner also underwent a physical therapy session that same day. *Id.* at 0502-0503. He attended additional physical therapy sessions on February 20, 2020; February 27, 2020; and March 5, 2020. PX28 at 0504-0513.

On March 5, 2020, Petitioner also followed up with Dr. Kane with respect to the left foot and ankle injuries. PX29. Dr. Kane noted Petitioner had already undergone arthroscopic surgery on the left knee; explained on this date that the internal fixation hardware in Petitioner's left ankle needed to be removed; and depending on the left knee treatment, the left ankle hardware removal procedure could and should be scheduled. PX0514-0516. Petitioner was also provided a temporary 6 month placard to use during his recovery. *Id.* at 0516.

On March 12, 2020, Petitioner followed up with Dr. O'Keefe. PX30. As of this date the surgical wounds were well healed, and Petitioner had made good progress in physical therapy. *See id.* at 0518. Dr. O'Keefe documented that it had been 8 weeks since initially requesting authorization from Respondent's workers' compensation carrier to perform the recommended MACI procedure, but that he still did not have the permission to move forward with the same. *Id.* Dr. O'Keefe noted that Petitioner was also having issues getting the hardware removal procedure for his left ankle as recommended by Dr. Kane authorized. *Id.* Dr. O'Keefe deferred Petitioner's work status and follow ups to Dr. Kane on an

interim basis and explained in the meantime he would continue seeking authorization for knee care and treatment. *Id.*

On March 26, 2020, Petitioner followed up with Dr. Kane who again recommended hardware removal surgery but authorization for that procedure from Respondent's workers' compensation insurance carrier remained elusive. PX31 at 0523-0524. Petitioner was instructed to discontinue use of the AFO and to continue use of orthopedic prosthetic devices and orthopedic shoes, as well as the prescription support stocking he was provided previously. *Id* at 0524.

On May 4, 2020, Petitioner attended a second Section 12 Examination with Dr. Karlsson, as scheduled by Respondent. *See* RX2. In his report following the second visit with Petitioner, Dr. Karlsson opined that the variances in the histories for mechanism of accident as documented by Petitioner's various providers were "much different" and inconsistent. *Id.* Regardless, Dr. Karlsson opined that his causation opinions were unchanged for either the left knee or left foot and ankle. Dr. Karlsson opined that Unna boots as applied by Dr. Kane were not necessary to treat Petitioner's left foot/ankle condition, and further that orthopedic shoes were not reasonable or necessary. He opined the arthroscopic surgery performed by Dr. O'Keefe was not reasonable or necessary for any condition related to the work accident, and that the MACI procedure recommended by Dr. O'Keefe was contraindicated by chronic degenerative changes. *Id.* Finally, he opined that the hardware removal surgery recommended by Dr. Kane was reasonable and necessary to treat Petitioner's left ankle condition, and that he would not be at maximum medical improvement for the left ankle until 3 months following hardware removal. *Id.*

On June 4, 2020, Petitioner followed up with Dr. Kane who documented the hardware removal surgery had finally been authorized. PX31 at 0525. X-rays of Petitioner's left ankle were obtained revealing multiple screws and plate in the area of the left ankle fracture. *Id.* Petitioner was diagnosed with loose painful hardware; a modified Unna boot to reduce swelling was applied; Petitioner was provided a heel pad to help offload the left ankle joint; and Dr. Kane noted Petitioner would be contacted to schedule the hardware removal surgery. *Id.* at 0525-0526.

On June 10, 2020, Petitioner underwent left ankle internal fixation - hardware removal surgery at Associated Surgical Center, which was performed by Dr. Kane. PX32 at 0528 – 0532.

From June 16, 2020, through September 14, 2020, Petitioner followed up with Dr. Kane for continued monitoring and treatment of his postoperative left ankle condition, status post removal of painful hardware. PX33. On June 25, 2020, Petitioner presented to Dr. Kane with an area of dehiscence along the incision line that required a surgical debridement to prevent infection. PX33 at 0539-0541. Petitioner was also provided a Z-Pak to control potential infection. *Id.*

On August 6, 2020, Petitioner again followed up with Dr. Kane. PX33 at 0546. Dr. Kane noted that "the left ankle appears to be functioning well with the exception of the fact there is a dehiscence along the proximal aspect of the wound." *Id.* Dr. Kane recommended Petitioner continue increasing activity levels as tolerated, reminded him to keep the left foot and ankle dry and clean, and finally applied an Unna boot to help reduce swelling and provide support. *Id.* at 0547. On September 3, 2020, Petitioner followed up with Dr. Kane; the findings and recommendations were unchanged since the prior visit in August 2020. *Id.* at 0548-49.

On September 4, 2020, Petitioner attended a third Section 12 Examination as scheduled by Respondent. RX3. Following this third examination in less than a year, Dr. Karlsson authored a report which largely confirmed that his opinions outlined in the November 4, 2019, report and May 14, 2020, report remained unchanged. *Id.* Dr. Karlsson opined that periodic follow-ups with Dr. Kane were reasonable to treat Petitioner's condition. *Id.* Dr. Karlsson also performed an AMA Impairment Evaluation on September 4, 2020. RX4. Dr. Karlsson opined that Petitioner's condition(s) would equate to 6% partial impairment of the whole person if considering both the left knee and left ankle conditions. *Id.*

On September 14, 2020, Petitioner followed up with Dr. Kane. PX33 at 0552. X-rays of Petitioner's left ankle were obtained and reviewed, and Dr. Kane noted Petitioner had increased his activity levels and improved his range of motion. *Id.* at 0550-0553.

On September 17, 2020, Petitioner returned to Dr. O'Keefe for post-operative monitoring and treatment of his left knee. PX34. The MACI procedure recommended by Dr. O'Keefe still was not approved. *Id.* at 0556. In the interim, Petitioner had been performing a home exercise program, which was made more difficult due to grinding and popping in the knee. *Id*. Petitioner was still ambulating with assistive support and a brace on the left knee. *Id.* Dr. O'Keefe encouraged Petitioner to continue his exercises and try to improve power before snow and ice arrived in winter, and otherwise provided him a new work status note showing he was to remain "off work." *Id.*

On October 15, 2020, the evidence deposition of Dr. John O'Keefe, MD, was taken in accordance with Illinois Supreme Court Rules and pursuant to agreement of the parties. PX50.

On December 14, 2020, the evidence deposition of Dr. Troy Karlsson, MD, was taken in accordance with Illinois Supreme Court Rules and pursuant to agreement of the parties. RX6. Dr. Karlsson testified he is a practicing orthopedic surgeon who performs three to four hundred surgeries per year. *Id.* at RX-001 – RX-003. He testified that of the three to four hundred surgeries he performs, approximately 40% are knee surgeries, 30% are hip surgeries, 20% are shoulder surgeries, and at least a portion of the remaining 10% are ankle surgeries. *Id.*

From November 17, 2020, through April 20, 2021, Petitioner continued following up with Dr. Kane for his left foot and ankle injuries. PX35. Throughout that time period, Petitioner's left ankle had good function, though he continued to suffer from infection/dehiscence along the surgical site, along with pain in his left knee, each of which slowed his progress. *Id*.

On March 4, 2021, Dr. Kane performed a deep suture abscess removal procedure. PX35 at 0563-0566.

On March 11, 2021, as instructed by Dr. Kane, Petitioner underwent some therapeutic sessions including ultrasound application, CPM Machine Therapy, and whirlpool therapy all of which were effective and provided Petitioner relief. PX35 at 0566-0567. In addition, as of the March 11, 2021, follow-up with Dr. Kane, it was noted that Petitioner's deep suture abscess had healed nicely.

On April 20, 2021, Petitioner attended his final appointment with Dr. Kane. PX35 at 0572. As of that date, Petitioner's left ankle condition had improved to the point that Dr. Kane opined he could return to work early the following week. *Id.* Dr. Kane also recommended that prior to returning to work, that Petitioner should consult Dr. O'Keefe regarding clearance for his knee injuries, and opined that prior to reaching maximum medical improvement for the left foot and ankle injuries, Petitioner would need: (1) a pair of orthopedic prosthetic devices, prescription orthotics, each year for the remainder of his working career; and (2) a pair of orthopedic shoes, for work, for the remainder of his working career. *Id.*

On May 6, 2022, the evidence deposition of Dr. John F. Kane, DPM, was taken in accordance with Illinois Supreme Court Rules and pursuant to agreement of the parties. PX51.

At trial, numerous medical bills exhibits were admitted into evidence. PX37-PX49. In addition, a photograph depicting a rider jack such as that which was involved in the accident was admitted into evidence strictly for purposes of illustration or as a demonstrative exhibit. PX52.

Petitioner's Testimony Regarding Prior Injuries

Petitioner denied that he had any prior injuries to his toe, foot, and ankle that required medical treatment. (Tr., p 25).

Petitioner testified that, other than arthritic pain and an injury related to playing basketball, he had no other injuries to his left knee that related to surgery or anything of that magnitude. (Tr., p. 26). He testified that he was at least periodically treating for his left knee at Loyola University Medical Center at least as far back as August of 2017 up through at least approximately six months prior to the May 29, 2019 work incident. (Tr., pp. 27-28). He testified he saw Dr. Evans and Dr. Rees at Loyola. (Tr., p. 28).

Petitioner testified that the treatment with Dr. Evans consisted of some physical therapy followed by a cortisone injection in the left knee. He testified he saw Dr. Evans about one year later. (Tr., p. 29). He then testified that Dr. Evans referred him to Dr. Rees. (Tr., p. 30). Petitioner testified he played sports and was concerned about his pain, so there was a suggestion about a possible knee replacement by Dr. Rees if his knee did not get better. (Tr., pp. 31-32).

Petitioner testified he did not undergo the knee replacement because he received a promotion and was working more while wearing his brace, so his knee felt better. (Tr., p. 32). He explained he was getting in exercise working more hours, which made his knee feel better. However, he testified he still had pain. (Tr., p. 33).

Petitioner testified that between August 2017 and May 29, 2019, Respondent employed him for the entire period. (Tr., pp. 29-30). He testified he was wearing his knee brace and working full duty through that whole period. (Tr., p. 33). He testified his attendance and his work product was not negatively affected by knee complaints he had prior to his work accident and he received a promotion in mid to late 2018 which included working overtime hours. (Tr., p. 34).

Petitioner testified he did not believe he would have undergone a knee surgery at any time between May 2019 and 2022 if it were not for his work accident of May 29, 2019. (Tr., p. 55).

On cross examination, Petitioner was questioned regarding a motor vehicle accident on May 28, 2014 for which he filed a lawsuit. He could not recall whether he was claiming injuries to the left knee, but testified if the records showed that, he would not disagree. He specifically remembers injuries to his back, neck and collar bone. The medical records as a whole indicate minimal treatment for the left knee related to the May 28, 2014 motor vehicle accident.

On cross examination, Petitioner was questioned regarding a prior work accident while working for Koch Foods on November 22, 2014. He testified that he fell off a dock and landed on the left side of his body. He testified that his primary injuries were to his left shoulder, left elbow and left wrist, but that if the treatment records indicated that he claimed injury to his left knee, he would not disagree. The medical records indicate minimal treatment for the left knee related to the November 22, 2014 unrelated work accident.

Petitioner's Testimony Regarding Current Condition

Petitioner testified he has not been actively treating for the left knee or left ankle since being release by Dr. O'Keefe and Dr. Kane. He testified that he has been working full duty ever since returning to work. (Tr., p. 51). He testified that there are days he has pain. However, he testified he can do his job very well, even with the adjustments he has had to make. (Tr., p. 52). He testified that he just deals with the pain, which does not slow him down because he has to do what he has to do. (Tr., pp. 52-53). He testified that when he is at work, he wears the hinged knee brace that Dr. Rees gave him, which helps him with his pain. He testified he does not utilize any other kind of brace or cane. (Tr., p. 102).

Petitioner testified he does not have any plans of having a knee replacement or the MACI procedure, even though he still has some knee pain. (Tr., p. 53). He does not feel he needs it.

Petitioner testified that since he returned to work, his pay has increased and that he is actually making more than he did at the time of the accident. (Tr., pp. 103-104).

Petitioner testified that even though he has pain in his knee from time to time, he just deals with it and does not take any kind of prescription pain medication or even over-the-counter medications, such as Advil or Tylenol. (Tr., p. 104).

Petitioner testified that he currently does a home exercise program on his own. He admitted he has not been given any restrictions with regard to playing sports from either Dr. Kane or Dr. O'Keefe (Tr., p. 105).

Petitioner was observed by the Arbitrator not wearing a knee brace at trial.

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).

In the case at hand, the Arbitrator observed Petitioner during the hearing and finds him to be a credible witness. The Arbitrator compared Petitioner's testimony with the totality of the evidence submitted and did not find any material contradictions that would deem the witness unreliable. Petitioner appeared to answer questions thoughtfully, honestly and to the best of his ability. He regularly indicated that if the records indicated certain facts that he could not recall, he would not disagree with the records.

F. IS PETITIONER'S CURRENT CONDITION OF ILL-BEING CAUSALLY RELATED TO THE INJURY?

"Whether a claimant's disability is attributable solely to a degenerative process of the preexisting condition or to an aggravation or acceleration of a preexisting condition because of an accident is a factual determination to be decided by the Industrial Commission." *Sisbro, Inc. v. Indus. Comm'n*, 207 Ill. 2d 193, 204–06 (2003); *Roberts v. Industrial Comm'n,* 93 Ill.2d 532 (1983); *Caterpillar Tractor Co. v. Industrial Comm'n,* 92 Ill.2d at 36–37. "Accidental injury need not be the sole causative factor, nor even the primary causative factor, as long as it was *a* causative factor in the resulting condition of ill-being." *Rock Road Construction Co. v. Industrial Comm'n,* 37 Ill.2d 123, 127, 227 N.E.2d 65 (1967). "

Here, the parties stipulated that on May 29, 2019, Petitioner sustained accidental injury arising out of and in the course of his employment by Respondent. Petitioner offered credible, unrebutted testimony, and the medical records clearly demonstrate, that he sustained injuries to three scheduled body parts as a result of the accident: (1) left great toe; (2) left foot/ankle, and (3) left knee. Arbitrator finds that Petitioner's current condition of ill-being in his left great toe, left foot/ankle, and left knee are all causally related to accidental injuries he sustained on May 29, 2019 arising out of and in the course of his employment.

Left Knee

"It has long been recognized that, in preexisting condition cases, recovery will depend on the employee's ability to show that a work-related accidental injury aggravated or accelerated the preexisting disease such that the employee's current condition of ill-being can be said to have been causally connected to the work-related injury and not simply the result of a normal degenerative process of the preexisting condition." *Caterpillar Tractor Co. v. Industrial Comm'n,* 92 Ill.2d 30, 36–37 (1982); *Caradco Window & Door v. Industrial Comm'n,* 86 Ill.2d 92, 99 (1981); *Azzarelli Construction*

Co. v. Industrial Comm'n, 84 Ill.2d 262, 266 (1981); *Fittro v. Industrial Comm'n,* 377 Ill. 532, 537 (1941). "It is axiomatic that employers take their employees as they find them. *Baggett,* 201 Ill.2d at 199, 266 Ill.Dec. 836, 775 N.E.2d 908. 'When workers' physical structures, diseased or not, give way under the stress of their usual tasks, the law views it as an accident arising out of and in the course of employment.'" *General Electric Co. v. Industrial Comm'n,* 89 Ill.2d 432, 434 (1982). "Thus, even though an employee has a preexisting condition which may make him more vulnerable to injury, recovery for an accidental injury will not be denied as long as it can be shown that the employment was also a causative factor." *Caterpillar Tractor Co. v. Industrial Comm'n,* 92 Ill.2d at 36; *Williams v. Industrial Comm'n,* 85 Ill.2d 117, 122 (1981); *County of Cook v. Industrial Comm'n,* 69 Ill.2d 10, 18, (1977); *Town of Cicero v. Industrial Comm'n,* 404 Ill. 487, 89 N.E.2d 354 (1949) (It is a well-settled rule that where an employee, in the performance of his duties and as a result thereof, is suddenly disabled, an accidental injury is sustained even though the result would not have obtained had the employee been in normal health). *Sisbro, Inc. v. Indus. Comm'n*, 207 Ill. 2d 193, 204–05 (2003).

Here, Respondent disputes causal connection between Petitioner's current condition of ill-being and any injury sustained to the left knee on May 29, 2019. Respondent relies on the opinions of Dr. Troy Karlsson in conjunction with some prior medical records that illustrate Petitioner had at least some preexisting condition(s) in his left knee at the time of the work accident.

Petitioner contends that regardless of any preexisting condition of ill-being in his left knee, the accident caused, aggravated, accelerated, exacerbated, or otherwise at least contributed to cause a worsening of his left knee condition; thus rendering Petitioner temporarily and totally disabled, and necessitating all medical treatment for the left knee at issue in this case, including surgery. Petitioner maintains that prior to the accident, he was able to perform all of his assigned duties; at no time was he temporarily and totally disabled due to any preexisting knee condition; and that any medical treatment he received for his left knee prior to the accident was elective.

Taking into account all of the evidence in the record, Arbitrator finds that Petitioner's current condition of ill-being in his left knee is causally related to injuries sustained in the accident.

Arbitrator notes that Petitioner does not dispute prior injury to his left knee. Petitioner credibly testified on both direct and cross examination that he had a history of injuries to his left knee, including sports injuries. Petitioner openly testified with respect to each of Respondent's attempts to impeach his credibility with prior medical records that he suffered some left knee injuries previous to the accident. Notably, Petitioner himself offered prior medical records from Loyola Medical Center into evidence to demonstrate the pre-accident baseline of any condition in his left knee.

Arbitrator finds that although it is clear Petitioner had preexisting conditions in his left knee, it is also clear that the accident at least contributed to cause his current condition of ill-being in his left knee and that the accident caused, aggravated, accelerated, exacerbated, or otherwise contributed to the worsening of Petitioner's left knee condition.

Arbitrator finds Petitioner's credible, unrebutted testimony that he was able to work full duty without restrictions for the entire time he was employed by Respondent prior to the accident as particularly determinative in finding his current condition of ill-being in his left knee to be causally related to injuries sustained in the accident. In addition, Arbitrator finds the fact that Petitioner had

received a promotion prior to the accident as additional evidence he was able to perform all of his assigned duties effectively, even despite any underlying or preexisting condition in the left knee. Moreover, Arbitrator finds that Petitioner's preexisting condition in the left knee only involved elective, sporadic appointments at Loyola Medical Center; and Petitioner certainly was not temporarily and totally disabled due to any condition of ill-being in his left knee at any time prior to the accident.

Arbitrator finds that Petitioner explicitly reported an increase or worsening of pain in his left knee immediately after the accident as documented in the emergency department medical records from University of Chicago, and consistently reported similar complaints to Dr. Harold Rees and Dr. Douglas Evans at Loyola Medicine thereafter. Arbitrator finds the histories and physical examinations documented by Dr. Evans at Petitioner's September 24, 2019, appointment; and by Dr. Rees at Petitioner's October 24, 2019, appointment, to be particularly thorough and instructive given each of those providers had first-hand knowledge of Petitioner's pre-accident baseline and were aware that between December 2018 and the May 29, 2019, work accident, Petitioner's left knee condition had in fact improved with use of a knee brace, and that he experienced better mobility, less pain, and increased activity at work. Based on the same, the Arbitrator finds both Dr. Evans and Dr. Rees clearly documented that Petitioner was able to forego a total knee arthroplasty, perhaps indefinitely, but that increased pain following the accident necessitated he return for additional treatment.

In light of Petitioner's credible, unrebutted testimony and the clear and consistent corroborating medical records as to the worsening of Petitioner's left knee condition following the May 29, 2019, accident, Arbitrator finds the opinions of Dr. O'Keefe and the supporting opinions of Dr. Kane as to Petitioner's left knee condition to be more persuasive than those of Respondent's Section 12 Examiner, Dr. Karlsson. In so finding, Arbitrator finds that Dr. O'Keefe's opinions are more congruent with the record as a whole and the totality of the evidence.

Finally, Arbitrator finds that the totality of the evidence, coupled with common sense, basic human anatomy, and the extensively and consistently documented mechanism of accident, to support the finding that Petitioner's current condition of ill-being in his left knee is causally related to the traumatic accident. Given the proximity of the left knee to Petitioner's left ankle, and the fact that the rider jack impacted Petitioner's left lower extremity with such force as to severely fracture his left ankle and left great toe; to assert that Petitioner's accidental injuries on May 29, 2019 did not at least contribute to cause his left knee condition defies logic and is contrary to the overwhelming evidence supporting causal connection in the record.

Left Great Toe, Left Foot/Ankle

Arbitrator finds that Petitioner's current condition of ill-being in his left great toe and left foot/ankle are causally related to injuries sustained as a result of the May 29, 2019 work accident. Though Respondent disputes certain medical bills for left great toe and left foot/ankle treatment, there is no dispute that Petitioner's current condition of ill-being is causally related to injuries sustained on May 29, 2019 to those body parts.

Petitioner offered credible, unrebutted testimony that prior to the May 29, 2019, work accident, he did not suffer any condition of ill-being pertaining to his left foot/ankle or left great toe whatsoever. There is no evidence in the record to the contrary. Petitioner also offered credible, unrebutted testimony

as to the mechanism of accident, including that a large, powerful, motorized machine called a rider jack ran into and over his left foot, left ankle, and left lower leg. While there is no evidence in the record of the exact amount of force exerted onto Petitioner's left lower extremity during the accident, it clearly was enough to cause numerous complex fractures in the left great toe and left ankle, requiring surgery. The traumatic impact of the rider jack into Petitioner's left lower extremity, and also the rider jack rolling onto Petitioner's foot and ankle and forcing him to the ground, resulted in crushing injuries to Petitioner's left great toe and caused complex Weber-C fractures to his left foot/ankle, thereby requiring surgery and numerous other treatments. Dr. Kane clearly documented throughout his medical records that it is his opinion that Petitioner's condition(s) of ill-being in the left great toe and left foot/ankle are causally connected to injuries sustained in the accident, and credibly testified as to the same at the time of his deposition.

Accordingly, Arbitrator finds that the accidental injuries sustained on May 29, 2019 resulted in his current condition of ill-being in his left great toe and left foot/ankle.

G. WHAT WERE PETITIONER'S EARNINGS?

Arbitrator finds that Petitioner's earnings during the year preceding the injury and average weekly wage calculation pursuant to Section 10 of the Act were accurately stated by Respondent on the Request for Hearing form. *See* AX1. Petitioner's 52 week earnings were $36,495.16 and his average weekly wage equates to $701.83. Arbitrator notes that Petitioner credibly testified as to overtime hours being voluntary and thus there is no dispute as to whether the same would be included in his average weekly wage calculation; they are not included.

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?

Arbitrator adopts her Findings of Fact and Conclusions of Law with respect to Issue (F), causal connection, and reiterates and incorporates the same herein. Having found Petitioner's current condition of ill-being as causally related to the accident, Arbitrator further finds that Petitioner's credible, unrebutted testimony and the extensive corroborating medical records, as well as the deposition testimony of Dr. O'Keefe and Dr. Kane, demonstrate that all of the medical treatment in the record from May 29, 2019, through April 20, 2021 was reasonable and necessary to treat his left knee, left ankle, and left great toe conditions. Accordingly, the Arbitrator finds that Respondent is responsible to pay for any and all unpaid medical bills contained in Petitioner's Exhibits 37 through 49 per the Illinois Fee Schedule.

For any of the foregoing medical expense owed, the Arbitrator awards Respondent credit for all prior medical expenses paid as indicated in its payment logs, as indicated in RX 14. Further, Any pre-accident bills are denied as those are clearly not related to the May 29, 2019 accident.

K. WHAT TEMPORARY BENEFITS ARE IN DISPUTE?

Arbitrator adopts her Findings of Fact and Conclusions of Law with respect to Issue (F), causal connection, and reiterates and incorporates the same herein. Having found Petitioner's current condition of ill-being as causally related to the accident, Arbitrator further finds that Petitioner's credible, unrebutted testimony and the extensive corroborating medical records, as well as the deposition testimony of Dr. O'Keefe and Dr. Kane, demonstrate that Petitioner was temporarily and totally disabled from May 29, 2019 through April 20, 2021, representing 98 6/7 weeks. Therefore, Arbitrator finds that Respondent is liable to pay temporary total disability benefits to Petitioner for the entire 98 6/7 week period.

Respondent shall receive a credit in the amount of $22,593.36 for TTD previously paid, as indicated in RX 14.

L. WHAT IS THE NATURE AND EXTENT OF THE INJURY?

Arbitrator adopts her Findings of Fact and Conclusions of Law with respect to Issue (F), causal connection, and reiterates and incorporates the same herein.

As petitioner's accident occurred on May 29, 2019, §8.1b applies. 820 ILCS 305/8.1(b) of the Act requires consideration of five factors in determining permanent partial disability:

1. The reported level of impairment pursuant to section (a);
2. The occupation of the injured employee;
3. The age of the employee at the time of the injury;
4. The employee's future earning capacity; and
5. Evidence of disability corroborated by the treating medical records.

820 ILCS 305/8.1(b)(2013).

The statute provides that no single factor shall be the sole determinant of disability. *Id.* The statute requires a written order explaining the relevance and weight of any factors used in addition to the level of impairment as reported by the physician. *Id.*

1. Reported level of impairment:

Arbitrator notes that the record contains an impairment rating of 6% of the person as a whole as determined by Dr. Karlsson for both the left knee and left ankle, pursuant to the most current edition of the American Medical Association's Guides to the Evaluation of Permanent Impairment. (RX 4). The Arbitrator notes that this level of impairment does not necessarily equate to permanent partial disability under the Workers' Compensation Act, but instead is a factor to be considered in making such a disability evaluation. Accordingly, the Arbitrator therefore gives greater weight to this factor.

2. Petitioner's occupation:

Petitioner offered extensive, unrebutted, credible testimony as to his specific job duties and occupation. Petitioner was employed as a driver for the Respondent at the time of the accident, which

includes near constant weight-bearing, operation of various heavy-duty machines such as pallet jacks, fork lifts, trucks, and rider-jacks; and the ability to keep up in a vast, fast-paced warehouse type environment while traversing and transporting pallets throughout the premises at McCormick Place. Petitioner did eventually return to full duty work without restriction and testified he is able to perform the duties of his job although he has made some personal adjustments. He does wear a knee brace while working. Petitioner's ability to perform the duties of his occupation may be affected in the future as a result of his current conditions of ill being in his left knee, left great toe, and left foot/ankle due to the physical nature of the job. Therefore, the Arbitrator assigns greater weight to this factor.

3. Petitioner's age at the time of injury:

Petitioner was 50 years old at the time of the accident. Petitioner has many more years to work and endure any ongoing condition of ill being in his left knee, left great toe, and left foot/ankle. The Arbitrator notes the foregoing is especially relevant when considering this factor in conjunction with the specifics of Petitioner's occupation and the weight-bearing manual labor that his assigned job duties require. Therefore, the Arbitrator assigns greater weight to this factor.

4. Petitioner's future earning capacity:

There was no evidence presented as to any detrimental effect on Petitioner's future earning capacity. Therefore, the Arbitrator gives no weight to this factor.

5. Evidence of disability corroborated by the medical records:

The Petitioner testified credibly and consistently that while he is able to still perform the duties of his job without restriction, there is residual pain in his left lower extremity. The Arbitrator notes that at the time Petitioner was eventually released from care and later returned to work, there remained recommendations for prescription prosthetic devices and orthotic shoes which must be worn at all times for the remainder of Petitioner's working life. The Arbitrator likewise notes that Petitioner had pending treatment recommendations including a MACI procedure when treatment ceased due to Respondent's refusal to authorize the same. Nevertheless, he testified at trial that he did not feel he needed either procedure at the time of trial and did not intend to proceed with same. Regardless, the severity of Petitioner's left knee and left foot/ankle injuries is clearly documented in the medical records, as is the traumatic mechanism of accident giving rise to this claim. Further taking into account the numerous surgeries and extensive treatment necessitated by the accident, all of the foregoing supports the Arbitrator's finding that evidence of Petitioner's disability is corroborated by the medical records. Therefore, the Arbitrator assigns this factor greater weight.

Considering these factors as a whole pursuant to Section 8.1(b) of the Act, the Arbitrator finds that the Petitioner sustained accidental injuries that caused a 17.5% loss of use of his left leg (37.625 weeks); 30% loss of use of his left foot/ankle (50.1 weeks); and 15% loss of use of his left great toe (5.7 weeks).

Respondent shall receive a credit for a $3,000.00 PPD advance previously made pursuant to RX14.

M. SHOULD PENALTIES BE AWARDED?

Although the Arbitrator finds Petitioner met his burden to prove a compensable accident and that his current condition(s) of ill-being in his left knee, left foot/ankle, and left great toe are causally related to the accident, she further finds that the existence of a preexisting left knee condition, along with the opinions of Respondent's Section 12 Examiner, Dr. Karlsson, present sufficient basis for disputing certain

elements of Petitioner's claim and delaying the payment of temporary total disability and medical benefits during the pendency of this claim. Stated another way, the Arbitrator finds that while Respondent's position has been proven incorrect under the Act, the failure to pay disputed benefits was not per say unreasonable or vexatious and merely for purposes of delay. Thus, the Arbitrator finds that penalties should not be awarded.

N. IS RESPONDENT DUE ANY CREDIT?

Arbitrator awards the following credits to Respondent as indicated above and pursuant to RX 14:

1) TTD credit in the amount of $22,593.36.
2) Credit for PPD advance of $3,000.00.
3) Credit for all medical bills paid by Respondent.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC020577
Case Name	Shaked Gushpantz v. Memory Lane Stables, Inc. & IWBF
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	24IWCC0169
Number of Pages of Decision	18
Decision Issued By	Amylee Simonovich, Commissioner

Petitioner Attorney	Brenton Schmitz
Respondent Attorney	Luis J. Magaña, Rachel Peter

DATE FILED: 4/11/2024

/s/Amylee Simonovich, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Shaked Gushpantz,

Petitioner,

vs. No. 21 WC 20577

Memory Lane Stables, and IWBF,

Respondents.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by Petitioner herein and notice given to all parties, the Commission, after considering the issue of nature and extent of Petitioner's injuries, and being advised of the facts and law, modifies the Decision of the Arbitrator as stated below, and otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

The parties stipulated, and the Arbitrator found, that Petitioner's average weekly wage was $280.00. As Sections 8(b)1 and 8(b)2 of the Act state that the TTD and PPD rates shall not exceed the employee's average weekly wage, we find that the correct TTD and PPD rates in this case should be $280.00 per week.

We therefore affirm the Arbitrator's award of 27-6/7 weeks of TTD from April 20, 2012 through November 1, 2021, and the PPD award of 40% loss of use of the right foot, but we modify the weekly TTD and PPD rates for those awards to be $280.00, to conform with the applicable statutory minimum rates. All else in the Arbitrator's decision is affirmed and adopted.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed October 2, 2023, is modified as stated herein. All else in the Arbitrator's decision is affirmed and adopted.

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

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

Bond for removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $51,900.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

APRIL 11, 2024

/s/ *Amylee H. Simonovich*
Amylee H. Simonovich

MP/mcp
o-03/21/24
051

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC020577
Case Name	Shaked Gushpantz v. Memory Lane Stables, Inc. & IWBF
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	15
Decision Issued By	Crystal Caison, Arbitrator

Petitioner Attorney	Brenton Schmitz
Respondent Attorney	Luis J. Magaña, Charlene Copeland

DATE FILED: 10/2/2023

THE INTEREST RATE FOR THE WEEK OF SEPTEMBER 26, 2023 5.31%

/s/Crystal Caison, Arbitrator

Signature

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Shaked Gushpantz Case # **21WC020577**
Employee/Petitioner

v.

Memory Lane Stables, Inc. & IWBF

.
Employer/Respondents

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 **Crystal L. Caison**, Arbitrator of the Commission, in the city of **Chicago**, on **June 8, 2023**. 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 **Injured Worker's Benefit Funds Liability**

FINDINGS

On **4/19/2021**, Respondent Employer ***was*** operating under and subject to the provisions of the Act.

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

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-Employer.

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

In the year preceding the injury, Petitioner earned $; the average weekly wage was $**280.00**.

On the date of accident, Petitioner was **26** years of age, ***single*** with **0** dependent children.

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

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

Respondent-Employer shall be given a credit of $**8,960.00** for TTD, $**0** for TPD, $**0** for maintenance, and $**0** for other benefits, for a total credit of $**0**.

ORDER

The Arbitrator finds that Respondent Employer, Memory Lane Stables shall pay reasonable and necessary medical expenses pursuant to the medical fee schedule, of $13,219.12 to Hinsdale Orthopedics and $12,082.34 to Optum as provided in Sections 8(a) and 8.2 of the Act.

The Arbitrator finds that Respondent Employer, Memory Lane Stables shall pay TTD of $293.33 commencing April 20, 2021 through November 1, 2021, for 27 and 6/7 weeks for total amount of $8,171.34. Respondent's overpayment of $788.66 is to be credited against the PPD award.

The Arbitrator finds that Respondent Employer, Memory Lane Stables shall pay Petitioner 40% of the right foot, pursuant to §8(e) of the Act. Respondent shall pay to Petitioner $293.33 per week for 66.80 weeks.

The Illinois State Treasurer as *ex-officio* custodian of the Injured Workers' Benefit Fund was named as a co-respondent in this matter. The Treasurer was represented by the Illinois Attorney General. This award, if any, is hereby entered as to the IWBF to the extent permitted and allowed under Section 4(d) of the Act. In the event the Respondent/Employer/Owner/Officer fails to pay the award the IWBF has the right to recover the benefits paid by it to the Petitioner pursuant to Section 5(b) and 4(d) of the Act. The IWBF's payment of medical costs awarded in this matter is limited to only those that are reasonable, related to this injury and that remain currently due and owing at the time of IWBF disbursement. Respondent/Employer/Owner/Officer shall reimburse

the Injured Workers' Benefit Fund for any compensation obligations of Respondent/Employer/Owner/Officer that are paid to the Petitioner from the Injured Workers' Benefit Fund. The Employer-Respondent's obligation to reimburse the IWBF, as set forth above, in no way limits or modifies its independent and separate liability for fines and penalties set forth in the Act for its failure to be properly insured.

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.

Crystal L. Caison

_____ **OCTOBER 2, 2023**

Arbitrator

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

ILLINOIS WORKERS' COMPENSATION COMMISSION

Shaked Gushpantz, Petitioner, v. Memory Lane Stables and , Illinois State Treasurer as Ex-Officio custodian of the Injured Workers' Benefit Fund Employer/Respondent.	)	Case No. 21WC20577

PROCEDURAL HISTORY

This matter proceeded to hearing on June 8, 2023 in Chicago, Illinois before Arbitrator Crystal L. Caison. As this is Injured Workers' Benefit Fund case, all issues are in dispute except for penalties and former attorneys' fees. (AX-1)

THE ARBITRATOR MAKES THE FOLLOWING FINDINGS OF FACT:

Petitioner's Testimony

Petitioner testified that she was 26 years of age and employed by Memory Lane Stables. She began working for Respondent-Employer in August 2018 and was paid $10 per hour in cash. Petitioner did not have a set work schedule and the owner, Ms. DiSimone DeSimone, would call or text her the day before she was to work. Her work hours depended on the time of year and during the summer, she worked five days a week, 10 hours a day. She did not receive any tax documents from Respondent-Employer. Memory Lane Stables had 30 horses. Her job duties included opening hale bales with knife, feeding the horses, and giving riding lessons and trail rides. Her typical workday included prepping the horses and giving riding lessons. Lessons consisted of holding the horse, helping the rider mount, and teaching them how to ride.

Petitioner testified that on April 19, 2021, she was giving riding lessons to a child. The horse was agitated and while trying to calm the horse, the horse bucked, throwing her off and the

horse landed on her right ankle. She was on the ground for 10 minutes, then allowed someone to call an ambulance.

Petitioner testified that she was taken to Amita Hospital and underwent an MRI scan. She testified that after being diagnosed, she underwent surgery. Petitioner testified that she underwent physical therapy at Athletico that helped a lot but that she continued to have pain in her ankle. Petitioner testified that she underwent a second surgery to remove the previously implanted hardware.

Petitioner testified that she returned to light duty work for a different employer in November 2021 and was released to full duty work on November 21, 2021. Petitioner testified that her new position is at another horse stable, and she performs the same type of duties at the same hourly pay, but that by her own choice, she does not ride horses while working. Petitioner testified that, although she has some pain in her ankle after being on it all day, she can do all activities. She testified that she does not have restrictions of any kind, that Dr. Ho released her without ordering a functional capacity evaluation and that she does not have any appointments scheduled for her right ankle.

Respondent's/Employer's Testimony

Ms. Kathy DiSimone testified that she is the owner of Memory Lane Stables, Inc. Ms. DiSimone testified that at the time of trial, Memory Lane Stables had an active policy of workers' compensation insurance but did not have such a policy in force on April 19, 2021. She testified that on that date, Ms. Shaked Gushpantz, Petitioner, was working for Respondent, and her job duties included riding lessons and feeding horses. Ms. DiSimone testified she was responsible for supervising Petitioner and directing her job duties. She provided tools and equipment to the Petitioner, in the form of saddles and tack for horses, to be used in her duties. Ms. DiSimone paid Petitioner at a rate of $10.00 per hour. Ms. DiSimone testified that she was informed of Ms. Gushpantz's claimed injuries on April 19, 2021.

Medical Treatment

On April 19, 2021, Petitioner was taken to Amita Emergency Room where an X-ray showed a non-displaced fracture of the distal fibula and a nondisplaced fracture of the medial malleolus. Surgery was recommended.

On April 21, 2021, Dr. Bryant Ho performed a right ankle open irrigation and debridement and bimalleolar ORIF. Petitioner's diagnosis was right open bimalleolar ankle fracture and lateral ankle wound. Hardware was inserted and Petitioner was given a short leg splint. (PX 1).

On June 3, 2021, Petitioner had an initial Physical Therapy evaluation at Athletico. Petitioner was instructed to participate in therapy two times a week for six weeks. (PX 3)

As of June 28, 2021, Petitioner had attended 8 sessions of therapy. At that time, Petitioner continued to report ankle pain and was challenged by weight-bearing activities.

On July 27, 2021 and after 16 sessions, Petitioner was discharged from physical therapy.

On September 3, 2021 and at Hinsdale Orthopedics the surgical removal of Petitioner's hardware was performed. (PX 2) However, Petitioner continued experiencing pain over her medial hardware and therefore, she remained off work from April 20, 2021 through November 2021.

On December 29, 2021, Petitioner was released to full duty and placed at MMI.

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).

Petitioner was soft-spoken, answered all questions asked of her and with no apparent attempt to evade the questions. When asked to describe her symptoms as related to her current condition, she did not appear to exaggerate her complaints.

The Arbitrator compared Petitioner's testimony with the totality of the evidence submitted and did not find any material contradictions that would deem the witness unreliable. Overall, Petitioner was a credible witness.

The Arbitrator also finds Respondent/Employer a credible witness.

Issue A, whether Respondent was operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act, the Arbitrator finds as follows:

The Arbitrator finds that on April 19, 2021, the Respondent-Defendant, Memory Lane Stables., was operating under and subject to the Illinois Workers' Compensation Act. Pursuant to Section 3 of the Illinois Workers' Compensation Act, the Act automatically applies to a Respondent who meets any one of the seventeen listed "ultra-hazardous" activities. Petitioner testified that, as part of her work duties, she utilized a knife to open hay bales. This satisfies the requirements of Section 3(8) of the Act.

No evidence was presented by the Respondent to dispute this issue. Therefore, the Arbitrator finds that Respondent-Employer, Memory Lane Stables. was operating under and subject to the Illinois Workers' Compensation Act on April 19, 2021.

Issue B, whether there was an employee-employer relationship, the Arbitrator finds as follows:

The Arbitrator finds that there was an employer-employee relationship between Petitioner and Respondent on April 19, 2021.

When determining whether there is an employer-employee relationship, the Court uses a multi-factorial test. No single facet of the relationship between the parties is determinative, but many factors, such as the right to control the manner in which the work is done, the method of payment, the right to discharge, the skill required in the work to be done, and the furnishing of tools, materials or equipment have evidentiary value and must be considered. (*Henn v. Industrial Com.* 3 Ill. 2d 325.) Of these factors, the right to control the work is perhaps the most important single factor in determining the relation, (*Crepps v. Industrial Com*. 402 Ill. 606,) inasmuch as an employee is at all times subject to the control and supervision of his employer, whereas an

independent contractor represents the will of the owner only as to the result and not as to the means by which it was accomplished. *Immaculate Conception Church v. Industrial Com*. 395 Ill. 615*; Besse v. Industrial Com*. 336 Ill. 283*; Lawrence v. Industrial Com*. 391 Ill. 80.

Petitioner testified that she had been working for the Respondent-employer since August 2018. Her schedule was set by the owner, Ms. DiSimone. Ms. DiSimone supervised the Petitioner, gave her work assignments, and directed her work. Petitioner was paid on an hourly basis. This testimony was corroborated by Ms. DiSimone at trial. Ms. DiSimone also provided tools and equipment in the form of saddles and tack.

Based on the foregoing, the Arbitrator finds that there was an employer-employee relationship between Petitioner and Respondent-Employer on April 19, 2021.

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

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

"The 'arising out of' component is primarily concerned with causal connection. To satisfy this requirement it must be shown that the injury had its origin in some risk connected with, or incidental to, the employment so as to create a causal connection between the employment and the accidental injury." Id. at ¶ 36. To determine whether a claimant's injury arose out of his employment, the risks to which the claimant was exposed must be categorized. Id. The three categories of risks are "(1) risks distinctly associated with the employment; (2) risks personal to the employee; and (3) neutral risks which have no particular employment or personal characteristics." Id. at ¶ 38. "A risk is distinctly associated with an employee's employment if, at the time of the occurrence, the employee was performing (1) acts he or she was instructed to perform by the employer, (2) acts that he or she had a common-law or statutory duty to perform, or (3) acts that the employee might reasonably be expected to perform incident to his or her assigned duties." Id. at ¶ 46.

The Petitioner credibly testified that on April 19, 2021, as she was giving horse riding lessons, the horse she was riding bucked, threw her to the ground, and then landed on her right

ankle, causing a severe fracture. Petitioner was in the course of her employment at the time, giving riding lessons. The risk to which she was exposed (namely, an unruly horse) is a risk peculiar to the employment.

Additionally, Petitioner received medical treatment immediately thereafter, and gave a consistent history to all medical providers she saw in the course of treatment, including the initial ambulance which picked the claimant up from Respondent's location.

Based on the credible testimony of the Petitioner, the Arbitrator finds that the Petitioner suffered an accident, arising out of and in the course of his employment with Respondent-Employer, on April 19, 2021.

Issue D, the date of the accident, the Arbitrator finds as follows:

Petitioner testified the accident occurred on April 19, 2021. The medical records confirm the accident occurred on April 19, 2021. The Arbitrator finds that the accident occurred on April 19, 2021.

Issue E, whether timely notice of the accident was given to Respondent, the Arbitrator finds as follows:

Pursuant to Section 6(c) of the Act, a claimant is required to give notice to his or her employer within 45 days of a work-related accident. 820 ILCS 305/6(c). The failure to give the statutorily required notice is a bar to recovery under the Act. Silica Sand Transport, Inc. v. Industrial Comm'n, 197 Ill. App. 3d 640, 651, 554 N.E.2d 734, 143 Ill. Dec. 799 (1990). Notice to agents of the employer (i.e., supervisors or foremen) can constitute notice to the employer. See McLean Trucking Co. v. Industrial Comm'n, 72 Ill. 2d 350, 354, 381 N.E.2d 245, 21 Ill. Dec. 167 (1978).

The purpose of the notice requirement is to enable the employer to investigate the employee's alleged industrial accident. White v. Illinois Workers' Compensation Comm'n, 374 Ill. App. 3d 907, 911, 873 N.E.2d 388, 313 Ill. Dec. 764 (2007). Giving notice of an injury is insufficient if the employer is not apprised that the injury is work related. Id. Because the legislature has mandated a liberal construction on the issue of notice, if some notice has been given, although inaccurate or defective, then the employer must show that it has been unduly prejudiced. Eileen Farina v. State Farm Mutual Insurance, 2014 Ill. Wrk. Comp. LEXIS 205, *9-

10, 14 IWCC 210; See Gano Electric Contracting v. Industrial Comm'n (Moore), 260 Ill. App. 3d 92, 631 N.E.2d 724 (4th Dist. 1994).

Petitioner testified that the owner, Ms. Kathy DiSimone was on-site, but not immediately present at the time of the accident. While Ms. DiSimone did not see the accident occur, she became aware of the incident shortly thereafter. Ms. DiSimone confirmed this in her testimony.

Based on the testimony from Petitioner and Respondent, the Arbitrator finds that timely notice was given.

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

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

Petitioner was taken by ambulance to the hospital where she was immediately diagnosed with an open fracture, and surgery was performed the next day. Petitioner testified that she never had issues with her right ankle before this incident. The medical histories are consistent with the traumatic incident as described by the Petitioner in her testimony. No contradictory evidence was presented. Thus, the Arbitrator finds that Petitioner's condition of ill-being (an open right ankle bimalleolar fracture), is causally related to the April 19, 2021 accident.

Issue G, Petitioner's earnings, the Arbitrator finds as follows:

Petitioner testified that she made $10.00 per hour. Respondent submitted into evidence Petitioner's payroll records, which confirm an average weekly wage of $280.00. The parties also stipulated the Petitioner's average weekly wage being $280.00. The Arbitrator adopts these records and the parties' stipulation to find an average weekly wage of $280.00.

Issue H, Petitioner's age at the time of the accident, the Arbitrator finds as follows:

Petitioner testified her date of birth is August 22, 1994. The medical records confirm this. Thus, the Arbitrator finds that Petitioner was 26 years old on the date of the occurrence.

Issue I, Petitioner's marital status at the time of accident, the Arbitrator finds as follows:

Petitioner testified that at the time of the accident she was married with no dependent children. Based on Petitioner's testimony, the Arbitrator finds that at the time of the accident, the Petitioner was unmarried with no dependent children.

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

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

The Arbitrator finds that the medical services rendered to the Petitioner were reasonable and necessary, and that Respondent-Employer has paid none of the charges for medical services. Petitioner is entitled to payment for all medical bills presented at trial. Petitioner's bills, in large part, were paid by her group health insurance. PX 4. The Arbitrator awards payment of those bills paid by Optum in the amount of $12, 082.34 as detailed in PX 4. Payment to be made at the lesser of IWCC fee schedule or the amount paid by Optum. The

Arbitrator also awards all of the outstanding billing presented by Hinsdale Orthopedics in the amount of $13,219.12, at the lesser of IWCC fee schedule or any applicable negotiated rate.

Issue K, whether Petitioner is entitled to temporary benefits, the Arbitrator finds as follows:

TTD

A claimant is temporarily totally disabled from the time an injury incapacitates him from work until such time as he is as far recovered or restored as the permanent character of his injury will permit. Westin Hotel v. Indus. Comm'n, 372 Ill.App.3d 527, 542 (1st Dist. 2007).

In determining whether a claimant remains entitled to receiving TTD benefits, the primary consideration is whether the claimant's condition has stabilized and whether she is capable of a return to the workforce. Interstate Scaffolding, Inc. v. Illinois Workers' Comp. Comm'n, 236 Ill.2d 132, 148 (2010). Once an injured employee's physical condition stabilizes, she is no longer eligible for TTD benefits. Archer Daniels Midland Co. v. Indus. Comm'n, 138 Ill.2d 107, 118 (1990).

Petitioner claims entitlement to TTD benefits from April 20, 2021 through November 1, 2021. Petitioner was unable to work following the accident and was released to light duty in the spring of 2021. She testified she found work in November 2021 with another employer. Petitioner was released to full duty and placed at MMI on December 29, 2021. Respondent-employer made TTD payments in the amount of $8,960.00.

Based on the above, the Arbitrator finds that Respondent is liable for TTD benefits from April 20, 2021 through November 1, 2021, at a rate of $293.33 per week. This is a total of 27 and 6/7 weeks, for a total amount of $8,171.34.

The overpayment of $788.66 is to be credited against the PPD award.

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

PPD FACTORS

In determining PPD benefits, Section 8.1b(b) of the Act directs the Commission to consider: "(i) the reported level of impairment pursuant to subsection (a); (ii) the occupation of the injured employee; (iii) the age of the employee at the time of the injury; (iv) the employee's future earning capacity; and (v) evidence of disability corroborated by the treating medical records." 820 ILCS 305/8.1b(b); Con-Way Freight, Inc. v. Illinois Workers' Compensation

Comm'n, 2016 IL App (1st) 152576WC, ¶ 22, 67 N.E.3d 959. "No single enumerated factor shall be the sole determinant of disability." 820 ILCS 305/8.1b(b).

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

Under Section 8.1b(b)(ii), the occupation of the injured employee, the Arbitrator notes that Petitioner returned to similar work. The Arbitrator therefore gives moderate weight to this factor.

Under Section 8.1b(b)(iii), the age of the employee at the time of the injury, the Arbitrator notes that Petitioner was 26 years old at the time of the accident. The Arbitrator gives some weight to this factor.

Under Section 8.1b(b)(iv), the employee's future earning capacity, the Arbitrator notes Petitioner presented no evidence regarding her current earnings capacity and as such has not met the burden of proof that any decrease has occurred. The Arbitrator gives great weight to this factor.

Under Section 8.1b(b)(v), evidence of disability corroborated by the treating medical record, the Arbitrator notes Petitioner underwent two surgeries, including the removal of hardware and testified that she only has pain after standing all day, that she continues to ride horses with no restrictions and that she no longer wears high heels. The Arbitrator gives great weight to this factor.

Based on the above factors, and the record taken as a whole, the Arbitrator finds that Petitioner sustained permanent partial disability to the extent of 40% of the right foot, pursuant to §8(e) of the Act which corresponds to 66.80 weeks of permanent partial disability benefits at a weekly rate of $293.33. The Arbitrator bases this finding on the Petitioner's credible testimony, and the records of the treating physicians.

Issue O, whether Respondent is in compliance with the Act and whether the Injured Workers' Benefit Fund is liable, the Arbitrator finds as follows:

Section 4 of the Workers' Compensation Act provides that the Fund is liable to pay benefits to an injured worker where the Respondent has failed to obtain insurance, and where Respondent has failed to pay benefits due. Petitioner presented evidence at trial that Respondent-Defendant, Memory Lane Stables., was not covered by a policy of workers' compensation insurance at the time of the accident through the sworn testimony of Ms. Kathy DiSimone. Therefore, all statutory requirements having been met.

As such, the Arbitrator further finds the Injured Workers' Benefit Fund liable and the Treasurer, as ex-officio custodian of the Fund, is ordered to pay the Petitioner's award to the extent set by statute. The Respondent shall reimburse the Fund.

It is so ordered:

Crystal L. Caison

Arbitrator Crystal L. Caison

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	19WC016652
Case Name	Mary Kay Nichols v. Oak Lawn Community High School
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	24IWCC0170
Number of Pages of Decision	17
Decision Issued By	Raychel Wesley, Commissioner

Petitioner Attorney	James Farnan
Respondent Attorney	W. Britt Isaly

DATE FILED: 4/11/2024

/s/ Raychel Wesley, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

MARY KAY NICHOLS,

Petitioner,

vs. NO: 19 WC 16652

OAK LAWN COMMUNITY HIGH SCHOOL,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of whether Petitioner's current left ankle condition is causally related to her March 14, 2019 work accident, entitlement to medical expenses, entitlement to Temporary Total Disability benefits, and the nature and extent of Petitioner's permanent disability, and being advised of the facts and law, corrects the Decision of the Arbitrator as stated below and otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

The Commission corrects the Decision to reflect the awarded period of Temporary Total Disability from May 3, 2019 through May 17, 2019 encompasses 2 1/7 weeks.

All else is affirmed.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed March 23, 2023, as corrected above, is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $1,506.81 per week for a period of 2 1/7 weeks, representing May 3, 2019 through May 17, 2019, that being the period of temporary total incapacity for work under §8(b) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay $123,251.09 for medical expenses, as provided in §8(a), subject to §8.2. Respondent shall be given a credit of $123,251.09 for medical benefits that have been paid, and Respondent shall hold Petitioner harmless from any claims by any providers of the services for which Respondent is receiving this credit, as provided in §8(j) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $813.87 per week for a period of 37.575 weeks, as provided in §8(e)11 of the Act, for the reason that the injuries sustained caused the 22.5% loss of use of the left foot.

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

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

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

APRIL 11, 2024

/s/ *Raychel A. Wesley*

RAW/mck

O: 3/21/24

/s/ *Carolyn M. Doherty*

43

/s/ *Christopher A. Harris*

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	19WC016652
Case Name	Mary Kay Nichols v. Oak Lawn Community High School
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	14
Decision Issued By	Nina Mariano, Arbitrator

Petitioner Attorney	James Farnan
Respondent Attorney	W. Britt Isaly

DATE FILED: 3/23/2023

THE INTEREST RATE FOR THE WEEK OF MARCH 21, 2023 4.62%

/s/ Nina Mariano, Arbitrator

Signature

STATE OF ILLINOIS)
)SS.
COUNTY OF COOK)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Mary Kay Nichols
Employee/Petitioner

v.

Oak Lawn Community High School
Employer/Respondent

Case # 19WC016652

Consolidated cases:

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Nina Mariano**, Arbitrator of the Commission, in the city of **Chicago**, on **10/20/2022**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On **March 14, 2019**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $***140,000.00***; the average weekly wage was *$* ***2,692.31***.

On the date of accident, Petitioner was ***51*** years of age, ***married*** with ***0*** children under 18.

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

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

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

Respondent is entitled to a credit of ***$123,251.09*** under Section 8(j) of the Act.

ORDER

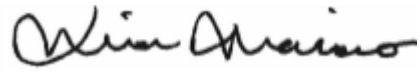
Respondent shall pay Petitioner 2 weeks of Temporary Total Disability benefits from 5/3/2019 through 5/17/2019, in the amount of $1506.81/week.

Respondent shall pay reasonable and necessary medical services of **$123,251.09** pursuant to the medical fee schedule, as provided in Section 8(a) of the Act. Respondent shall be given a credit of $**123,251.09** for medical benefits that have been paid, and Respondent shall hold petitioner harmless from any claims by any providers of the services for which Respondent is receiving this credit, as provided in Section 8(j) of the Act.

Finally, the Arbitrator finds that the Petitioner is permanently partially disabled to the extent of **22.5%** loss of use of left foot equaling **37.575 weeks** of permanency benefits under 8(e) of the Illinois Workers' Compensation Act, in the amount of **$813.87/week**.

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

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



Signature of Arbitrator

MARCH 23, 2023

STATE OF ILLINOIS)
)
COUNTY OF COOK)

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Mary Kay Nichols,)
)
Employee/Petitioner)
)
v.) No.: 19WC016652
)
Oak Lawn Community High School,)
)
Employer/Respondent.)

FINDINGS OF FACT

This matter proceeded to hearing on October 20, 2022 in Chicago, Illinois before Arbitrator Nina Mariano on Petitioner's Request for Hearing. Issues in dispute include accident, causal connection, unpaid medical bills, temporary total disability benefits and nature and extent of the injury. Arbitrator's Exhibit "Ax" 1.

Petitioner testified that she began working as a P.E. teacher for Respondent in 1993. (T. 9). As a P.E. teacher, Petitioner would teach various sports to her students such as volleyball and badminton. (T. 10). On March 14, 2019, the Petitioner was acting as an instructor of badminton to students during P.E. class. (T. 11). Petitioner would physically demonstrate to her students how to play the sport of badminton, including how to serve, hit an overhead shot and various other skills used in badminton games. (T. 12). On the day of the accident Petitioner was asked by one of her students to play that student in a badminton match. (T. 12). That student's name was Zach Fogarty. (T. 14). Petitioner testified that there was no prohibition by the Respondent that prevented the Petitioner from playing against students while in P.E. class and that Respondent was aware Petitioner was playing students while in gym class. (T. 14-15). Such interaction between teacher and student was in fact encouraged. (T. 14-15).

As the Petitioner and the student Zach Fogarty were playing against each other, Zach hit the "birdie" and as the Petitioner stepped to her side to reach the birdie, she felt something pop in her left ankle (T.16). The petitioner immediately felt a sharp and very painful sensation in her left ankle. (T. 16-17). Petitioner was a high school and college athlete and had suffered sprained ankles in the past but had never felt the pop in her ankle and resulting painful sensation on any prior occurrence either as a college athlete or P.E. teacher. (T. 17). Following the injury, the Petitioner immediately ended the match with the student and limped to the trainer's office within the school. (T. 17). Petitioner had never had the occasion prior to March 14, 2019 to visit the trainer's office for any injury to her left ankle. (T. 18). Petitioner

reported to the trainer that she had done something to her left ankle and that it wasn't normal. (T. 19). The trainer, Rebecca Egan, prepared a witness statement which noted that Petitioner had come to see her after she injured her left ankle while playing badminton with students. The trainer noted that the Petitioner advised that she had felt a pop in the left ankle and that she experienced an immediate painful sensation in her left ankle. (PX. 11).

Zach Fogarty, a student at Oak Lawn Community High School on March 14, 2019 and the student that Petitioner was playing badminton against in P.E. class at the time of her injury, also testified at trial. Mr. Fogarty is currently employed by Respondent as a groundskeeper. (T. 72). Mr. Fogarty testified that on the day of the accident, he challenged Petitioner to a badminton match. (T. 73). During the course of that badminton match, Fogarty saw Petitioner step towards and lunge for the birdie and shouted out a loud "ow." He stated that you could definitely tell something was wrong with Petitioner. (T. 74-75). Fogarty further testified that he had never seen Petitioner injure herself in P.E. class on any prior occasions. (T. 76). After Petitioner screamed out in pain, Mr. Fogarty asked if Petitioner was okay to which she replied "no". Mr. Fogarty then saw Petitioner bend down to look at her left ankle. (T. 77). Mr. Fogarty then saw Petitioner limp out of the gym class to the trainer's office. (T. 77). He did not see the Petitioner limping at any time prior to this occurrence during their badminton match. (T. 77).

As soon as Petitioner left the trainer's office on March 14, 2019, she immediately presented to Midwest Orthopedics where a history was noted of injuring her left ankle playing badminton earlier that same day. (PX2). Petitioner was treated and prescribed a tall CAM boot for her left ankle. (PX2). Petitioner testified that she noted swelling in her left ankle at this time. (T. 22). Petitioner followed up with podiatrist Carol Moore DPM, who recommended 2-3 weeks of immobilization. Petitioner testified that during this timeframe post-accident, the pain was sharp while her left ankle was in the boot and she could feel her tendon rolling over in the boot. (T. 31). During Petitioner's course of treatment with Dr. Moore, she was able to see swelling in her left ankle. (T. 33). Following that conservative care with Dr. Moore, the Petitioner returned to Midwest Orthopedic to treat with Dr. David Garras. (PX2).

Petitioner first saw Dr. Garras on April 16, 2019. During the physical exam performed by Dr. Garras at that visit, Petitioner testified that she experienced sharp pains when Dr. Garras applied pressure to the outside of her left ankle. (T. 36). Dr. Garras prescribed an MRI of the left ankle. The MRI showed a dislocation of the peroneus tendon, and a tear of the anterior talofibular and calcaneofibular ligaments. (PX2). At that time, Dr. Garras recommended surgery to Petitioner's left ankle. (PX2). Surgery was performed by Dr. Garras on May 3, 2019. (PX4). Operative procedures performed were left ankle arthroscopy and extensive debridement, left lateral talar dome microfracture of the osteochondral lesion, left lateral ligament reconstruction with InternalBrace, left syndesmotic open reduction and internal fixation, left peroneal debridement of the peroneus longus and brevis, left peroneus brevis repair, left peroneus brevis transfer and tenodesis to the peroneus longus, left peroneal groove deepening, application of amniotic membrane and fluoroscopy. *Id.* Pre-op and Post-op diagnoses were left ankle pain, left lateral talar dome osteochondral lesion with subchondral cyst, left ankle instability, left syndesmotic instability, left peroneus brevis tendon tear, left peroneal subluxation and left ankle valgus. *Id.*

Petitioner followed up post op with Dr. Garras who eventually referred Petitioner to a course of physical therapy. Following surgery, Petitioner was off work for two weeks. (T. 39). Petitioner wanted to return to work so she could administer final exams to her students, so Dr. Garras allowed her to return to

work following the two weeks off in a wheelchair. (T. 41). Petitioner began physical therapy at ATI on June 18, 2019 and attended physical therapy based on said prescription up and including December 19, 2019. (PX3). Petitioner continued to follow up with Dr. Garras who, due to Petitioner's continued improvement, eventually discharged her from his care on January 30, 2020. (PX2); (T. 44).

Petitioner testified at trial that she did suffer ankle sprains in both ankles from her years as a high school and college volleyball player (T. 22). Although Petitioner had sprained her left ankle in the past (T. 23), she had never had any prior issues with her left ankle like those she experienced on March 14, 2019. (T. 25). Petitioner attended high school between 1981-1985 and did sprain her ankle playing high school volleyball (T. 50). Likewise, Petitioner testified that while playing volleyball in college, she did suffer ankle sprains (T. 51-52). Petitioner stated she never went to a doctor following any of her prior ankle sprains she suffered in high school or college. (T. 55). Petitioner likewise testified that she never dislocated her left ankle as claimed by the IME but rather it was her right ankle she thinks she dislocated. (T. 53). This ankle injury of March 14, 2019 was a different kind of pain than she had experienced with any of the prior ankle sprains. (T. 25). The pain she experienced on March 14, 2019, was a sharp, popping pain. (T. 25-26). It was a different type of ankle pain she was experiencing from this accident versus those sprains in the past. (T. 26). Petitioner described the sensation in her left ankle from this injury as a tendon rolling over in your ankle and had never experienced that rolling tendon sensation in the past. (T. 26). Additionally, even though Petitioner had experienced plantar fasciitis in both her feet prior to this accident date, the last time Petitioner sought any medical treatment for plantar fasciitis was some 23 years before this accident. (T. 28). Prior to March 14, 2019, Petitioner worked out on a regular basis and never had any problems with her left ankle in that time frame. (T. 28). Following the surgery of May 3, 2019, Petitioner was off work for a total of two weeks, returning to work on May 17, 2019. (T. 39).

Petitioner continues to experience limitations in her physical activity, especially in the workplace. Petitioner can no longer jump, play volleyball, run and continues to experience a loss of sensation in her left ankle. (T. 61-62; 66).

Dr. Holmes Deposition

Petitioner was required to visit Dr. Holmes for an Independent Medical Evaluation on May 30, 2019. Dr. Holmes sat for his first deposition on December 6, 2021. (RX 1). Dr. Holmes testified pursuant to his IME report that the mechanism of the injury that Petitioner described did not substantiate or correspond with her diagnosis. Dr. Holmes testified that the pain described by Petitioner on March 14, 2019 was not indicative of microfracture of the lateral osteochondral and instead, Dr. Holmes is of the opinion that Petitioner's injury preexisted March 14, 2019 and was not exacerbated by the injury in question. (RX 1). Part of the basis of that opinion is that the x rays taken of Petitioner's left ankle post-accident demonstrated no soft tissue swelling on those films. Additionally, Dr. Holmes was of the opinion that the surgery performed by Dr. Garras on Petitioner's left ankle were for pre-existing conditions and did not in any way exacerbate those pre-existing conditions.

On cross examination, Dr. Holmes testified that he disagreed with the opinion of Dr. Garras that the microfracture of the lateral osteochondral pre-existed the Petitioner's injury of March 14, 2019. Dr, Holmes testified that some of the causes of this microfracture and lesion would be previous trauma,

endocrine abnormalities or by unknown causes. Petitioner testified that she has never been diagnosed with or had any endocrine abnormalities. (T. 46). Dr. Holmes testified that per his IME report of May 30, 2019, he was under the impression that the prior trauma to Petitioner's ankle was to her left ankle. (RX 1). Petitioner testified she believed that prior "dislocation" was to her right ankle. (T. 69). Dr Holmes was likewise critical of Dr. Garras performing the surgery on Petitioner's left ankle as he would have proceeded with conservative measures in lieu of surgery. (RX 1).

Following his deposition of December 6, 2021, Dr. Holmes issued an addendum to his IME report. This addendum report was dated April 30, 2022. Dr. Holmes sat for a second deposition on July 19, 2022 in which he attempted to address some of the inconsistencies in his first IME report. Dr. Holmes was critical of Petitioner's "understanding and vocabulary with respect to reporting the nature of a musculoskeletal injury than a typical layperson" and that the reported events of March 14, 2019 were of insufficient force to have resulted in the acute generation of the peroneal tendon dislocation. (RX 2).

Dr. Garras Deposition

Dr. Garras sat for his deposition on January 20, 2022 and testified that Petitioner was first treated in his office on March 14, 2019 and seen by his PA. (PX 10; pg.12). It was noted in the records from that visit on March 14, 2019 that there was indeed soft tissue swelling present in Petitioner's left ankle when she presented to Dr. Garras' office. (PX 10; pg.12). Specifically, there was noted swelling about the lateral malleolus and the ATF ligament region of Petitioner's left ankle. (PX 10; pg.12). During the physical examination when Dr. Garras pushed on the front of Petitioner's left ankle, he "definitely got an increase in pain" when he touched the ankle laterally which is a further sign of an acute injury. (PX10; pg. 39). The physical exam performed by Dr. Garras also noted soft tissue swelling present in the ankle, edema about the lateral ankle, tenderness over the joint line and pain over the ligaments and peroneal tendons. All of these findings indicated to Dr. Garras that Petitioner's left ankle ligaments had suffered an acute injury. (PX 10; pg.15).

Following a physical examination and review of the MRI report, Dr. Garras' diagnosis was lateral osteochondral lesion, peroneal tendonitis with peroneal subluxation and a lateral ankle sprain. (PX 10; pg.16). Dr Garras testified that based on the MRI films he personally reviewed, there was acute bleeding present on the T2 images around the osteochondral lesion which tells you that this is an acute left ankle injury, meaning that it just happened. (PX 10; pg.34). Dr Garras testified that there was still blood in the bone that he could see in the MRI films of Petitioner's left ankle that gives you hints of how acute something is. (PX 10; pg.35). Dr Garras' opinion is that based on the MRI taken, this was a more recent injury versus an older injury. Dr Garras also testified that the sharp pain associated with Petitioner's injury is more indicative of something that is more acute in nature. (PX 10; pg.15).

However, the most compelling testimony concerning the presence of an acute injury in Petitioner's left ankle was what Dr. Garras himself visualized during surgery. Dr. Garras testified that "when we stuck the scope in", it confirmed and showed an acute ankle injury. (PX 10; pg.39). Dr Garras further testified that during said surgery, he removed the damaged cartilage and performed a microfracture to try to heal the ankle. (PX 10; pg.39).

Dr. Garras also testified that Petitioner's prior plantar fascia surgery is not relevant to any of the issues involved in this case and had no bearing on Petitioner's left ankle injury. (PX 10; pg.33). Additionally, Dr. Garras testified that the talar tilting he noted present in Petitioner's left ankle was not addressed or treated in any way. (PX10; pg 27). Accordingly, the talar tilting had no bearing on Dr. Garras' treatment course of Petitioner.

Dr. Garras was of the opinion that it was reasonable for Petitioner to be off work for the 2 weeks after surgery he performed on her left ankle and it was reasonable for her to be off work from May 3, 2019 to May 17, 2019. (PX 10; pg.41-42). Dr. Garras described Petitioner as stoic with a high level of pain because most of his patients with this injury are off work for a good 6 to 12 weeks after ankle surgery like this. (PX 10; pg.41).

Dr. Garras testified that he is of the opinion that the injuries he treated the Petitioner for which he performed surgery on May 3, 2019 were caused by the injury of March 14, 2019. (PX 10: pg 27). "All the findings that were found on the MRI and during surgery are acute findings. They are not chronic. A dislocated peroneal tendon doesn't happen as a result of a chronic condition. A torn lateral ligament does not happen as a result of a chronic condition. An acute cartilage injury with bone marrow edema around it does not happen as a result of a chronic condition." (PX 10; pg.27). Dr Garras also testified that the mechanism of the injury as known to him is consistent with the type of injury suffered by the Petitioner and that the surgery performed upon Petitioner's left ankle was medically necessary. (PX 10; pg.28).

CONCLUSIONS OF LAW

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

Decisions of an arbitrator shall be based exclusively on the evidence in the record of the proceeding and material that has been officially noticed. 820 ILCS 305/1.1(e). Credibility is the quality of a witness which renders his evidence worthy of belief. The Arbitrator, whose province it is to evaluate witness credibility, evaluates the demeanor of the witness and any external inconsistencies with his/her testimony. Where a claimant's testimony is inconsistent with his/her actual behavior and conduct, the Commission has held that an award cannot stand. McDonald v. Industrial Commission, 39 Ill. 2d 396 (1968); Swift v. Industrial Commission, 52 Ill. 2d 490 (1972).

It is the function of the Commission to judge the credibility of the witnesses and to resolve conflicts in the medical evidence and assign weight to witness testimony. O'Dette v. Industrial Commission, 79 Ill.2d 249, 253, 403 N.E.2d 221, 223 (1980); Hosteny v. Workers' Compensation Commission, 397 Ill. App. 3d 665, 674 (2009). Internal inconsistencies in a claimant's testimony, as well as conflicts between the claimant's testimony and medical records, may be taken to indicate unreliability. Gilbert v. Martin & Bayley/Hucks, 08 ILWC 004187 (2010).

In the case at hand, the Arbitrator observed Petitioner during the hearing and finds her to be a credible and honest witness. The Arbitrator compared Petitioner's testimony with the totality of the evidence submitted and did not find any material contradictions that would deem the witness unreliable.

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

The Arbitrator finds that Petitioner suffered an injury that arose out of and in the course of her employment at Oak Lawn Community High School on March 14, 2019. Petitioner was working as a P.E. teacher, demonstrating to students how to play the sport of badminton. Petitioner testified that she would physically demonstrate to her students how to play the sport of badminton, including how to serve, hit an overhead shot and various other skills used in badminton games. On the day of the accident Petitioner was asked by one of her students to play that student in a badminton match. That student's name was Zach Fogarty. There was no prohibition by the Respondent that prevented the Petitioner from playing against students while in gym class and according to the Petitioner, the Respondent was fully aware Petitioner was playing students while in gym class and in fact encouraged such interaction between teacher and student. On March 14, 2019 the Petitioner was teaching the course of Badminton to her students demonstrating how to play. While in the course of this demonstration and while playing another student in badminton, the Petitioner injured her left ankle. The credible testimony provided by the Petitioner and witness Zach Fogarty as to what occurred on March 14, 2019 is uncontroverted. She was performing her job duties as a P.E. teacher and while demonstrating a specific skill set during P.E. class to her students, she injured her left ankle. Petitioner was not limping nor was she injured prior to March 14, 2019. This is an accident in accordance with the Illinois Workers' Compensation Act. Injuring an ankle while teaching a skill to students during P.E. class is a risk associated with the Petitioner's job duties.

The accident report filled out by the school athletic trainer clearly supports Petitioner's testimony regarding this accident and to what occurred. Petitioner advised the trainer she hurt her ankle playing badminton in P.E. class and felt a pop in her left ankle. When examined at Midwest Orthopedics later that same day, Petitioner provided a history of left ankle pain which she injured playing badminton earlier today. Respondent did not enter into evidence anything that disproves or impeaches the credibility of Petitioner's testimony, nor the testimony of witness Zach Fogarty, as to how she sustained her injury on March 14, 2019. Dr Garras also testified that the mechanism of the injury is consistent with the type of injury suffered by the Petitioner

All the evidence supports the finding that the Petitioner suffered an accident arising out of and in the course of her employment on March 14, 2019.

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

In conjunction with finding that the Petitioner suffered an accident arising out of and in the course of her employment on March 14, 2019, the Arbitrator further finds that the Petitioner's current condition is causally related to that work accident.

It is clear from a comprehensive review of the testimony and medical evidence that the Petitioner suffered an injury on March 14, 2019 that caused pain/symptoms in her left ankle. It is clear that the Petitioner injured her left ankle teaching badminton to students. The Respondent has disputed that there is a causal relationship between the accident and Petitioner's subsequent left ankle condition. As the Petitioner and student were playing against each other, the student hit the birdie to Petitioner and as

Petitioner stepped to her side to reach the birdie, she felt something pop in her left ankle. She immediately felt a sharp, very painful sensation in her left ankle. Petitioner was a high school and college athlete and had never felt the pop in her ankle and resulting painful sensation on any prior occurrence either as a college athlete or P.E. teacher. Following the injury, Petitioner immediately ended the match with the student, and the Petitioner limped to the trainer's office within the school. The Petitioner had never had the occasion prior to March 14, 2019 to visit the trainers office for any injury to her left ankle. On March 14, 2019, the Petitioner reported to the trainer that she had done something to her left ankle and that it wasn't normal.

Before the accident, Petitioner had not sought any medical treatment for any issues in her left ankle. Prior to March 14, 2019 she had sought treatment for some sprains suffered in her left ankle while she was playing volleyball in high school and college when she would occasionally suffer sprains. But even then, the treatment she received was just with the athletic trainer and never a medical doctor. This fact is corroborated by the extensive medical records obtained after the injury. The Arbitrator notes that there is no indication of any prior medical treatment to the left ankle treatment prior to March 14, 2019. This was the first time she experienced pain in her left ankle like this, and the pain persisted all throughout Petitioner's treatment. Prior to March 14, 2019, Petitioner worked out on a regular basis and never had any problems with her left ankle in that time frame and performed her job without any apparent issue.

The trainer, Rebecca Egan prepared a witness statement which noted that Petitioner had come to see her after she injured her left ankle while playing badminton with students. The trainer noted that Petitioner advised that she had felt a pop in the left ankle and that she experienced an immediate painful sensation in her left ankle.

The Arbitrator finds that Mrs. Egan's report and post accident account is credible and corroborates Petitioner's testimony.

Zach Fogarty, currently employed by Respondent and on March 14, 2019, the student at Oak Lawn Community High School that Petitioner was playing in badminton in P.E. class at the time of her injury also testified at trial. Mr. Fogarty testified on the day of the accident, he challenged Petitioner to a badminton match. During the course of that badminton match, Fogarty saw Petitioner step towards and lunged for the birdie, shout out loud "ow" and testified he could definitely tell something was wrong with Petitioner. Fogarty further testified that he had never seen Petitioner injure herself at P.E. class on any prior occasions. After Petitioner screamed out in pain, he asked if Petitioner was okay to which she replied no. He then saw Petitioner bend down looking at her left ankle. Mr. Fogarty then saw Petitioner limp out of the gym class to the trainer's office. He did not see the Petitioner limping at any time prior to this occurrence during their badminton match.

The Arbitrator finds that Mr. Fogarty's testimony is credible. As a current employee (Maintenance Groundkeeper), Mr. Fogarty presented an unbiased account of the events of March 14, 2019. Respondent presented no witnesses to rebut the testimony of Petitioner or Mr. Fogarty.

The key determination for causation by Respondent's expert, Dr. Holmes, seemed to focus on the fact that mechanism of the injury would not result in a lateral osteochondral lesion, peroneal tendonitis with peroneal subluxation or a lateral ankle sprain.

Dr. Holmes testified pursuant to his IME report that the mechanism of the injury that Petitioner described did not substantiate or correspond with a lateral osteochondral lesion, peroneal tendonitis with peroneal subluxation or a lateral ankle sprain diagnosis. Dr. Holmes clarified that the pain described by Petitioner on March 14, 2019 was not indicative of a lateral osteochondral lesion, peroneal tendonitis with peroneal subluxation or a lateral ankle sprain, and instead, Dr. Holmes diagnosed Petitioner with a preexisting condition caused by unknown causes.

The Arbitrator finds that Dr. Holmes's testimony is not credible with respect to the history of treatment he was mistakenly assumed involved the subject left ankle. It is clear that any significant ankle injury suffered to Petitioner's ankles was some 13 years prior and involved her right ankle, not the subject left ankle. Dr. Holmes noted in his first IME report that Petitioner suffered a "dislocation" of her left ankle when in fact this prior "dislocation" was to her right ankle.

The Arbitrator also finds that Dr. Holmes's testimony is not credible with respect to the as mechanism of the injury of Petitioner's left ankle. Dr Holmes testified that based on the history documented, there was no specific injury suffered since Petitioner was not struck by an object or by another participant or that she did not fall. But clearly based on the testimony of witness Zachary Fogarty, Petitioner screamed out in pain as she reached to return a hit badminton birdie. Mr. Fogarty also testified that Petitioner reached for her left ankle immediately after the accident, immediately terminated the badminton match she was playing, and limped out of the gym heading directly to the school trainer. Additionally, the trainer who saw Petitioner, prepared a report of her treatment with Petitioner immediately following the accident. Finally, Petitioner went to seek medical attention at Midwest Orthopedic immediately after she left the trainer Rebecca Egan.

Despite Dr. Holmes' testimony to the contrary, the medical records clearly show that it was noted during the Petitioner's first visit at Midwest Orthopedic that there was indeed soft tissue swelling in Petitioner's left ankle when she presented to Midwest Orthopedic on March 14, 2019. Additionally, again despite Dr. Holmes testimony to the contrary, there was documented subjective findings of continued swelling in Petitioner's left ankle, painful sensation to touch during physical examination, blood on the ankle bone seen in the MRI and visualization of an acute injury to the ankle during surgery after Dr. Garras 'stuck the scope in the ankle". Finally, again despite Dr. Holmes' testimony there was a lack of any medical treatment to the Petitioner's left ankle in the years prior to March 14, 2019. Even though Petitioner had experienced plantar fasciitis in her left foot prior to this accident date, the last time Petitioner sought any medical treatment for plantar fasciitis was some 23 years before this accident.

Therefore, the two basic presumptions of Dr. Holmes's negative causation opinion (the mechanism of injury and preexisting injury) are not supported by the facts in this case. As soon as Petitioner left the trainer's office on March 14, 2019, she immediately presented to Midwest Orthopedics where a history was noted of injuring her left ankle playing badminton earlier that same day. Petitioner was treated and prescribed a tall CAM boot for her left ankle. Petitioner testified that she noted swelling in her left ankle at this time during the examination at Midwest Orthopedics later that same day. Petitioner testified that during this timeframe post-accident, the pain was sharp while her left ankle was in the boot and she could feel her tendon rolling over in the boot. During Petitioner's early course of treatment with Dr. Moore, Petitioner was able to see swelling in her left ankle. Following that conservative care, Petitioner eventually returned to Midwest Orthopedic to follow up with Dr. David Garras, whom she saw on April 16, 2019.

During the physical exam performed by Dr. Garras, Petitioner experienced sharp pains when Dr. Garras applied pressure to the outside of her left ankle. Specifically, there was noted swelling about the lateral malleolus and the ATF ligament region of Petitioner's left ankle.

The Arbitrator finds that Dr. Garras' opinion, with respect to accident, history and causal connection, to be credible and persuasive. Specifically, Dr. Garras testified that during the physical examination, when Dr. Garras pushed on the front of Petitioner's left ankle, he definitely got an increased in pain when he touched the ankle laterally. This is a further sign of an acute injury. The physical exam performed by Dr. Garras also noted soft tissue swelling present in the ankle on April 16, 2019, edema about the lateral ankle, tenderness over the joint line and pain over the ligaments and peroneal tendons. Dr Garras also testified that the sharp pain associated with Petitioner's injury is more indicative of something that is more acute.

Dr. Garras prescribed an MRI of the left ankle. The MRI showed "blood in the bone" a dislocation of the peroneus tendon and a tear of the anterior talofibular and calcaneofibular ligaments. Following a physical examination and review of the MRI report, Dr. Garras' diagnosed a lateral osteochondral lesion, peroneal tendonitis with peroneal subluxation and a lateral ankle sprain. Dr Garras testified that based on the MRI films he personally reviewed, there was acute bleeding present on the T2 images around the osteochondral lesion which tells you that this is an acute left ankle injury, meaning that it just happened. Dr Garras testified that there was still blood in the bone that he could see in the MRI films of Petitioner's left ankle that gives you hints of how acute something is. Dr Garras opinion is that based on the MRI taken, this was a more recent injury versus an older injury. Additionally, unlike Dr. Holmes, Dr. Garras actually visualized the injury during surgery. Dr. Garras testified that "when we stuck the scope in", it confirmed and showed an acute ankle injury. Dr Garras testified that he removed the damaged cartilage and performed a microfracture to try to heal the ankle. All of these findings are consistent with the opinion of Dr. Garras that Petitioner's left ankle ligaments had suffered an acute injury from the accident of March 14, 2019.

Petitioner testified that although she did suffer ankle sprains in both ankles from her years as a high school and college volleyball player and although she had sprained her left ankle in the past she had never had any issues with her left ankle like those she experienced on March 14, 2019. Petitioner did sprain her ankle playing high school volleyball (1981 to 1985) but couldn't even remember if she injured her right or left ankle. Likewise, Petitioner testified that while playing volleyball in college, she did suffer an ankle injury but likewise couldn't remember if it was to her right or left ankle. Petitioner stated that she never went to a doctor following any of her ankle sprains she suffered in college. Petitioner likewise testified that she never dislocated her left ankle as claimed by Dr. Holmes but rather it was her right ankle that she thinks she may have dislocated. This ankle injury of March 14, 2019 was a different kind of pain that she had experienced with any of the prior ankle sprains. The pain she experienced on March 14, 2019, was a sharp, popping pain unlike any of her prior ankle sprains. It was a different type of ankle pain she was experiencing from this accident versus those sprains in the past. Petitioner described the sensation in her left ankle from this injury as a tendon rolling over in your ankle and had never experienced that rolling tendon sensation in the past.

The weight of the evidence establishes that a causal relationship exists between the accident of March 14, 2019 and the current condition of Petitioner's left ankle. Accordingly, the Arbitrator finds that Petitioner's left ankle injury is causally related to her work injury that occurred on March 14, 2019.

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?

In accordance with the Arbitrator's findings that an accident occurred on March 14, 2019 arising out of and in the course of the Petitioner's employment and that her current condition is causally related to that accident, the Arbitrator further finds that Respondent is liable for the medical care provided to the Petitioner and that the medical care provided was reasonable and necessary to cure the effects of the accident. The Arbitrator awards the following medical expenses Petitioner incurred to alleviate the effects of the injury and are causally related to the injury. Petitioner submitted medical bills totaling $123,251.09 paid by Blue Cross/Blue Shield. (PX 5-9). The Arbitrator further finds that certain bills were paid by Petitioner's group medical insurance Blue Cross Blue Shield (PX 5). The Respondent is entitled to an 8(j) credit with respect to said bills paid by group insurance but is ordered to hold the Petitioner harmless for any claims by any providers of the services for which the Respondent is receiving said credit.

K. What temporary benefits are in dispute?

Dr. Garras recommended surgery to Petitioner's left ankle. Surgery was performed by Dr. Garras on May 3, 2019. Petitioner followed up post op with Dr. Garras who eventually referred Petitioner to a course of physical therapy. Following surgery, Petitioner was off work for two weeks. Petitioner wanted to return to work so she could administer final exams to her students, so Dr. Garras allowed her to return to work following the two weeks off in a wheelchair.

Having found that the medical treatment was reasonable and necessary, the Arbitrator finds that the Petitioner is entitled to temporary total disability benefits from May 3, 2019 through May 17, 2019 representing 2 weeks. Respondent shall pay Petitioner 2 weeks of temporary total disability benefits from May 3, 2019 through May 17, 2019.

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

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

Under Section 8.1b(b)(i), the Arbitrator notes that no permanent partial disability impairment report and/or opinion was submitted into evidence. The statute does not require the claimant to submit an

impairment rating. It only requires that the Commission consider such a report if in evidence and regardless of which party submitted it. See Continental Tire of the Americas, LLC v. Illinois Workers' Compensation Comm'n, 2015 IL App (5th) 140445WC, ¶ 17, 43 N.E.3d 556. Therefore, the Arbitrator gives no weight to this factor.

Under Section 8.1b(b)(ii), the occupation of the injured employee, the Arbitrator notes that Petitioner continues to work in a physical education teaching position with the Respondent. The Petitioner works in an environment that requires light to moderate physical activity and involves spending time teaching physical education class. Petitioner testified that she still experiences pain in her left ankle, that she is no longer able to jump or run and continues to have a tingling sensation in her left foot. The Arbitrator therefore gives moderate weight to this factor.

Under Section 8.1b(b)(iii), the age of the employee at the time of the injury, the Arbitrator notes that Petitioner was 51 years old, as parties stipulated to, when she sustained her injury to her left ankle. The Arbitrator notes that the Petitioner is towards the end of her work life and continues to work as a physical education teacher. The Arbitrator therefore places moderate weight on this factor.

Under Section 8.1b(b)(iv), the employee's future earning capacity, the Arbitrator notes that neither Petitioner nor Respondent presented evidence indicating any effect on Petitioner's future earning capacity. The Arbitrator therefore gives no weight to this factor.

Under Section 8.1b(b)(iv), evidence of disability corroborated by the treating medical records, Arbitrator notes that as a result of her work accident, Petitioner underwent a complex surgical repair of her left ankle and had a good result. The last few times she saw Dr. Garras, he indicated that Petitioner had some tingling and trouble on uneven ground, but that her left ankle had recovered with minimal problems. On the date of the trial, she testified that she still experiences left ankle pain and loss of sensation that was not present before the accident. The Arbitrator therefore gives greater weight to this factor.

Based on the above factors, and the record taken as a whole, the Arbitrator finds that Petitioner sustained permanent partial disability to the extent of 22.5% loss of use of the left foot, pursuant to §8(e) of the Act.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	16WC025772
Case Name	Patrick Waltz v. State of Illinois - Vandalia Correctional Center
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	24IWCC0171
Number of Pages of Decision	20
Decision Issued By	Maria Portela, Commissioner

Petitioner Attorney	Todd Schroader, Mary Massa
Respondent Attorney	Caitlin Fiello

DATE FILED: 4/15/2024

/s/Maria Portela, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF)
JEFFERSON

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Patrick Waltz,

Petitioner,

vs. NO: 16 WC 025772

Vandalia Correctional Center,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of accident, medical expenses, temporary total disability, permanent disability and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed February 7, 2023 is hereby affirmed and adopted.

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

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

APRIL 15, 2024

o030524
MEP/yp

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

/s/ *Amylee H. Simonovich*
Amylee H. Simonovich

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	16WC025772
Case Name	WALTZ, PATRICK v. VANDALIA CORRECTIONAL CENTER
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	18
Decision Issued By	Jeanne AuBuchon, Arbitrator

Petitioner Attorney	Todd Schroader
Respondent Attorney	Caitlin Fiello

DATE FILED: 2/7/2023

THE INTEREST RATE FOR THE WEEK OF FEBRUARY 7, 2023 4.75%

/s/ Jeanne AuBuchon, Arbitrator
Signature

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

February 7, 2023

/s/ Michele Kowalski

Michele Kowalski, Secretary
Illinois Workers' Compensation Commission

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Patrick Waltz
Employee/Petitioner

v.

Vandalia Correctional Center
Employer/Respondent

Case # **16** WC **025772**

Consolidated cases: _____

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Jeanne L. AuBuchon**, Arbitrator of the Commission, in the city of **Mount Vernon**, on **September 14, 2022**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On **4/21/2016**, Respondent ***was*** operating **under and** subject to the provisions of the Act.

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

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

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

Petitioner's current conditions of ill-being ***are*** causally related to the accident.

In the year preceding the injury, Petitioner earned $**118,728.00**; the average weekly wage was $**2,283.23**.

On the date of accident, Petitioner was **46** years of age, ***married*** with **0** dependent children.

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

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

Respondent shall be given a credit of $ for TTD, $ for TPD, $ for maintenance, and $**187,325.84** for other benefits, for a total credit of $**187,325.84**.

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

ORDER

Respondent shall pay reasonable and necessary medical services as listed in Petitioner's Exhibits – except for charges related to carpal tunnel surgery and the last four physical therapy visits – as provided in Sections 8(a) and 8.2 of the Act. Respondent shall be given credit for all medical benefits that have been paid and hold Petitioner harmless for any claims by insurance carriers for reimbursement due pursuant to Section 8(j).

Respondent shall pay Petitioner temporary total disability benefits of $**1,398.23**/week for **147 & 4/7** weeks, commencing September 1, 2016, through June 30, 2019, as provided in Section 8(b) of the Act. Respondent shall be entitled to a credit of $187,325.84 for nonoccupational indemnity disability benefits paid.

Respondent shall pay Petitioner permanent partial disability benefits of $755.22/week for 85 weeks, because the injuries sustained caused the 12% loss of the person as a whole as to his left shoulder and 5% loss of the person as a whole as to his mental conditions, as provided in Section 8(d)2 of the Act.

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

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

Jeanne L. AuBuchon **FEBRUARY 7, 2023**

Signature of Arbitrator

PROCEDURAL HISTORY

This matter proceeded to trial on September 14, 2022, on all disputed issues. The issues in dispute are: 1) whether the Petitioner sustained accidental injuries that arose out of and in the course of his employment; 2) the causal connection between the accident and the Petitioner's left shoulder and mental health conditions; 3) payment of medical bills; 4) entitlement to temporary total disability benefits on the basis of liability; and 4) the nature and extent of the Petitioner's injuries.

FINDINGS OF FACT

At the time of the incident, the Petitioner was 46 years old and had been employed by the Respondent as a major/shift supervisor. (AX1, T. 10) His duties included scheduling staff, which he was doing on April 21, 2016, when the discussion became heated. (T. 10-12) The Petitioner said he and Maj. Julius Banal were butting heads on how things should go and Maj. Banal called him a "whiny ass," to which the Petitioner said: "F*** you." (T. 12) The Petitioner said Maj. Banal said: "You know you're going to say that to me about one more time, and we're going to go." (T. 13) The Petitioner again replied: "F*** you." (Id.) He said Maj. Banal got up from behind a desk, walked to the other side of the room where the Petitioner was sitting and stood over the top of him and said: "Come on." (T. 13, 21-22) The Petitioner said he was always taught not to be intimidated – especially in a prison setting – and he stood up because he was not going to be in a position to not defend himself properly. (T. 13-14) He said Maj. Banal then hit him with both hands in the shoulder area, which threw him back into his chair. (T. 14) Two other majors then separated them. (Id.)

The Petitioner filled out a Notice of Injury, stating that he was discussing union business when the discussion turned into an argument when he was shoved and fell into a chair. (RX1)

Maj. Banal reported the verbal argument and said the Petitioner stood up in his chair and took a step towards him into his space, which he took to be a threat. (Id.) He said he pushed the Petitioner away from him. (Id.) He said the incident ended without further problems as both of them then walked away. (Id.) Maj. Joseph Powell filled out an Incident Report, stating that Maj. Banal and the Petitioner exchanged verbal insults, during which time Maj. Banal stood up out of his chair and walked in the direction of the Petitioner and stated that he wanted the Petitioner to get up out of his chair. (Id.) Maj. Powell said the Petitioner hesitated and stayed in the chair. (Id.) He said Maj. Banal asked him to get out of his chair a second time. (Id.) He said the Petitioner stood up, Maj. Banal pushed him backwards and the Petitioner fell back into the chair. (Id.) Maj. Roy Garrett also filled out an incident report, with his description of the incident essentially identical to the Petitioner's testimony. (Id.) The Petitioner filled out a separate incident report consistent with his testimony. (Id.) The Petitioner testified that Maj. Banal was prosecuted and pled guilty to assault. (T. 15)

The Petitioner acknowledged having previous treatment for his left shoulder. (T. 16) He said that before the incident, he was having some soreness but nothing to the extent of what it was afterwards. (T. 25) On April 8, 2016, Petitioner saw Dr. Frank Lee, an orthopedic surgeon at Bonutti Clinic, and gave a history of approximately eight weeks of left shoulder pain and a fall on his left shoulder. (PX2) He reported treatment by his primary care provider and having physical therapy for about five weeks with no relief. (Id.) These records were not submitted at arbitration. The Petitioner described his pain as a constant dull ache in his shoulder that radiated down his arm to his elbow with increased pain with overhead reach, inability to reach behind his back due to pain and occasional numbness/tingling in his fingers. (Id) Dr. Lee diagnosed synovitis (joint lining inflammation) and tenosynovitis (inflammation of the membrane surrounding the tendons)

and ordered an MRI to rule out a rotator cuff tear. (Id.) Dr. Lee also discussed the option of a cortisone injection. (Id.)

On April 22, 2016, the Petitioner saw Dr. Jeffrey Crowell, his primary care physician at Family Care Associates, regarding low back pain with pain and numbness radiating into his left leg as a result of the work incident. (PX1). He was diagnosed with acute left-sided low back pain with left-sided sciatica and given home exercises and pain medication. (Id.)

Also on April 22, 2016, the Petitioner saw Dr. Lee and reported the work accident. (PX2). The Petitioner said he was not having increased pain in his left shoulder area, but the pain with internal rotation and with outstretched lift was worse than before. (Id.) Dr. Lee interpreted the April 11, 2016, MRI as showing a partial rotator cuff tear and stated that the Petitioner had an aggravation of his left shoulder symptoms from the workplace assault. (Id.)

The Petitioner returned to Dr. Lee on May 13, 2016, and reported continued constant pain that increased with outstretched reach. (Id.) Changes in symptoms included audible pop with severe pain and pain with movement in all directions. (Id.) Dr. Lee gave the Petitioner a steroid injection and recommended an arthrogram MRI. (Id.) The Petitioner saw Dr. Lee on June 6, 2016, and reported that the injection lasted about two days, with 50 percent relief the first day and about 30-40 percent the next couple of days. (Id.) Dr. Lee interpreted the MRI as showing a bone bruise to the left shoulder anterior humeral head (the top of the humerus that forms the ball of the shoulder joint) and glenoid (part of the scapula that forms the socket of the shoulder joint) and tears to the superior labrum (thick tissue that attaches to the rim of the shoulder socket) and the biceps. (Id.) He diagnosed superior labral and longitudinal biceps tears and a bone bruise of the shoulder joint. (Id.) He said some of the Petitioner's pain may have been due to the bone contusions that may need time to heal and that it remained to be seen if surgical intervention was required. (Id.)

On June 29, 2016, Petitioner returned to Dr. Lee and reported no change in symptoms. (Id.) Dr. Lee recommended surgery on the left shoulder. (Id) On October 27, 2016, Dr. Lee performed a left shoulder arthroscopy with repair of the labrum, chondroplasty (repair of damaged cartilage) of the anterior shoulder joint, biceps tenodesis (repair of the tendon connecting the biceps muscle to the shoulder) and carpal tunnel release. (PX2, PX6) The Petitioner underwent physical therapy at Phoenix Physical Therapy from November 10, 2016, through January 18, 2017, for a total of 16 visits. (PX7) The therapy note from December 15, 2016, stated that the Petitioner's shoulder continued to progress well. (Id.) The last four visits appeared to be focused on the Petitioner's low back. (Id.) At follow-up visits with Dr. Lee, the Petitioner reported improvement in his shoulder, and on February 20, 2017, he reported his shoulder was doing excellent, range of motion was good and that he had no pain to speak of. (PX2)

Dr. Lee testified consistently with his records at a deposition on November 13, 2017. (PX10) Dr. Lee noted changes in the Petitioner's condition after the incident: increased problems with internal rotation and lifting his arm in an outstretched manner; an audible pop from the shoulder; suggestion of tear in the biceps tendon and tear in the anterior labrum on the second MRI; and bone edema in the ball and socket in the front of the shoulder. (Id.) He explained that the injection he gave showed that the Petitioner's pain was coming from within the joint, which was the opposite of what he would have expected if the Petitioner had only the rotator cuff injury that was diagnosed before the accident. (Id.) He said the intervention of repairing the labral tear and reattaching the biceps solved the Petitioner's problems with his pain. (Id.) He thought the increase in the severity of the Petitioner's symptoms accelerated the timeline towards surgery. (Id.) He said the carpal tunnel surgery was not related to the work accident. (Id.)

On cross-examination, Dr. Lee acknowledged that a pushing incident to the front of the shoulder is not a common mechanism of biceps or labral injuries. (Id.) He explained how the injuries could happen with force placed across the ball of the joint, pushing the ball back on the socket, and that sudden force of the ball going back could pull the bicep and the upper labrum. (Id.) But it was his impression, based on the history provided, that the chair fell over backwards and there was some impact between the Petitioner and the floor. (Id.) He said that if those details were different, that may alter his opinion. (Id.)

On February 6, 2018, the Petitioner underwent a Section 12 examination of his left shoulder by Dr. Richard Lehman, an orthopedic surgeon at the U.S. Center for Sports Medicine. (RX3) Dr. Lehman reviewed medical records, examined the Petitioner and reviewed imaging studies. (Id.) He said the two MRIs could not be compared because they were completely different evaluations – one with contrast and one without. (Id.) He did not believe there was a causal relationship between his left shoulder condition and the accident. (Id.) He believed the Petitioner had pre-existing degenerative arthritis and a long-term degenerative split in the biceps that he did not believe was caused by being pushed anteriorly. (Id.) He did not believe the incident changed the intraarticular pathology in the shoulder in any way. (Id.) He said the mechanism of injury would not have traumatized or damaged the Petitioner's rotator cuff, biceps tendon or labrum. (Id.) He said the Petitioner's medical treatment was reasonable and necessary and that the Petitioner required no further treatment other than strengthening. (Id.) He said the Petitioner was not at maximum medical benefit because he still had weakness in his shoulder. (Id.)

Dr. Lehman testified consistently with his report at a deposition on June 27, 2019. (RX4) He explained how he determined that the changes in the Petitioner's shoulder as seen on the May 31, 2016, MRI were degenerative and not acute – such as acute bone marrow edema (swelling

caused by trapped fluid), acute fluid and changes in the meniscus (thick pad of cartilage) of the AC joint. (Id.) He said his review of the surgical report showed no indication of an acute injury. (Id.) He said he did not believe the stress of the work incident as it was described would alter, exacerbate or in any change the Petitioner's underlying arthritis because the biomechanics of the altercation would "in no way" stress the anterior part of the shoulder. (Id.)

On cross-examination, Dr. Lehman said it was not clear from the Petitioner's history or medical records that the Petitioner's pain level increased after the work incident. (Id.) Dr. Lehman said surgery was not the answer to the Petitioner's problem because his pain did not go away afterwards. (Id.)

As to his mental health claim, the Petitioner acknowledged having prior treatment for depression, post-traumatic stress disorder (PTSD) and anxiety. (T. 17) The Petitioner had been treating with Dr. David Hilton, a psychiatrist at LifeLinks Mental Health, since December 2, 2015. (PX3) In his initial intake note, Dr. Hilton documented a 15-year history of depression with a cyclical pattern, worsening six weeks prior to the visit. (Id.) Dr. Hilton diagnosed recurrent, mild major depression and PTSD and prescribed medication. (Id.) On April 1, 2016 – his last visit before the work accident – the Petitioner reported being anxious (worse when going to work) and interpersonal problems with peers at work. (Id.) His mood was mildly depressed, and other mental health indicators were normal. (Id.)

The Petitioner testified that after the work incident, he noticed changes regarding his mental health – being more hypervigilant, not wanting to go out in public because he was always so nervous, increased drinking and avoiding driving by the prison or seeing other correctional officers. (T. 17-18) He saw Dr. Hilton on May 20, 2016, and reported the incident and that he was being hazed at work. (PX3) He was angry, anxious, irritated and depressed. (Id.) Dr. Hilton's

notes were difficult to read, as they were hand-written. The Petitioner had monthly visits to Dr. Hilton, who continued to prescribe medications for anxiety and depression (lorazepam, Cymbalta, mirtazapine and clonazepam) and mood stabilizing (lamotrigine). (Id.) On August 19, 2016, Dr. Hilton recommended resuming psychotherapy. (Id,) The last treatment note submitted at arbitration was from May 4, 2018, and reflected that the Petitioner was anxious and depressed, but other mental health indicators were normal. (Id.)

Dr. Hilton testified consistently with his records at a deposition on June 12, 2021. (PX11) He thought there were changes after the accident: the Petitioner's overall mood and PTSD tended to be worse for an extended period of time; the degree of sleep disturbance seemed significantly worse with more nightmares, more restless sleep and repeated incidents where he would be thrashing and fighting in his sleep; being more uncomfortable in crowds; more labile emotionally, including instances of tearfulness at visits; and generally more depressed. (Id.) He thought the assault contributed to and exacerbated the diagnosis that existed beforehand. (Id.)

On February 23, 2022, the Petitioner underwent a Section 12 examination of his mental health condition by Dr. Jarrod Holiday, an instructor in psychiatry at Washington University School of Medicine. (RX5) Dr. Holiday examined the Petitioner and reviewed Dr. Hilton's deposition and records, Dr. Lehman's report, Dr. Lee's records, the incident reports and Dr. Crowell's records. (Id.)

In his interview with Dr. Holiday, the Petitioner reported a history of childhood bullying, onset of depressive symptoms in 1997-1998 in connection with his wife's infidelity, past suicidal ideation and multiple traumatic experiences while working in various prisons that included a riot, witnessing fights and assaults on officers, being assaulted by prisoners and a fire. (Id.) Regarding PTSD symptoms, the Petitioner reported nightmares, involuntary and intrusive memories of

various assaults and violence he witnessed, hypervigilance, social avoidance and startling at loud noises. (Id.) The Petitioner reported a history of alcohol abuse dating back to his teenage years – drinking approximately 36 beers daily for many years, having liver damage at age 26, being involved in a near-fatal motorcycle accident, branding himself while intoxicated and blacking out. (Id.) He said his drinking increased following the work incident and led to a near-fatal alcohol overdose in 2017. (Id.) Also after the work incident, the Petitioner was harassed by coworkers, was overwhelmed by the politics of the workplace, began avoiding coworkers outside of work, experienced significantly worsened mood and had difficulty with sleep, nightmares and difficulty in crowds. (Id.)

At the time of Dr. Holiday's examination, the Petitioner was seeing Dr. Hilton every three months, was not seeing a therapist, was using medical marijuana and was taking antidepressants. (Id.) He reported that after retiring, his depression improved, his alcohol use decreased significantly to about two beers per day, he was more engaged in activities, and he was better able to handle crowds. (Id.)

Dr. Holiday diagnosed the Petitioner with: PTSD; major depressive disorder, recurrent in partial remission; moderate alcohol use disorder in partial remission; and moderate opioid use disorder in sustained remission. (Id.) He opined that the work incident on April 21, 2016, was not the cause of the Petitioner developing PTSD or major depressive disorder, both of which pre-existed the workplace injury for many years. (Id.) He could not provide an opinion as to whether the incident exacerbated the Petitioner's pre-existing mental illness, as his symptoms were already worsening prior to the event. (Id.) He said there were other contributing factors, including the Petitioner's alcohol use, his perceived mistreatment by the Respondent and the nature of his pre-existing mental illnesses. (Id.) He opined that the medical treatment the Petitioner received had

been reasonable and necessary and that he would require continued psychiatric treatment. (Id.) He also opined that the Petitioner's psychiatric illnesses had not resulted in a psychiatric disability, as his symptoms improved over time. (Id.) He found the Petitioner to be at maximum medical improvement regarding his psychiatric illnesses. (Id.)

Dr. Holiday testified consistently with his report at a deposition on July 13, 2022. (RX6) He acknowledged that PTSD can be aggravated by additional traumatic events, that the Petitioner's symptoms increased after the work incident and that the incident may have affected the Petitioner's depression or PTSD. (Id.)

The Petitioner testified that he retired from corrections in June 2019 because he could not continue in the job. (T. 19-20) He said that his mental health improved for a while after retiring, but he was struggling lately – having nightmares from the assault and other traumatic experiences he had seen and been involved in over a 29-year career. (T. 20) Regarding his left shoulder, the Petitioner said the surgery helped, but he still had some pain, lack of range of motion and soreness. (T. 21)

CONCLUSIONS OF LAW

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

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

An injury from a fight between two employees arising out of a quarrel concerning the employer's work in which they were engaged is a risk incidental to the employment and is therefore compensable as to the employee not responsible for the assault. *Scholl v. Industrial Comm.*, 366 Ill. 588, 10 N.E.2d 360 (1937); *Franklin Coal & Coke Co. v. Industrial Comm.*, 322 Ill. 23, 152

N.E. 498 (1926); *Chicago, Rock Island & Pacific Railway Co. v. Industrial Comm.*, 288 Ill. 126, 123 N.E. 278 (1919); *Pekin Cooperage Co. v. Industrial Comm.*, 285 Ill. 31, 120 N.E. 530 (1918) Injuries to the assailant, being traceable directly to his voluntary actions as aggressor, cannot be ascribed to the conditions of the employment or considered a risk incidental to the employment and, hence, are not compensable. *Armour & Co. v. Industrial Comm.*, 397 Ill. 433, 74 N.E.2d 704 (1947); *Triangle Auto Painting & Trimming Co. v. Industrial Comm.*, 346 Ill. 609, 178 N.E. 886 (1931). Physical contact is not decisive in the determination of who is the aggressor. *Ford Motor Co., v. Industrial Commission*, 78 Ill. 2d 260 (1980). Someone may be determined to be the aggressor if, "[h]is words were antagonistic, and were such as might cause an altercation, whether justified or not. By such action, he stepped outside the scope of his employment, and by so doing he stepped outside the protection of the Workmen's Compensation Act." *Container Corp. of America v. Industrial Com.*, 402 Ill. 129, 133 (1948).

The Arbitrator finds that Maj. Banal was the aggressor in all respects. By the accounts of the Petitioner and witnesses, it was Maj. Banal who started the argument down the wrong path with name-calling. He got up from his seat, walked around a desk and stood over the Petitioner – goading him into a confrontation, then pushing him when he stood up. As far as the Petitioner's retorts to Maj. Banal during the verbal altercation, the Arbitrator finds that these did not cause the altercation, which Maj. Banal had already set in motion.

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

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

An accident need not be the sole or primary cause as long as employment is a cause of a claimant's condition. *Sisbro, Inc. v. Indus. Comm'n,* 207 Ill. 2d 193, 205, 797 N.E.2d 665, 278

Ill.Dec. 70 (2003). An employer takes its employees as it finds them. *St. Elizabeth's Hosp. v. Workers' Comp. Comm'n,* 371 Ill.App.3d 882, 888, 864 N.E.2d 266, 309 Ill.Dec. 400 (5th Dist. 2007). A claimant with a preexisting condition may recover where employment aggravates or accelerates that condition. *Caterpillar Tractor Co. v. Industrial Comm.,* 92 Ill. 2d 30, 36, 440 N.E.2d 861, 65 Ill.Dec. 6 (1982). Employers are to take their employees as they find them. *A.C.& S. v. Industrial Comm'n*, 304 Ill.App.3d 875, 883, 710 N.E.2d 837, 238 Ill.Dec. 40 (1st Dist. 1999)

When a preexisting condition is present, a claimant must show that "a work-related accidental injury aggravated or accelerated the preexisting [condition] such that the employee's current condition of ill-being can be said to have been causally connected to the work-related injury and not simply the result of a normal degenerative process of the preexisting condition." *St. Elizabeth's Hospital*, 371 Ill.App.3d at 888.

The Petitioner had pre-existing degeneration and a partial rotator cuff tear. The Arbitrator notes that there were no surgical plans made before the work incident.

Dr. Lehman did not find a causal relationship between the incident and the Petitioner's left shoulder condition. He did not believe the incident changed the pathology in the Petitioner's shoulder in any way and said the mechanism of injury would not have traumatized or damaged the Petitioner's rotator cuff, biceps tendon or labrum. The Arbitrator notes that Dr. Lehman saw the Petitioner once – more than a year after his surgery – and could not tell from the Petitioner's history or medical records that his pain level increased after the work incident.

Dr. Lee determined there were changes in the Petitioner's shoulder condition after the work accident, including symptomatic changes and differences between the two MRI studies, such that he found that the Petitioner suffered additional injuries to his labrum and biceps that accelerated the need for surgery. Dr. Lee acknowledged that his opinion regarding mechanism of injury could

have changed if the history of the incident was different than the Petitioner's report to him that his chair fell over when he fell onto it. However, Dr. Lee was not asked if it was impossible for the accident as described in the Petitioner's other reports to have been a mechanism of injury. As the Petitioner's treating physician both before and after the incident, Dr. Lee had more opportunities to be familiar with the Petitioner and his condition. For this reason, his opinions deserve greater weight. The Arbitrator finds there were changes in the Petitioner's shoulder condition after the work incident and an acceleration of the need for surgery that create a causal connection between the incident and the Petitioner's shoulder condition.

As to the Petitioner's mental health issues, Dr. Holiday said the work incident did not cause his PTSD or depression but could not give an opinion as to whether the incident exacerbated the Petitioner's pre-existing mental conditions. He also acknowledged that PTSD can be aggravated by additional traumatic events, that the Petitioner's symptoms increased after the work incident and that the incident may have affected the Petitioner's depression or PTSD. Dr. Holiday saw the Petitioner once – six years after the incident.

Dr. Hilton pointed to a number of changes in the Petitioner's condition after the work incident and thought the assault contributed to and exacerbated the diagnosis that existed beforehand. Again, as the Petitioner's treating physician, Dr. Hilton had more opportunities to be more familiar with the Petitioner and his conditions both before and after the incident, and his opinions deserve greater weight. This, along with Dr. Holiday's weak opinion and concessions stated above, lead the Arbitrator to find that the work incident exacerbated the Petitioner's mental conditions, creating a causal connection.

Therefore, the Arbitrator finds that the Petitioner's left shoulder and mental health conditions are causally related to the work incident.

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

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

Based on the findings above regarding causation, the Arbitrator finds that the other medical services provided were reasonable and necessary, with two exceptions. By Dr. Lee's admission, the carpal tunnel surgery was not related to the injuries from the work accident, and the last four physical therapy visits were related to the Petitioner's lower back and not his shoulder. The Arbitrator finds these were not reasonable or necessary to treat the Petitioner's work-related injuries.

Therefore, the Arbitrator orders the Respondent to pay the medical expenses contained in the Petitioner's exhibits – except for charges related to carpal tunnel surgery and the last four physical therapy visits – pursuant to Section 8(a) of the Act and in accordance with medical fee schedules. The Respondent shall have credit for any amounts already paid or paid through its group carrier. Respondent shall indemnify and hold Petitioner harmless from any claims arising out of the expenses for which it claims credit.

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

According to the Request for Hearing (AX1), the parties dispute temporary total disability benefits for the period of September 1, 2016, through June 30, 2019. An employee is temporarily totally incapacitated from the time an injury incapacitates him for work until such time as he is as

far recovered or restored as the permanent character of his injury will permit. *Archer Daniels Midland Co. v. Indus. Comm'n*, 138 Ill.2d 107, 118 (1990).

Based on the findings above regarding accident and causation, the Arbitrator finds that the Petitioner was entitled to TTD benefits from September 1, 2016, through June 30, 2019, and the Respondent is entitled to a credit of $187, 325.84 in nonoccupational indemnity disability benefits paid.

Issue L: What is the nature and extent of the Petitioner's injury?

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

(i) **Level of Impairment.** No impairment ratings were offered. Therefore, the Arbitrator gives this factor no weight.

(ii) **Occupation.** The Petitioner has retired from corrections. There was no evidence of any current employment to determine any impact the work injuries would have on the Petitioner's employment. Therefore, the Arbitrator places little weight on this factor.

(iii) **Age.** The Petitioner was 46 years old at the time of the injury. He has many years in which he will need to deal with the residual effects of his injuries. The Arbitrator places significant weight on this factor.

(iv) **Earning Capacity.** There was no evidence of limitation of the Petitioner's earning capacity. Therefore, the Arbitrator places no weight on this factor.

(v) **Disability.** The Petitioner testified that his mental health improved for a while after retiring but he still had nightmares. As to his left shoulder, the Petitioner said the surgery helped, but he still had some pain, lack of range of motion and soreness. The Arbitrator puts significant weight on this factor.

Therefore, the Arbitrator finds the Petitioner's temporary total disability to be 12 percent of the body as a whole with regards to his left shoulder and 5 percent of the body as a whole with regards to his PTSD and depression.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	22WC023680
Case Name	Marrio Riles v. Holiday Inn
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b)
Decision Type	Commission Decision
Commission Decision Number	24IWCC0172
Number of Pages of Decision	15
Decision Issued By	Maria Portela, Commissioner

Petitioner Attorney	Adam Rosner
Respondent Attorney	Daniel Wellner

DATE FILED: 4/15/2024

/s/Maria Portela, Commissioner

Signature

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

MARRIO RILES,

Petitioner,

vs. NO: 22 WC 23680

HOLIDAY INN,

Respondent.

DECISION AND OPINION ON REVIEW

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

The Commission affirms and adopts the Arbitrator's Decision. However, the Commission modifies the Decision to correct the onset date for temporary total disability benefits. The Arbitrator awarded benefits commencing on the date of accident, August 30, 2022. The Commission finds, however, that benefits do not commence until September 1, 2022, when Petitioner was placed off work by Dr. Chunduri and, therefore, modifies the Decision accordingly.

All else is affirmed and adopted.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent shall pay to the Petitioner the sum of $480.00 per week for a period of 25 1/7 weeks, from September 1, 2022 through November 30, 2022, and from December 2, 2022 through February 24, 2023, that being the period of temporary total incapacity for work under §8(b), and that as provided in §19(b) of the Act,

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

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $4,100.34 for medical expenses under §8(a) of the Act subject to the fee schedule in §8.2 of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall authorize the consultation with the University of Illinois PM&R as recommended by Dr. Lipov.

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

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

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

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $8,614.83. 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.

APRIL 15, 2024

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

MEP/dmm
O: 32624
49

/s/ *Amylee H. Simonovich*
Amylee H. Simonovich

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	22WC023680
Case Name	Marrio Riles v. Holiday Inn
Consolidated Cases	
Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	12
Decision Issued By	Nina Mariano, Arbitrator

Petitioner Attorney	James McHargue
Respondent Attorney	Daniel Wellner

DATE FILED: 4/12/2023

THE INTEREST RATE FOR THE WEEK OF APRIL 11, 2023 4.79%

/s/Nina Mariano, Arbitrator

Signature

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

Marrio Riles
Employee/Petitioner
v.
Holiday Inn
Employer/Respondent

Case # **22** WC **23680**

Consolidated cases:

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Nina Mariano**, Arbitrator of the Commission, in the city of **Chicago**, on **February 24, 2023**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On the accident date, **August 30, 2022**, Respondent *was* operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $**25,646.40**; the average weekly wage was $**493.20**.

On the date of accident, Petitioner was **44** years of age, **single** with **10** dependent children.

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

Respondent shall be given a credit of $**7,654.08** for TTD, $**0** for TPD, $**0** for maintenance, and **$0** for medical, and **$0** for other benefits, for a total credit of **$0.**

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

ORDER

Respondent shall pay Petitioner temporary total disability benefits of $480.00/week for 25 and 3/7 weeks, commencing August 30, 2022 through November 30, 2022 and from December 2, 2022 through February 24, 2023. Respondent is entitled to a credit for TTD paid in the amount of $7,654.08 as indicated above.

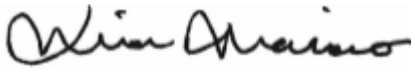
Respondent shall pay reasonable and necessary medical services, pursuant to the medical fee schedule, of Illinois Orthopedic Network, $164.86; Midwest Specialty Pharmacy, $2,637.53; and South Suburban Physical Therapy, $1,297.95.

The Arbitrator orders Respondent to authorize the consultation with University of Illinois PM&R as recommended by Dr. Lipov.

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

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

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



_____ **APRIL 12, 2023**

Signature of Arbitrator

ICArbDec19(b)

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

MARRIO RILES,	)	
	)	
Petitioner,	)	
	)	Number: 22 WC 23680
vs.	)	
	)	
HOLIDAY INN,	)	
	)	
Respondent.	)	

FINDINGS OF FACT

Petitioner, Marrio Riles, testified that he had been employed by Bar Louis Holiday Inn for thirteen years as of August 30, 2022. Tx8. Petitioner testified that he worked as a breakfast manager. Id. at 9. As a breakfast manager, Petitioner transferred products such as silverware, glasses, etc. from the breakfast cooler to the restaurant; lifting/unpacking boxes filled with product; filled coffee pots; and unloading the carts for breakfast. Id. at 9-10. Petitioner testified that on August 30, 2022, he worked from 5:00 AM to 10:30-11:00 AM. Id. at 11. Petitioner testified that as he was working on August 30, 2022, he walked into the cooler room and flipped on the light switch that was located outside the cooler room. Id. at 11. Petitioner testified that the light did not initially come on, so he tried again, and as he did, he was "shocked" with electricity on his left hand. Id. at 11-12. Petitioner testified that the pain originated in his left index and middle finger and in the outside lower part of his left palm. Id. at 12. Petitioner testified that he felt the shock for about a minute. Id. at 12-13.

Petitioner testified that he noticed burn marks on his hand, sharp pain shooting through his hand, and swelling, so he went to the emergency room. Id. at 13-14. On August 30, 2022, Petitioner presented to the emergency room at Advocate South Suburban Hospital with 7/10 left hand pain, numbness, and swelling and a history consistent with his testimony at trial. Px1. On physical examination, the physician found pain and electrical discoloration to the left index finger with exit injury, left palmar and ulnar areas with erythema, and swelling throughout the index finger. Id. Petitioner underwent an EKG, which was normal, and was diagnosed with an electrocution injury. Id. He was instructed to follow up with a primary care physician, and Petitioner testified that he did not have one and that if he was sick, he went to the ER.

Petitioner testified that he woke up the following day with his left hand still swollen and painful so he followed up with another physician. Tx14. He testified that he believed he spoke to his attorney who

put him in touch with Illinois Orthopedic Network ("ION"). On September 1, 2022, Petitioner presented to Dr. Chunduri, who is board certified in Anesthesiology and Pain Management, at ION with 8/10 pain along the volar and dorsal surface of the hand and numbness along digits 2 through 4 that would intermittently radiate up into the forearm. Px2. Petitioner also complained of increased headaches in addition to some light headedness. Id. On physical examination to the left hand, Dr. Chunduri noted tenderness along the 2nd through 4th metatarsals and numbness along the wrist as well as digits 2 through 4, decreased ability to make a composite fist, and numbness/tingling with Tinel's over the cubital tunnel. Id. Dr. Chunduri diagnosed Petitioner with left hand pain and paresthesias, recommended an EMG, and placed Petitioner off work. Id. Petitioner followed up with a telephonic consult with Dr. Wiesman, who is board certified in Plastic Surgery and Hand and Microvascular Surgery, on September 22, 2022 with continued 8/10 left hand pain, numbness into the third through fifth digits, and pain aggravated with grasping and grabbing motions. Id. Dr. Wiesman continued his recommendation of the EMG and Petitioner's off work restrictions. Id.

On October 5, 2022, Petition presented for an EMG of his left upper extremity with the neurologist's impression being normal. Id. On October 5, 2022, Petitioner followed up with Dr. Wiesman with similar hand pain/numbness and physician examination findings as previous visits. Id. Dr. Wiesman recommended Petitioner start physical therapy and stay off work. Id. Petitioner completed a course of physical therapy at South Suburban Physical Therapy from October 10, 2022 through December 12, 2022. Px4. Petitioner presented for a telephonic visit with Dr. Wiesman on November 3, 2022, with continued left hand pain, cramping, and swelling of the left hand when performing physical therapy exercises. Id.

On December 1, 2022, Petitioner returned to see. Dr. Wiesman. He indicated that Petitioner was sent back to work today on light duty restrictions, but that that the job was not honoring those and he was required to use both hands to perform his work duties, which aggravated his symptoms. Edema was noted over Petitioner's left hand and forearm. Dr. Wiesman referred Petitioner to pain management and also recommended a neurology follow up for a more thorough evaluation. Dr. Wiesman took Petitioner off work since his employer was not able to accommodate one handed duty. Dr. Wiesman further noted that Petitioner mentioned sharp pains at the back of his head causing headache symptoms, which he has been noticing since the electrocution and occurs once weekly. He has associated nausea.

On December 20, 2022, Petitioner presented to Dr. Lipov at ION for pain management with similar complaints and reduced left hand grip strength on physical examination. Id. Dr. Lipov recommended

Petitioner use a compression glove stocking and then consider a dorsal column stimulator if that does not work. Id.

On January 19, 2023, Petitioner presented for an independent medical examination (IME) at the request of the insurance carrier with Dr. Rishi Garg, who is board certified in Neurology. Rx1. At the IME, Petitioner complained of left hand pain, numbness, swelling, weakness and headaches and memory issues. Id. Dr. Garg noted the pain was located in the palmar aspect of the left hand and digits 3 through 5 with pain radiating to the forearm. Id. On physical examination, Dr. Garg noted left hand reduced grasp strength and hypersensitivity to pin in digits 3 through 5 of the left hand. Id. Dr. Garg diagnosed Petitioner with unspecified left hand pain, did not find Petitioner's condition of ill-being was causally related to the work accident, and that Petitioner did not require any further treatment. Id. He found that Petitioner's objective findings did not match his subjective complaints. Id. Dr. Garg found Petitioner's treatment until the IME to be reasonable and necessary and that he had reached maximum medical improvement. Id.

Petitioner last presented to Dr. Lipov on January 24, 2023 with 8/10 pain in his left hand and similar physical examination findings. Id. Dr. Dr. Lipov noted that Petitioner tried the compression glove, but that it increased his pain. Id. At this visit, Dr. Lipov referred Petitioner back to hand service and to University of Illinois PM&R section due to their expertise with electrocution injuries. Dr. Lipov indicated that it may take a year for his condition to fully resolve, and that he may need to consider a dorsal column stimulator if significant pain persists. Dr. Lipov placed Petitioner off work. Id.

Petitioner testified that in the weeks following his work accident, he still had pain and tingling throughout his left hand and headaches. Tx15. Petitioner testified that he was taking Gabapentin for his symptoms, but it was causing depression, mood swings, and erectile dysfunction. Id. at 16. Petitioner testified that he then stopped taking the medication. Id. at 16-17. Petitioner testified that he had some improvement from physical therapy with feeling in his left hand, but that it continued to swell. Id. at 20. Petitioner testified that he returned to work on December 1, [2022], with work restrictions of no use of the left hand. Id. at 21. Petitioner testified that the work he performed required both hands and his left hand/forearm began to swell. Id. at 21. Petitioner testified that he was subsequently taken off work. Id. Petitioner testified that he tried using the compression glove, but that it applied pressure and swelling to his hand, so he stopped using it. Id. at 22. Petitioner testified the compression glove helped in short bursts. Id.

Petitioner testified that he still has not been seen at the clinic at University of Illinois Hospital and that he wishes to attend a consultation here. Id. at 23. Petitioner testified that he is currently off work

pending approval of the consultation. Id. at 24. Petitioner testified that he feels left hand palm pain and shooting pains in his hand. Id. at 24. Petitioner testified that his condition has affected his daily life such as preparing meals and playing video games. Id. at 25. Petitioner testified that he has [eleven] kids, three of which live with him. Id. at 25. Petitioner testified that he is financially responsible for ten of the kids who are under eighteen. Id. Petitioner testified that his condition has affected his ability to interact with his kids such as playing sports and training. Id. at 26. Petitioner testified that he enjoys his job for Respondent and wishes to go back to work there after his treatment. Id. at 27.

Petitioner testified that he has had no intervening accidents with his left hand since the work accident and had no treatment for his left hand prior to the work accident. Id. at 27. Petitioner testified that he still has headaches from the work accident and did not have headaches prior to the work accident. Id. at 28.

On cross examination, Petitioner testified that he did not recall telling the emergency room doctor on the accident date that he had no loss of function or range of motion of the left hand. Id. at 29. Petitioner testified that he does not have a primary care physician. Id. at 30. Petitioner testified that he then went to ION where he was taken off work. Id. at 31-32. Petitioner testified that his left hand hurt while performing everyday activities and when sleeping on his left side. Id. at 33. Petitioner testified that when he returned to work on light duty, he contacted Human Resources and returned on December 1, 2022. Id. at 35-36. Petitioner testified that he saw Dr. Wiesman's Physician's Assistant on that date, who took him back off work. Id. Petitioner testified that he does not recall telling Dr. Chunduri that he always has issues with headaches. Id. at 37. Petitioner testified that he was truthful in his symptoms to Dr. Garg for the IME. Id. at 38.

Petitioner testified that he is financially responsible for all ten of the children under eighteen years old. Id. at 39-40. On redirect examination, Petitioner testified that his headaches prior to the work injury were in the area of the front of his head. Id. at 41.

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).

(F) IS PETITIONER'S PRESENT CONDITION OF ILL-BEING CAUSALLY RELATED TO THE INJURY?

The Arbitrator had the opportunity to personally observe the Petitioner's testimony. The Arbitrator finds the Petitioner truthful in his assertion that his left hand and headache symptoms began as a result of the work accident in a manner consistent with his testimony at trial. The Arbitrator compared Petitioner's testimony with the totality of the evidence submitted and did not find any material contradictions that would deem the witness unreliable. The Arbitrator finds Dr. Chunduri, Dr. Wiesman, and Dr. Lipov specifically to have been credible in their opinions in the medical records regarding the nature of his injuries and their causal relationship to the claimed injury at work for the Respondent. The Arbitrator does not find the opinions of Dr. Garg as credible or persuasive on this issue.

On August 30, 2022, Petitioner sustained a traumatic injury when his left hand was electrocuted while trying to flip a light switch at work for Respondent. Immediately following the injury, Petitioner credibly testified that he had pain sensation, numbness, and swelling in his left hand from his left index finger to his palm. Petitioner notified his supervisor and went to the emergency room at Advocate South Suburban Hospital on August 30, 2022 with symptoms and a history consistent with his testimony at trial. On physical examination, the emergency room doctor noted pain, swelling, and electrical dislocation to Petitioner's left index finger and erythema to the ulnar and palmar sides of the left hand. Petitioner then followed up with Dr. Chunduri at ION with continued left hand pain, swelling, and difficulty making a fist. Dr. Chunduri recommended Petitioner undergo an EMG and physical therapy. Petitioner underwent

a course of physical therapy at South Suburban Physical Therapy from October 10, 2022 through December 12, 2022.

Petitioner underwent the EMG, which was normal, on October 5, 2022. Petitioner started treating with Dr. Wiesman on September 22, 2022 and treated with him until November 3, 2022. Throughout Petitioner's treatment with Dr. Wiesman, Petitioner consistently complained of left hand pain, radiating pain up to his forearm, aggravated pain with gripping and grasping, and numbness/tingling in digits 3 through 5. Additionally, Dr. Wiesman consistently noted positive physical examination findings to the left hand such as tenderness along the left palm and difficulty with making a composite fist. As Petitioner's symptoms continued to progress despite conservative treatment, Dr. Wiesman referred Petitioner for pain management with Dr. Lipov and also instructed him to see a neurologist.

Petitioner treated with Dr. Lipov on December 20, 2022 and January 24, 2022 with Petitioner having similar complaints as with Dr. Wiesman. On December 20, 2022, Dr. Lipov recommended Petitioner use a compression glove stocking to alleviate his symptoms. As Petitioner testified to and is corroborated by the medical records, the compression glove increased his pain and only helped in short bursts. As such, on January 24, 2023, Dr. Lipov referred Petitioner to University of Illinois PM&R (Physical Medicine and Rehabilitation) Section "due to their expertise with electrocution injuries." Px2.

With respect to Petitioner's headaches, Petitioner testified that following the work accident, he began to experience headaches. This is substantiated by the medical records from his emergency room visit at Advocate South Suburban Hospital and his medical visits on September 1, 2022 and December 20, 2022 at ION.

Respondent relies on Dr. Garg's opinions contained in his January 19, 2023 report. At the IME, Petitioner complained of left hand pain, numbness, swelling, and weakness. Petitioner also complained of headaches, dizziness, and memory complaints that started one month after the work accident. On physical examination, Dr. Garg noted sensitivity to the pin in digits 3 through 5 on the left hand and reduced grip strength. Dr. Garg opined Petitioner's subjective complaints and physical examination did not correlate with the EMG, as it was normal, and therefore Petitioner was at maximum medical improvement and did not require any further treatment. Petitioner acknowledges that the EMG was normal and so do Petitioner's treating physicians. However, since the work accident, Petitioner has had consistent complaints of left hand pain, numbness, swelling, and reduced grip strength, which was consistent with Dr. Garg's examination. Further, Dr. Garg specifically noted Petitioner to be sensitive in digits 3 through 5 on physical examination, which is also consistent with the treating physicians' physical examinations.

Petitioner credibility testified that his left hand pain, numbing, and swelling, and reduced grip strength started after his hand was electrocuted. There is no dispute as to accident. Further, Petitioner credibly testified that he had no intervening accidents or treatment for his left hand prior to the work accident. There are no medical records entered into evidence that point to the contrary. In the IME report, Dr. Garg did not note any malingering or symptom magnification. As such, the Arbitrator finds that Petitioner was credible in his testimony regarding the onset of his left hand symptoms following the work accident, which is corroborated by the medical records including the IME.

Dr. Garg does indicate in his IME report that "prior to the IME, I watched Mr. Riles use his left hand independently while checking in." Rx1. Just because Petitioner is suffering from left hand pain does not mean he is unable to "check in." Petitioner testified that he does have difficulty performing daily activities such as cooking and playing video games, but that does not mean he is unable to completely use his left hand. The notion that because Petitioner "checked in" using his left hand at the IME means that Petitioner is not suffering a debilitating left hand condition from an electrocution injury is not persuasive.

Finally, Dr. Garg only opines as to Petitioner's left hand injury and does not make a diagnosis as it relates to Petitioner's headaches.

Thus, the Arbitrator finds Dr. Chunduri, Dr. Wiesman, and Dr. Lipov as credible and persuasive on the issues of causation and does not find Dr. Garg's opinion as credible and persuasive on these issues. Further, the Arbitrator notes that Respondent offered no addendum report or second independent medical examination at trial. Therefore, the Arbitrator finds that Petitioner's left hand and headache conditions are causally related to his August 30, 2022 work accident. This is supported by Petitioner's testimony and the medical records.

G. WHAT WAS PETITIONER'S AGE AT THE TIME OF THE ACCIDENT?

The medical records and application for adjustment show that Petitioner was born on September 26, 1977. This would make him 44 years old on the date of the accident. Respondent presented no evidence to refute this testimony. Therefore, the Arbitrator finds Petitioner was 44 years old on the date of accident.

H. WHAT WAS PETITIONER'S MARITAL STATUS AT THE TIME OF THE ACCIDENT?

Petitioner testified that at the time of the accident he had ten dependent children. Petitioner testified he had custody of three of the ten children, but was financially responsible for all ten children dependents. The Arbitrator notes that Respondent offered no evidence to the contrary and relies on the Petitioner's testimony. The Arbitrator finds that Petitioner had ten dependent children as of the date of the accident.

(J) WERE THE MEDICAL SERVICES THAT WERE PROVIDED TO PETITIONER REASONABLE AND NECESSARY?

The Arbitrator finds that the medical services provided to Petitioner were reasonable and necessary. This is supported by Petitioner's medical records from Dr. Chunduri, Dr. Wiesman, and Dr. Lipov.

The Arbitrator finds that the medical opinions and treatment plans set forth in the medical records from Dr. Chunduri, Dr. Wiesman, and Dr. Lipov are both credible and appropriate for his work-related injuries. As Petitioner's treating physicians that saw Petitioner on several occasions, they were the most equipped physicians to diagnose Petitioner and recommend treatment based on Petitioner's subjective complaints and their own objective findings.

Dr. Garg found in his IME report, dated January 19, 2023, that all treatment Petitioner received up until the IME date was reasonable and related. However, Dr. Garg placed Petitioner at maximum medical improvement and opined he required no further care. For the treatment beyond January 19, 2023, Petitioner continued to suffer from debilitating left hand pain, numbness, and swelling. Petitioner continued to try conservative treatment at the recommendations of his treating physicians such as a compression sleeve. Respondent offered no addendum report or subsequent IME report beyond Dr. Garg's January 19, 2023 IME report.

As such, the Arbitrator finds that the medical services provided to Petitioner throughout the course of his treatment were both reasonable and necessary, and orders the Respondent to pay the medical bills listed in Petitioner's exhibits, pursuant to the Fee Schedule.

(K) IS PETITIONER ENTITLED TO PROSPECTIVE MEDICAL CARE?

The Arbitrator finds that Petitioner is entitled to the consultation at University of Illinois PM&R as recommended by Dr. Lipov. Petitioner attempted all conservative treatment available to him including medication, physical therapy, and a compression stocking glove. As Petitioner's left hand condition

progressively worsened, Dr. Lipov recommended the consultation at University of Illinois PM&R due to their expertise in electrocution injuries.

As noted previously, Dr. Garg opined that Petitioner did not require any further treatment based on a normal EMG. However, Petitioner's subjective complaints and physical examination findings were consistent throughout his treatment. Throughout Petitioner's treatment, he consistently complained of left hand pain, numbness, tingling, swelling, and difficulty making a composite fist. Thus, as Petitioner is still suffering from his electrocution injury, it is reasonable to have him examined by a facility which specializes in electrocution injuries.

Thus, the Arbitrator finds the recommendation for Petitioner to present for a consultation with a specialist for electrocution injuries as reasonable, necessary, and causally related to his work accident for the Respondent. The Arbitrator relies on the medical records and Petitioner's testimony regarding the necessity of the consultation at this time. The Arbitrator does not find Dr. Garg's independent medical examination to have been credible or persuasive on this issue. Therefore, the Arbitrator orders the Respondent to authorize and pay for the recommended consultation and associated care.

(L) IS PETITIONER ENTITLED TO TEMPORARY TOTAL DISABILITY BENEFITS?

The Arbitrator finds that Petitioner is entitled to TTD benefits from August 30, 2022 through November 30, 2022 and from December 2, 2022 through February 24, 2023. Petitioner was initially placed off work on August 30, 2022 after his visit to the emergency room. Petitioner's off work status was continued at ION until November 3, 2022, when Dr. Wiesman placed Petitioner on work restrictions with no use of left hand. Respondent offered work within Petitioner's restrictions on December 1, 2022, and Petitioner attempted to work on that day. Petitioner was then placed off work again on December 1, 2022 by Dr. Wiesman as his employment was requiring to perform work with both hands. Petitioner was off work for the remainder of his treatment.

Thus, having previously found that Petitioner's injury arose in and out of the course of his employment, that Petitioner's current condition of ill-being was causally related to his work injury, and that his treating physician's course of treatment was reasonable and necessary, Petitioner is entitled to TTD benefits from August 30, 2022 through November 30, 2022 and from December 2, 2022 through February 24, 2023.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	10WC038621
Case Name	David Hanchar v. AAR Aircraft Group, Inc.
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	24IWCC0173
Number of Pages of Decision	24
Decision Issued By	Maria Portela, Commissioner

Petitioner Attorney	Damian Flores
Respondent Attorney	Craig Scarpelli

DATE FILED: 4/18/2024

/s/Maria Portela, Commissioner

Signature

24IWCC0173

STATE OF ILLINOIS)
) SS.
COUNTY OF DUPAGE)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

DAVID HANCHAR,

Petitioner,

vs. NO: 10WC038621

AAR AIRCRAFT GROUP, INC.,

Respondent.

DECISION AND OPINION ON REVIEW

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

The Commission reverses the arbitrator's finding that petitioner's cervical spine condition was unrelated to the August 20, 2010 work injury. We find that Petitioner sustained an injury to the cervical spine on August 20, 2010 and returned to work with restrictions. Petitioner testified that it was painful while he was "picking orders, walking, stocking inventory" on August 26, 2010, and he had extreme pain in his groin along with neck pain and the left side of his face was numb. *T.15*. Petitioner testified that he never had neck pain like that before. *T.17-18*. We note that the Athletico records, dated September 14, 2010, document Petitioner's complaints of "increased pain in his neck since the incident." *Px3, T.V1-156.*[1]

We acknowledge that the handwritten note of Dr. Jesse Butler, on August 3, 2011, states, "he has always had neck pain." *Px6, T.V1-790*. However, it is not clear whether Dr. Butler was referring to Petitioner's complaint of "always" having neck pain for the past year since his work injury or if this was intended to indicate that Petitioner had pre-existing neck pain prior to his work injury. We believe it would be speculative to deny causation regarding Petitioner's post-

[1] The electronic record in Compfile is separated into four volumes. Citations are made to the Exhibit Number, Transcript Volume Number and Page Number within that Volume.

accident neck complaints on Dr. Butler's handwritten note.

On August 11, 2011, Petitioner underwent a cervical MRI which showed only mild osteophytes and bulges from C3 through C7 with no significant canal or foraminal stenosis and the signal intensity of the spinal cord was normal. *Px6, T.V1-767*. On August 17, 2011, Petitioner underwent EMG/NCV testing by Dr. Igor Rechitsky at the Clinical Neurology and Neurodiagnostic Center. The results indicated mild demyelinating left ulnar neuropathy at the elbow with no evidence of cervical radiculopathy. *Id. at 771*. The Commission further notes that on January 10, 2013, Petitioner aggravated his cervical spine while undergoing a functional capacity examination at ATI. *Id. at 461*.

From 2013 onward, complaints and treatment focused primarily on the lumbar spine with intermittent complaints of neck pain. On January 11, 2019, Petitioner underwent an MRI of the cervical spine which showed degenerative pathology and no stenosis. *Px27A, T.V3-989*. Accordingly, the Commission finds that as of that date, Petitioner was at maximum medical improvement for the cervical spine condition and his current condition of ill-being pertaining to the cervical spine is unrelated to injuries sustained in the work accident of August 20, 2010. We find that Petitioner is entitled to medical expenses related to his cervical spine through January 11, 2019.

We affirm the Arbitrator's causation findings regarding Petitioner's left elbow.

Regarding Petitioner's lumbar spine, we find Petitioner has proven that his current condition of ill-being remains causally related to his work injury. We disagree with the Arbitrator's finding that the opinions of Dr. Kern Singh, Respondent's §12 examiner, were persuasive. Instead, we find the opinions of Dr. Navdeep Jassal and Dr. Jorge Inga most persuasive on the issue of causation.

Initially, on May 9, 2011, Dr. Singh opined that Petitioner sustained a work injury on August 20, 2010, which resulted in an aggravation of pre-existing degenerative disc disease at L4-5 and he agreed with Dr. Jesse Butler's surgical recommendation. *Px6, T.V1 at 844.* Petitioner underwent the L4-S1 fusion on June 13, 2011 (*Id. at 817*) and was returned to full duty work by Dr. Butler on January 11, 2012, even though he still complained of "a stabbing pain of the left buttock and SI joint region" and was continuing to take Voltaren twice daily along with occasional Norco and Flexeril as prescribed by his primary care physician. *Id. at 654*. Although Petitioner continued to work regular duty, he returned on February 29, 2012 with continued complaints of pinching in the left lower lumbar region and a CT scan was recommended. *Id. at 647*. On July 23, 2012, Dr. Butler performed a posterior spinal hardware Marcaine "regional block" injection at L5-S1 for "significant localized mechanical back pain." *Id. at 612*. Dr. Butler removed the lumbar hardware from L4 to the sacrum on September 4, 2012 (*Id. at 597*) but Petitioner developed an infection and underwent irrigation and debridement of the spinal wound on September 17, 2012. *Id. at 580*.

Petitioner participated in a Functional Capacity Evaluation on January 10, 2013, that was considered a valid representation of his physical capabilities at the light to medium level, which was below the medium demand level of his job with Respondent. *Id. at 461*.

On January 17, 2013, Petitioner was examined by Respondent's §12 examiner, Dr. Srdjan Mirkovic, who recommended an updated lumbar MRI which, if unremarkable, would indicate

that Petitioner had exhausted care and he could return to work with the January 10, 2013 FCE parameters as permanent restrictions. *Px19, TV3 at 104*. On February 21, 2013 after reviewing the February 1, 2013 MRI, Dr. Mirkovic recommended that Petitioner's low back symptoms continue to be treated with pain management as prescribed by his treating physician and reaffirmed his opinion that Petitioner could return to work with permanent light-medium restrictions per the January 10, 2013 FCE. *Id. at 98*.

On September 24, 2013, Petitioner had a neurosurgery consultation with Dr. Sergey Neckrysh who opined Petitioner presented with "adjacent segment degeneration at L3-4 level with neurogenic claudication, back pain which is mechanical in nature, and lumbar radiculopathy due to the lateral recess and foraminal stenosis" and recommended decompression and fusion surgery at L3-4. *Px20, T.V3 at 173*.

Dr. Singh examined Petitioner a second time on November 11, 2013. *Rx5, T.V4-965*. Although Dr. Singh's report mentions 5/5 Waddell signs and that Petitioner's current symptoms are not causally related to "a work-related injury," he also opined that Petitioner could return to work at the level determined by the January 10, 2013 FCE. We note that Dr. Singh did not opine that the FCE restrictions were unrelated to Petitioner's work injury; just that, in his opinion, Petitioner's current reported symptoms (10/10 pain, etc.) were not.

Dr. Singh also opined that an L3-4 fusion was not indicated because the MRI at that level was normal. However, Dr. Singh also recommended a repeat FCE "to delineate the patient's current level of functioning." Therefore, Petitioner still had some residual physical limitations as a result of his work injury (and subsequent surgeries) even though Dr. Singh may have believed his pain complaints were exaggerated.

We note that Dr. Singh's records include a separate report, also dated November 11, 2013, that again reflected Petitioner's "Restrictions per FCE 1/10/13" and states:

4. The diagnosis/treatment is causally related to the alleged industrial accident: Yes

Id. at 974. This clearly indicates Dr. Singh's opinion that Petitioner's work restrictions are related to his work injury.

Petitioner underwent the repeat FCE on August 6, 2014. *Px21, T.V3 at 187*. The results reflected that Petitioner put forth full effort and was only "demonstrated the ability to perform 40.0% of the physical demands of his job as a Warehouse Clerk." *Id*. Unlike the first FCE, which reflected that Petitioner was at a light-medium demand level and his job required a medium demand level, this repeat FCE indicated that Petitioner could function at a medium demand level and his job required a heavy demand level. *Id. at 188*. We believe this discrepancy is due to the fact that "a detailed job description was not available" when the first FCE was performed (*Px6, T.V1 at 461*) but the second FCE report indicates that a job description had been provided. *Px21, T.V3 at 189.* In any event, the second FCE report indicates Petitioner "reported reliable pain ratings 75.0% of the time which would suggest that pain could have been considered a limiting factor during functional testing." *Id. at 189*. The report also indicates, "The return to work test items Mr. Hanchar was unable to achieve successfully during this evaluation include: Occasional Shoulder Lifting, Occasional Overhead Lifting, Frequent Squat Lifting, Walking, Bending, Squatting, Stair Climbing, Total Standing and Firm Grasping." *Id. at 188*. Therefore, we find that this FCE supports a finding that Petitioner was unable to return to

his former job with Respondent at that time.

The Arbitrator found Respondent liable for all of Petitioner's lumbar treatment through November 11, 2013, including the cost of the August 6, 2014 FCE, which had been recommended by Dr. Singh. Respondent did not file a Petition for Review to dispute the award and we find that all of the lumbar treatment prior to that date to be reasonable, necessary and causally related to Petitioner's work injury.

Although we acknowledge the examination and positive Waddell sign findings by Dr. Singh and Dr. Mirkovic, they both still recommended Petitioner be limited to the restrictions contained in the Functional Capacity Evaluation performed on January 10, 2013. Similarly, although Dr. Harel Deutsch did not believe, as of August 22, 2012, that Petitioner would benefit from removal of the lumbar fusion hardware, he did recommend 50-pound restrictions even before Petitioner underwent the first FCE. *Px3 T.V1 at 120, Px11, T.V2 at 1637.*

It is important, therefore, to distinguish between causation and maximum medical improvement (MMI). Even if we were to accept the opinions of Dr. Singh and Dr. Mirkovic as persuasive, which we do not, the fact that Petitioner may not have been a surgical candidate and could return to some form of employment within restrictions does not mean that Petitioner's lumbar condition is no longer related to his work injury. Just the opposite, since the work restrictions are a result of Petitioner's lumbar fusion and subsequent procedures, which are all causally related to his work injury. Dr. Mirkovic even specifically recommended that Petitioner continue pain management for his lumbar condition.

This brings us to whether Dr. Neckrysh's September 24, 2013 recommendation that Petitioner undergo an L3-4 decompression and fusion for "adjacent segment degeneration" was reasonable, necessary and causally related to Petitioner's work injury. We point out the following medical records:

5/26/16	Dr. Jorge Inga documented Petitioner's history of a work accident on August 20, 2010 and diagnosed "failed back syndrome"
6/8/16	Dr. Stanley Dennison (pain management) wrote that Petitioner's pain began on August 20, 2010 after a work-related injury lifting a box and hearing a pop. The assessment included "lumbar post-laminectomy syndrome."
11/9/16	Dr. Inga ultimately performed the L3-4 fusion and his operative report reflects that the indication for surgery was Petitioner's history of work injury on August 20, 2010 and his subsequent, persistent disabling symptoms. The post-operative diagnosis included status post lumbar fusion at L4-5 and L5-S1 with instability of the spine at L3-4.
4/6/17	Dr. Navdeep Jassal opined that Petitioner has lumbar post-laminectomy syndrome and a history of work injury on August 20, 2010.

We also consider that Respondent did not send Petitioner for another §12 examination after Dr. Singh's in 2013; particularly since a Utilization Review (UR) report, dated October 5,

2016, certified the L3-4 fusion as being medically necessary. *Px67, T.V4 at 841*. The UR report specifically states that it was related to a "Date of Injury: 08/20/2010" and includes, in its clinical rationale, Petitioner's previous L4-S1 fusion and subsequent hardware removal. *Id. at 842*.

Dr. Jassal eventually gave a very specific causation opinion on February 17, 2020, when he wrote, Petitioner "is totally disabled at this point. I do not think he is able to work his prior occupation, as well as another occupation at this point secondary to his severe pain and his lack of mobility. He has failed conservative, interventional, surgical intervention for his low back and neck pain related to his work injury in August 2010." *Px31, T.V4-557*.

Based on the above and the totality of the evidence, the Commission finds that Petitioner's lumbar condition remains causally related to his work injury and that all of his lumbar medical treatment through the date of hearing has been reasonable, necessary and causally related to that injury. Although the Arbitrator pointed out the Waddell signs noted by Dr. Singh and Dr. Mirkovic, the Arbitrator did not specifically find Petitioner not credible as a witness. In any event, notwithstanding the Arbitrator's reference to the Waddell signs noted by Doctors Singh and Mirkovic, we find Petitioner credible regarding his lumbar symptoms and accordingly, find his lumbar spine condition causally related to the work injury.

We do point out that Dr. Jassal noted, on October 15, 2020, that Petitioner "threw his back out while moving. He had movers but also did a lot on his own" and that "with his move recently his pain is aggravated." *Px31, T.V4 at 571*. However, an MRI on January 22, 2021 showed "stable" findings with no new central stenosis, foraminal narrowing or disc extrusion. *Id. at 607*. Therefore, we find that this "moving" incident did not cause any aggravation that would break the chain of causation.

We also clarify the Arbitrator's causation analysis which seems to imply that "chain-of-events" requires a pre-existing condition that became aggravated or deteriorated by a work injury. *Dec. 8-9*. We find that a chain-of-events analysis is appropriate in the case at bar where Petitioner testified that he was in a previous state of good health with no prior symptoms and there was a change in that state of good health after the work injury.

Regarding temporary total disability (TTD) benefits and Respondent's credit, we disagree with the Arbitrator's rationale and, instead, find that the parties' claimed dates of TTD in item #8 on the Request for Hearing form are binding stipulations by the parties pursuant to *Walker v. IC*, 345 Ill. App. 3d 1084, 804 N.E.2d 135 (4th Dist. 2004). Specifically, Respondent stipulated that Petitioner is entitled to TTD from "8/27/10 – 11/9/10; 11/20/10 – 1/18/12; 9/4/12 – 8/26/22 … Respondent double paid 2 weeks of TTD and seeks credit for 1/2/21 – 1/7/21 & 1/16/21 – 1/21/21." *ArbX1, T.61*.

However, our award of TTD is not based solely on these stipulations. Rather, based on our finding that Petitioner's lumbar condition remains causally related to his work injury and Dr. Jassal's opinion, on February 17, 2020, that Petitioner was "totally disabled," we find that Petitioner's condition had not stabilized until that time. The Commission also notes that Respondent did not rebut this opinion. Therefore, we find Petitioner is entitled to 461-4/7 weeks of TTD (8/27/10 - 11/18/10, 11/20/10 - 1/18/12, and 9/4/12 - 2/16/20). The parties stipulated that Petitioner's average weekly wage in the year preceding the injury was $558.00, which results in a TTD rate of $372.00. As Petitioner acknowledged in his brief, Respondent is entitled to a credit of $190,066.29 in TTD paid. *P-brief at 19, 20*. After considering the credit, the

Commission finds that Respondent overpaid TTD by $18,361.73. *Id*.

Regarding the nature and extent of Petitioner's injuries, we find he has proven entitlement to permanent total disability benefits under §8(f) of the Act. On February 17, 2020, Dr. Jassal wrote, Petitioner "is totally disabled at this point. I do not think he is able to work his prior occupation, as well as another occupation at this point secondary to his severe pain and his lack of mobility. He has failed conservative, interventional, surgical intervention for his low back and neck pain related to his work injury in August 2010." *Px31, T.V4-557*. This is supported by Dr. Inga's prior opinion, on September 1, 2017, that "Due to the persistent disabling symptomatology, especially when he stands or sits, I don't believe he is capable of returning to keeping a clerical occupation." *Px23, T.V3-252.* In addition, on January 24, 2019, Edward Pagella, vocational rehabilitation counselor, prepared an Employability Study which concluded, "I would concur with the Federal Administrative Law Judge that Mr. Hanchar is disabled and unable to return back to any type of work as there is no suitable and viable labor market for him." *Px32, T.V4-613*. On February 27, 2020, Mr. Pagella issued an Addendum stating that Petitioner is permanently totally disabled based on Dr. Jassal's February 17, 2020 report. *Id. at 616-17*.

Based on the above referenced opinions, which the Commission considers to be persuasive, the Commission finds that Petitioner is medically unable to work due to his work injuries. Therefore, we vacate the Arbitrator's permanent partial disability awards for the left arm and lumbar spine and find that Petitioner is entitled to permanent total disability benefits under §8(f) of the Act commencing on February 17, 2020.

Based on the stipulated average weekly wage of $558.00, Petitioner is entitled to permanent total disability benefits of $466.13 per week, which was the applicable minimum rate at the time of his accident on August 20, 2010.

Finally, we correct the following scrivener's errors:

Page 2, line 2: strike "14" and replace with "10"
Page 3, third paragraph, line 2: strike "17" and replace with "24"
Page 4, last paragraph of Findings of Fact, 2nd line: add "not" after "could"
Page 5, last line: strike "201" and replace with "2011"

All else is affirmed and adopted.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $372.00 per week for a period of 461-4/7 weeks, that being the period of temporary total incapacity for work under §8(b) of the Act. Respondent is entitled to a credit of $190,066.29 in TTD already paid, which has resulted in an overpayment of $18,361.73.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the outstanding medical expenses related to his lumbar condition through the date of hearing that are in evidence along with those expenses related to his cervical condition through January 11, 2019, for medical expenses under §8(a) of the Act subject to the fee schedule in §8.2 of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that the Arbitrator's Permanent Partial Disability awards under §8(d)2 of the Act are hereby vacated.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay the petitioner the sum of $466.13 per week for life, commencing February 17, 2020, as provided in Section 8(f) of the Act, because the injury caused the permanent and total disability of the petitioner.

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

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

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

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

April 18, 2024

/s/ *Maria E. Portela*

/s/ *Amylee H. Simonovich*

/s/ *Kathryn A. Doerries*

SE/
O: 2/20/24
49

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	10WC038621
Case Name	David Hanchar v. AAR Aircraft Group, Inc.
Consolidated Cases	
Proceeding Type	
Decision Type	Amended Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	16
Decision Issued By	Frank Soto, Arbitrator

Petitioner Attorney	Damian Flores
Respondent Attorney	Craig Scarpelli

DATE FILED: 10/26/2022

THE INTEREST RATE FOR THE WEEK OF OCTOBER 25, 2022 4.39%

/s/Frank Soto, Arbitrator

Signature

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
AMENDED ARBITRATION DECISION

DAVID HANCHAR
Employee/Petitioner

v.

AAR AIRCRAFT GROUP, Inc.
Employer/Respondent

Case # **10** WC **038621**

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 **Soto**, Arbitrator of the Commission, in the city of **Wheaton**, on **8/26/22**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On **8/20/2010**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $**10,602.00**; the average weekly wage was $**558.00**.

On the date of accident, Petitioner was **33** years of age, ***single*** with **0** dependent children.

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

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

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

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

ORDER

SEE ATTACHED RIDER TO ARBITRATION DECISION.

PETITIONER IS AWARDED ALL RELATED MEDICAL SOLELY REGARDING TREATMENT TO THE LUMBAR SPINE AND LEFT ARM/ELBOW FROM 8/20/10 THROUGH 11/13/13 INCLUDING THE COST OF THE AUGUST 6,2014 FCE CONDUCTED BY BROOKLINE PHYSICAL THERAPY. ALL TREATMENT RELATIVE TO THE CERVICAL SPINE IS DENIED AS UNRELATED TO THE WORK INJURY HEREIN.

PETITIONER CLAIM FOR TTD BENEFITS IS DENIED. RESPONDENT IS ENTITLE TO A CREDIT FOR 2 WEEKS OF TTD BENEFITS FOR THE TIME PERIOD OF 1/2/21-1/7/21 AND 1/16/21 -1/21/21.

PETITIONER IS ENTITLED TO 212.95 WEEKS OF PPD BENEFITS PROVIDING 15% LOSS TO THE LEFT ARM AND 35% LOSS TO THE WHOLE PERSON.

Respondent shall pay Petitioner compensation that has accrued from December 20, 2010 through August 26, 2022 and shall pay the remainder of the award, if any, in weekly payments.

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

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

OCTOBER 26, 2022

By: /o/ Frank J. Soto
Arbitrator

Procedural History

This case was tried on August 26, 2022. The issued disputed issues are whether Petitioner's current conditions of ill-being (*i.e*. lumbar spine, cervical spine and left arm) are causally related to the injury, whether Respondent is liable for unpaid medical bills, whether Petitioner is entitled to TTD/Maintenance benefits, whether Petitioner is permanent and totally disabled and, if not, the nature and extent of the injury. (Arb. Ex. #1).

Findings of Fact

It is undisputed that David Hancher (hereafter referred to as "Petitioner") suffered an injury that arose out of and in the course of his employment with AAR Aircraft & Engine Group, Inc., (hereafter referred to as "Respondent") on August 20, 2010. Petitioner testified he was serving as a warehouse worker pulling inventory, checking stock and re-stocking parts. Petitioner estimated the average weight of those parts were between 20 and 100 pounds. Petitioner testified prior to his work accident he had no problems performing his work duties and had not received medical treatment for the lumbar or cervical spine.

Petitioner testified, on August 20, 2010, he was picking an order and when he lifted a case with wooden handles weighing between 15 and 25 pounds off the forks of a forklift, he heard a loud pop in his low back and he fell to the ground and could not move. He noted immediate 10/10 pain.

Petitioner testified he attempted to walk off the pain and stiffness without success. An ambulance was called to the scene and he was taken to the emergency room at Alexian Brothers Medical Center. (Px. 1). Petitioner sought follow-up treatment at Alexian Brothers Health System. Petitioner was permitted to return to work, and did so, from August 23 through August 26 of 2010. On August 26, 2010, Petitioner testified he was having pain emanating from his groin upward to his neck and the left side of his face so he presented to his PCP, Dr. Bhandarkar, who took him off work. An MRI was ordered and Petitioner was referred to Dr. Butler.

On September 7, 2010, Petitioner underwent the lumbar MRI which showed L4-5 and L5-S1 lumbar disc herniations with significant stenosis. On December 16, 2010, Dr. Butler evaluated Petitioner and recommended a series of lumbar epidural steroid

injections and took Petitioner off work. (Px. 6). The lumbar injections did not relieve Petitioner's symptoms. On March 14, 2011, Dr. Butler recommended a posterior lumbar fusion from L4 through S-1.

On May 9, 2011, Petitioner underwent a Section 12 examination with Dr. Kern Singh who opined Petitioner's work injury aggravated his pre-existing degenerative disc disease at L4-5 and L5-S1. Dr. Singh concurred with Dr, Butler's surgical recommendation. (Rx. 5). Petitioner underwent the procedure on June 13, 2011. (Px. 6).

Petitioner testified he experienced post-operative numbness to his left shoulder down his forearm culminating in numbness in his left little and ring fingers. He reported the symptoms as well as neck pain to Dr. Butler on August 3, 2011 with Dr. Butler noting that Petitioner reported that "*he has always had neck pain*". A cervical MRI was recommended and completed on August 11, 2011. The MRI noted mild osteophytes and bulges from C3 through C7 with no significant canal or foraminal stenosis noted. An EMG/NCV was also performed which noted mild demyelinating left ulnar neuropathy at the elbow with no evidence of cervical radiculopathy. (Px. 6). The Arbitrator notes Dr. Butler's records from 2011 document cervical and left arm symptoms but the records do not relate Petitioner's complaints to his August 20, 2010 work injury or from the June 13, 2011 lumbar fusion surgery.

Dr. Visotsky, who treated Petitioner's post-operative left arm condition, diagnosed left cubital tunnel syndrome which was confirmed by an EMG/NCV. Dr. Visotsky performed cubital tunnel surgery to the left elbow on September 1, 2011.

Dr. Butler recommended an FCE which was performed on January 5, 2012. The FCE, which was found to be valid, placed Petitioner at the medium to heavy physical demand level (hereinafter "PDL"). Petitioner testified to returning to work from January 19, 2012 through late August of 2012. Petitioner testified he was transferred to a new warehouse which allowed him to drive a forklift. Petitioner testified his low back became increasingly painful as early as June of 2012 and he underwent another injection, administered by Dr. Butler on July 23, 2012, which only provided a short-term resolution of his symptoms.

As a result of the on-going complaints Petitioner presented to Dr. Harrel Deutsch on August 22, 2012. (Px. 11). Dr. Deutsch reviewed a lumbar CT scan which showed the

lumbar fusion hardware to be in good position with no signs of any hardware impingement. Dr. Deutsch opined the removal of the hardware was not warranted and suggested additional conservative treatment.

On September 4, 2012, Dr. Butler removed Petitioner's lumbar fusion hardware. Petitioner suffered a post-operative infection which led to a six- day in-patient hospitalization as well as 6 weeks of IV antibiotic treatment. Petitioner also suffered pulmonary embolism to both lungs due to post-operative complications.

After the removal of the hardware, Dr. Butler recommended a second FCE which was completed by ATI on January 10, 2013. The FCE, which was valid, placed Petitioner at the light to medium PDL. Petitioner's pre-injury position was rated at medium PDL. (Rx. 6).

Despite the hardware removal, Petitioner continued report subjective complaints of chronic back pain and presented to Dr. Neckrysh on September 17, 2013 who recommended another lumbar fusion at the L3-4 level (above the first fusion site) as well as the exploration of the prior fusion site. (Px. 20).

On November 11, 2013, Petitioner was examined, again, by Dr. Singh pursuant to Section 12 of the Act. (Rx. 5). Dr. Singh's exam noted 5 out of 5 Waddell Signs which, he said, suggested subjective symptom magnification. Dr. Singh also reviewed the Lumbar CT-Scan dated December 11, 2012 and the MRI Films dated August 5, 2013. Dr. Singh noted the MRI showed no evidence of stenosis. Based upon the examination, Waddell findings, benign diagnostic studies, Dr. Singh found no clinical evidence of an on-going lumbar problem. Dr. Singh opined Petitioner's subjective complaints were not causally related to the August 20, 2010 work injury and that no further surgery was warranted. Dr. Singh recommended an updated FCE to identify Petitioner's current level of functioning. (Rx. 5).

On August 6, 2014, an FCE was performed at Brookline Physical Therapy. (Rx. 7). At that time, Petitioner reported having the ability to sit for 8 hours and stand for one hour on an average day. The report indicated Petitioner put forth full effort. The FCE placed Petitioner at the medium PDL but the report also recommended that Petitioner avoid repetitive bending, walking, stair climbing and squatting.

Petitioner testified he relocated to Florida in late 2013 and that he started treating with Dr. Jorge Inga who recommended L3-4 fusion surgery, which was performed on November 9, 2016. (Px. 23). Respondent disputed the surgery based upon Dr. Singh's Section 12 opinions.

Petitioner testified the surgery helped a little but that he continued to experience hip and low back pain which led to Dr. Jassal, a pain management physician. (PXs. 26 & 31). Dr. Jassal recommended a spinal cord stimulator (hereinafter "SCS"). A trial SCS was undertaken on April 29, 2019 with a permanent implantation date of May 20, 2019. Petitioner testified the SCS became infected which prompted its removal and another course of IV antibiotics. Petitioner continued to treat with Dr. Jassal through 2022.

Petitioner testified he discussed a return to work with Dr. Jassal and was advised he can never return to work given his current symptoms. Petitioner testified he wants to return to work but cannot tolerate his current pain levels. He testified due to the aggressive infectious process was with the first attempt.

On February 17, 2020, Dr. Jassal opined Petitioner was totally disabled and that Petitioner could return to work at his pre-injury position nor any other position. Dr. Jassal last saw Petitioner on June 29, 2022. At that time, Dr. Jassal's assessment was degenerative disc disease with radiculopathy, post-laminectomy syndrome and chronic pain syndrome with history of L3 through S1 fusion (hardware at L3-4 only with broken screw) status post SCS implantation and explanation due to aggressive infection. (Px. 31). Petitioner testified he does desire to return to some form of employment but has never engaged in any type of search for employment.

Conclusions of Law

The Arbitrator adopts the above Findings of Fact in Support of the Conclusions of Law as set forth below. The claimant bears the burden of proving every aspect of her claim by a preponderance of the evidence. *Hutson v. Industrial Commission,* 223 Ill.App.3d 706 (1992)

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

In pre-existing condition cases, recovery will depend on the employee's ability to show that a work-related accidental injury aggravated or accelerated the pre-existing

disease such that the employee's current condition of ill-being can be said to have been causally connected to the work-related injury and not simply the result of a normal degenerative process of a pre-existing condition. *Caterpillar Tractor Co. v. Industrial Comm'n,* 92 Ill.2d 30, 36-37. When a worker's physical structures, diseased or not, give way under the stress of their usual tasks, the law views it as an accident arising out of and in the course of employment. *General Electric Co. v. Industrial Comm'n,* 89 Ill.2d 432, 60 Ill.Dec. 629, 433 N.E.2d 671 (1982). Even though an employee has a preexisting condition which may make him more vulnerable to injury, recovery for an accidental injury will not be denied as long as it can be shown that the employment was also a causative factor. *Caterpillar Tractor Co. v. Industrial Comm'n,* 129 Ill.2d 52, 133 Ill. Dec. 454, 541 N.E.2d 665 (1989). Employers are to take their employees as they find them *A.C.&S. v. Industrial Commission,* 710 N.E.2d 8347 (Ill. App. 1st Dist. 1999) citing *General Electric Co. v. Industrial Commission,* 433 N.E.2d 671, 672 (1982). Causal connection between work duties and an injured condition may be established by a claim of events including claimant's ability to perform duties before the date of an accident and inability to perform same duties following date of accident. *Darling v. Industrial Commission*, 176 Ill.App.3d 186, 530 N.E.2d 1135 (1st Dist. 1988) "When the claimant's version of the accident is uncontradicted and his testimony is unimpeached, his recital of the facts surrounding the accident may be sufficient to sustain an award. *International Harvester v. Industrial Comm'n*, 93 Ill.2d 59, 63-64 (1982).

The Arbitrator carefully reviewed and considered all medical evidence along with all the testimony. The Arbitrator finds Petitioner failed to prove by the preponderance of the credible evidence that his current lumbar spine and cervical spine conditions are causally related to his August 20, 2010 work accident. The Arbitrator finds Petitioner's original lumbar spine condition, which resulted in the L4-S1 lumbar fusion surgery, and left elbow condition, which resulted in a left cubital tunnel surgery, were causally related to Petitioner's work accident of August 20, 2010 but those conditions resolved and are unrelated to Petitioner's current conditions of ill-being.

Regarding the lumbar spine, it is undisputed that Petitioner suffered an injury that arose out of and in the course of his employment with Respondent on August 20, 2010 which led to a lumbar fusion from L4 through S1 on June 13, 201 and a left ulnar nerve

transposition on September 1, 2011. Petitioner also underwent the removal of the hardware removed on September 4, 2012, which was complicated by a post-operative infection.

The Arbitrator finds the medical opinions of Dr. Singh persuasive. On May 9, 2011, Dr. Singh opined Petitioner suffered a work-related injury on August 20, 2010, which resulted in an aggravation of pre-existing degenerative disc disease at L4-5. Dr. Singh agreed with Dr. Butler's surgical recommendation. On November 11, 2013, Dr. Singh performed a second Section 12 evaluation which noted 5 of 5 Weddell Signs with no clinical corroboration between Petitioner's subjective complaints and his examination and the radiology reports. At that time, Dr. Singh opined Petitioner's subjective complaints were no longer causally related to his August 20, 2010 work injury and that Petitioner required no further surgical intervention. Dr. Singh recommended another FCE to confirm Petitioner's physical capabilities. The FCE, which occurred on August 6, 2014, placed Petitioner at the medium PDL but recommended that Petitioner avoid repetitive bending, walking, stair climbing and squatting.

The Arbitrator finds Dr. Singh's opinions to be consistent with the opinions of Dr. Deutsch and Dr. Mirkovic, an associate clinical professor of orthopedic surgery at Northwestern University Feinberg School of Medicine Spine Surgery. (Rx. 4). In his report dated February 21, 2013, Dr. Mirkovic reviewed the February 1, 2013 MRI which, he indicated, showed post-operative changes at L4-5 without evidence of recurrent disc herniation or stenosis and the December 11, 2012 CT scan which, he said, showed a solid fusion at L4-5. Dr. Mirkovic's examination also noted 3 out of 5 Weddell signs and that Petitioner reported back pain with different maneuvers without any specific reproduction of symptoms. Dr. Mirkovic assessed chronic low back pain of unknown etiology. Dr. Mirkovic opined Petitioner could return to work consistent with the January 10, 2013 FCE recommendations and no further operative care was warranted.

The Arbitrator doesn't find that either Dr. Jassal or Dr. Inga proffered a sufficient causation opinion to substantiate Petitioner's current cervical or lumbar spine condition being related to Petitioner's August 20, 2010 work injury. Dr. Inga diagnoses severe stenosis at L3-4 but makes no opinion whether Petitioner's condition is causally related to Petitioner's work accident.

The medical records from Dr. Jassal, the pain management physician, contains a very general statement that Petitioner's low back and neck pain are relate to his work injury of August of 2010. Dr. Jassal fails to sufficiently explain how the 2016 L3-4 fusion surgery or Petitioner's cervical complaints are related to Petitioner's August 20, 2010 work accident. Petitioner suffered from a preexisting degenerative disc disease in his low back. The lumbar MRI performed on September 7, 2010 showed significant stenosis at L4-5 and L5-S1. When Petitioner underwent the original fusion surgery, Dr. Singh opined Petitioner's work accident aggravated the pre-existing degenerative disc disease. The lumbar MRI performed on May 13, 2016 also showed spinal stenosis at L3-4. Dr. Inga diagnoses severe stenosis at L3-4, however, the medical records from either Drs. Inga or Jassal fail to explain how Petitioner's L3-4 disc symptoms and the November 9, 2016 fusion surgery were related to the August 20, 2010 work accident. Based upon Drs. Inga and Jassal it is unclear whether the need for the surgery was related to the preexisting degenerative disc disease at the L3-4 level or an aggravation of that preexisting condition and, if so, whether the cause of the aggravation was Petitioner's August 20, 2010 work accident and/or prior L4-S1 fusion surgery. The Arbitrator notes it is also unclear from the medical records whether Dr. Jassal reviewed Petitioner's prior medical records. When the question is one specifically within the purview of experts, expert medical testimony is mandatory to show the claimant's work activities caused the condition of which the employee complains. *Nunn v. Industrial Comm'n*, 157 Ill.App.3d 470, 478 (Forth Dist. 1987), citing *Westinghouse Electric Co. v. Industrial Comm'n*, 64 Ill.2d. 257 (1976). An employer's liability for benefits cannot be based on guess, speculation, or conjecture. *Illinois Bell Telephone v. Industrial Comm'n*, 265 Ill.App.3d. 681, 638 N.E.2d 207 (1994).

Petitioner argues he met his burden of proof based upon Respondent's stipulation regarding TTD and based upon a chain of events theory. Petitioner claims that Respondent's TTD stipulation on the Request For Hearing equates to a causation stipulation.[1] In support of his argument, Petitioner cites *Walker v. Industrial Comm'n*,

[1] On item 8 of the Request For Hearing, states "Petitioner claims to be entitled to TTD". Respondent checked the box marked "disputes" and listed the dates TTD benefits were paid. Respondent listed the dates TTD were paid. (Arb. Ex. #1). Respondent continued to paid TTD benefits after Dr. Singh opined Petitioner reached MMI.

345 Ill.App.3d, (Forth Dist. 2004) and *Fontalvo v. Food Team, Inc*, 12 IWCC 565 (2012). The Arbitrator finds Petitioner's reliance on the *Walker* case misplaced. In *Walker*, 345 Ill.App.3d, (Forth Dist. 2004), the employer stipulated the employee was entitled to 84 weeks of TTD benefits but, on review, the Commission modified the arbitrator's decision and reduced the TTD award to 29 6/7 weeks, below the 84 weeks the employer stipulated was due. The Appellate Court in *Walker* held the Commission lacked the power to modify the TTD benefits below the number of weeks stipulated by the employer. Unlike the situation in *Walker*, Respondent did not stipulate Petitioner was entitled to TTD benefits for specific number of weeks. Respondent disputed the time period Petitioner claimed to be entitled to TTD benefits. Respondent listed the actual dates TTD benefits were paid on the Request For Hearing form because Respondent was seeking a credit for those benefits if Petitioner was found to be permanently and totally disabled[2]. Respondent's desire to receive credit for TTD benefits paid in the event of a permanent total disability finding does not equate to a *defacto* causation stipulation in this case.

Petitioner also asserts he met his burden of proof based upon a chain-of-events theory. A chain of events which demonstrates a previous condition of good health, an accident, and a subsequent injury resulting in disability may be sufficient circumstantial evidence to prove a causal nexus between the accident and the employee's injury. *Shafer v. Illinois Workers' Compensation Comm'n*, 2011 IL. App. (4th) 100505, 974 N.E.2d 1, 364 Ill. Dec. 1 (quoting *International Harvester v. Industrial Comm'n* 93 Ill. 2nd 59, 442 N.E.2d 908, 66 Ill. Dec. 347 (1982). If a claimant is in a certain condition, an accident occurs, and following the accident, the claimant's condition has deteriorated, it is inferable that the intervening accident caused the deterioration. The salient factor is not the precise previous condition; it is the resulting deterioration from whatever the previous condition had been. *Schroeder v. Illinois Workers' Compensation Comm'n*, 2017 IL. App. (4th) 160192WC, 79 N.E.3d. 833, 414 Ill. Dec. 198. The Arbitrator finds the chain-of-events theory is not applicable in this case. Petitioner did not testify to having a prior condition followed by a work accident which caused his condition to deteriorate.

[2] On item number 13 of the Request For Hearing, Petitioner was seeking a permanent total disability finding and 131 5/7 weeks of benefits. It was inserted on the Request For Hearing, if there is a finding of permanent total disability it should be "subject to the credit for TTD paid". (Arb. Ex. #1).

Petitioner testified he was not experiencing any symptoms prior to his August 20, 2010 work injury. This is not a situation when an application of adjustment of claim is filed based upon an aggravation of a prior condition after returning to work.

Regarding the left elbow, Petitioner did not provide any testimony nor medical evidence to suggest any on-going problems with his left elbow. Therefore, there is no current condition of ill-being to assess relative to the left elbow with the condition resolving after the treatment provided by Dr. Visotsky.

Regarding the cervical spine, Petitioner complained neck pain to Dr. Butler on August 3, 2011 with Dr. Butler specifically noting that Petitioner reported that "*he has always had neck pain*". A cervical MRI was completed on August 11, 2011 which showed only mild osteophytes and bulges from C3 through C7 with no significant canal or foraminal stenosis. An EMG/NCV was performed which showed mild demyelinating left ulnar neuropathy at the elbow with no evidence of cervical radiculopathy. (Px. 6) The Arbitrator takes note that Dr. Butler's records from 2011 mention cervical symptoms but failed to relate Petitioner's neck/cervical symptoms to his August 20, 2010 work injury or to a complication arising from the June 13, 2011 lumbar fusion surgery.

With respect to issue "J" whether the medical services reasonable and necessary and has Respondent paid all appropriate charges, the Arbitrator finds as follows:

Under Section 8(a) of the Act, claimant is entitled to recover reasonable medical expenses, the incurrence of which are causally related to an accident arising our or and in the scope of employment and which are necessary to diagnose, relieve, or cure the effects of the claimant's injury. *Absolute Cleaning/SVMBC v. Illinois Workers' Compensation Comm'n,* 409 Ill.App.3d 463, 470 (4th Dist. 2011).

Petitioner submitted no evidence relative to unpaid medical bills from the August 20, 2010 injury through the Section 12 evaluation with Dr. Kern Singh on November 11, 2013. The Arbitrator finds Respondent responsible to pay for all related medical treatment through November 11, 2013 including the cost of the August 6, 2014 FCE, which was recommended by Dr. Singh. The Arbitrator finds all medical treatment after November 11, 2013, other than the August 6,2014 FCE, as not being causally related to Petitioner's work injury. As stated above, the Arbitrator also did not find causal connection between Petitioner's cervical complaints and his work injury and, therefore,

the Arbitrator does not find Respondent liable for any medical treatment relative to the cervical spine.

With respect to issue "K" whether Petitioner is entitled to TTD benefits, the Arbitrator finds as follows:

"The period of temporary total disability encompasses the time from which the injury incapacitates the claimant until such time as the claimant has recovered as much as the character of the injury will permit, "*i.e.,* until the condition has stabilized." *Gallentine v. Industrial Comm'n*, 201 Ill. App. 3d 880, 886 (2nd Dist. 1990). The dispositive test is whether the claimant's condition has stabilized, *i.e.,* reached MM.I. *Sunny Hill of Will County v. Ill. Workers' Comp. Comm'n*, 2014 IL App (3d) 130028WC at 28 (June 26, 2014, Opinion Filed); *Mechanical Devices v. Industrial Comm'n*, 344 Ill. App. 3d 752, 760 (4th Dist. 2003). To show entitlement to temporary total disability benefits, a claimant must prove not only that he did not work, but also that he was unable to work. *Gallentine*, 201 Ill. App. 3d at 887; *see also City of Granite City v. Industrial Comm'n*, 279 Ill. App. 3d 1087, 1090 (5th Dist. 1996).

The Arbitrator adopts the medical opinions of Dr. Singh who opined Petitioner reached MMI as of November 11, 2013. An FCE conducted prior to and subsequent to Dr. Singh's November 11, 2013 evaluation placed Petitioner's physical capabilities at the Medium PDL. Petitioner testified he relocated to Florida in late 2013 but did not make himself available for employment with Respondent nor any other employer. By adopting the opinion of Dr. Singh, the Arbitrator finds Petitioner's condition stabilized by August 6, 2014, the date of the FCE. Given this, Petitioner's entitlement to TTD should ended on August 6, 2014.

Given that Petitioner's condition had stabilized by August 6, 2014, the Arbitrator must determine whether Petitioner is entitled to maintenance benefits. Section 8(a) provides for both physical rehabilitation and vocational rehabilitation and mandates that Respondent pay all maintenance costs and expenses "incidental" to a program of "rehabilitation". The statutory term "rehabilitation" has been construed broadly to include an injured employee's self-initiated and self-directed job search. *Roper Contracting v. Industrial Commission,* 349 Ill. App. 3d 500 (2004). However, by its plain terms, Section 8(a) requires Respondent to pay only those maintenance costs and expenses that are

incidental to the rehabilitation. That means that Respondent is obligated to pay maintenance benefits only "while Petitioner is engaged in a prescribed vocational rehabilitation program". *Nascote Industries v. Industrial Commission,* 353 Ill. App. 3d**.** Therefore, if Petitioner is not engaging in some type of "rehabilitation" (whether it be physical rehab, active enrollment with an educational institution, formal job training, or a self-directed job search), Respondent's obligation to provide maintenance is not triggered.

Petitioner testified he made no attempts to find employment after his relocation to Florida. He also made no effort to return to his pre-injury position with Respondent after the evaluation with Dr. Singh on November 11, 2013 and the FCE dated August 6, 2014. Petitioner admitted he has made no formal search for employment of any kind nor engaged in any vocational rehabilitation from 2013 to the present.

It is noted that Respondent continued to disburse weekly TTD benefits despite the opinions of Dr. Singh through the date of trial. The Arbitrator takes note the payment of such benefits is not an admission of liability on the part of Respondent and there is no contra-indication to Respondent disputing liability for any period of TTD/Maintenance at trial. Therefore, the Arbitrator gives no evidentiary weight to the on-going payment of benefits.

Petitioner seeks TTD or Maintenance for various periods through February 16, 2022 at which time he was found medically permanently and totally disabled by Dr. Jassal. The Arbitrator does not adopt Dr. Jassal's medical opinions and does not find Petitioner to be a permanent and total disability as a result of the August 20, 2010 work accident. Given this, the Arbitrator finds Petitioner was entitled to TTD benefits from August 20, 2010 through November 9, 2010, from November 20, 2010 through January 18, 2012 and finally from September 4, 2012 through August 6, 2014 totaling 172 2/7 weeks of benefits. As such, Petitioner is entitled to no additional TTD nor Maintenance benefits beyond that date. On the Request For Hearing form, Respondent sought only a credit for double paying 2 weeks of TTD benefits from 1/2/21-1/7/21 and from 1/16/21 -

1/21/21. (Arb. Ex. #1). The Arbitrator finds Respondent is entitled to a credit for 2 weeks of TTD benefits.[3]

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

Petitioner testified he currently experiences significant low back pain. He further notes that his legs fall asleep when he sits for any extended period of time. He testified that he currently does very little beyond trips to the grocery store. He currently resides with his mother and does perform ADLs though he testified to "paying the price" afterward. It is unclear whether Petitioner's complaints are related to his work accident of August 20, 2010 or to his preexisting unrelated degenerative spinal condition or to his unrelated cervical spine condition. The Arbitrator notes on February 17, 2022, Dr. Jassal opined Petitioner was permanent total disability on February 17, 2022. However, Dr. Singh opined Petitioner reached MMI as of November 11, 2013 and, on August 6, 2014, an FCE was performed at Brookline Physical Therapy which found Petitioner at the medium PDL but recommending Petitioner avoid repetitive bending, walking, stair climbing and squatting. Based upon the restrictions involving avoiding repetitive bending, walking and stair climbing or squatting identified in the August 6, 2014 FCE, it is reasonable to infer that Petitioner would be unable to return to his prior occupation as a warehouse worker.

Evidence of Petitioner's potential earning capacity was not established to consider a wage loss. Petitioner's disability is, therefore, assessed upon partial permanent disability based upon a loss of trade or occupation. Petitioner's date of accident is before September 1, 2011. Therefore, the provisions of Section 8.1b of the Act are not applicable.

Based upon the Petitioner's testimony and the record taken as a whole, the Arbitrator finds that Petitioner's disability is related to Petitioner's physical ability noted by Dr. Singh and the August 6, 2014 FCE. This matter is best evaluated as loss to the left

[3] In Respondent's proposed decision, Respondent claimed an entitlement to a TTD credit for a overpayment of 420 1/7 weeks from 8/7/14 through 8/26/22. On the Request For Hearing form, Respondent sought only a credit for double payment of 2 weeks and not for the period from 8/7/14 through 8/26/22. The language of section 7030.40 indicates that the request for hearing is binding on the parties made therein. See *Walker v. Industrial Comm'n*, 4-03-0087WC, 345 Ill. App. 3d at 1088.

arm due to the elbow injury and residuals as well as a loss of occupation resulting from the original lumbar condition and its residuals. The Arbitrator finds Petitioner sustained permanent partial disability to the extent of 15% loss to the left arm and 35% loss of the use of the whole person representing 212.95 weeks of PPD Benefits.

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	17WC026795
Case Name	Misty Dawn Haynes v. St. Clara's Senior Care
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	24IWCC0174
Number of Pages of Decision	15
Decision Issued By	Kathryn Doerries, Commissioner

Petitioner Attorney	Matthew Brewer
Respondent Attorney	Peter Donahue

DATE FILED: 4/18/2024

/s/Kathryn Doerries, Commissioner

Signature

24IWCC0174

STATE OF ILLINOIS)
) SS.
COUNTY OF MCLEAN)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

MISTY HAYNES,

Petitioner,

vs. NO: 17 WC 026795

ST. CLARA'S SENIOR CARE,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petitions for Review having been filed by the Respondent and Petitioner herein and notice given to all parties, the Commission, after considering the issues of causal connection, reasonableness and necessity of medical treatment, and permanent partial disability, and being advised of the facts and law, modifies the Decision of the Arbitrator as stated below and otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

As it pertains to PPD benefits, the Arbitrator's Section 8.1b(b) analysis gave proper weight to the enumerated factors. The Commission, however, views the level of disability differently than the Arbitrator. The Commission modifies the Arbitrator's Decision to increase Petitioner's PPD award from 32.5% loss of use of the person as a whole to 35% loss of use of the person as a whole pursuant to Section 8(d)2 of the Act.

The Commission further modifies page 7, first paragraph, and strikes the second "not" in line number 9, so that the sentence reads "She did not display any Waddell's signs nor did she display pain out of proportion."

All else is affirmed and adopted.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $319.00 per week for a period of 175 weeks, as provided in §8(d)2 of the Act, for the reason that the injuries sustained caused the 35% loss of the person as a whole.

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

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

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $55,925.00. 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.

April 18, 2024

KAD/swj
O 3/5/24
42

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

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

/s/*Amylee H. Simonovich*
Amylee H. Simonovich

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	17WC026795
Case Name	HAYNES, MISTY v. ST CLARA'S SENIOR CARE
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	12
Decision Issued By	Bradley Gillespie, Arbitrator

Petitioner Attorney	Matthew Brewer
Respondent Attorney	Peter Donahue

DATE FILED: 6/23/2022

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

/s/Bradley Gillespie, Arbitrator

Signature

STATE OF ILLINOIS)
)SS.
COUNTY OF McLean)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Misty Haynes
Employee/Petitioner

v.

St. Clara's Senior Care
Employer/Respondent

Case # **17** WC **26795**

Consolidated cases: _____

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Bradley Gillespie**, Arbitrator of the Commission, in the city of **Bloomington**, on **12/21/21**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On **6/6/17**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $**27,622.40**; the average weekly wage was $**531.20**.

On the date of accident, Petitioner was **38** years of age, ***married*** with **2** dependent children.

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

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

Respondent shall be given a credit of $**9,814.74** for TTD, $**0.00** for TPD, $**0.00** for maintenance, and $**0.00** for other benefits, for a total credit of $**9,814.74**.

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

ORDER

The Arbitrator finds that the Petitioner's current condition of ill-being is causally related to her June 6, 2017 accident.

Respondent shall pay Petitioner permanent partial disability benefits of $319.00/week for 162.5 weeks, because the injuries sustained caused the 32.5% loss of the person as a whole, as provided in Section 8(d)2 of the Act.

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

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

Bradley D. Gillespie **JUNE 23, 2022**

Signature of Arbitrator

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

MISTY HAYNES,	)
Petitioner,	)
	)
v.	)**Case No.: 17WC026795**
ST. CLARA'S SENIOR CARE,	)
Respondent.	)

DECISION OF THE ARBITRATOR

This matter proceeded to hearing on December 21, 2021 in Bloomington, Illinois (Arb. 1). The following issues were in dispute:

- Causal Connection
- Nature and Extent of Injuries

FINDINGS OF FACT

Misty Dawn Shreve (f/k/a Misty Haynes), [hereinafter "Petitioner"] was born on March 22, 1979. She testified that she obtained a GED and subsequently attended a Certified Nursing Assistant ("CNA") school. (AT p.10) Petitioner lives in Lincoln, IL where she has resided her entire life. (AT p.11)

Petitioner testified that on June 6, 2017, she was employed by St. Clara's Manor [hereinafter "Respondent"] as a CNA. (AT p.11) Petitioner stated that she had been working for Respondent approximately 17 years in June 2017. She explained that she started out working in the kitchen and was hired as a CNA after completing her training . (AT pp.11-12) Petitioner described her general job duties as providing morning care to residents, getting them ready for their day, helping them with transfers, toileting, bathing, feeding, charting, activities of daily living as well providing moral support. (AT p.12)

Petitioner testified that she was working the midnight shift on June 6, 2017 and the facility was short-staffed.(AT p. 13) Petitioner had performed all of her bed checks for the residents, got them cleaned up and went to do her charting. *Id.* A co-worker named Paul asked for assistance helping slide a couple of residents up in bed. The first resident she helped Paul moved up in bed weighed approximately 130 pounds. When she returned to work on her charting, she noticed some pain in her lower right side of her back. Paul returned and asked for assistance moving a resident that weighed approximately 200 pounds up in bed. While sliding this resident up in bed, she "felt even more pain shooting down from her lower back into my buttock area on the right side." (AT p. 14) Petitioner notified her employer regarding the accident and her symptoms. (AT 14-15)

Petitioner testified that she was able to finish her shift but, the pain did not let up, so she went home, iced it and relaxed. (AT p. 15) Petitioner testified that her midnight shift began in the

evening of June 6, 2017, and ran into the morning of June 7, 2017. *Id.* She was scheduled to work on the evening of June 7, 2017, into the morning or June 8, 2017. *Id.* Petitioner said that she could not complete her tasks and received assistance from nurse to perform her duties that evening. (AT pp. 16-17) On the morning of June 8, 2017, Petitioner notified the Director of Nursing, and she was sent to the emergency room. (AT p. 17)

Petitioner testified that, leading up to this incident, she was not experiencing low back pain, was not treating for any low back pain, was not taking any prescription medication for low back pain. (AT p. 16)

Petitioner first sought medical care on June 8, 2017, at Abraham Lincoln Memorial Hospital. (PX 2) Petitioner testified that she described her accident as well as her subjective complaints. A physical examination was performed, and Petitioner was diagnosed with a lumbar strain. (PX 2 p. 2) Petitioner was taken off of work on June 8, 2017, and prescribed Naproxen as well as Robaxin. (PX 2, p. 2-3) Petitioner was told to follow up with her primary care physician for further care. (PX 2, p. 3)

Petitioner followed up with her primary care physician's office on June 12, 2017. (PX 3, p. 2) Petitioner reported pain in her low back and sharp pain into the right side radiating into her right buttock. *Id.* Petitioner was prescribed Prednisone and was placed on light duty. She was referred to physical therapy. (PX 3, p 2-3)

When Petitioner followed up with her primary care physician's office on June 19, 2017, she complained of severe pain shooting into her right leg. (PX 3, p. 4) Petitioner was continued on light duty restrictions of no pushing, pulling, and limit frequent bending. Physical therapy was again recommended. (PX 3, p 4-6) Petitioner began physical therapy at Abraham Lincoln Memorial Hospital on 6/22/17. (PX 4, p 2)

Petitioner followed up with her primary care physician's office on July 6, 2017. Petitioner testified that initially physical therapy did not provide much relief and she still had a lot of pain that shot down her right buttock area and also into her right hip. (AT p. 20) Petitioner's primary care physician's office recommended an MRI of the lumbar spine and continued the Petitioner on light duty restrictions. (PX 3, p 8-10)

Petitioner underwent an MRI of her lumbar spine at Abraham Lincoln Memorial Hospital on July 10, 2017. (PX 5) The study revealed minimal spinal canal narrowing at L4-5 from a diffuse disc bulge slightly greater centrally. (PX 5, p 2) Following her MRI, Petitioner was referred to Springfield Clinic. (AT 20-21)

On July 12, 2017, Petitioner presented to the Springfield Clinic for evaluation of low back pain. (PX 6) Petitioner's MRI was reviewed and it was noted that she had a small central disc herniation at L4-5. (PX 6, p. 4) Additional physical therapy was ordered and Petitioner was continued on her same work restrictions. (PX 6, p 4-7)

Petitioner was evaluated by Dr. William Payne on August 1, 2017. (PX 6, p. 11) Petitioner described her work accident to Dr. Payne. *Id.* Dr. Payne also performed a physical

examination and diagnosed Petitioner with low back pain. *Id.* Dr. Payne recommended that she continue in physical therapy and provided work restrictions of no lifting more than 20lbs. (PX 6, p 11-15)Petitioner continued in physical therapy up through August 24, 2017. (PX 4, pp. 24-25)

Dr. Payne's office notes indicate that they received a phone call from the Petitioner on August 27, 2017, complaining of severe back pain. Petitioner was instructed by Dr. Payne's office to go to the emergency room. (PX 6, p 16)

Petitioner presented to the emergency room at Abraham Lincoln Memorial Hospital on August 27, 2017. (PX 7) Petitioner complained of low back pain in the area of the left side of her lower lumbar spine as well as the right side of her lower lumbar spine. (PX 7, p. 2) Her pain was described to be sharp, aching pain. *Id.* Petitioner received an injection of, Toradol, morphine, Zofran and Norflex to the to help her with her pain. (PX 7, p. 3). Petitioner was instructed to follow up with her orthopedic surgeon Dr. Payne. *Id.*

Shortly thereafter, Respondent sent Petitioner for an Independent Medical Examination with Dr. Matthew Coleman on September 5, 2017. (RX 1, Ex. 1) Petitioner provided a consistent history regarding her work accident to Dr. Coleman. Dr. Coleman diagnosed Petitioner as having a work-related lumbar strain. Dr. Coleman believed Petitioner did have a disc bulge at L4-5. Dr. Coleman believed that the Petitioner's current condition and pain was causally related to the work accident. Furthermore, Dr. Coleman was not aware of any prior history of low back issues before the Petitioner's work accident. Dr. Coleman recommended the Petitioner continue physical therapy and recommended a lifting restriction of no more than 20 pounds. (RX 1)

Petitioner followed up with Dr. Payne on September 7, 201717. (PX 6 p. 19) Dr. Payne recommended Petitioner undergo an epidural steroid injection with Dr. Narla. *Id.* Petitioner was continued on work restrictions of no lifting more than 20 pounds as well as no patient involvement, sit to stand only and limited activity based upon patient's level of pain. (PX 6, p 19-22)

Petitioner presented to Dr. Narla on November 20, 2017. (PX 6, p. 25) Dr. Narla agreed with Dr. Payne's recommendation and scheduled Petitioner for an epidural steroid injection that would be performed at the L4-5 level on the right side. (PX 6, pp. 25-26) Dr. Narla performed an L4-5 right sided epidural steroid injection on November 27, 2017. (PX 9, p 2) Petitioner followed up with Dr. Narla on December 11, 2017. (PX 6, p. 29) Petitioner noted some relief from the epidural steroid injection. (AT p. 26, *See also* PX 6, pp. 29-30) Dr. Narla recommended the Petitioner undergo an additional epidural steroid injection. *Id.*

On December 27, 2017, Dr. Narla performed a second L4-5 right sided lumbar epidural steroid injection. (PX 6, p. 34) Petitioner testified that she had the same temporary relief after the second injection as she did after the first injection. (AT p. 26)

Petitioner followed up with Dr. Payne on January 6, 2018. (PX 6, p. 48) Petitioner continued to complain of low back pain without long term significant relief following the series of epidural steroid injections performed by Dr. Narla. *Id.* At this appointment, Dr. Payne

recommended a right sided L4-5 microdiscectomy. *Id.* Petitioner was taken off of work by Dr. Payne until she could be reevaluated on March 20, 2018. (PX 6, pp. 48-50)

Respondent sent Petitioner back to Dr. Coleman for a second Independent Medical Examination on March 20, 2018. (RX 1, Ex. 2) Dr. Coleman recommended Petitioner undergo an additional MRI prior to proceeding with the low back surgery recommended by Dr. Payne. *Id.* However, Dr. Coleman did believe that the recommendation for surgery is directly related to the Petitioner's work accident. (RX 1, Ex. 2)

Petitioner underwent the MRI recommended by Dr. Coleman on April 12, 2018 at Abraham Lincoln Memorial Hospital. (PX 3, pp. 82-83) This study revealed slight enlargement of the central disc protrusion at L4-5 compared to the MRI of July 10, 2017. *Id.* Mild spinal canal and bilateral foraminal stenosis was also noted. (PX 3, p 82-83)

Petitioner followed up with Dr. Payne on April 19, 2018. (PX 6, pp. 59-62) Dr. Payne again recommended Petitioner undergo microdiscectomy at the right side of L4-5. *Id.* Dr. Payne continued Petitioner off of work. *Id.* Dr. Payne performed the microdiscectomy on April 30, 2018. (PX 6, p 64-65)The pre-operative and post-operative diagnosis was a disc herniation at L4-5 with right worse than left radiculopathy. *Id.* Dr. Payne performed a right sided laminotomy, medial facetectomy, and discectomy at L4-5. *Id.* Petitioner was continued off of work immediately following the surgery. (PX 6, p. 67)

Petitioner followed up with Dr. Payne postoperatively on May 15, 2018. (PX 6, pp. 68-70) Petitioner indicated that she was better than before surgery and had no radicular complaints. *Id.* Petitioner described her low back as being sore over the sacrum on the right side. *Id.* Dr. Payne continued Petitioner off work and instructed her to begin physical therapy in one month. *Id.*

Petitioner followed up with Dr. Payne on June 14, 2018. (PX 6, p. 72) The Petitioner described having a lot of back spasms as well as walking with an altered gait. *Id.* Swelling was noted over her right side, but she was noted to have improved significantly. (PX 6, p.72) Dr. Payne returned Petitioner to work with restrictions of no lifting more than 30 pounds, no repetitive lifting, bending, or twisting. *Id.* Dr. Payne also recommended Petitioner begin physical therapy. *Id.* Petitioner began post-operative physical therapy at Abraham Lincoln Memorial Hospital on June 21, 2018. (PX 9, p. 29)

Petitioner followed up with Dr. Payne on 7/26/18. (PX 6, pp. 74-76) Dr. Payne noted continued improvement although Petitioner described being very anxious about getting back to work without restrictions. (PX 6, p. 75) Dr. Payne noted Petitioner had been working a light duty position with Respondent as a receptionist. *Id.* Petitioner was continued in physical therapy and her work restrictions were no lifting over 30 pounds, desk work only, no floor work, light duty. (PX 6, p.74)

Petitioner continued physical therapy and followed up with Dr. Payne's office on August 23, 2018. (PX 6, p. 79) Petitioner indicated she was doing much worse at this time and described an incident the week before when she was leaving physical therapy and she noted shooting pain

across the right side of her back down her right buttock to the lateral side of her right thigh. *Id.* Petitioner reported that she was quite miserable and had been walking leaned over to the left since the incident. *Id.* Dr. Payne noted an obvious limp as Petitioner walked down the hall. *Id.* Dr. Payne noted Petitioner's radicular symptoms at this point were worse than they were before surgery. (PX 6, p. 79) Her physical examination revealed a positive straight leg raise on the right at 40 degrees. *Id.* Dr. Payne diagnosed the Petitioner with L5 radiculopathy. *Id.* Dr. Payne suspected Petitioner might have re-herniated the disc at the L4-5 level. (PX 6, p. 80) Dr. Payne recommended the Petitioner undergo a new MRI with and without contrast. *Id.* Depending on the results he may consider an additional epidural injection or possibly a revision surgery consisting of a fusion at the L4-5 level. *Id.* Dr. Payne placed the Petitioner on work restrictions of reception work/desk work only. (PX 6, p. 77)

Petitioner's August 20, 2018, physical therapy records indicate that Petitioner became tearful multiple times during her physical therapy session regarding ongoing pain symptoms, inability to push wheelchair at work, and limitations with daily activities. (PX 9. p. 71) The therapist noted Petitioner exhibited a more antalgic gait when leaving her physical therapy session than she did upon arrival. *Id.* Petitioner complained of increased right low back pain at a level of 8-10 following this treatment visit. (PX 9, p 71)

Petitioner underwent the MRI recommended by Dr. Payne on August 31, 2018. (PX 9, p 75-76) This study revealed laminectomy and diskectomy changes at L4-5 with enhancing epidural granulation tissue or evolving fibrosis, no discrete disc herniation was identified, and no newly developing lumbar disc herniation or nerve root impingement was identified. *Id.*

Petitioner also underwent an EMG with Dr. Narla on September 13, 2018. (PX 6, p 82) Dr. Narla interpreted the nerve conduction studies as essentially normal apart from minor polyphasic potentials in the lower lumbar paraspinal muscles which could be related to the surgery performed by Dr. Payne. *Id.*

Petitioner followed up with Dr. Payne on September 20, 2018. (PX 6, p 86-89) Dr. Payne reviewed the EMG/NCV study as well as Petitioner's updated MRI. *Id.* Dr. Payne did not believe Petitioner could return back to work as a CNA and recommended a Functional Capacity Evaluation to determine permanent restrictions. *Id.* Dr. Payne also discussed a potential referral to Dr. Narla for pain management. *Id.* Dr. Payne continued the Petitioner on the same work restrictions of reception/desk work only. (PX 6, p.86)

On October 2, 2018, Respondent sent Petitioner for a third Independent Medical Examination with Dr. Coleman. (RX 1, Ex. 3) Dr. Coleman believed that the Petitioner may benefit from an additional epidural steroid injection. If Petitioner were not to pursue an epidural steroid injection, she would be considered at maximum medical improvement. If Petitioner were to have an injection, she would be at maximum medical improvement approximately two weeks after the injection. Dr. Coleman continued to recommend over the counter anti-inflammatories. Dr. Coleman continued to restrict Petitioner to no lifting more than 20 pounds and no strenuous or repetitive activity until she could obtain an injection. Dr. Coleman opined that he would allow Petitioner to return to work full duty two weeks following the proposed injection. (RX 1)

Petitioner underwent a Functional Capacity Evaluation at Memorial Industrial Rehab on October 16, 2018. (PX 11, p. 4) Petitioner's patterns of movement and physiological responses were consistent with maximal effort. *Id.* Petitioner demonstrated cooperative behavior and was willing work to maximum abilities in all test items. *Id.* Petitioner gave maximal effort on all test items as evidenced by predictable patterns of movement including increased accessory muscle recruitment, counter balancing and use of momentum, and physiological responses such as increased heart rate. *Id.* Her performance was consistent among FCE items. (PX 11, p. 4) Petitioner had consistent limitations relating to all walking, sitting, and standing tasks. *Id.* *Petitioner's walking limitation was her most prominent limitation during testing. Petitioner's FCE performed on October 16, 2018, was a valid study and gave an accurate determination as to her current physical limitations. (PX 11, pp. 4-15)

Petitioner followed up with Dr. Payne on November 11, 2018. (PX 6, pp. 110-112) Petitioner continued to report right sided low back pain. *Id.* Dr. Payne reviewed Petitioner's FCE. *Id.* Dr. Payne believed that Petitioner was at maximum medical improvement and issued permanent work restrictions per the FCE of working in a light physical demand job with waist to floor lifts and waist to crown lifts limited to no more than 20 pounds, and front carrying up to 25 pounds. *Id.* Dr. Payne recommended that the Petitioner see Dr. Jain for management of her chronic pain. (PX 6, pp. 110-112)

Petitioner testified that she was unable to return to her job as a CNA with the restrictions issued by Dr. Payne on November 1, 2018. (AT p. 33) However, Respondent took Petitioner back to work in a new position that was within her permanent work restrictions. Petitioner described her new job with Respondent as working at the front desk as a receptionist. (AT pp. 33-34)

Petitioner did subsequently see Dr. Jain on January 8, 2019. (PX 6, pp. 105-109) Dr. Jain recommended Petitioner undergo an epidural steroid injection and recommended ongoing prescription management for Petitioner's chronic pain. *Id.* Dr. Jain indicated that Petitioner will likely continue to have chronic pain. *Id.* Petitioner later elected to continue her pain management treatment with Dr. Salvacion at Memorial Medical Center. (PX 11, p 16-18) Petitioner initially met with Dr. Salvacion on June 24, 2019. *Id.* Petitioner complained of persistent pain in her back radiating into her right hip and proximal side. *Id.* Petitioner provided Dr. Salvacion a consistent history of her work accident June 6, 2017. *Id.* At this initial visit, Dr. Salvacion recommended Petitioner begin a Medrol Dose Pak along with Gabapentin. (PX 11, pp.16-18) Petitioner was advised to follow up in a couple of weeks if her symptoms continued to bother her as she may benefit from a trial of epidural steroid injections. *Id.*

On July 8, 2019, Petitioner followed up with Dr. Salvacion and he recommended epidural steroid injections. (PX 11, p. 19) On July 22, 2019, Dr. Salvacion performed a lumbar epidural steroid injection at the L5-S1 level. (PX 11, p. 21) A second epidural steroid injection was performed on August 19, 2019, at the right L4-5 level. (PX 11, p. 24) Petitioner testified that the epidural steroid injections performed by Dr. Salvacion did not provide her any relief. (AT p. 34) Petitioner continued to see Dr. Salvacion through December of 2020 primarily for prescription refills. (AT p. 35)

On February 23, 2021, Respondent sent Petitioner to Dr. Coleman for a fourth Independent Medical Examination. (RX 1, Ex. 4) Dr. Coleman opined that any residual symptoms were related to the Petitioner's mild degenerative disc disease and other nonorganic issues. *Id.* Dr. Coleman did not believe Petitioner's current complaints were still related to her original accident on June 6, 2017. *Id.* Dr. Coleman did not recommend any further medical care for her low back. *Id.* Dr. Coleman believed Petitioner was at maximum medical improvement and would have been so two weeks following her initial epidural steroid injection in the summer of 2019. (RX 1, Ex. 4) Dr. Coleman indicated during his examination Petitioner was reasonable and consistent with her reporting. *Id.* She did not display any Waddell's signs nor did she not display pain out of proportion. *Id.* Dr. Coleman detected no signs of symptom magnification or secondary gain. *Id.* Dr. Coleman believed that Petitioner had improved substantially since her FCE, which was the basis for her permanent work restrictions. (RX 1, Ex. 4) Dr. Coleman did not believe that the Petitioner required any ongoing work restrictions and would release her to return to work in a full duty capacity. (RX 1)

Petitioner followed up with Dr. Payne on July 29, 2021. (PX 6, p 122-125) Petitioner indicated that following her FCE and placement at MMI, her employer had been accommodating her restrictions in a desk position. *Id.* Dr. Payne examined her again, recommended Petitioner continue her permanent work restrictions from November 1, 2018, and released her from his care.

At arbitration, Petitioner testified she continues to take Gabapentin and an anti-inflammatory as they provide her ongoing relief. Petitioner still works for Respondent in the front desk position she began working following June 6, 2017, accident. (AT p.35)

Petitioner testified that she still has low back pain. Petitioner testified that she is still sore and stiff, especially in the mornings when she wakes up. Some mornings are more difficult than others. Petitioner noted that she experienced some nerve pain on her drive from Lincoln, Illinois to Bloomington, Illinois for trial. She continues to notice pain in her lower right buttock area. Petitioner testified that she still has trouble sleeping and trouble lying flat which were issues she noticed immediately following her surgery. (AT pp. 35-36) Petitioner testified that her issues sleeping and lying flat bother her on a daily basis. Petitioner has difficulty sitting for long periods of time (i.e. when she is attending her daughter's sporting events). (AT p. 37) Petitioner is unable to work out at the present time because of her low back pain. (AT p. 38) She also testified that standing for long periods of time baking, cooking or making beds at home bothers her low back. Petitioner described difficulty lifting heaver items such as cases of water when going grocery shopping. (AT pp. 38-39) Petitioner did not believe she could return to her former position as a CNA. (AT 39)

Respondent called Susan Boyd to testify at arbitration. Ms. Boyd is the business office manager for Respondent. (AT p. 77) Ms. Boyd testified that Respondent is a skilled nursing facility. (AT p. 78) Ms. Boyd testified that she took part in the Petitioner's job change from a CNA to a receptionist. (AT p. 79) Ms. Boyd stated that the person who was in the receptionist position retired and there was an opening for the receptionist job. *Id*. Ms. Boyd confirmed that Petitioner was hired into the receptionist position once it became open. (AT p. 80)

On cross-examination, Ms. Boyd testified that she was aware of Petitioner's permanent work restrictions. (AT p. 84) Ms. Boyd confirmed that Petitioner was unable to perform the job requirements of a CNA with the permanent restrictions issued by her treating physicians. (AT pp. 84-85) Ms. Boyd confirmed that the lifting requirements of a CNA for Respondent would be beyond Petitioner's permanent work restrictions. (AT p. 85) Ms. Boyd confirmed that Petitioner never actually applied for the receptionist position and the administrator at Respondent's facility approached Petitioner and offered her the position. (AT pp. 85-86)

Dr. William Payne testified via evidence deposition on February 4, 2021. (PX 12) Dr. Payne is a board certified orthopedic surgeon who specializes in spine surgery. (PX 12, pp. 9-10) Dr. Payne performs 8-10 spine surgeries per week and half his practice is spent on patients with lumbar spine conditions. (PX 12, p. 10-11) Petitioner provided Dr. Payne with an accurate history of her work accident. Dr. Payne performed many physical examinations of Petitioner and performed surgery on her lumbar spine on April 30, 2018. Dr. Payne placed Petitioner at maximum medical improvement on November 1, 2018. (PX 12, p. 30) Dr. Payne testified that a causal connection exists between Petitioners work accident and her low back condition. Dr. Payne opined that the microdiscectomy and permanent restrictions based on her valid functional capacity evaluation were causally related to Petitioner's work injury on June 6, 2017. (PX 12, p. 31) Dr. Payne further stated that his recommendation for Petitioner to undergo pain management with Dr. Salvacion is causally related to the accident. (PX 12, p. 31-32)

Dr. Matthew Colman testified via evidence deposition on July 13, 2021. Dr. Colman is Respondents independent medical examiner who saw the Petitioner four different occasions. Dr. Colman testified that the Petitioner's low back condition is causally related to the accident. (RX 1, p. 37) According to Dr. Colman, anything following the initial injection performed by Dr. Salvacion on July 22, 2019, was no longer causally related to her initial injury. (RX 1, p. 37) Despite her valid FCE, Dr. Colman did not believe Petitioner still required permanent work restrictions at the time of his deposition. (RX 1, p. 41-42) However, Dr. Colman did not perform any testing that would be similar to that of an FCE when he last saw the Petitioner in 10.8.18. (RX 1, p. 42)

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 Arbitrator finds that Petitioner testified credibly. Both Dr. Payne and Dr. Colman agree that a causal relationship exist between Petitioner's condition of ill-being and her June 6, 2017, work accident at least through the initial epidural steroid injection provided by Dr. Salvacion. While Dr. Colman opined that the causal connection ended following the initial epidural steroid injection administered by Dr. Salvacion, the Arbitrator finds that Dr. Payne's opinion is more credible than that of Respondent's Independent Medical Examiner. Dr. Payne followed Petitioner throughout the course of her care and The Arbitrator also finds that the chain-of-events in this case support a causal connection between Petitioner's current condition of ill-being and the June 6, 2017, work accident.

The only issue relative to causation that warrants further analysis is the applicability of Petitioners permanent work restrictions. On this issue, the Arbitrator finds that the opinion of Dr. Payne that Petitioner's permanent work restrictions are causally related to her accident more compelling. In support of this finding, the Arbitrator notes the Petitioners valid FCE, Dr. Payne's final examination of July 29, 2021, and the Petitioners credible testimony regarding her ongoing daily issues with her low back.

In support of the Arbitrator's Decision relating to (L). What is the nature and extent of the injury, the Arbitrator finds the following:

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

With regard to subsection (ii) of §8.1b(b), the occupation of the employee, the Arbitrator notes that the record reveals that Petitioner was employed as a CNA at the time of the accident and that she is not able to return to work in his prior capacity as a result of said injury. The Arbitrator notes that the Petitioner is now working a light duty position as a receptionist. The Arbitrator therefore gives *greater* weight to this factor.

With regard to subsection (iii) of §8.1b(b), the Arbitrator notes that Petitioner was 38 years old at the time of the accident. Based on the Petitioner's permanent work restrictions, her job change and her ongoing subjective complaints, along with the fact that she has an additional work life expectancy of approximately 30 more years, the Arbitrator therefore gives *greater* weight to this factor.

With regard to subsection (iv) of §8.1b(b), Petitioner's future earnings capacity, the Arbitrator notes that the Petitioner did not sustain any loss of future earnings capacity. The Arbitrator therefore gives *lesser* weight to this factor.

With regard to subsection (v) of §8.1b(b), evidence of disability corroborated by the treating medical records, the Arbitrator notes that the Petitioner's testimony at the time of trial is consistent with all the records admitted into evidence. Because of this, the Arbitrator therefore gives *greater* weight to this factor.

Based on the above factors, and the record taken as a whole, the Arbitrator finds and concludes that Petitioner sustained permanent partial disability to the extent of 32.5% loss of use of the person as a whole pursuant to §8(d)2 of the Act.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	18WC020039
Case Name	Mark Winters v. State of Illinois
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	24IWCC0175
Number of Pages of Decision	24
Decision Issued By	Amylee Simonovich, Commissioner, Kathryn Doerries, Commissioner

Petitioner Attorney	Darren Kozlowski
Respondent Attorney	Joseph L. Moore

DATE FILED: 4/18/2024

/s/Amylee Simonovich, Commissioner

Signature

DISSENT: /s/Kathryn Doerries, Commissioner

Signature

24IWCC0175

STATE OF ILLINOIS)
) SS.
COUNTY OF SANGAMON)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Mark Winters,

Petitioner,

vs. NO: 18 WC 20039

State of Illinois,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petitions for Review having been filed by Respondent and Petitioner herein and notice given to all parties, the Commission, after considering the issues of accident, causal connection, and permanent disability, and being advised of the facts and law, modifies the Decision of the Arbitrator. The Commission otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

The Commission affirms the Arbitrator's conclusions that the June 19, 2018, accident arose out of and in the course of Petitioner's employment. The Commission also affirms the Arbitrator's conclusions that Petitioner's current condition of ill-being is causally related to the accident and that Petitioner sustained a 5% loss of use of the left foot due to the June 19, 2018, accident.

While the Commission agrees with the Arbitrator's conclusion that Petitioner's left ankle injury was due to a compensable accident, the Commission notes that the Arbitrator did not properly consider the Illinois Supreme Court's opinion in *McAllister v. Ill. Workers' Comp. Comm'n*, 2020 IL 124848. Pursuant to *McAllister*, Petitioner must prove his injury "…had its origin in some risk connected with, or incidental to, the employment so as to create a causal connection between the employment and the accidental injury." *Id*. at ¶ 36 (internal citations omitted). A risk is incidental to a claimant's employment "…when it belongs to or is connected with what the employee has to do in fulfilling his or her job duties." *Id*. Furthermore, risks distinctly associated with one's employment include tripping on a defect at the employer's premises and falling on uneven or slippery ground at the work site. *Id*. at ¶ 40. The credible evidence shows that under the circumstances present in this case, the configuration of the north exit's threshold with an immediate step down without warning constitutes a hazard or defect. Petitioner's left ankle injury was due to this defect. Thus, the work accident arose out of and in the course of Petitioner's employment.

The Commission also makes the following correction to the Arbitration Decision Form. In the Order section, the Arbitrator mistakenly wrote that Petitioner was disabled "…from June 20, 2018 to June 12, 2018, a period of 3 1/7 weeks…" The Commission modifies the above-referenced sentence to read as follows:

> Petitioner was temporarily totally disabled as a result of the accident from June 20, 2018, to July 12, 2018, a period of 3-2/7 weeks, and Respondent shall pay 3-2/7 weeks of temporary total disability at a weekly rate of $859.79.

The Commission otherwise affirms and adopts the Decision of the Arbitrator.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed on August 17, 2022, is modified as stated herein.

IT IS FURTHER ORDERED that on June 19, 2018, Petitioner sustained an accident that arose out of and in the course of his employment.

IT IS FURTHER ORDERED that Petitioner's current condition of ill-being regarding his left ankle is causally related to the June 19, 2018, work accident.

IT IS FURTHER ORDERED that Respondent shall pay Petitioner temporary total disability benefits of $859.79/week for 3-2/7 weeks, commencing June 20, 2018, through July 12, 2018, as provided in Section 8(b) of the Act.

IT IS FURTHER ORDERED that Respondent shall pay Petitioner permanent partial disability benefits of $773.81/week for 8.35 weeks, because the injuries sustained caused the 5% loss of the left foot, as provided in Section 8(e) of the Act.

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

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

Pursuant to §19(f)(1) of the Act, claims against the State of Illinois are not subject to judicial review.

April 18, 2024

d: 2/20/24
AHS/jds
51

/s/ *Amylee H. Simonovich*
Amylee H. Simonovich

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

DISSENT

I respectfully disagree with the majority's opinion that Petitioner's left ankle injury on June 19, 2018, arose out of his employment. Petitioner attributed his fall while traversing the step down to the similar color tone between the doorway's threshold and the step down. Petitioner testified the threshold and the step down were "the same – similar color, and *I just didn't see it*." (T. 27) The majority concluded that Petitioner's misstep while exiting a building arose from a risk distinctly associated with his employment, based on its finding that the configuration of the doorway's threshold with an "immediate step down without warning" presented a hazard or defect which caused Petitioner's misstep. For the reasons outlined below, I view the evidence differently and find there was no defect or hazard associated with the step down from which Petitioner fell. Accordingly, Petitioner's accident originated from a neutral risk as set forth in *McAllister vs. Ill. Workers' Comp. Comm'n,* 2020 IL 124848, 2020 Ill LEXIS 561. When examined under a neutral risk analysis, Petitioner did not meet his burden of proof as the evidence adduced at trial failed to prove an increased risk greater than that shared by the general public.

In order to establish compensability under the Act, claimants must prove by a preponderance of the evidence that: (1) the injury occurred in the course of the employment, and (2) the injury arose out of the employment. *McAllister vs. Ill. Workers' Comp. Comm'n,* 2020 IL 124848, P32. To satisfy the "arising out of" prong, which is primarily concerned with causal connection, claimants must show their injury had its origin in some risk connected with the employment. *Id*. at P36. To determine whether a claimant's injury arose out of the employment, we are required to first categorize the type of risk from which the injury originated, of which there are three: (1) risks distinctly associated with the employment, (2) risks personal to the employee, and (3) neutral risks, which have no particular employment or personal characteristics, including but not limited to, stray bullets, lightning strikes, and dog bites.

As a general rule, falls on level ground or stairs are classified as having their origin in neutral risks. See *Illinois Consol. Tel. Co. vs. Industrial Comm'n*, 314 Ill. App. 3rd 347, 353, 732 N.E.2d 49, 54 (2000) (Rakowski, J., concurring opinion). Injuries in the workplace stemming from neutral risks are not compensable unless the employment exposed the claimant to an increased risk of injury greater than that shared by the general public. *McAllister vs. Ill. Workers' Comp. Comm'n,* 2020 IL 124848, P34. Because the general public and employees are equally exposed to the risk of falling while walking or traversing stairs, injuries resulting from such falls do not arise out of the employment. *Elliot vs. Industrial Comm'n*, 153 Ill. App. 3rd 238, 244, 505 N.E.2d 1062 (1987). "The act of walking down the stairs itself does not establish a risk greater than those faced outside of work." *Elliot*, 153 Ill. App. 3rd at 276. Where, however, a fall on level ground or stairs occurs due to the presence of an unsafe defect or hazard on the employer's premises or worksite, the injury is deemed to have its origin in a risk distinctly associated with the employment and shall be found compensable. *McAllister vs. Ill. Workers' Comp. Comm'n,* 2020 IL 124848, P40.

In claims involving stairs, floors, entryways, sidewalks, and exterior grounds on the employer's premises, there is a distinction between defects and hazards such as slippery conditions, debris, holes, broken, cracked, and uneven surfaces, which pose risks associated with the employment, and conditions which are present by design, such as street curbs, sloping pavement, and step downs, which are considered neutral risks. Compare *Litchfield Healthcare*

Ctr. vs. Industrial Comm'n, 349 Ill. App. 486 (5th Dist. 2004), finding a defect present where claimant tripped over uneven slabs of sidewalk within the same sidewalk, and *Vaughan vs. Illinois Workers' Compensation Comm'n*, 2021 IL App (4th) 200253WC-U[1], affirming the Commission's decision finding *no defect was present* where the configuration and height differential was present by design.

In *Caterpillar vs. Industrial Comm'n*, 129 Ill. 2d 52, 541 N.E 2d 665 (1989), the claimant, after completing his shift, exited the building through the door normally used by the employees, and while walking towards his vehicle in the parking lot, stepped off the curb with his foot landing partially on a downward slope and partially on the blacktop driveway, causing claimant's ankle to twist. *Caterpillar*, 129 Ill. 2d 52, 56-57 (1989). The Supreme Court noted the downward slope between the sidewalk curb and the driveway was apparently *intended for drainage*. *Id.* at 56-57. At the location of the accident, there were no holes, rocks or obstructions and the Court concluded that the condition of the premises was not a contributing cause of the claimant's ankle injury. *Caterpillar*, 129 Ill. 2d 52, 61 (1989). In short, the slope was present by design and was therefore not a defect. The Court then applied a neutral risk analysis and ruled the accident did not arise out of the employment as the risk to the claimant was no greater than the risk the general public faced when traversing street curbs. Notably, the Court examined an earlier decision it handed down which was factually similar but with the opposite result and then overruled the prior decision. In *Bartley vs. Industrial Comm'n*, 45 Ill. 2d 374 (1970), the Court found an unsafe hazard where the claimant stepped off a walkway that was 11 inches higher than the ground. Observing the apparent inconsistency, the *Caterpillar* Court stated: "*Bartley* may be distinguished by the difference in the height of the ledge. However, to the extent it is irreconcilable with this decision, it is overruled." *Caterpillar*, 129 Ill. 2d at 64. (Emphasis added.)

More recently, in *Vaughan vs. Illinois Workers' Comp. Comm'n*, 2021 IL App (4th) 200253WC-U, the Appellate Court considered a sidewalk/parking lot accident where a height differential was hidden due to the worker's direction of travel and the lack of adequate artificial illumination. The claimant, after completing her shift, injured her knee while walking on the sidewalk toward her assigned parking lot. She exited the building through the employee entrance and testified the sidewalk was not normally used by the general public. *Id.* at P6. The claimant reached the blacktop parking lot and then stumbled and fell due to a height differential. Claimant testified that the surface of the *sidewalk appeared to be even with the blacktop*; however, there was a height differential, estimated to be an inch and-a-half to two inches. *Id.*at P7. At the time of her fall, claimant testified that it was still dark outside and the temperature was at or near freezing. She also testified there were outdoor lights illuminating the area; however, one of the lights was not functioning and other lights were partially obscured by a parked security van, which created a shadow that made that area darker. *Id*. Claimant further testified that the darkness made the sidewalk and the blacktop appear even, or "level." *Id*. At P8. As noted by the Court, the arbitrator interjected for clarification and asked claimant the following question during the claimant's testimony:

> Q. So, you think you fell because you didn't see the difference in height between the concrete sidewalk and the asphalt?
>
> A. Right. It looked even to me."

1. Pursuant to Supreme Court Rule 23(e)(1), non-binding Rule 23 Orders may be cited as persuasive authority.

Claimant further commented that: "It was dark and it looked even." *Id.* P14. The photographic evidence revealed the blacktop sloped where it met the curb adjacent to the sidewalk. *Id*. Claimant also testified that the area was clear of rocks, debris, water, snow, ice, holes, or other surface-type defects. *Id.* at P13. Claimant asserted her accident was caused by a hazardous condition. The Court disagreed and affirmed the Commission's denial of benefits as the evidence supported the Commission's finding that the height differential between the curb and the blacktop "***was by design and not a defect.***" *Vaughan vs. Illinois Workers' Comp. Comm'n*, 2021 IL App (4th) 200253WC-U, P34 (emphasis added). The Court further indicated "[t]he possibility of mis-stepping while stepping from a sidewalk, over a curb and onto a slanted surface ***in close proximity to an access ramp*** is not a risk peculiar to claimant's employment where there is simply no evidence of a defect." *Id.* P35. (Emphasis added.)

Though the Commission's underlying decision denying benefits in *Vaughan vs. Memorial Medical Center* was decided in 2018, 18 IWCC 690, 2018 Ill. Wrk. Comp. LEXIS 918, the Appellate Court issued its affirming opinion on April 22, 2021, seven months after the Supreme Court rendered its decision in *McAllister vs. Ill. Workers' Comp. Comm'n,* 2020 IL 124848, 2020 Ill LEXIS 561.

The majority relies on *McAllister vs. Ill. Workers' Comp. Comm'n,* 2020 IL 124848, P40, which noted by way of example that tripping on a defect or falling on an uneven surface while on the employer's premises constitutes a risk distinctly associated with one's employment. Because the doorway's configuration and step down were present by design and there was no deterioration, cracked, or broken concrete, I would classify the risk encountered by Petitioner as a neutral risk.

Under a neutral risk analysis, injuries originating from neutral risks are only compensable where the employee was exposed to the risk to a greater degree than the general public. *Illinois Institute of Technology Research Institute vs. Industrial Comm'n,* 314 Ill. App. 3rd 149, 163, 731 N.E2d 795, 807 (2000). Such an increased risk may be either qualitative, where some aspect of the employment contributes to the risk, or quantitative, such as when the employee is exposed to a common risk more frequently than the general public. *Potenzo vs. Ill. Worker Comp. Comm'n,* 378 Ill. Ap. 3rd 113, 117, 881 N.E.2d 523, 527 (2007).

In the present matter, Petitioner testified he was coming out of the building when he stepped with his left foot and missed a step. (T. 27) There was no debris, slippery condition, broken or cracked surface. Petitioner attributed the cause of his misstep to the sameness or similarity in the color of the threshold in comparison with the flooring inside the building and the exterior ground level concrete. Specifically, Petitioner testified the threshold and the step down were "the same – similar color, and *I just didn't see it*." (T. 27) (Emphasis added) Petitioner then identified five photographs depicting the area of the accident. Petitioner testified the threshold was silver. (T. 32) Petitioner further testified that the surface of the interior floor was silver in appearance. (T. 32) He also testified the ground level concrete adjacent to the step down was also silver in appearance. (T. 32) I find Petitioner's theory that the color tone of the threshold, interior, and exterior surfaces blended to create a hazardous condition is not entirely consistent with the photographic evidence.

The fifth photo depicting the interior floor shows the surface was speckled with small dark aggregate or chips embedded with a brighter background. (T. 258, JX #9) Beneath the doors is a

silver metal door sill plate with anti-slip grooves. (T. 257-258, JX #9) The third and fourth photos show the presence of an exterior silver metal threshold with anti-slip grooves. (T. 256-257, JX #9) The first and second photos depicting the ground level concrete surface adjacent to the step down show the outside concrete was darker grey in color tone. (T. 254-255, JX #9) Contrary to Petitioner's description, the speckled interior flooring, the silver metallic threshold, and the grey concrete presented three different and contrasting surfaces. Additionally, there was no obstruction as the twin double doors were made of framed full-height transparent glass. (T. 30, 254-255, JX #9) The façade was also constructed with full-height glass panels on both sides of the double doors. (T. 254-255, JX #9) I therefore disagree with my colleagues that the step down in close proximity to the doorway was without warning. Even assuming the threshold and step down were similar in appearance, I find there was no defect or hazard as the configuration and surfaces of the threshold and step down were present by design. The height of the step down appears to be 3 inches to 4 inches. This height differential is significantly less than the 11-inch height differential present in *Bartley vs. Industrial Comm'n*, 45 Ill. 2d 374 (1970), which the Supreme Court overruled in *Caterpillar*, supra.

Petitioner also testified a small portion of the step was painted yellow. The first and second photos show a small area of paint situated on the vertical riser of the step facing persons approaching the doors from the outside. Petitioner's supervisor, Tom Jennings, when asked about the yellow paint depicted in the photos, testified there was a little on the "face" of the step. Mr. Jennings testified the steps at the east and west exits had yellow painted strips for safety. I find the lack of yellow paint along the riser of the step down for the north exit to be immaterial. The vertical side of the step, if fully painted yellow, would have only been plainly visible to persons *entering* the building. The vertical riser was not visible to persons exiting the building. The fourth and fifth photographs make this clear. Accordingly, the absence of yellow paint on the riser was not a contributing factor as Petitioner was exiting the building when he misstepped and fell.

Under the qualitative standard, the testimony of three witnesses failed to show the north exit doorway and step down presented any risk of falling. Tom Jennings, Petitioner's supervisor, completed a supervisor's report of injury stating that he did not see anything unsafe at the site of the fall. (T. 119, JX #5) Mr. Jennings further testified he was unaware of anybody other than Petitioner falling at the north door location. (T. 127) Investigator Robert Mertz testified that he had been employed as a Secretary of State Capitol Police Officer for almost nine years. (T. 130) Investigator Mertz testified that he had worked the northeast station other times and had never seen anyone fall in the north doorway. (T. 136). Investigator Mertz also testified that even though the north door is marked "Employee Entrance Only," members of the public sometimes enter through that door and anyone can exit through it. (T. 136-137) Sergeant Gerald Schneider testified he had supervised law enforcement and security staff at the Capitol Complex since October 2016. (T. 155). He was unaware of any defects to the north door of the Stratton Building. (T. 155). Sergeant Schneider further testified he searched the Capitol Police reporting system for incident reports and found only one other reported fall since 2017 and that occurrence did not involve the step down where Petitioner had fallen. (T. 155-156, 158)

Parenthetically, Petitioner testified he was carrying his tools; however, he testified to carrying one drywall pan and three knives in a satchel with a total combined weight of seven pounds. (T. 25) There was no testimony suggesting the satchel of tools played a contributing factor

in Petitioner's misstep while exiting the building.

Under the quantitative standard, Petitioner's testimony fails to show he was required to enter and exit buildings more frequently than the general public. As for the Stratton Building where Petitioner fell, he testified he had been employed with the Secretary of State's office for approximately four months and during that period he exited the building through the north exit only two or three times. (T. 26-27) There were other occasions where Petitioner used the north side to enter the Stratton building; however, there was no testimony demonstrating frequent use of the building doorways as part of his employment duties.

For the above reasons, I dissent from the majority's opinion and would reverse the Arbitrator's decision.

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	18WC020039
Case Name	Mark Winters v. State of Illinois
Consolidated Cases	
Proceeding Type	Request for Hearing
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	16
Decision Issued By	Dennis OBrien, Arbitrator

Petitioner Attorney	Darren Kozlowski
Respondent Attorney	Suzanne Borland

DATE FILED: 8/17/2022

/s/ Dennis OBrien, Arbitrator
Signature

INTEREST RATE WEEK OF AUGUST 16, 2022 3.02%

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

August 17, 2022

/s/ Michele Kowalski

Michele Kowalski, Secretary
Illinois Workers' Compensation Commission

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

MARK WINTERS
Employee/Petitioner

v.

STATE OF ILLINOIS
Employer/Respondent

Case # **18** WC **020039**

Consolidated cases: _____

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

DISPUTED ISSUES

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

FINDINGS

On **June 19, 2018**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

In the year preceding the injury, Petitioner earned $**21,924.48 (less than 52 weeks of employment)**; the average weekly wage was $**1,289.68**.

On the date of accident, Petitioner was **47** years of age, ***married*** with **2** dependent children.

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

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

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

ORDER

Petitioner suffered an accident on June 19, 2018, which arose out of and in the course of his employment by Respondent.

Petitioner's medical condition, multiple tiny avulsion fracture fragments involving the dorsal aspect of the left talar head and lateral aspect of the anterior process of the left calcaneus, which constituted a sprain of the left hindfoot, is causally related to the accident of June 19, 2018.

Petitioner was temporarily totally disabled as a result of the accident from June 20, 2018 to June 12, 2018, a period of 3 1/7 weeks, and Respondent shall pay 3 1/7 weeks of temporary total disability at a weekly rate of $859.79.

Petitioner sustained permanent partial disability to the extent of 5% loss of use of the left foot pursuant to §8(e) of the Act, and Respondent shall pay 8.35 weeks of permanent partial disability at a weekly rate of $773.81.

Respondent is entitled to credit for all amounts paid by its group health insurance carrier for treatment of maladies caused by this accident pursuant to Section 8(j) of the Act.

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

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

Signature of Arbitrator

August 17, 2022

FINDINGS OF FACT:

TESTIMONY AT ARBITRATION

Petitioner

Petitioner testified that in June of 2018 he was employed by the Secretary of State as a maintenance painter, repairing drywall, patching holes, and doing all aspects of painting. He said he had begun the job on February 1, 2018, having previously been a general contractor. He said he also worked as a college basketball referee and a college baseball umpire, having done that since 1994. He said he had also worked as an umpire for baseball in the Olympics and in the College World Series. He said he earned about $60,000.00 a year officiating.

Petitioner said that on June 19, 2018, he was working on the eighth floor of the Stratton Building repairing drywall and prepping it for painting. He said he used a number of tools to perform that work, and those were his own, personal tools. He said he had worked for three to four hours that day before quitting to clean up at 11:30, he exited his work area, got on the elevator and went to the main floor to exit the building and go to his shop area in the Archives Building to clean up his tools so the drywall mud would not get hard, and then he would get lunch. He said he carried the tools in a satchel-like bag, and they weighed about seven pounds. When he got to the main floor he exited the elevator and turned left to the north exit of the building. He said that was the only exit you would see upon getting off the elevator, and he had previously used it two or three times.

Petitioner said that as he was coming out of the building his left foot missed a step, that there was a threshold and then a step down that were of similar color. He noted Petitioner Group Exhibit 9 was a set of five photos of that exit taken by him in December of 2018, and the photos accurately depicted how the exit appeared in June of 2018. He noted that the exit door stated it was an entrance for employees only. He said the fourth photo in that exhibit showed the threshold and step coming out of that doorway. He said the threshold was silver colored, as was the floor inside the building. He said there was one step at that exit, and that the other exits from that building did not have any steps. He noted that part of the step was colored yellow and the remainder was silver. He said the fifth photograph in that exhibit was taken from the inside of the building looking out and the area where he would have walked, through the left of a pair of doors, was silver in color, not yellow. He said he did not trip going out the door, he just completely missed the step, as he had not noticed it.

Petitioner testified that after he missed the step, he fell, he lay there for a while, as his ankle was hurting, and a capitol police officer, who was stationed on the east side of the building, forty to fifty yards away, came to help him. He said they then went to the officer's station and Petitioner's foreman, Tom Jennings, was called. Mr. Jennings came and asked him if he would like an ambulance, and Petitioner said he wanted to drive himself to Springfield Clinic. At the clinic x-rays were taken, he was put in a walking boot and was given crutches and a prescription for pain medication. He was told he could work with restrictions. He said he told Mr. Jennings of the restrictions after he left the doctor's office, and he was told to come to work the next day, at which time

Petitioner and Mr. Jennings went to personnel and were informed that he could not work with restrictions, he would need to have a "no restrictions" release from his doctor to go back to work.

Petitioner said he received additional medical care from Dr. Herrin as in 2004 he had injured his right ankle and Dr. Herrin had performed surgery on him at that time. He noted that the ankle injured on June 19, 2018 was his left ankle, and that he had never before injured the left ankle. Dr. Herrin ordered x-rays and a CT scan of his left ankle, told him he had several fractures which pulled ligaments and bone chips off the bone, and gave him a prescription for swelling and pain. He returned to see Dr. Herrin on several occasions. He said he was off work for about four weeks. Because he was planning on going to a basketball officials camp but was having swelling and some pain in the ankle, he asked for a cortisone shot before going to the camp. He said the injection helped. At the camp he officiated three or four nonregulation games a day, with evaluators watching how they call the game, how their mechanics are, how they run, all of the aspects of officiating. He said he went to the camp in hopes of getting hired and getting a better schedule. He said he was not hired, however, and did not get a better schedule, that his evaluation said his running was not up to par, it looked like he was injured.

Petitioner said he had never injured his left ankle prior to this 2018 accident. He said that as of the date of arbitration he had pain in his ankle, having more pain in the ankle depending on what activity he was performing, but it was hard to pinpoint any certain activity that caused more pain, it was just a day-to-day difference. He attributed his pain to the June 2018 accident.

On cross examination Petitioner said he was still umpiring professional baseball in 2004 when he had an unrelated injury to his right ankle, and he had to ice it and get a good deal of physical therapy for it at that time. He said that injury was a compound open dislocation of the right talus joint, with an artery severed and nerve damage. He said he had two surgeries in 2004 or 2005 for that injury. He said Dr. Herrin since 2005 had given him three to five cortisone shots to that right ankle over the years.

Petitioner when asked about Dr. Herrin office notes indicating that he had injected Petitioner's right ankle on July 19, 2018, after he had returned to work, stated the injection was not to his right ankle, it was to his left foot. He said that was the only injection he ever had in his left foot. He said Dr. Herrin's office note of July 12, 2018, a week before the ankle injection of July 19, 2018, was accurate when it stated he was being seen not only for follow-up from a left ankle CT scan, but also in follow-up on his right ankle pain. He said he was not seeing Dr. Herrin for his right ankle, they just had a relationship about his right ankle, his right ankle was not bothering him when he got his left ankle injection, his left ankle was bothering him. He said while his right ankle was not perfect, it was not hurting him at that time.

Petitioner agreed that officiating college basketball games involved a lot of running up and down the court, and that on some days between 2004 and June 18, 2018 his right ankle gave him problems, while at other times it did not.

Petitioner said that while he had used that exit before, he had never before tripped or fallen because of that step. He acknowledged that some doors in the Stratton Building have steps as you exit, while others do not.

Petitioner said he was going to clean his tools in the basement of the Archive Building, which was to the southeast of the Stratton Building. He agreed there were tunnels which connected the buildings, which he used

if it was raining, cold, or snowing, but not as a general rule. He said they were not to use the east or west doors of the Stratton Building, only the north and south doors, and he used the north door rather than the south as he was working in the northwest corner of the building, and the north door was the closest exit, rather than walk through the building. He said this was probably the first or second day working on this project, though he had done other projects in the building in the past.

Petitioner said there were shops in every building, but he was stationed in the Archives Building shop, and that was where his lunch was located. He said they were done drywalling that day, so he was taking his tools there to clean up.

Petitioner said he had been working for the Secretary of State for about four and a half months when this injury occurred, they maintained 22 buildings, and he had probably worked in the Stratton Building four or five times when this injury happened. He said on the date of the accident, after his supervisor was called, Mr. Jennings asked him what happened and asked if he wanted an ambulance. He did not, so he and Mr. Jennings exited the building through the north door, where he had fallen, went to Mr. Jennings's state vehicle and Mr. Jennings drove Petitioner to Petitioner's truck, which was in a nearby parking lot. Petitioner said he took his satchel of tools with him, that he had taken them with him earlier to Officer Mertz's station. He said that after getting to his truck he went directly to Springfield Clinic.

Petitioner agreed that there might have been more yellow paint on the step when he fell than is shown on the first page photograph, as the photo was taken six months after the incident. He agreed there was nothing defective about the doorway or the step, or the ground on the outside of the building where he fell.

Petitioner said he had not been back to see Dr. Herrin about his left ankle since receiving the cortisone shot on July 19, 2018. He said he returned to work with no restrictions on July 12, 2018, and had been working for four nearly four years since returning to work from this injury. He noted he was making more money as of the date of arbitration than he made on the date of injury.

Petitioner said he refereed NCAA basketball at the Division 2 level and he was at the camp trying to get hired in Division 1, with better games. He said he already earned $60,000 a year officiating basketball and baseball games. Petitioner said the basketball officials camp was approximately a month after his injury. He said he refereed a total of seven running clock games over three days at that camp. While he said he did not advance because of his running, he did not believe his right ankle had anything to do with his running on that occasion. He said he had an opportunity to reapply for advancement after the summer of 2018, but he did not do so. He said he was still officiating collegiate basketball and baseball games as of the date of arbitration, at the same level he had done prior to this injury.

On redirect examination Petitioner said he thought the fact the step was not completely painted yellow mad it "some sort of defect."

Petitioner said that whenever he had seen Dr. Herrin he was asked about his right ankle, which he had seen that physician for on at least a dozen occasions, including the two or three times he saw Dr. Herrin for his left ankle. He said when Dr. Herrin wrote that he was seeing Petitioner for his right ankle on July 19, 2018, the doctor was in error, and he made that error on a number of occasions in that day's record, noting that he had injured his right ankle in the accident of June 19, 2018.

Petitioner said that on June 19, 2018 he had put his lunch in a refrigerator in the shop in the basement of the Archives Building. He said it was basically the same distance to the Archives Building if you exited the Stratton Building from the north or south exits.

On recross examination Petitioner agreed that a Dr. Herrin notation in his June 19, 2018 notes does make mention of his having degenerative right ankle changes, and that his July 12, 2018 notes reflect the doctor was ordering right ankle x-rays, which were performed that day.

On redirect examination and recross examination Petitioner said that Springfield Clinic had put him in a left foot boot, and he was able to walk around while wearing it. He said wearing the left foot boot did cause some pain in his right foot. He said he wore the boot both day and night until he returned to work on July 13, 2018, at which point he only wore it at night for about two weeks. He said he used the boot at the officials camp where he officiated games, icing his ankles between and after games.

Tom Jennings

Mr. Jennings was called as a witness by Petitioner. He said he was Petitioner's direct supervisor and had been for four years. He said he remembered assigning Petitioner to a job on the eighth floor of the Stratton Building on June 19, 2018. That job involved piecing drywall in, taping it, filling in and, finally, painting the walls. He said that if painting, and more painting was to be done in the afternoon, the brushes and rollers would be covered up so air did not get to them and dry them out. He said he had seen Petitioner carrying a tool bag in the past, but he could not remember if he had one on June 19, 2018. He said he did remember Petitioner calling to say he had gotten hurt. He said Petitioner had never in the four years he had been his supervisor been written up or broken a rule, he had been an upstanding employee, who he believed to be honest.

Mr. Jennings said there was a mini fridge in the Archives Building shop where lunches could be kept. He said he did not eat lunch with the two people who share that area.

After Petitioner was released as a witness for Petitioner and Petitioner rested his case, Respondent called Mr. Jennings as a witness.

Mr. Jennings testified that on June 19, 2018 he received a telephone call from Petitioner, who said he had gotten hrt, had stepped out of the building and had hurt his foot. Petitioner said he did not know if he was okay, so Mr. Jennings told him he would come over there, driving from his Klein and Mason office to the Stratton Building. He said Petitioner was sitting with the guard by the elevator. Petitioner said he was going to go get the foot looked at, and Mr. Jennings said he would drive him to his vehicle. He said they exited through the north door as that is where Mr. Jennings had parked, by the door. He said he took Petitioner in his state vehicle to the gravel lot, Lot H, which was across Monroe Street from the Stratton Building and the Capitol Complex.

Mr. Jennings said he could not remember if Petitioner was carrying anything or had a tool bag with him when he was transported in Mr. Jennings's vehicle. He said that when they exited the building he did not notice anything on the ground. He said he filled out a Supervisor's Report of Injury of Illness and had said he did not write on that report that he had seen anything that was unsafe. He said he had used the north door of the Stratton Building in the past and had never fallen in that doorway.

On cross-examination Mr. Jennings was shown Petitioner's Group Exhibit 9, photographs, and he said they showed the north door and the step, and when asked if the step was one continuous color he said it was, it was the concrete color. When specifically asked if he saw any yellow on the step he said he saw "a little on the face," and the photo fairly accurately depicted how the step looked on June 19, 2018. He agreed he was the supervisor for painting and that the reason the step was painted yellow was for safety. He said the east and west exits to the Stratton Building had steps and they were painted yellow as a safety stripe. He said the step to the north door was usually painted, to make people cautious of the step. He said he thought the step should be completely painted yellow, and without being painted yellow there was a greater risk of a person missing that step.

On redirect examination Mr. Jennings said he did not know of anyone else who had fallen at this location.

Robert Mertz

Mr. Mertz was called as a witness by Respondent. He said he was a police officer for the Secretary of State Capitol Police and had been for approximately nine years. He said he was working in that capacity on June 19, 2018, at the northeast door of the Stratton building. While he did not see Petitioner fall, he said he heard a loud noise shortly after Petitioner had walked past him. He looked towards where the noise came from and saw Petitioner on the ground, went to him to make sure he was okay and helped him get up. He said Petitioner walked around for a short amount of time and then contacted his supervisor by phone. Mr. Mertz then helped Petitioner to his post to wait for the supervisor. He said Petitioner was not carrying any supplies, tools or lunch with him at this time. He said the supervisor arrived, Petitioner and the supervisor talked briefly, and then they exited through the north door.

Mr. Mertz identified Joint Exhibit 4 as including his report that he filled out on June 21, 2018, where he wrote that Petitioner did not realize there was a step and he twisted his ankle. He said the report does not mention Petitioner carrying any supplies when he fell. He said he would have noted that in his report if he had been carrying some. He said he did not see any supplies on the ground, either. He said he never saw anyone else fall at the door. He said the door had a sign on it noting it was for employees only, but other people would also use it, and he would allow older people to use it rather than make them walk around the building in the rain. He said anyone could exit through the door.

On cross examination Mr. Mertz said he was watching the elevators and two doors. He repeated on a couple of occasions that he noticed Petitioner because he walked by him after exiting the elevator. Mr. Mertz was then asked to describe where his post was located, and he said it was to the south of the elevators, and the elevators face east. He was then asked if a person exiting the elevators would pass by him if exiting the north door and Mr. Mertz admitted they would not, and then said he could not say positively that Petitioner had walked past him as it was four years prior to arbitration. He said he did not see Petitioner go through the north door, but after the noise occurred, he saw Petitioner sitting on the ground with his hands on the door, appearing to be trying to pull himself back up.

Mr. Mertz said he did not see a bag of tools. When asked what kind of shoe Petitioner was wearing he said he did not know, not after four years, nor could he say what kind of shirt Petitioner was wearing, noting that he usually wore a white shirt, but he could not positively say what he was wearing that day. He said

Petitioner did not usually have a bag, he had not seen him with anything. But he was positive he did not see a bag on the date of this incident. Mr. Mertz was asked to read portions of his report and one portion said he "observed a while male leaving through the north door and stumbles and either sit down or fall as he exited out the north door."

Gerald Schneider

Mr. Schneider was called as a witness by Respondent. He said he was a supervisor/sergeant for the Capitol Division of the Secretary of State Police, supervising law enforcement and security staff on the Capitol Complex. He said he had been promoted to sergeant in 2016. He said he had done a search of a database for accidents at the location of this fall and found only two, one of which was a member of his security staff who fell on the steps coming up.

On cross examination Mr. Schneider said he could not remember when he was asked to do that search, nor did he have a copy of that resulting report with him. He said he did his computer search using an activity code for a sick and injured person and for a slip and fall in the Stratton Building from 2017 to when he ran the report. He said that there were things that happened which went unreported, when people trip and do not get hurt. He said the incidents would be in the computer if the reporting officer entered it in the computer. He said if an injured person did not report the injury to an officer, but to their supervisor, it would not be on the computer.

MEDICAL EVIDENCE

On June 19, 2018 Petitioner was seen at Springfield Clinic by Physician Assistant (PA) Whetstone. History given at that time was of Petitioner missing a step coming out of a building and twisting his left ankle. He noted a prior injury to his right ankle but no previous problems with the left ankle. He had problems with weightbearing and 6/10 pain. Physical examination revealed obvious swelling of the dorsal lateral midfoot and mild strength deficit on dorsiflexion secondary to pain. X-rays were obtained and they showed a possible avulsion fracture off the dorsal talus. He was supplied with a walking boot and was told to use crutches as needed while non-weightbearing, until he could walk on the walking boot. He was given an off work slip at that time, noting that he was to be off from June 19, 2018 through June 20, 2018, but noting he should see his PCP prior to returning to work. (Joint X 1 p.3,9,10,16)

Petitioner was seen at the Orthopedic Center of Illinois by Dr. Herrin on June 27, 2018. A history was given of having missed a step at work and have twisted his foot. He said he felt a pop in the foot and had marked swelling. Petitioner was in a fracture boot. It was noted that he had a history of a series (sic) injury to the right subtalar joint but that was satisfactory at the time of this visit. Physical examination revealed a mild decrease in motion of the subtalar joint, minimal pain with motion, with some tenderness on the dorsal aspect of the foot near the talonavicular joint, and more tenderness along the dorsal lateral aspect of the foot. A CT scan was ordered and he was to continue wearing the boot. His work was restricted to no climbing, no significant standing or walking and no twisting or squatting. (Joint X 2 p.2,3,6)

A CT scan was conducted on July 3, 2018 and was interpreted as showing multiple tiny avulsion fracture fragments involving the dorsal aspect of the talar head and later aspect of the anterior process of the calcaneus. (Joint X 3 p.18)

Petitioner was seen by Dr. Herrin again on July 12, 2018. He reported he felt he was improving, with less pain and stated he could ambulate without any pain. After reviewing the CT images Dr. Herrin agreed with the radiologist's impressions and stated that the avulsion fractures constituted "essentially ligamentous type injuries," which he said clinically constituted a sprain of the hindfoot, which was getting better. Petitioner advised Dr. Herring that he wanted to return to work and thought he could do so. Dr. Herrin said he could cease using the boot and released him to return to work without restrictions, but told him that if he had problems they could take him off work again. He was to return in three to four weeks, at which time it was anticipated he would be released from care. (Joint X 3 p.10,11)

Petitioner returned to see Dr. Herrin one week later, on July 19, 2018. The office note for this date mentions it was for follow up on Petitioner's "right ankle," but also notes he injured that ankle on June 19, 2018, which is the date of Petitioner's left ankle injury. On physical examination Petitioner was found to have some posterior right knee tenderness, but no other problems with the right knee. The note then describes findings in regard to the right ankle, not the left, and states, "(h)e does have decreased subtalar motion on the right side as compared to the left. He has no pain in the forefoot or midfoot to palpation." Dr. Herrin's assessment was "closed displaced avulsion fracture of the left talus with routing healing,' and right ankle pain. It was noted that the right foot pain was related to degenerative changes of the subtalar joint and that Petitioner had a history of a previous subtalar dislocation. It was noted that Petitioner was about to officiate five college division 1 basketball games in the next weekend in Dallas, Texas. Because of that, to manage Petitioner's symptoms, he gave him a corticosteroid injection into "the subtalar joint of the right foot," and he was going to see him back on an "as-needed basis regarding his right foot." (Joint X 3 p.14)

Petitioner received no additional medical care subsequent to July 19, 2018.

DOCUMENTARY EVIDENCE

Several reports were entered into evidence as joint exhibits. These were basically in accord with the testimony of the witnesses. Joint Exhibit 9, the photographs of the doorway, are of the greatest value, as they show the small amount of yellow paint remaining on the step and the similarity between the color of the concrete step and the apparent concrete sidewalk beyond the step, with the difference in height not apparent in the photograph taken from the inside of the building looking to the outside of the building, the direction Petitioner would have been traveling at the time of his injury.

ARBITRATOR CREDIBILITY ASSESSMENT

All four witnesses appeared to be testifying honestly to the best of their abilities. Petitioner did not appear to be evasive in the least, answering all questions put to him by both attorneys in a forthright manner. Officer Mertz appeared to make some mistakes, such as his repeatedly saying he first noticed Petitioner when he walked past his post after exiting the elevator, but then noting that his post was south of the elevators and

Petitioner walked to the north after exiting the elevators, as he was exiting the north door of the building. He said he could not remember some things clearly, as it had been nearly four years since the accident when he testified, and that is quite understandable. For that same reason the Arbitrator is not giving too much weight to Officer Mertz's testimony that Petitioner did not have a tool satchel with him, it is felt he simply cannot remember that fact due to the passage of time and the fact it would not be something he would naturally remember. His not mentioning a tool bag in his report is not proof that no tool bag was present. Mr. Jennings was also quite honest, clearly stating he could not remember whether Petitioner carried any tools to his vehicle when he was driving Petitioner to his car, again noting the passage of time. Petitioner, on the other hand, did remember carrying the satchel, which again would be natural for him to remember, he knew why he was carrying it, to clean his tools, and the incident would naturally be more important to him, as he was injured and required medical care. Mr. Schneider also appeared quite honest, though his testimony was not involving his personal involvement in the incident, but rather a computer search done on an unknown date and actually of little consequence in this preceding.

The Arbitrator finds all four gentlemen were credible witnesses, though their memories of the facts were of differing quality.

CONCLUSIONS OF LAW:

In support of the Arbitrator's decision relating to whether an accident occurred which arose out of and in the course of Petitioner's employment by Respondent on June 19, 2018, the Arbitrator makes the following findings:

The findings of fact, above, are incorporated herein.

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

An injury must be one which both arises out of and in the course of the Petitioner's employment by Respondent. 820 ILCS 305/2 (West 2006). An injury is "in the course" of employment if it occurs during employment, at a place where the worker may reasonably perform employment duties or engage in some incidental employment duties. "Typically, an injury arises out of one's employment if, at the time of the occurrence, the employee was performing acts he or she was instructed to perform by the employer, acts which he or she had a common law or statutory duty to perform, or acts which the employee might reasonably be expected to perform incident to his or her assigned duties." Homerding v. Industrial Commission, 327 Ill.App.3d 1050, 1054, 765 N.E.2d 1064, 1068 (2002). "

Here Petitioner had finished his work for the morning, repair of drywall, and was going back to the paint shop in the Archives Building to both clean his tools so the drywall mud would not harden, as well as to eat his lunch, which was in the paint shop. Cleaning tools is clearly part of the job of repairing or replacing drywall. Eating lunch is clearly an incidental activity anticipated by the Respondent, Respondent even supplied a mini refrigerator in the paint shop for that purpose, per the testimony of Petitioner's direct supervisor, Mr. Jennings. Leaving the Stratton Building to go to the Archives Building through one of the two exits he could use for that building, the exit closest to the elevator he used to get to the ground floor, in a route he said was roughly

equidistant to the Archive Building as the route he would have taken through the other exit door, would certainly be expected by the employer, and his direct supervisor did not contradict any of Petitioner's testimony in that regard.

The Supreme Court has noted that when an injury occurs "in an area which is the sole or usual route to the employer's premises, and the route is attendant with a special risk or hazard, the hazard becomes part of the employment." Bommarito v. Industrial Commission, 82 Ill.2d 191, 195 (1980). In this case the concrete step just outside the north exit door of the Stratton Building was of the same color as the sidewalk beyond it, and, as is shown in one of the photos admitted into evidence, showing the open door looking outside, the step and the lower sidewalk visually blend together. That is clearly why in the past the step (or at least the east portion of the step which still has paint on it) was painted yellow, so the hazard would be readily visible. Even Respondent's painting supervisor testified that unpainted, that step constituted a hazard.

The Appellate Court has held that when "an injury to an employee takes place in an area which is the usual route to the employer's premises, and the route is attendant with a special risk or hazard, the hazard becomes part of the employment." Litchfield Healthcare Center vs. Industrial Commission, 349 Ill. App. 3d 486 (2004). The court held that the "arising out of" requirement of the Act is satisfied when special hazards or risks are encountered as a result of using a usual access route. It went on to note that the claimant in that case was exposed to a defective sidewalk and that her regular use of the north parking lot at the suggestion of her employer exposed her to the defective sidewalk to a degree beyond that to which the general public would be subjected. In the instant case the door in question had a sign on the exterior which noted that it was an employee entrance only, and thus was not to be used by the general public.

Petitioner also testified that at the time of his fall he was carrying a satchel with tools in it, the tools he intended to clean in the paint shop of the Archives Building. That tool bag may have increased his risk of falling if he missed a step. While Officer Mertz testified Petitioner did not have a tool bag when this occurred, he also admitted that his memory was not very good on several items he was asked about, as the incident had occurred four years prior to the arbitration hearing. Presence of a tool bag would therefore also possibly be something he could not clearly recall. Petitioner, on the other hand, had good cause to remember the incident, as it was he who was injured, and it would be logical he would remember a painful incident that caused him a good deal of pain, resulted in his seeing medical providers on several occasions, and caused him to wear a fracture boot for several weeks, more than a casual witness after the fact. The third witness present at the scene, Mr. Jennings, said he could not remember whether Petitioner had a tool bag or not.

The Arbitrator finds that Petitioner suffered an accident on June 19, 2018, which arose out of and in the course of his employment by Respondent. This finding is based upon the testimony of Petitioner and the photographs of the exit door and step.

In support of the Arbitrator's decision relating to whether Petitioner's current condition of ill-being, multiple tiny avulsion fracture fragments involving the dorsal aspect of the left talar head and lateral

aspect of the anterior process of the left calcaneus, which constituted a sprain of the left hindfoot, is causally related to the accident of June 19, 2018, the Arbitrator makes the following findings:

The findings of fact, above, are incorporated herein.

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

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

There is no evidence Petitioner had any condition of ill-being in his left ankle prior to the fall of June 19, 2018. Petitioner testified he had not injured that left ankle at any time prior to June 19, 2018. Petitioner felt a sudden onset of pain at the time of the June 19, 2018 fall and immediately sought medical attention after the fall. X-rays and CT scans found evidence of the multiple avulsion fractures in the dorsal aspect of the left ankle as described in those reports and by Dr. Herrin in the days and weeks following this accident.

The Arbitrator finds that Petitioner's medical condition, multiple tiny avulsion fracture fragments involving the dorsal aspect of the left talar head and lateral aspect of the anterior process of the left calcaneus, which constituted a sprain of the left hindfoot, is causally related to the accident of June 19, 2018. This finding is based upon Petitioner's unrebutted testimony to a pre-accident state of asymptomatic good health in the left foot and ankle, his having an accident on June 19, 2018, and his immediately after said accident having sudden pain, immediate medical treatment and new diagnoses based on diagnostic testing and physical examinations. Certi-Serve, Inc. vs. Industrial Commission, 101 Ill.2d 236,244 (1984).

In support of the Arbitrator's decision relating to what temporary benefits Petitioner is entitled to as a result of the accident of June 19, 2018, the Arbitrator makes the following findings:

The findings of fact, above, are incorporated herein.

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

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

Petitioner has claimed to be temporarily totally disabled from June 20, 2018 through June 11, 2018. (Arb. X 1)

Petitioner testified that he was restricted from work as of the day after the accident, that he and his direct supervisor took his restricted work slip to human resources and they were informed that Petitioner could not work with restrictions, he would need to have a "no restrictions" release from his doctor to go back to work. Dr. Herrin provided such a 'no restrictions' release to Petitioner at Petitioner's request on July 12, 2018. Petitioner said he returned to work following that doctor appointment.

The Arbitrator finds that Petitioner was temporarily totally disabled as a result of the accident of June 19, 2018 from June 20, 2018 to June 12, 2018, a period of 3 1/7 weeks. This finding is based upon The testimony of Petitioner and the medical records of Springfield Clinic and Dr. Herrin.

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

The findings of fact, above, are incorporated herein.

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

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

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

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

With regard to subsection (ii) of §8.1b(b), the occupation of the employee, the Arbitrator notes that the record reveals that Petitioner was employed as a painter at the time of the accident and that he *is* able to return to work in his prior capacity as a result of said injury. The Arbitrator notes Petitioner has worked his normal job for nearly four years through the date of arbitration, and he did not testify to having any difficulty performing his usual work duties. Because of his ability to perform his usual job duties, the Arbitrator therefore gives *lesser* weight to this factor.

With regard to subsection (iii) of §8.1b(b), the Arbitrator notes that Petitioner was 47 years old at the time of the accident. Because of his having to perform his usual duties for considerable years, but having not voiced any difficulty in performing those duties, the Arbitrator therefore gives *lesser* weight to this factor.

With regard to subsection (iv) of §8.1b(b), Petitioner's future earnings capacity, the Arbitrator notes Petitioner testified he was making more money as of the date of arbitration than he made on the date of injury.. Because of the lack of evidence of any loss of earning capacity as a result of this injury, the Arbitrator therefore gives *no* weight to this factor.

With regard to subsection (v) of §8.1b(b), evidence of disability corroborated by the treating medical records, Petitioner testified that as of the date of arbitration he had pain in his ankle, having more pain in the ankle depending on what activity he was performing, but it was hard to pinpoint any certain activity that caused more pain, it was just a day-to-day difference. The Arbitrator notes Petitioner had radiographic evidence of multiple tiny avulsion fracture in the left talar region, an injury Dr. Herrin described as essentially ligamentous type injuries which clinically constituted a sprain of the hindfoot. As of July 12, 2018 Petitioner was able to

ambulate without pain according to Dr. Herrin. On July 19, 2018 Dr. Herrin may have injected the talar region of the left foot, it is unclear, as Petitioner had a far worse injury in the past to his right talar region, which received occasional treatment by Dr. Herrin since 2004, and the record of July 19, 2018 states that the right talar region was injected. It is noted that Dr. Herrin's records clearly mislabel this injury as having involved the right foot on at least two other occasions, and since the left foot was a very recent injury, the Arbitrator feels this injection was, more probably than not, to the left foot. The Arbitrator does not feel it really is of much import, however, as Petitioner had a remarkably good recovery from this injury and was able to referee seven Division 1 NCAA running clock basketball games less than six weeks after this accident. In addition, Petitioner testified that he had continued to referee college basketball and umpire college baseball games, and even Olympic baseball games during the four years subsequent to the accident and prior to arbitration. Petitioner has received no medical care for the left ankle since July 19, 2018. Because of his lack of medical care after less than six weeks of treatment and his ability to referee and umpire collegiate sports for the four years since this accident, the Arbitrator is of the opinion that Petitioner's injury from this accident has largely resolved, and therefore gives l*esser* weight to this factor.

Based on the above factors, and the record taken as a whole, the Arbitrator finds that Petitioner sustained permanent partial disability to the extent of 5% loss of use of the left foot pursuant to §8(e) of the Act.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	17WC030751
Case Name	Delia Flores v. Securitas Security Services Inc
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	24IWCC0176
Number of Pages of Decision	17
Decision Issued By	Christopher Harris, Commissioner

Petitioner Attorney	Michael E. Mahay
Respondent Attorney	Patrick D. Duffy

DATE FILED: 4/18/2024

/s/Christopher Harris, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

DELIA FLORES,

Petitioner,

vs. NO: 17 WC 30751

SECURITAS SECURITY SERVICES,

Respondent.

DECISION AND OPINION ON REVIEW

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

The Commission finds that Petitioner failed to prove that she is permanently and totally disabled and accordingly strikes the Arbitrator's award of benefits under Section 8(f) of the Act. With regard to permanent total disability (PTD) benefits:

> If the claimant's disability is limited in nature so that he is not obviously unemployable, or if there is no medical evidence to support a claim of total disability, the burden is upon the claimant to prove by a preponderance of the evidence that he fits into the 'odd-lot' category--one who, though not altogether incapacitated to work, is so handicapped that he will not be employed regularly in any well-known branch of the labor market. (Citation omitted). The claimant ordinarily satisfies his burden of proving that he falls into the odd-lot category in one of two ways: (1) by showing diligent but unsuccessful attempts to find work, or (2) by showing that because of his age, skills, training, and work history, he will not be regularly employed in a well-known branch of the labor market. *Westin Hotel v. Indus. Comm'n*, 372 Ill. App. 3d 527, 544 (2007).

The Appellate Court added that "the most recent cases making an odd lot determination on the basis that there is no stable job market for a person of the claimant's age, skills, training, and work history have required evidence from a rehabilitation services provider or a vocational counselor." *Id.* at 545.

In the case at bar, Petitioner first failed to provide medical evidence to support a claim of total disability. Petitioner's expert, Dr. Carl Graf, did not testify that Petitioner was permanently and totally disabled but instead indicated that more information would be needed with respect to Petitioner's ability to work. Although he believed that "sedentary duty work, in my opinion, would be difficult at best," he further testified that Petitioner would likely require a functional capacity evaluation (FCE). Petitioner also failed to prove that she fell in the odd-lot category for PTD benefits. She provided no evidence that she performed a diligent but unsuccessful job search and she offered no testimony or opinion from a rehabilitation services provider or a vocational counselor indicating that because of her age, skills, training and work history, she would not be regularly employed in a well-known branch of the labor market. As such, the Commission finds that Petitioner is not entitled to PTD benefits.

Petitioner shall instead be compensated pursuant to Section 8(d)2 of the Act and in making this determination, the Commission modifies the Arbitrator's findings and the weight assigned to the five factors under Section 8.1b of the Act as follows:

(i) Impairment Rating: The parties did not offer any impairment rating into evidence. The Commission gives this factor no weight.

(ii) Occupation of Injured Employee: At the time of the September 6, 2017 work accident, Petitioner was employed by Respondent as a security officer. As of the arbitration date, Petitioner testified that she was 68 years old and receiving social security retirement benefits. The Commission notes that Petitioner was of retirement age and did not testify that her work-related disability had forced her to retire.

The Commission further notes no specific evidence pertaining to Petitioner's present ability to work as a result of her right shoulder and cervical spine injuries other than Dr. Graf's testimony that Petitioner could work sedentary duty work although he believed it would be difficult at best. Dr. Graf's testimony at the very least indicated that Petitioner could not return full duty to her prior employment. The Commission gives this factor moderate weight.

(iii) Petitioner's Age: Petitioner was 63 years old on the accident date; neither party submitted evidence into the record which would indicate the impact of the Petitioner's age on any permanent disability resulting from the September 6, 2017 work accident. The Commission gives this factor no weight.

(iv) Petitioner's Future Earning Capacity: There is no evidence in the record as to reduced earning capacity resulting from the September 6, 2017 work accident. The Commission gives this factor no weight.

(v) Evidence of Disability: Evidence of Petitioner's disability is corroborated by the treating medical records. Following the September 6, 2017 work accident, Petitioner was diagnosed with right shoulder pain which improved with medication and physical therapy. Petitioner also underwent injections in the right trapezial area (2), right low cervical paraspinals (2) and right rhomboid (1), as well as a cervical epidural steroid injection on May 23, 2018. Petitioner was further prescribed therapy and medication for the cervical spine and she proceeded with an anterior cervical discectomy and fusion (ACDF) at C5-6 on August 23, 2018.

Petitioner's post-operative diagnoses were C5-6 cervical disc herniation with radiculopathy. She, however, developed a right hemiparesis condition following the cervical surgery for which she received inpatient physical and occupational therapy at Shirley Ryan AbilityLab. The September 25, 2018 discharge record from Shirley Ryan stated that Petitioner had met all her short and long-term goals for functional mobility but still required close to distant supervision for transfers, ambulation and stair negotiation. Dr. Graf had noted that despite some improvement of her function, Petitioner had significant permanent neurologic deficits. Respondent's Section 12 examiner, Dr. Harel Deutsch, similarly agreed that when he saw Petitioner on January 25, 2019, she had weakness in the right side of her body and limited ability to move related to the surgery.

As of the arbitration date, Petitioner testified that she had difficulty with writing, memory, cooking, washing clothes, completing household chores and being independent. She confirmed that she continued to take pain medication every day including Norco, Gabapentin and Tramadol but she was not under any active care for her claimed work-related conditions. Petitioner also used a walker regularly or a wheelchair at times. The Commission gives this factor significant weight.

In light of the foregoing, with no single enumerated factor being the sole determinant of disability, the Commission awards Petitioner five percent (5%) loss of use of the person as a whole for the right shoulder injury and fifty-five percent (55%) loss of use of the person as a whole for the cervical spine injury.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed June 23, 2023 is hereby modified as stated and otherwise affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay to Petitioner permanent partial disability benefits of $428.23 per week for 300 weeks because the injuries sustained caused five percent (5%) loss of use of the person as a whole for the right shoulder and fifty-five percent (55%) loss of use of the person as a whole for the cervical spine pursuant to Section 8(d)2 of the Act.

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

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

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

April 18, 2024

CAH/pm
O: 3/21/24
052

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

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

/s/ *Amylee Hogan Simonovich*
Amylee Hogan Simonovich

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	17WC030751
Case Name	Delia Flores v. Securitas Security Services Inc
Consolidated Cases	
Proceeding Type	
Decision Type	Amended Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	10
Decision Issued By	Rachael Sinnen, Arbitrator

Petitioner Attorney	Michael E. Mahay
Respondent Attorney	Patrick D. Duffy

DATE FILED: 6/23/2023

THE INTEREST RATE FOR THE WEEK OF JUNE 21, 2023 5.17%

/s/ Rachael Sinnen, Arbitrator

Signature

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
AMENDED ARBITRATION DECISION

Delia Flores
Employee/Petitioner

v.

Securitas Security Services
Employer/Respondent

Case # **17** WC **30751**

Consolidated cases: _____

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Rachael Sinnen**, Arbitrator of the Commission, in the city of **Chicago**, on **June 27, 2022 and March 3, 2023.** After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On **September 6, 2017**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $***37,112.92***; the average weekly wage was $***713.71***.

On the date of accident, Petitioner was ***59*** years of age, ***married*** with ***0*** dependent children.

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

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

Respondent shall be given a credit of $***19,915.80*** for TTD, $***0*** for TPD, $***0*** for maintenance, and $***3,601.65*** for other benefits, for a total credit of $***23,517.45***.

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

ORDER

Respondent shall pay Petitioner directly for the following outstanding medical services, pursuant to the medical fee schedule and Sections 8(a) and 8.2 of the Act: Rehab Institute of Chicago (PX4), Union Health Service (PX2, PX5), UIC Physician Group (PX 6), UIC Pathology (PX7), Advocate Illinois Masonic (PX8) and SRAL (PX9).

Respondent shall pay Petitioner temporary total disability benefits of $475.80/week for 208 1/7 weeks, (9/18/2017; 9/20/2017 - 10/8/2017; 10/15/2017; 10/20/2017 - 10/21/2017; 10/29/2017; 11/3/2017 - 5/30/2018 and 2/21/2019 - 6/26/2022) as provided in Section 8(b) of the Act.

Respondent shall pay Petitioner Permanent Total Disability benefits of $540.23/week, beginning on June 27, 2022 because the injuries sustained caused the petitioner to become permanently totally disabled pursuant to §8(f) of the Act. See Conclusions of Law for Arbitrator's considerations under §8.1b(b) of the Act.

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

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

JUNE 23, 2023

Signature of Arbitrator

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

ILLINOIS WORKERS' COMPENSATION COMMISSION

Delia Flores,	)	
	)	
Petitioner,	)	
	)	
v.	)	
	)	Case No. 17WC30751
Securitas Security Services,	)	
	)	
	)	
Respondent.	)	

FINDINGS OF FACT

This matter initially proceeded to hearing on June 27, 2022 and proofs were closed on March 3, 2023 in Chicago, Illinois before Arbitrator Rachael Sinnen on Petitioner's Request for Hearing. Issues in dispute include causal connection, unpaid medical bills, temporary total disability benefits "TTD, and the nature and extent of the injury. Arbitrator's Exhibit "Ax" 1 and 2.

Prior Medical Condition

Prior to her September 6, 2017 accident, Petitioner had a right shoulder replacement surgery in 2015 by Dr. Benjamin Goldberg. She was still taking Norco and Tramadol up to the September 6, 2017 accident. (T 35, 36.) She had been working full duty prior to the September 6, 2017 accident. (T 17.)

Work Accident

On September 6, 2017 she worked for Securitas as a security officer and was assigned to the Fidelity Data Center at 350 East Cermak. She was assigned to this location for 13 years. She had trained for two to three months. Her title was Day Shift Command Center. Her duties included logging employees in and patrolling the grounds. (T 8, 9.)

She sustained a work injury on September 6, 2017. When she arrived, there was a refrigerant alarm. She went with the engineer to the mechanical room. She "badged in" and opened the steel door. The door was heavy and pressurized. When she opened the door, she felt pulling in her right shoulder, extending to her fingers. (T 10, 12.) She gave notice of the accident to Securitas within 45 days. (T 13, 14.)

Petitioner completed various reports regarding the accident writing that she had pain from her right wrist to her right shoulder. (RX 1-3.) Petitioner confirmed that she did not mention her neck in the reports and was concerned that she reinjured her right shoulder. (T 41, 42, RX 1, 2, and 3.)

Medical Treatment

Since her work accident, Petitioner first sought treatment at Union Health Service (UHS) with her primary care physicians.
In Dr. Izewski's September 9, 2017 record, he recorded Petitioner had a history of shoulder pain, and "1 week ago" hit her shoulder and the pain persisted. Dr. Izewski ordered x-rays of the right shoulder. His assessment was right shoulder pain. (PX 1.) In Dr. Ramirez's September 16, 2017 record, Petitioner reported that when opening a door, she felt "acute severe pain" in the right shoulder and heard a snapping sound. Examination was positive for significant tenderness at the acromioclavicular joint, decreased range of motion of the shoulder, and a "drooped shoulder". The neurologic exam was negative. Dr. Ramirez ordered an MRI of the right shoulder. Dr. Ramirez diagnosed disorder of rotator cuff. (PX 1.) While Petitioner testified that she did complain to her doctors about neck pain, neither date of treatment references neck pain. (T41-43; PX 1.)

Petitioner was referred to Dr. Dennis Mess, an orthopedist at UHS. Petitioner presented to Dr. Mess on September 22, 2017 and complained of right shoulder pain. (T 15.) Dr. Mess noted Petitioner was two years status post reverse shoulder surgery but now had a new onset of pain. (PX 1.) Dr. Mess referred Petitioner to Dr. Goldberg who had performed her 2015 surgery.

Petitioner presented to Dr. Benjamin Goldberg, an orthopedic surgeon who specializes in treatment of the shoulder, elbow, and knee, on September 29, 2017. (RX 5.) Petitioner testified that Dr. Goldberg told her the problem was her neck (T 44) but records do not include a reference to neck pain or that the etiology of her pain was the neck. He referred her for therapy of the right shoulder. (RX 5.)

On October 14, 2017, Petitioner returned to Dr. Ramirez who permitted her to return to work without restriction. (PX 1.) Petitioner returned to Dr. Izewski on October 17, 2017. She again complained of right shoulder pain. She sought an order for physical therapy and requested an extension to be kept off work. Dr. Izewski prohibited Petitioner from working through November 7, 2017. (PX 1.) She returned to Dr. Izewski on November 8, 2017 and again complained of right shoulder pain. He prohibited Petitioner from working until she was evaluated on November 10, 2017. (PX 1.)

Petitioner presented to Dr. Nikhil Verma, an orthopedic surgeon who specializes in treatment of the shoulder, elbow, and knee at Midwest Orthopedics at Rush, on October 30, 2017. Dr. Verma's records show that Petitioner complained of pain in the right shoulder and right side of the neck with numbness and tingling in the right arm. Dr. Verma's examination was positive for complaints of pain with any movement of the arm. X-rays showed a well-fixed total shoulder replacement. Dr. Verma released Petitioner and instructed her to follow-up with Dr. Goldberg, the surgeon who performed the shoulder replacement surgery. He did not provide work restrictions. (T 15, 46, 47; PX 5.)

Petitioner presented to Dr. Djuro Petkovic, an orthopedist at IBJI specializing in sports medicine, on December 12, 2017. Examination revealed a positive Spurling's test. Petitioner reported neck pain with upper extremity numbness and tingling. A cervical spine x-ray revealed advanced degenerative changes from C5 to C7. He recommended a spine evaluation to address Petitioner's complaints of tingling and ordered blood tests to rule out an infection. He prohibited Petitioner from working. Dr. Petkovic referred Petitioner to Dr. Michael Kornblatt to examine Petitioner's neck. (T 18; PX 2.)

An x-ray of the cervical spine on December 13, 2017 revealed advanced degenerative disc disease at C5-6 and C6-7. (PX 1.)

Petitioner followed-up with Dr. Izewski, Dr. Ramirez, and Dr. Petkovic into June 2018. (T 19, 20.)

Dr. Michael Kornblatt, an orthopedic spine surgeon, examined Petitioner on January 3, 2018. Petitioner complained of shoulder and neck pain. No work injury was noted. She denied having any radicular pain. He noted cervical x-rays on December 13, 2017 revealed advanced degenerative disc disease at C5-6, C6-7. Dr. Kornblatt diagnosed cervical degenerative disc disease. He specified that Petitioner did not have a surgical condition in the cervical spine and referred Petitioner to her internist for medical management. (RX 5.)

Petitioner presented to pain management on March 23, 2018 and complained of right shoulder pain. Examination was positive for tenderness at the right upper trapezius and right lower cervical paraspinal area. Caroline Coon, PA-C, assessed chronic right shoulder pain. She recommended trigger point injections in the right cervical paraspinals and right upper aspect of the trapezius. Injections were administered on March 23, 2018. (RX 5.)

On April 23, 2018 Petitioner returned to Dr. Goldberg and complained of right shoulder pain. She complained of increased pain since pulling on a heavy door on September 6, 2017. She underwent three months of physical therapy with no benefit. She had poor range of motion of the right shoulder and significant pain affecting her activities of daily living. He ordered an infectious disease workup and a CT scan of the shoulder. (RX 5.)

Dr. Mana Triveldi administered injections into right trapezial area right lower cervical paraspinal injections on May 7, 2018. (RX 5.)

Dr. Ramirez then referred Petitioner to Dr. Englehard. (T 20.)

On August 1, 2018 Petitioner presented to Dr. Herbert Engelhard, a spine surgeon at UIC. Petitioner complained of pain in her neck radiating down her left arm. She also reported difficulty with walking and balancing. Examination revealed significantly decreased range of motion of the neck in all directions. Dr. Engelhard diagnosed a cervical disc herniation at C5-6 with corresponding radiculopathy. He recommended surgery. (PX 3.)

Dr. Englehard performed an anterior cervical disc fusion on August 23, 2018. (T 21, PX 9.) It is Petitioner's understanding that during the surgery she was injured when her spinal cord was touched. As a result, she was paralyzed. (T 21, 22.) She was in the hospital for one week and then transferred to Shirley Ryan AbilityLab (SRAL). She was in SRAL for between one to 1-1/2 months. (T 22, 48.) She wanted to go home. After she went home, she followed up for outpatient therapy for over two months. (T 23.)

Petitioner was an inpatient at SRAL from August 30, 2018 through September 25, 2018. She then had outpatient treatment at SRAL from October 1, 2018 to December 17, 2018. The outpatient treatment included physical therapy and occupational therapy.

After the surgery, she noticed that she could not walk. She wears a brace on her right foot. According to her records, her right foot hangs down, i.e., she has a foot drop. The brace supports her foot. (PX 2)

On June 15, 2020 she complained of right hip pain to Dr. Izewski. (RX 5.) On August 3, 2020 she had x-rays of the right hip. On November 10, 2020 she called UHS and requested a refill of Norco for her right hip. (T 48-50; RX 5.)

She saw Dr. Ackerman on December 11, 2020 and complained of ongoing right hip and low back pain. (T 51; RX 5.)

She has had multiple trigger point injections into her right hip. On March 11, 2021 she told Dr. Izewski that she had had injections into the hip and was scheduled for more injections. She mentioned to Dr. Izewski that a spinal cord stimulator implantation was planned. Petitioner testified that she decided she did not want any more surgery. Dr. Renlin Xia had administered the injections and proposed the spinal cord stimulator. (T 51-53; PX 5.)

She saw Dr. Graf at the request of her attorney. Dr. Graf's examination lasted about one hour. She also saw Dr. Deutsch at the request of the Respondent. Dr. Deutsch's examination lasted about five to 10 minutes. Dr. Deutsch did no testing and never asked Petitioner to walk. (T 24-26.)

She is no longer receiving care for her injuries sustained in this accident. (T 33.) She testified that she cannot walk upstairs. She uses a walker or holds onto something, e.g., furniture, as she walks. She takes Tramadol and Norco. (T 30, 32, 33.)

Dr. Harrel Deutsch

Dr. Harrel Deutsch examined Petitioner at the request of the Respondent on January 25, 2019. (RX 4, p. 7.) He is a neurosurgeon specializing in spine surgery. (RX 4, p. 4.) Petitioner provided a history of opening a door on September 6, 2017 and injuring her shoulder. She did not remember the details. (RX 4, p. 7, 8, 24, 25.)

At the time of her examination by Dr. Deutsch, Petitioner complained of neck pain, which she assessed at 7/10. She had right leg pain and was using a walker. She complained of right arm numbness and numbness and weakness on the right side of her body. (RX 4, p. 10.)

Dr. Deutsch's examination was positive for weakness in the right grip and the right lower extremity; a positive Hoffman's reflex on the right side; neck stiffness and limited motion; a well-healed anterior cervical incision; and the use of a walker to ambulate. There were no Waddell signs or signs of malingering. (RX 4, p. 11.)

Dr. Deutsch opined that Petitioner suffered no injury to the neck since there was no mechanism of injury for a neck injury, no complaints of neck pain after the accident, and the cervical MRI did not show any acute injury (degenerative changes were not related). (RX 4, p. 12, 13.)

Dr. Deutsch explained that symptoms of radiculopathy are often severe, overwhelming and occur immediately. If the injury is not as severe, the symptoms may take overnight to develop. The symptoms are severe neck pain and stiffness and pain, numbness and tingling going down the arm. He reviewed the medical records and saw no reference to neck pain from September 6, 2017 until October 30, 2017. (RX 4, p. 14, 15, 34, 36.) On cross-examination Dr. Deutsch noted that at her initial office visit following September 6, 2017, she complained of pain from the shoulder down the arm and that pain may radiate from the shoulder. (RX 4, p. 26, 27, 37, 38.)

Dr. Deutsch opined that Petitioner's treatment, including the cervical spine surgery, was reasonable but not related to the accident. He specified that the cervical injections were not reasonable treatment because Petitioner was not complaining of neck pain. (RX 4, p. 20.) He further opined that Petitioner's hemiparesis is related to the cervical spine surgery, but not related to the accident (RX 4, p. 19.)

Dr. Carl Graf

Dr. Carl Graf is a board-certified orthopedist. His practice focuses on treatment of the spine. (PX 3, p. 6-8.) On May 10, 2019 Dr. Graf examined Petitioner at the request of Petitioner's attorney. Dr. Graf was not a treating physician. After examining Petitioner and reviewing medical records, he drafted a report on September 10, 2019. (PX 3, p. 9, 34.)

Petitioner provided a history of working in security on September 6, 2017. When she arrived at work that day, an alarm was going off. She tried to find the source of the alarm, "and went through mechanical rooms indicating that there were heavy steel doors and there was a great deal of air pressure between the rooms. She notes that with pushing on the doors, she began to have neck pain, right shoulder pain." (PX3, p. 12).

At the time of Dr. Graf's May 10, 2019 examination, Petitioner reported pain in the right shoulder, forearm, and hand and assessed the pain at 8/10. There was continued weakness in the right upper extremity. The weakness had improved with rehabilitation. (PX 3, p. 14.)

Dr. Graf's examination revealed a severely antalgic gait. Petitioner wore an ankle foot orthosis (AFO) to support her ankle. She used a walker. She was unable to step on her heels or tiptoes.

She was unable to squat or raise from a squatting position. She could not perform a tandem gait because of weakness and gait imbalance. (PX 3, p. 15, 16.)

Petitioner had limited range of motion of the cervical spine. The Spurling's Maneuver was equivocal. There was significant weakness in the right upper extremity in every motor group. She had a claw hand type deformity in the right hand because of loss of innervation to the muscles in the hand. Petitioner reported numbness and paresthesia throughout the right upper extremity. Examination of the right shoulder revealed pain with passive range of motion. (PX 3, p. 16, 17.)

Dr. Graf's examination of the lumbar spine demonstrated significant weakness in the right lower extremity. Petitioner's toes were upgoing with Babinski signs, which is abnormal. There were hypertonic reflexes in the right lower extremity. There was decreased sensation throughout the right lower extremity extending to the right abdomen and chest. (PX 3, p. 17.)

He found no inconsistencies during his examination. (PX 3, p. 17, 18.)

Dr. Graf's review of records included Dr. Harrel Deutsch's report. Dr. Graf disagreed with Dr. Deutsch's opinions and instead stated that the cervical radiculopathy diagnosis was missed. Dr. Verma was the first physician to catch the diagnosis, and it was confirmed by multiple other physicians, including Dr. Engelhard. (PX 3, p. 26, 27). Dr. Graf agreed that radiculopathy usually appears within 48 hours of the incident. He added that a C5-6 herniation could cause severe shoulder and arm pain. Dr. Graf noted that the absence of a diagnosis of radiculopathy does not mean that the condition (radiculopathy) did not exist. (PX 3, p. 32, 33.)

Dr. Graf's diagnosis initially after the accident is C5-6 herniation. The diagnosis at the time of his examination—May 10, 2019—was right hemiparesis following surgery, and it was related to the accident. (PX 3, p 27, 28.)

Dr. Graf opined that treatment to date was reasonable and necessary. Petitioner would require ongoing physical therapy and pain management. She may also need a walker, assistive devices, and braces such as an AFO. He thought Petitioner would have a difficult time performing sedentary duty. However, Petitioner had not yet reached MMI. (PX 3, p. 28-30.)

Medical Bills

Petitioner's attorney introduced the following outstanding bills into evidence:

- UHS (PX4) $4,115.43
- University of Illinois Hospital (PX 6) $14,057.62
- SRAL bill (PX 7) $160,289.99

According to the records, SEIU paid net group disability benefits to Petitioner in the amount of $3,601.65. They paid medical benefits in the amount of $3,889.97. (RX 6.) According to the SRAL bill, Respondent made no payments to SRAL (PX 7) but Medicare has paid SRAL $37,793.55. (RX 10.)

According to RX 8, Respondent made payments to UHS (PX 4) and University of Illinois (PX 6).

AMENDED CONCLUSIONS OF LAW

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

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

The differences between the medical opinions of Respondent's Section 12 examiner, Dr. Deutsch, and Petitioner's expert, Dr. Graf, primarily stem from whether Petitioner had radiculopathy.

Dr. Deutsch opined that Petitioner did not have radiculopathy and Dr. Kornblatt (the first spine surgeon that evaluated Petitioner) documented that Petitioner denied any radicular pain. While Dr. Deutsch did not believe that Petitioner required any treatment for her cervical spine (as no injury had occurred), Dr. Kornblatt referred Petitioner to pain management. Petitioner's second spine surgeon, Dr. Engelhard, and Petitioner's expert, Dr. Graf, both opined that Petitioner had a C5-6 herniation with radiculopathy requiring surgery.

No one reported signs of symptom magnification or malingering. Both Drs. Deutsch and Graf agree that Petitioner's current right hemiparesis was a consequence of her cervical surgery.

The Arbitrator acknowledges that Petitioner's accident reports, which she drafted herself, did not mention any neck pain. Further, Petitioner's medical records do not document neck complaints until her October 30, 2017 visit with Dr. Verma, which is within two months of her work accident. Dr. Deutsch finds the lack of initial neck complaints significant, opining that symptoms of radiculopathy are often severe and immediate. Dr. Graf agreed that radiculopathy usually appears within 48 hours of an incident but credibly explained that a C5-6 herniation can cause severe shoulder and arm pain.

None of Petitioner's internists, pain management doctors, nor shoulder specialists formally diagnosed Petitioner with radiculopathy but Dr. Graf credibly points out that the absence of a formal diagnosis of radiculopathy does not mean the condition does not exist. Treatment notes do refer to radiating pain from the shoulder to the arm as early as September 9, 2017, three days after the accident. As a result, the Arbitrator finds that the medical records support Dr. Graf and Dr. Engelhard's opinions that Petitioner suffered from radiculopathy and thus, needed surgery, which unfortunately resulted in right hemiparesis.

The Arbitrator finds that Petitioner's current condition of ill-being is causally related to the injury.

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

Based on the opinions of Dr. Graf, Petitioner's testimony and the supporting medical records, the Arbitrator finds Petitioner's treatment to be reasonable and necessary and finds that Respondent has not paid for said treatment. As such, the Arbitrator orders Respondent to pay Petitioner directly the outstanding medical bills submitted into evidence, including those from Rehab Institute of Chicago (PX4), Union Health Service (PX2, PX5), UIC Physician Group (PX 6), UIC Pathology (PX7), Advocate Illinois Masonic (PX8) and SRAL (PX9), pursuant to the medical fee schedule and Sections 8(a) and 8.2 of the Act.

Respondent shall be given a credit for medical benefits that have been paid, and Respondent shall hold Petitioner harmless from any claims by any providers of the services for which Respondent is receiving this credit as provided in Section 8(j) of the Act.

Issue K, whether Petitioner is entitled to temporary total disability benefits, the Arbitrator finds as follows:

Based on Petitioner's testimony and the supporting medical records, Petitioner was authorized off work from 9/18/2017; 9/20/2017 through 10/8/2017; 10/15/2017; 10/20/2017 through 10/21/2017; 10/29/2017; 11/3/2017 through 5/30/2018 and 2/21/2019 through 6/26/2022.

Based on the above, the Arbitrator finds Respondent liable for 208 1/7 weeks of TTD benefits (9/18/2017; 9/20/2017 - 10/8/2017; 10/15/2017; 10/20/2017 - 10/21/2017; 10/29/2017; 11/3/2017 - 5/30/2018 and 2/21/2019 - 6/26/2022) at a weekly rate of $475.80.

The parties have stipulated that Respondent has paid $19,915.80 in TTD benefits.

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

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

A person is permanently and totally disabled when he or she cannot perform any services except those for which no reasonably stable labor market exists. A.M.T.C. of Illinois v. Industrial Commission, 77 Ill.2d 482, 487 (1979). A claimant need not show she has been reduced to total physical incapacity before being entitled to a permanent and total disability award. Interlake, Inc. v. Industrial Commission, 86 Ill. 2d 168, 176 (1981).

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

Under Section 8.1b(b)(ii), the occupation of the injured employee, the Arbitrator notes that Petitioner was a Security Officer for Respondent but never returned to work following her accident. The Arbitrator therefore gives little weight to this factor.

Under Section 8.1b(b)(iii), the age of the employee at the time of the injury, the Arbitrator notes that Petitioner was 59 years old at the time of the accident and still has years to live with her current condition. The Arbitrator gives moderate weight to this factor.

Under Section 8.1b(b)(iv), the employee's future earning capacity, the Arbitrator notes that Petitioner has not been able to return to work. Her medical records support the inability to return to work and even Dr. Graf explained that Petitioner would struggle to even work sedentary duty. The Arbitrator gives significant weight to this factor.

Under Section 8.1b(b)(iv), evidence of disability corroborated by the treating medical records, the Arbitrator gives significant weight to this factor. Petitioner testified that she has continued pain and requires assistance with activities of daily living. Complications arose during Petitioner's cervical surgery resulting in right hemiparesis and requiring ongoing management of her condition.

After considering all of the evidence adduced and the factors enumerated in §8.1b of the Act, the Arbitrator finds that as a result of the injuries sustained, Petitioner is found to be permanently totally disabled in accordance with §8(f) of the Act. Respondent shall pay Petitioner Permanent Total Disability benefits of $540.23/week, beginning on June 27, 2022 because the injuries sustained caused the petitioner to become permanently totally disabled pursuant to §8(f) of the Act.

It is so ordered:

Arbitrator Rachael Sinnen

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	20WC028880
Case Name	Dianne Wyatt v. Aisin Mfg Illinos, LLC
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b) Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	24IWCC0177
Number of Pages of Decision	18
Decision Issued By	Marc Parker, Commissioner

Petitioner Attorney	Taylor McCann
Respondent Attorney	Patrick Keefe

DATE FILED: 4/19/2024

/s/Marc Parker, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF)
WILLIAMSON

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

Dianne Wyatt,

Petitioner,

vs. NO: 20 WC 28880

Aisin Manufacturing Illinois,

Respondent.

DECISION AND OPINION ON REVIEW

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

The Commission affirms the findings of the Arbitrator with clarification on the issue of prospective medical treatment. Dr. Otto, in his record from May 12, 2022, continues to believe Petitioner may have shoulder pathology because she has mechanical pain with movement. Dr. Otto wants to explore all possible pain generators leading to Petitioner's arm pain including a spine evaluation to rule out cervical or neurogenic pathology. Once the spine evaluation is complete, Dr. Otto will re-evaluate Petitioner. Dr. Otto has not placed Petitioner at maximum medical improvement and intends to continue treatment. The Commission agrees with the Arbitrator that the spine evaluation is reasonable and necessary to further analyze the causally related right shoulder.

Notwithstanding the above and pursuant to their agreement, neither party is foreclosed from pursuing or defending any cervical claim on remand.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed December 22, 2022, is hereby affirmed and adopted.

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

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

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

Bond for removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $39,300.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

April 19, 2024

MP: ns
o 3/7/24
68

/s/ *Marc Parker*
Marc Parker

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	20WC028880
Case Name	WYATT,DIANNE v. AISIN MFG ILLINOIS, LLC
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	15
Decision Issued By	Jeanne AuBuchon, Arbitrator

Petitioner Attorney	Brittni McCann
Respondent Attorney	Patrick Keefe

DATE FILED: 12/22/2022

THE INTEREST RATE FOR THE WEEK OF DECEMBER 20, 2022 4.55%

/s/ Jeanne AuBuchon, Arbitrator

Signature

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Dianne Wyatt
Employee/Petitioner

v.

Aisin Mfg. Illinois, LLC
Employer/Respondent

Case # **20** WC **028880**

Consolidated cases: _____

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

DISPUTED ISSUES

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

FINDINGS

On **April 26, 2019**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $**49,002.82**; the average weekly wage was **$960.84**.

On the date of accident, Petitioner was **34** years of age, ***married*** with **0** dependent children.

Petitioner ***has not*** received all reasonable and necessary medical services.

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

Respondent shall be given a credit of $**23,697.70** for TTD, $**0** for TPD, $**0** for maintenance, and $**0** for other benefits, for a total credit of $**23,697.70**.

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

ORDER

Respondent shall pay the reasonable and necessary medical services outlined in Petitioner's Exhibit 7, as provided in § 8(a) and § 8.2 of the Act. Respondent shall have credit for any amounts previously paid and shall indemnify and hold Petitioner harmless from claims made by any health providers arising from the expenses for which it claims credit.

Respondent shall authorize and pay for the treatment recommended by Dr. Otto, pursuant to §8(a) of the Act.

Respondent shall pay Petitioner temporary total disability benefits of $**640.56**/week for **84 1/7** weeks, as provided in Section 8(b) of the Act, for Petitioner's periods of disability from **July 8, 2020**, through **August 3, 2020**, and from **January 8, 2021**, through **July 25, 2022**.

Respondent shall be given a credit of $**23,697.70** for temporary total disability benefits that have been paid.

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

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

Jeanne L. AuBuchon
Signature of Arbitrator

December 22, 2022

PROCEDURAL HISTORY

This matter proceeded to hearing on July 25, 2022, pursuant to Sections 8(a) and 19(b) of the Illinois Workers' Compensation Act (the Act). The issues in dispute are: 1) whether Petitioner's right shoulder condition is causally connected to her work accident; 2) whether Respondent has paid all reasonable, related medical expenses already incurred; 3) whether Petitioner is entitled to additional temporary total disability (TTD) benefits after August 30, 2021; and 4) entitlement to prospective medical treatment for her right shoulder. The issue of credit for TTD payments initially was disputed, but the parties reached an agreement subsequently.

FINDINGS OF FACT

At the time of the accident, the Petitioner was 34 years old and employed by the Respondent as a manufacturing specialist building sunroofs. (T. 11-12). On April 26, 2019, while installing rain channels, the Petitioner felt tightness and a pop in her right shoulder and immediate pain. (T. 12-13). The Petitioner testified that the month before she saw a physical therapist from Heartland Regional Medical Group Occupational Health Early Intervention, who treated her at the Respondent's facility for her right shoulder due to aggravation from repetitive use. (T. 34-35) She said it was nothing that was a concern or issue. (Id.) She said she had no other problems with her right shoulder before that. (T. 35)

The day after the accident, the Petitioner was seen by therapists in the safety department at the Respondent's facility. (T. 13-14). The Petitioner continued treatment with the therapists at the Respondent's safety office off and on for two years. (T. 15). Those records were not submitted at arbitration.

The Petitioner also sought treatment with her primary care physician, Dr. Anna Little at Shawnee Health Services. (T. 15-16, PX4). On December 31, 2019, Physician Assistant Ethan

Weshinskey diagnosed shoulder joint pain and prescribed a muscle relaxer. (PX4). On July 13, 2020, the Petitioner reported that her pain was worse, and Dr. Little diagnosed acute on chronic shoulder pain likely exacerbated by the repetitive nature of her work. (Id.) Dr. Little excused the Petitioner from work from July 8, 2020, through July 13, 2020, because of arm pain. (Id.) Dr. Little also recommended the Petitioner be moved to a different line or different work responsibilities due to the aggravation and pain to Petitioner's shoulder the repetitive movements at work caused. (Id.). Dr. Little repeated these recommendations on July 20, 2020. (Id.) On July 31, 2020, Dr. Little excused the Petitioner from work until August 4, 2020. (Id.)

Dr. Little then referred the Petitioner to Dr. Richard Lehman at the U.S. Center for Sports Medicine for an orthopedic evaluation and treatment. (T. 18, PX4). Dr. Lehman saw the Petitioner on August 10, 2020, and noted tenderness in the anterior superior region of the right shoulder, pain with overhead movements, clicking with rotation, tenderness, somewhat weak supraspinatus (the muscle that runs from the shoulder blade to the top of the humerus), with increased pain, positive empty can test (test for integrity of the supraspinatus tendon), positive Neer and Hawkins tests (tests for shoulder impingement), positive apprehension test (test for instability) and positive Speeds test (test for biceps tendon pathology). (Id.) Dr. Lehman diagnosed pain, crepitus (grating) and impingement syndrome of the right shoulder and ordered an MRI, which was performed on August 14, 2020. (Id.)

On September 24, 2020, Dr. Lehman reviewed the MRI and found supraspinatus tendon tendinopathy versus a tear and performed a diagnostic lidocaine injection into the right subacromial space. (PX3) The injection relieved the Petitioner's symptoms for 15 minutes, causing Dr. Lehman to believe a cortisone injection would not help. (Id.) He diagnosed impingement syndrome and suspected the Petitioner had a rotator cuff tear. (Id.) He recommended

arthroscopic surgery. (Id.) On January 8, 2021, Dr. Little provided the Petitioner work restrictions of essentially no use of the right upper extremity due to her continued pain and other symptoms. (PX4) The Petitioner has not returned to work since that time. (T. 22).

The Petitioner underwent a Section 12 examination on March 9, 2021, by Dr. George Paletta, an orthopedic surgeon with The Orthopedic Center of St. Louis. (RX1 Deposition Exhibit 2). She reported an onset of symptoms in February or March of 2019, when there was a change in the assembly production in which she was responsible for running additional stations. (Id.) She said that while working these stations, she felt her shoulder tightening and then felt a pop. (Id.) Dr. Paletta said the Petitioner did not relate the onset of symptoms to any one particular job but to the overall job duties. (Id.)

An examination revealed diffuse tenderness, reasonably good range of motion with pain and discomfort with testing for impingement and O'Brien test (test for labral or AC joint lesions). (Id.) The Petitioner exhibited positive Waddell's signs (tests to detect non-organic components of pain). (Id.) Dr. Paletta read the MRI, but said the study was of poor quality and stated that any conclusions based on that scan were limited. (Id.) He saw no evidence of an obvious rotator cuff tear but some tendinopathy. (Id.) He said the biceps tendon appeared to be intact, the AC joint appeared normal, and there was no fluid in the subacromial space. (Id.)

Dr. Paletta diagnosed chronic right shoulder pain without evidence of structural abnormality that was primarily myofascial (a chronic pain disorder in which pressure on sensitive points in the muscles causes pain in the muscle). (Id.) He recommended a new MRI of the right shoulder and said he could not recommend surgery without further imaging. (Id.) He could not identify any pre-existing condition or other abnormalities from which an aggravation would have resulted from the work activities. (Id.) He said there were no current objective findings to support

the ongoing subjective complaints, with the exam findings being primarily subjective and variable depending on the level of effort. (Id.) He said the presence of positive Waddell's sign calls into question correlation of subjective complaints with any objective findings. (Id.) He opined that the ongoing complaints of pain were out of proportion to the reported work activities. (Id.) He also opined that the course and duration of treatment was initially medically reasonable and necessary but was now excessive, stating that one would expect that physical therapy and activity modification would benefit the Petitioner within six to twelve weeks. (Id.) He said it was more concerning that the injection provided no relief – indicating that the subacromial space was not the cause of the pain and being a poor prognostic sign with regard to surgical treatment. (Id.) He believed the Petitioner required restrictions of no repetitive use of the arm in the overhead position and no lifting overhead. (Id.) He said the Petitioner had not reached maximum medical improvement based purely on her continued subjective complaints of pain. (Id.)

Dr. Lehman wrote a letter to the Respondent's insurer on April 29, 2021, explaining his treatment and opining that the Petitioner had impingement syndrome that started at the time of her work injury. (PX3) The Petitioner underwent another MRI on June 24, 2021. (PX1) Dr Lehman wrote another letter to the Respondent's insurer on June 29, 2021, stating that the second MRI showed mild to moderate rotator cuff tendinosis; bursal surface fraying, shallow partial-thickness bursal surface tear of the supraspinatus without a full-thickness tendon tear, mild degenerative changes of the acromioclavicular (AC) joint and mild atrophy of the deltoid muscle. (PX3) Dr. Lehman reiterated his diagnosis of impingement syndrome and his opinions that the condition was related to her job and that the description of the accident and symptoms were consistent with that diagnosis. (Id.)

Dr. Paletta issued an addendum report on July 27, 2021, after having reviewed the second MRI. (RX1, Deposition Exhibit 2) He said all of the structures appeared normal except for mild to moderate tendinopathy of the rotator cuff involving the supraspinatus more so than the infraspinatus. (Id.) He disagreed with the finding of a partial tear of the supraspinatus. (Id.) He said the Petitioner had age-related degenerative tendinopathy. (Id.) He said the Petitioner's complaints and exam findings did not correlate with either impingement syndrome or a partial-thickness rotator cuff tear. (Id.) He believed the positive Waddell's signs and lack of consistency in the exam were signs of symptom magnification. (Id.) Based on this, he believed the Petitioner was a poor candidate for surgical treatment. (Id.) He said that if there were a rotator cuff tear, one would expect that the injection performed by Dr. Lehman would have at least given the Petitioner significant relief due to the effects of the local anesthetic. (Id.)

Dr. Paletta issued another report on August 6, 2021, reiterating the findings on the two previous reports. (Id.) He added that the Petitioner was at maximum medical improvement and that she required no restrictions or limitations. (Id.)

On August 24, 2021, the Petitioner returned to Dr. Lehman, who expressed concern that the Petitioner was still suffering from clicking and impinging. (PX3) He did not feel the Petitioner could pursue conservative treatment anymore and felt a right shoulder arthroscopy was needed to fully visualize the area in order to treat her. (Id.) He recommended that the Petitioner return to work under light-duty status with no use of her right arm. (Id.) Dr. Lehman also wrote a letter to the Petitioner's attorneys, stating that the Petitioner continued to have clicking and popping in the subacromial space and positive impingement sign. (PX3) He said the Petitioner had posterior myofascial pain and discomfort but also had subacromial impingement syndrome. (Id.) He said the new MRI did not change his treatment plan and noted that the Petitioner's shoulder issues had

been going on for a year and a half without getting better. (Id.) He said the Petitioner had some partial breakdown of her rotator cuff and degenerative changes of the AC joint. (Id.) He said the MRI findings suggested that the Petitioner had mild rotator cuff tendinosis with some bursal fraying. (Id.) He believed the Petitioner's work manifested an underlying pre-existing subacromial impingement and manifested her symptoms that otherwise, in his opinion, were not problematic prior the accident. (Id.)

Dr. Lehman testified consistently with his records at a deposition on October 9, 2021. (PX9). He explained that subacromial impingement syndrome occurs when the space between the flat bone on top of the shoulder (acromion) and where the rotator cuff transverses is diminished, and the acromion rubs on the rotator cuff. (Id.) He said this caused the partial-thickness tear of the rotator cuff as seen on the MRIs. (Id.) He said impingement syndrome was sufficient to cause the pain of which the Petitioner complained and was consistent with her description of the work accident. (Id.) He outlined two ways to look at the failure of the injection he performed to provide relief: 1) that the Petitioner could just live with the pain or 2) that the injection did not have the ability to address the Petitioner's rotator cuff pathology, and arthroscopic surgery would be needed. (Id.) He said the surgery would also evaluate the rotator cuff. (Id.) On cross-examination, Dr. Lehman stated that he was not provided with the films from the second MRI and was relying on the radiologist's report. (Id.)

The Petitioner continued to treat with Dr. Little and Dr. Lehman. (PX3, PX4). On February 23, 2022, Dr. Lehman gave the Petitioner work restrictions of no repetitive use of her right arm and no reaching. (PX3)

Dr. Paletta testified consistently with his reports at a deposition on March 30, 2022. (RX1) He disagreed with Dr. Lehman's diagnosis of impingement syndrome, stating that the lack of

significant relief from the injection, which he termed as an impingement test, told him that she did not have impingement syndrome. (Id.) He acknowledged that the Petitioner had symptoms typically associated with impingement syndrome but added that there are a variety of causes of pain patterns similar to those from impingement syndrome. (Id.) He also said impingement syndrome can cause bursal surface fraying over time but continued to disagree that there was evidence of thinning or a tear on the bursal side of the rotator cuff. (Id.) He also stated the Petitioner was not in a work position where impingement syndrome would be expected to develop because the condition develops with repetitive overhead activities, which the Petitioner did not describe when discussing her work duties. (Id.) He agreed that based on the Petitioner's history, it appeared that her pain began as a result of her work activities. (Id.) He could not say that the incident involving the pop in her shoulder was a potential traumatic injury because she did not give him details as to what she was doing when the pop occurred. (Id.)

Regarding treatment, Dr. Paletta said the Petitioner's myofascial pain was not amenable to surgical intervention. (Id.) He said there was not a lot of treatment that would help the Petitioner, and she may have to live with the pain. (Id.)

While the Petitioner was treating with Dr. Lehman, he retired, and Dr. Little referred the Petitioner to Dr. Randall Otto, an orthopedic surgeon at SLUCare for continuing orthopedic treatment. (T. 23-24, PX5). On March 31, 2022, Dr. Otto saw the Petitioner, and an examination showed positive Speed's test, O'Brien test, Hawkins test and cross-body adduction test. (Id.) He reviewed the second MRI and did not see any substantial tearing of the rotator cuff or distinct labral pathology but did see mild decreased capsular volume. (Id.) He diagnosed chronic right shoulder pain and believed the Petitioner had some mechanical shoulder pain most likely within

the joint. (Id.) He recommended a diagnostic injection into the joint, which occurred on April 19, 2022, and provided no relief. (PX5, T. 25)

Dr. Otto then saw the Petitioner on May 12, 2022, and stated that because of the result of the injection and a fairly normal MRI, there was no guarantee that surgery would provide any relief and may put her at risk for worsening symptoms. (PX5) He recommended that the Petitioner see a spine specialist for evaluation to rule out her cervical spine or neurogenic cause of her pain. (Id.) A cervical spine MRI performed on May 31, 2022, showed right lateral disc herniation at C5-6 and mild narrowing of the foraminal regions (where the nerves exit the spine). (Id.)

The Petitioner said she attempted to return to work following the final addendum report of Dr. Paletta, but the Respondent failed to respond to Petitioner's inquiries. (T. 22-23). The Respondent has not paid the Petitioner TTD or medical benefits since August 30, 2021. (T. 30; PX8). The Petitioner said she received unemployment benefits from September 2021 until February 2022. (T. 31, 32)

The Petitioner testified that she continued to experience pinching and stabbing pains, pain that shoots up and down her shoulder, pain from her neck to her shoulder, throbbing and continuous muscle spasms. (T. 28) She said she had difficulty washing dishes, cleaning house, grocery shopping, driving, making jewelry as a hobby, moving a computer mouse, washing her hair (T. 28-29)

CONCLUSIONS OF LAW

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

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

To obtain compensation under the Act, Petitioner must prove some aspect of her employment is a causative factor in her resulting injuries. Petitioner's employment does not need to be the sole or even primary factor, but Petitioner's employment need only be a causative factor resulting in injury. *Sisbro, Inc. v. Industrial Comm'n,* 207 Ill.2d 193, 205 (2003).

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

The Petitioner's medical records and testimony indicate that although she felt tightness in her shoulder before April 26, 2019, it was on that day that she felt a pop and immediate pain. Although Dr. Paletta disagreed with Dr. Lehman as to a diagnosis – myofascial pain versus impingement syndrome and partial tear of the rotator cuff – he said it appeared that the Petitioner's pain began as a result of her work activities. Although Dr. Otto apparently agreed with Dr. Paletta that there was no substantial rotator cuff tear and did not specifically note impingement syndrome, he did find decreased capsular volume in the shoulder and mechanical shoulder pain most likely within the joint. In addition, the circumstantial evidence supports the conclusion that the Petitioner's work caused her current shoulder condition.

For these reasons, the Arbitrator finds that the Petitioner has proved by a preponderance of the evidence that the Petitioner's current condition of ill being is causally related to her work-related injury of April 26, 2019.

Issue J: Has Respondent paid all appropriate charges for all reasonable and necessary medical services?

The right to be compensated for medical costs associated with work-related injuries is at the very heart of the Workers' Compensation Act. *Hagene v. Derek Polling Const*., 388 Ill. App. 3d 380, 383, 902 N.E.2d 1269, 327 Ill.Dec. 883 (2009). A claimant is entitled to recover reasonable medical expenses that are causally related to the accident and that are determined to be required to diagnose, relieve, or cure the effects of claimant's injury. *F & B Mfg. Co. v. Indus. Comm'n*, 325 Ill. App. 3d 527, 534, 758 N.E.2d 18, 259 Ill.Dec. 173 (1st Dist. 2001).

The Arbitrator notes Dr. Paletta's opinion that the treatment had become excessive and that there should have been improvement after six to twelve weeks of physical therapy. The physical therapy records were not submitted at arbitration, making it difficult to determine whether there was any improvement in the Petitioner's symptoms. The Arbitrator lays the issue of excessive treatment or treatment delays at the feet of the Respondent. It appears that until the Petitioner saw Dr. Lehman nearly a year and a half after the accident, the Respondent was directing her care. There is no indication that the treatment rendered by Dr. Little, Dr. Lehman or Dr. Otto was unreasonable or unnecessary.

Having found that Petitioner's condition of ill being is causally related to her work accident, the Arbitrator also finds Petitioner's treatment to be reasonable and necessary and finds that Respondent has not paid for said treatment. As such, the Arbitrator orders Respondent to pay Petitioner directly for the outstanding medical services contained within Petitioner's Exhibit 5, pursuant to the medical fee schedule and Sections 8(a) and 8.2 of the Act. The parties stipulated that Respondent shall be afforded a credit under 8(j) for any medical bills already paid.

Issue K: Whether Petitioner is entitled to any prospective medical care.

Upon establishing causal connection and the reasonableness and the necessity of recommended medical treatment, employers are responsible for necessary prospective medical

care required by their employees. *Plantation Manufacturing Co. v. Industrial Commission*, 294 Ill.App.3d 705 (1997). This includes treatment required to diagnose, relieve, or cure the effects of claimant's injury. *F & B Manufacturing Co. v. Industrial Commission*, 325 Ill. App. 3d 527 (2001).

Dr. Paletta recommended against surgery. Dr. Lehman recommended surgery, but he is no longer the treating physician. Dr. Otto did not recommend surgery and wanted a determination as to whether the Petitioner's symptoms were coming from her cervical spine. There was a cervical MRI but no further evaluation. At this point, his treatment is far from complete.

Based on this and the findings above regarding causation, the Arbitrator finds the Petitioner is entitled to prospective medical treatment as recommended by Dr. Otto.

Issue L: Whether Petitioner is entitled to any temporary total disability benefits.

According to the Request for Hearing (AX1), the Petitioner contends she is entitled to temporary total disability benefits (TTD) for the period of January 8, 2021, through the date of trial on July 25, 2022, and the Respondent claims the Petitioner is entitled to TTD for July 8, 2020, through August 30, 2021.

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

Dr. Little excused the Petitioner from work from July 8, 2020, through August 4, 2020. On January 8, 2021, Dr. Lehman gave the Petitioner work restrictions, which the Respondent was unable to accommodate. Following his examination on March 9, 2021, Dr. Paletta agreed that work restrictions were appropriate, albeit he recommended less stringent restrictions. On August

6, 2021, Dr. Paletta issued a report stating that restrictions were no longer required. The Arbitrator notes that aside from Dr. Paletta's opinions as to causation and necessity of further medical treatment, there was no change noted in the Petitioner's symptoms. Further, Dr. Lehman's restrictions have never been lifted by a treating physician. The Petitioner attempted to return to work after Dr. Paletta's last report but received no response from the Respondent. There was no evidence to contradict her testimony.

Based on these facts and the findings above regarding causation, the Arbitrator finds that the Petitioner is entitled to TTD benefits from July 8, 2020, through August 3, 2020, and from January 8, 2021, through July 25, 2022, for a total of 84 1/7 weeks.

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	18WC034618
Case Name	Robert Phinnessee v. Modern Advanced Manufacturing
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	24IWCC0178
Number of Pages of Decision	25
Decision Issued By	Christopher Harris, Commissioner, Amylee Simonovich, Commissioner

Petitioner Attorney	Martha Niles
Respondent Attorney	Joseph D'Amato

DATE FILED: 4/22/2024

/s/Christopher Harris, Commissioner

Signature

DISSENT: /s/Amylee Simonovich, Commissioner

Signature

24IWCC0178

STATE OF ILLINOIS)
) SS.
COUNTY OF)
WINNEBAGO

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

ROBERT PHINNESSEE,

Petitioner,

vs. NO: 18 WC 34618

MODERN ADVANCED MANUFACTURING,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Petitioner herein and notice given to all parties, the Commission, after considering the issues of permanent partial disability and being advised of the facts and law, modifies the Decision of the Arbitrator as stated below and otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

The Commission agrees with the Arbitrator's analysis of Section 8.1(b). The Arbitrator found that the record amply demonstrates discolorations and plaques, and that Petitioner's skin had and continues to have multiple locations of discoloration that resulted from this work-related skin condition. In addition to the Arbitrator's findings, the Commission notes that the record further demonstrates that Dr. Lloyd provided Petitioner permanent work restrictions to avoid allergens and to use personal protective equipment ("PPE") consisting of vinyl, not nitrile due to his allergy to nitro. Respondent's Section 12 examiner, Dr. Brown also opined that the Petitioner, while he could work full duty, needed to use multiple layers of gloving, cotton covered by nitrile gloves, and additional protective garments, including an apron with sleeves to completely cover his arms and a barrier cream. While Dr. Lloyd and Dr. Brown disagree as to the type of material Petitioner should avoid, both agree that he requires PPE to perform his job duties as a result of his work-related accident. Based upon the record as a whole, the Commission finds that an award of 30% person-as-a-whole is more appropriate. All else is affirmed and adopted.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the

Arbitrator, filed July 20, 2023, is hereby modified as state above, and otherwise affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $312.00 per week for a period of 150 weeks, as provided in §8(d)2 of the Act, for the reason that the injuries sustained caused 30% loss of use of the person-as-a-whole.

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

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

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $43,100.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

April 22, 2024

CAH/tdm
d: 3-21-24
052

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

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

DISSENT

While I agree with the Majority's decision to increase the PPD award, I find that 40% loss of use of the person-as-a-whole is more appropriate given the loss of trade he has sustained. Petitioner cannot return to the position he was in at the time of the injury. With his PPE restrictions, Respondent was only able to accommodate him in the assembly department, not as a CNC operator. Ms. Belmonte testified that Petitioner could not return to work as a machinist, nor in the food service industry. Ms. Babbitt's testimony was not persuasive because she never discussed the extent of the PPE required with the potential employers. Petitioner lost access to his skilled employment at a very young age. For these reasons, I believe a higher loss of use is appropriate.

/s/ *Amylee H. Simonovich*
Amylee H. Simonovich

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	18WC034618
Case Name	Robert Phinnessee v. Modern Advanced Manufacturing
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	22
Decision Issued By	Paul Seal, Arbitrator

Petitioner Attorney	Martha Niles
Respondent Attorney	Joseph D'Amato

DATE FILED: 7/20/2023

/s/ Paul Seal, Arbitrator

Signature

THE INTEREST RATE FOR THE WEEEK OF JULY 18, 2023 5.25%

STATE OF ILLINOIS)
)SS.
COUNTY OF WINNEBAGO)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Robert Phinnesse
Employee/Petitioner

v.

Modern Advanced Manufacturing
Employer/Respondent

Case # **18** WC **34618**

Consolidated cases: _____

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Paul Seal**, Arbitrator of the Commission, in the city of **Rockford, IL**, on **June 16, 2023**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On **6/7/2018**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $**27,040.00**; the average weekly wage was $**520.00**.

On the date of accident, Petitioner was **42** years of age, ***single*** with **0** dependent children.

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

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

Respondent shall be given a credit of $**4,985.91** for TTD, $**0** for TPD, $**0** for maintenance, and $**0** for other benefits, for a total credit of $**4,985.91**.

Respondent is entitled to a credit of $**7,221.81** under Section 8(j) of the Act.

ORDER

Respondent shall pay Petitioner temporary total disability benefits of $346.67/week for 21 2/7 weeks, commencing 8/27/18-12/23/18 and 12/31/19-1/31/19, as provided in Section 8(b) of the Act.

Respondent shall pay reasonable and necessary medical services noted in Pex.6, the medical bill exhibit., as provided in Section 8(a) of the Act.

Subsection (i) of §8.1(b) is not relevant as no AMA rating was provided by either party. Pursuant to *Corn Belt Energy Corp. v. Illinois Workers' Compensation Comm'n*, 2016 IL App (3d) 150311WC, no AMA rating is required.

Subsection (ii) of §8.1(b), regarding the occupation of the injured employee, is given some weight. The evidence shows that the petitioner can and did return to work in a different department for some time, but he requires total protective wear to do so.

Subsection (iii) of §8.1(b), regarding the age of the injured employee, is given moderate weight. Petitioner was only 42 on the date of accident and has well over 25 years of work life in his future.

(iv) of §8.1(b), regarding the employee's future earning capacity, is given little weight as the evidence introduced by either party as to the Petitioner's current earning capacity places him approximately at the same rate.

Subsection (v) of §8.1(b), regarding the evidence of disability corroborated by the medical records, and by the Arbitrator's personal observation, is given significant weight. The Petitioner was diagnosed with a recurrent contact dermatitis for which he relies on the use of steroid cream to handle flare ups. The medical records amply demonstrate the discolorations, plaques, etc. that his skin had and continues to have. At trial, the Arbitrator himself observed the multiple locations of discoloration that resulted from this work-related skin condition.

The Arbitrator awards 20% loss of use of the person as a whole under section 8(d) (2) of the act, 100 weeks permanent partial disability.

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

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

Signature of Arbitrator

July 20, 2023

FINDINGS OF FACTS AND CONCLUSIONS OF LAW

The parties agree that on June 23, 2018, the Petitioner, Robert Phinnessee (Petitioner) and the Respondent, Modern Advanced Manufacturing (Respondent) were operating under the Illinois Worker's Compensation or Occupational Diseases Act and that their relationship was one of employee and employer. They agree that the Petitioner gave the Respondent notice of the accident which is the subject matter of the dispute within the time limits stated in the Act. They further agree that in the year preceding the injuries, the Petitioner earned $27,040.00, and that his average weekly wage was $520.00

STATEMENT OF FACTS

Petitioner testified that in his worked for as a CNC, and set-up operator, which entailed making certain that the tooling used was correct, including changing, damaged tools, loading parts, ensuring the program was available, and the machine was correct. As part of that, he would have to measure parts, gauge the type of parts, clean and install them. T.14 He testified that the machines are tooling machines designed to cut steel into a shape or form programmed into the machine. Id. Once the part was cut, he would take a hose and blow the part off to ensure that extra shavings and loose pieces of metal were not still on it. The part would be unclamped and placed on a table And a new sheet would be installed with different measurements to make an image to make sure it fits the proper standard for the parts. T.15

On the date of injury, June 7, 2016, Petitioner testified that he had completed a job in his original hiring department and was waiting for another job to be assigned. Respondent relocated him into a different department while waiting for a new assignment. He started training in that department, and as the training proceeded, and time passed, he began to notice an issue with his skin. T.16.

He testified that in the original department he worked in, he didn't actually touch materials, but that it was required in the department he was working in on June 7, 2018. Petitioner stated that his hands were going into chemicals and chemicals were splashing over different areas. Over time in that department, he began to react. T.16-17. He initially did not think much of it, brought it to his supervisor's attention because it was getting worse. T.17.

Petitioner testified that the chemical he was referring to is called coolant, which prevents friction which prevents friction and that the fluid gets very hot. T.18. The coolant is used to prevent the machine from catching on fire. Id.

He testified that he had received a certification as a machinist and had worked with this type of equipment.

He further stated started to have a reaction on his hands, he sought medical treatment because the skin of his both arms, was pulling off, and that his hands were bloated and appeared spotted like a leopard, with burning pain. T.20

Petitioner testified that he had always worked with gloves and the gloves did not help because chemical went through the gloves, T.22. He testified that the gloves were cotton of some type he believed, and they were designed to protect against sharp edges of the steel and the heat of the parts. Id.. He further testified that after the skin condition started, he was wearing rubber gloves for a somewhat stronger barrier with the cotton gloves over that. T.22- 23.

He testified that he went to the emergency room because of the pain working was becoming too difficult. Transcript to 21 He initially treated at Swedish-American, a part of the UW Health System. Pex.1, where he was prescribed cream for his hands and steroids, both in a cream, and in a pill form. T.24. Petitioner testified that he was then treated at Crusader Community Hospital, MD Skin Center and the UW Health Dermatology Clinic. T.25-26

He stated that his condition prevented him from returning to work. T.26, and that was ultimately taken off of work entirely until his skin condition had resolved. T. 27

Following his release to work, he returned to the respondent on a light duty basis in a different department. T.28. He further testified that he was required to be fully protected, with PPE equipment, so that no skin was exposed to anything. T.28, and that he was placed in different department than he had been hired for. Petitioner stated that that he was instructed by his physician that he would not be capable of working in a job in contact with the chemical whatsoever. T.30.

Petitioner testified he has never returned to his original position as a machinist. T.3, and that he does not feel he can safely do so.

In addition to the work exposure, Petitioner further testified that he has noticed additional allergic reactions in his current life, including that he breaks out and then he had spots on the day of trial. T. 30-33. Petitioner testified that any type of lotion or chemical that contacts his skin, including perfumes dyes, and such substances, would cause it to break out causes skin to break out. He stated that this could occur using soap, deodorant, taking a shower, T.35..

Petitioner then testified that he recalled going to see the Respondent's expert doctor, although he did not recall the name, (T.36.) and that he met with a vocational expert at all at his lawyer's request. Id.

On cross examination, the petitioner repeated his understanding of the permanent restrictions are to not allow him to work as a certified machinist because of the skin reaction to the chemicals. At the request of Respondent's counsel, he read part of a report issued by Dr. Lloyd, Pex. 3@219. The report stated he had occupational allergic contact dermatitis with allergies to at least four chemical substances per the report, (T.39) that he had to avoid skin type

contact with any of those chemicals on a permanent basis, and that he was to be off of work until released by her. Id.

The next sentence in this letter was that PPE would be adequate protection, but it must be of a specific type. Petitioner stated it did not change his understanding of the restrictions and that even using PPE did not suffice to prevent contact with the chemicals. T.41.

Asked again if this was if his understanding of his inability to return to his old job was part of his restriction he again replied, yes. Transcript at 40.

Petitioner stated he was paid benefits during some of the time, and agreed that from his return to work in January 2022 until he was laid off in August 2022, using the PPE provided by Respondent, he did not have any lost time from work. due to a skin condition

In response to Respondent's question about whether the initial condition was limited to his arms and hands, he testified that it was on his neck and chest area as well. T.55. He further stated that on the date of trial his hands and arms were better. However, point out that he had leopard like spots on his arms and hands still. He also stated his back was in that condition as well.

The Arbitrator noted that during his direct testimony, Petitioner had removed his shirt and demonstrated the discolorations on his chest and arms. T.34

On redirect, Petitioner described the PPE as covering his hands, his arms, his entire arm from, his elbow down to his wrists. T.60.

Testimony of Gregory Brown, witness for the respondent.

The witness testified that he was a safety coordinator at Respondent's facility.T.65 and was working in that capacity in June 2018.

Mr. Brown further stated that Petitioner's primary work at modern advance was as a machinist. T.66 .

Brown testified that he was aware of Petitioner's skin condition developed due to the work activities at Respondent (T. 65,67), and that he had been advised of Petitioners restrictions. He stated that his understanding of the condition was that it was contact dermatitis, and that Petitioner was off of work approximately August 27, 2018 until January 27, 2019. T. 67. The witness testified that Petitioner was provided with PPE equipment, consistent with what Dr. Lloyd recommended.

Brown further stated that Petitioner was placed in a different department, assembly. T.70 This was done to remove him from the premise presence of the injurious chemical. Id.

On cross examination, Brown testified that they had approximately 25 to 50 people using some level of PPE, but not the full body, vinyl plastic, covering all areas of exposed skin to move in contact with dust required by Dr. Brown. T. 72. He also agreed that Petitioner was an acceptable employee for the two years he worked after his return in January 2019.

Swedish American Hospital, a division of UW health

Petitioner presented to the emergency room on July 22, 2018 in the position of a state of the emergency department with a rash that had started approximately a month earlier. Petitioner believed the rash was due to rubber gloves. He was complaining of, a dry, itchy, irritated rash on the face neck, back of his arms and on his legs, but not on the back of his legs. He reported peeling on his hands, applying lotions, taking Benadryl, trying to soak his hands in hydrogen peroxide, but on the data presentation, the skin of his knuckles was open with clear drainage. He also reported sleeping on sofa that had been cleaned with bleach. He denied any prior history of conditions allergy conditions or symptoms.

On examination, the doctor found plaque rash and diffuse edema of the bilateral hands; and noted it was most likely related to the bleach, couch and worsened due to the gloves and detergent being used at work. The doctor thought there might be an underlying skin disorder as the plaques and patches on the back did not appear to be acute, but that the irritants he has been using "probably exacerbated" an underlying exzema or psoriasis. Pex. @114. The diagnosis was dermatitis due to chemical product. Id.@115.

Petitioner to return to the emergency department on July 23, 2018 with the same symptoms of a rash. He gave history of having developed rash on his hands after using latex gloves, with powder at work and a rash on his neck and chest for approximately two weeks after sleeping on a couch cleansed with bleach. He reported the rashes were getting worse. Pex.1@76.

He was contacted by the emergency department and instructed to return on the 24th. The Petitioner reported again that the rash had been on his arms for weeks after exposure to some chemicals, but the rash on the neck was more recent. He reported pain in all locations of the rash. Pex.1@ 73.

On examination, it was reported finding desquamation (defined as skin peeling and flaking,Taber's Medical Dictionary on line) on the he lower arms, the anterior and posterior of the neck with scaling; mild areas of desquamation on the hands. Id.@74. Additional blood work was taken to determine if there were an infectious process proceeding with the hospitalization might be required. the tentative diagnosis included impetigo and allergic dermatitis to chemicals.

On August 14, 2018, Petitioner again treated at the emergency department for his rash. He gave a history of a rash on his hands, feet, neck, and lower, abdomen for approximately two months, which he had never suffered from before. Pex. 1@ 46. He further reported that he been taking Benadryl and antibiotics prescribed through the emergency department, with no improvement in the symptoms. Id. He was to be referred to a primary care physician.

On examination, it was reported finding desquamation on the bilateral hands, and bilateral feet, with the hands being worse;, plaques, on both on bilateral hands and forearms, lower, abdomen, and small, scattered plaques in the back and legs. Pex.1@ 47 He was diagnosed with dermatitis and provided prednisone along with Pepcid and Benadryl. Pex.1W 50

Petitioner returned to the emergency department on September 9, 2018. Petitioner was complaining of ongoing peeling rash to his bilateral hands and forearms for the past 4 to 5 months, having been seen multiple times for the same condition. He was on steroids with Pepcid and Benadryl , which cleared up the rash, but when he returned to work a few days earlier, the rash returned worse than before. Id. @20

He was diagnosed with an irritant contact dermatitis. And at 23 he was instructed to follow up with a dermatologist and provided with prednisone tramadol and cephalexin
He was to be referred to a primary care physician to obtain a referral for dermatology.

Crusader Clinic

On September 23, 2022, Petitioner, began treating with a new primary care physician at Crusader Clinic.

He reported he had no past medical history of issues with his skin. He reported the exposure to chemicals at work. He was having a rash on his hands and have been seen at the emergency department as Swedish American, going off work with improvement of his symptom; but upon his return to the job had recurrence of the problem. A change of gloves at work proved ineffective. He reported working at a facility, using coolant and that at that time, no other body parts and he was trying to get a referral to dermatology dermatologist. Pex.2@20

The diagnosis was allergic contact dermatitis due to chemical products, described as work related. Pex.2@ 23 he was provided medications and a referral to dermatology. Id.

The remaining records of Crusader clinic are unrelated to this Worker's compensation case.

MD Skin Center

Petitioner begin treating at the MD Skin Center on October 24, 2018 with a chief complaint of rash. At that time, it was described as being on his left hand and right arm and itchy, blistering, and flaking. He stated that he believed it was due to the exposure to coolant at work. Prior prescriptions of antibiotics and prednisone helped, but after cessation of the prednisone, a week earlier, the rash was flaring up again.

The doctor conducted and examination and the diagnosis was allergic contact dermatitis v. irritant dermatitis v. unspecified dermatitis. He was recommended to remove all scented products, cosmetics, fragrances, hair products, shampoos soaps, plants, etc. and she was only hypoallergenic materials and patent products. He was advised that this could last several weeks

despite treatment. He was to return if the condition did not improve. The doctor prescribed medications and the use of nitrile gloves to return to work. Pex.4@267

He returned to t Pex.4@267he skin center on November 19, 2018 PEX for at 280 with continued dermatitis issues. The examination continued to show issues on both the right and radial hand in the palmar area.

UW Health Dermatology

He was first seen at UW health dermatology on December 23, 2018. He reported that as part of his job with the respondent, working on one of the machines, he would have to wear nitrile gloves, while immersing his hands into a coolant for the machine operation. He would be required to remove the metal parts and clean the machine, while his hands were immersed in the colon; and this is when he initially developed the dermatitis. Pex.3@ 234.

He gave history of the problem developing where he tried to use hydrocortisone cream and a barrier cream changing from nitrile gloves to cloth rubberized gloves. He advised the doctor of his condition in continuing to get worse, and evaluations in the emergency room with treatments with antibiotics and Benadryl, and a return to work. Id.

On examination, the doctor noted mild edema and hyper pigmentation along with hyper keratosis on the dorsal of both his hands, as well as some post, inflammation changes in the color of his skin on the palm aspect of the fingers, as well as some scaling and discoloration on the dorsal and ventral arms up to the elbow.

Under impression, the doctor noted a strong history of allergic contact, dermatitus, based on his oxygen that was occupational. She stated that the coolant and the metal fragments in the coolant could both be allergens, as well as nitrile gloves. She ordered patch testing and took him

off work. Id@235. He underwent the patch testing that day. The test used the UW standard, oil and coolant series. 110 different patches were applied, and he was to return for follow up.

He was seen on January 4, 2019 for a reading of the 96 hour patch test. On examination on that day, he still had mild erythema and scaling on the dorsal, hands and forearms.

The patch test disclosed the Petitioner was allergic to six separate products including: thorium mix; potassium dichromate; methlylchloroisothihzolinone in 2 forms; iodopropynyl butylcarbamate; and MI/MCI on cooling series. Pex.3 @216. The doctor noted that the Petitioner had been off work for several weeks, he was still not fully healed. She also noted that the preservatives, including the MRI/MCI and Ido propyl, and beautiful carbonate are in a number of personal care products. Id@217. he was to remain off work until January 28 and will then be available. Allowed to return to work with permanent restrictions. Id.@218

Petitioner returned to Dr. Lloyd on January 18, 2019 for a follow up after the patch test. He had remained off work and was using topical betamethasone dipropionate, cream which demonstrated improvement. He was still do demonstrated hyper keratosis on the arms, although improved, hyper pigmentation, and no new areas of dermatitis. the doctor anticipated he would be able to return. He would be fully healed within a week. Pex.3@20

He was given permanent work restrictions. And which included avoiding allergens but could return to work using PPE consisting of vinyl, not nitrile because he has an allergy to nitro to Robert. these restrictions were deemed permanent. Pex.3@210-211.

On February 22, 2019, he returned to Dr. Lloyd for a recheck three weeks after having returned to work with permanent restrictions. On that date, she indicated that his rash was better and that he was using vinyl PPE over the forearm and vinyl gloves, She further stated that he

could not have contact with products and rubber that contain the allergens. Pex3@215. He was to continue using the topical steroid if he got an area of rash. Id.@216.

Dr. Clarence Brown, Respondent IME

He testified that the history Petitioner gave to him on the day of evaluation was identical to that provided by the insurance carriers agent and retaining his services. Rex.2@ 11. The doctor further testified that the Petitioner had no prior history of eczema.

With respect to causation, in addition to noting there was no prior condition, the doctor opined that the Petitioner's genetic make-up predisposed him to develop in this condition. Id.@20.

On examination, the doctor diagnosed eczematous dermatitis. Rex. 2@12-13. He then agreed that the exposure to the chemicals at work could have been caused that exacerbated that condition. Id.@14, 19.

The doctor further opined that Petitioner would be able to resume work at full capacity with the use of multiple layers of gloving, cotton covered by nitrile gloves, and additional protective garments, including an apron with sleeves to completely cover his arms and barrier cream. Id.@21

On cross examination, the doctor admitted that despite frequent references to the Petitioner is genetic make up, can you perform new, genetic testing to confirm his theory. Id.@30

He further agreed that he had never been presented any evidence that prior to the workplace exposure and accident on June 7, 2018, Petitioner ever had eczema, dermatitis or any skin allergy. Id@31.

Dr. Brown also agreed that a number of chemicals Petitioner had tested positive two were included in multiple personal care products.

Deposition of Laura Belmonte, CRC

Laura Belmonte testified on behalf of the Petitioner as a vocational expert. Prior to her testimony, she issued a report, which is Petitioners Exhibit number 5. The arbitrator notes that Miss Belmont, his testimony is consistent with her report.

The witness testified that she had been retained by Petitioners counsel to evaluate him for vocational assessment in light of his medical condition. Pex.7@10 As part of that evaluation, she conducted an in-depth interview with the Petitioner as described in her testimony between pages 10 and 13, as well as medical records provided by Petitioners attorney. Id at 14.

The witness testified that Petitioner had completed a one-year program in machine operation to become a machinist, and he had, in fact, become a machine machinist. Deposition at 19 the witness further testified that she had read review certain medical records, including those from Swedish-American and Dr. Brown, the Respondent ime.

After reviewing his employment, history, training, work experience, etc., the witness testified that he was employable, but there were certain capacities he would not be employed in record at an Internet transcript a deposition transcript of 23. She found that he was “severely restricted from the machining industry,“ and that he had “lost access” to that. She upon that he could not work as a machinist. It at 23 through 24. She further opined that he could not work in the food service industry because of the chemicals and environments that he was restricted from working in that industry. She specifically testified that disinfectants, liquids, soaps, bleach, cleaning solutions, etc. contain many of these chemicals, and then she would be exposed to them directly and buy airborne particles in those capacities. Id.@29.

On cross examination, she was asked a series of questions about a labor market survey, performed by another individual on behalf of Respondent. She pointed out on re-direct that many of those facilities those jobs would not be suitable for the Petitioner based on the potential for exposure to chemicals, and the types of dust that he could not be exposed to per the IME report.

Deposition of Sharon Babbitt, Respondent Vocational Witness

Sharon Babbitt testified via deposition on behalf of the respondent as a vocational rehabilitation consultant.

She stated that her understanding of the medical restrictions were the result of a "pre-existing condition" but that he was advised to avoid contact with several chemicals. Rex.3@ 11 she then listed those chemicals to the best of her ability, Id.@ 12.

She also reviewed the report from Dr. Brown, Respondent's IME and the medical records from Dr. Lloyd, and she testified that per Dr. Lloyd's records, Petitioner had to avoid contact with the chemicals she had mentioned, and she listed additional preservatives in fluids, that could be problematic. Id@13-14.

When asked specifically about some of the chemicals listed by Dr. Lloyd. On page 21 of her deposition, she testified that methylisothizazolinone is a preservative used in paper, paperboard, adhesive liquid, cosmetics, personal care products cleaning products.etc. Id.@21. This was also true of the lodopropynyl as it related to cosmetics, paints, coding primers and personal care items including wet wipes. Id.@22.. The next item was chromate and her research indicated that contact dermatitus with this product is commonly or is mainly found in bricklayers, construction workers and metal workers.

On cross examination, the witness testified that, although she mentioned, PPE on her labor market survey to the employers, she failed to describe the type and extent of the PPE that would be required. Rex.3@29. There was no specific discussion of the extent or the nature and restrictions of the PPE this is the Petitioner required. Id.

CONCLUSIONS OF LAW

Illinois law is very clear that a petitioner bears the burden of proving the elements of his case by a preponderance of the credible evidence. *E.g., Peoria County Nursing Home v. Industrial Comm'n*, 115 Ill.2d 524, 505 N.E.2d 1026 (1987).

With respect to the burden of proof, Illinois is also very clear that a work injury does not have to be the sole or even primary cause of the condition of illbeing. *E.g., Sisbro, Inc. v. Industrial Comm'n*, 207 Ill. 2d 193, 205 (2003). In fact, aggravation of a pre-existing condition in and of itself is compensable because an employer takes its worker as it finds them. *E.g., St. Elizabeth's Hospital v. Illinois Workers' Compensation Comm'n*, 371 Ill. App. 3d 882, 888 (2007). A claimant with a preexisting condition may recover where employment aggravates or accelerates that condition. *Caterpillar Tractor Co. v. Industrial Comm'n*, 92 Ill. 2d 30, 36 (1982).

Further, only the Commission has the ability to determine the credibility of an expert witness. The proponent of expert testimony must lay a foundation sufficient to establish the reliability of the bases for the expert's opinion. *Gross v. Illinois Workers' Compensation Comm'n*, 2011 IL App (4th) 100615WC, 960 N.E.2d 587, 355 Ill. Dec. 705.

As part of the decision making process, the Commission and Arbitrator must determine the credibility of each witness, including the petitioner.

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 witness' demeanor and any external inconsistencies with testimony. Where a claimant's testimony is inconsistent with his actual behavior and conduct, the Commission has held that an award cannot stand. *McDonald v. Industrial Commission*, 39 Ill. 2d 396 (1968);

The Arbitrator personally observed Petitioner's affect and presentation during testimony and found him to be a credible witness who presented as sincere, open, and honest. The medical evidence in the record documents a history consistent with Petitioner's testimony. The Arbitrator found no evidence of malingering or symptom magnification. Finally, no evidence was admitted which rebutted or contradict the fact that this Petitioner did not have any pre-existing history of eczema or dermatitis. Accordingly, Petitioner's testimony is deemed credible and afforded a great deal of weight by the Arbitrator.

IN SUPPORT OF THE ARBITRATOR'S DECISION REGARDING (F) IS PETITIONER'S CURRENT CONDITION OF ILL-BEING CAUSALLY RELATED TO THE INJURY, THE ARBITRATOR CONCLUDES AS FOLLOWS:

The Arbitrator finds the Petitioner has met his burden of proof by the preponderance of the evidence that his current condition is causally connected to the injury of December 12, 2016.

Petitioner introduced medical records which demonstrate a clear and unbroken chain of complaints of skin injury and discoloration to his bilateral arms, chest, abdomen, etc., from June 7, 2018 up to the date of trial. As well, all of the treating doctors found that he had an eczematic and/or contact dermatitis due to the exposure to the multiple irritants at the work place. Notably, even the Respondent's IME, Dr. Brown, opined that, despite his unsubstantiated belief that Petitioner must have had a genetic pre-disposition, there was zero evidence of such a condition

prior to the work exposure. He also opined that if such a condition did exist, it was exacerbated by the work exposure.

IN SUPPORT OF THE ARBITRATOR'S DECISION REGARDING (J) WERE THE MEDICAL SERVICES THAT WERE PROVIDED TO PETITIONER REASONABLE AND NECESSARY? HAS RESPONDENT PAID ALL APPROPRIATE CHARGES FOR ALL REASONABLE AND NECESSARY MEDICAL SERVICES?, THE ARBITRATOR CONCLUDES AS FOLLOWS:

The Arbitrator finds that the Petitioner has proven by the preponderance of the credible evidence that the medical services provided were reasonable and necessary. The Arbitrator adopts the position of the treating doctors that Petitioner did not have any skin condition prior to this accident and that the development of the condition required him to receive the appropriate treatment.

Regarding the bills, Respondent raised an issue related to the number of physicians Petitioner saw. Respondent offered no evidence in support of this proposition, the sole medical records having been introduced by Petitioner.

In reviewing the medical records, the Arbitrator notes that he initially treated at Swedish American, which is a division of UW Health. The doctor(s) at Swedish ordered a referral to a primary care physician. The PCP was Crusader Clinic, who provided him a dermatology referral. The dermatologist was at MD Skin Center. Subsequently, Petitioner returned to UW Health Dermatology Department for further treatment. The Arbitrator finds that Petitioner has not exceed his choice of doctors.

The parties stipulated that Respondent has paid $7,221.81 in medical bills. Any unpaid bills listed in Petitioner's bill exhibit Pex.6 are awarded pursuant to fee schedule and Respondents shall receive credit for such portions of the bills they have already paid.

IN SUPPORT OF THE ARBITRATOR'S DECISION REGARDING (L) WHAT TEMPORARY TOTAL DISABILITY BENEFITS ARE IN DISPUTE?, THE ARBITRATOR CONCLUDES AS FOLLOWS

The Petitioner has proven by the preponderance of the credible evidence that he was temporarily totally disabled from August 27, 2018 to December 23, 2018 and again from December 31, 2019 to January 31, 2019. This represents off work time from various providers and an attempt to return to work by Petitioner

The Respondent therefore owes the Petitioner full payment of 21 2/7 weeks of TTD at his TTD rate of $346.67 per week.

IN SUPPORT OF THE ARBITRATOR'S DECISION REGARDING (L) WHAT IS THE NATURE AND EXTENT OF THE INJURY?, THE ARBITRATOR CONCLUDES AS FOLLOWS

Because Petitioner's accident occurred after 9/1/11, the Commission must base its decision on the five factors of Section 8.1(b) of the Act for guidance in determining nature and extent. The five factors are: (i) the reported level of impairment pursuant to subsection (a); (ii) the occupation of the injured employee; (iii) the age of the employee at the time of the injury; (iv) the employee's future earning capacity; and (v) evidence of disability corroborated by the treating medical records.

Subsection (i) of §8.1(b) is not relevant as no AMA rating was provided by either party. Pursuant to *Corn Belt Energy Corp. v. Illinois Workers' Compensation Comm'n*, 2016 IL App (3d) 150311WC, no AMA rating is required.

Subsection (ii) of §8.1(b), regarding the occupation of the injured employee, is given some weight. The evidence shows that the petitioner can and did return to work in a different department for some time, but he requires total protective wear to do so.

Subsection (iii) of §8.1(b), regarding the age of the injured employee, is given moderate weight. Petitioner was only 42 on the date of accident and had well over 25 years of work life in his future.

(iv) of §8.1(b), regarding the employee's future earning capacity, is given little weight as the evidence introduced by either party as to the Petitioner's current earning capacity places him approximately at the same rate.

Subsection (v) of §8.1(b), regarding the evidence of disability corroborated by the medical records, and by the Arbitrator's personal observation, is given significant weight. The Petitioner was diagnosed with a recurrent contact dermatitis for which he relies on the use of steroid cream to handle flare ups. The medical records amply demonstrate the discolorations, plaques, etc. that his skin had and continues to have. At trial, the Arbitrator himself observed the multiple locations of discoloration that resulted from this work-related skin condition.

Pursuant to the above analysis the Arbitrator awards the Petitioner 20% loss of the person as a whole under section 8(d) (2) of the act, 100 weeks permanent partial disability.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	16WC018248
Case Name	Craig Foster v. Hayes Mechanical
Consolidated Cases	
Proceeding Type	8(a)/19(h) Petition
Decision Type	Commission Decision
Commission Decision Number	24IWCC0179 [20IWCC0685]
Number of Pages of Decision	9
Decision Issued By	Kathryn Doerries, Commissioner

Petitioner Attorney	Steven Berg
Respondent Attorney	James Clune

DATE FILED: 4/23/2024

/s/Kathryn Doerries, Commissioner

Signature

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

CRAIG FOSTER,

Petitioner,

vs. NO: 16 WC 018248

HAYES MECHANICAL,

Respondent.

DECISION AND OPINION ON REVIEW PURSUANT TO §19(h) and §8(a)

This matter comes before the Commission on Petitioner's Section 19(h) and 8(a) Petition, seeking compensation for medical expenses and alleging a material increase in his disability since the Commission's previous Decision and Opinion on Review (20 IWCC 0685), dated November 20, 2020. A hearing on the Petition was held before Commissioner Harris in Springfield, Illinois, on January 11, 2024. Oral argument was heard on the matter on March 5, 2024. The Commission, having reviewed and considered the entire record, finds that Petitioner failed to prove a material increase in disability and denies Petitioner's request for additional benefits under Section 19(h). The Commission further finds Petitioner is entitled to medical expenses related to treatment received from October 8, 2021 through January 7, 2022 under Section 8(a).

Background and History of Case:

Petitioner, a former union pipefitter, injured his right little finger while drilling a piece of angle iron on February 23, 2016. The iron piece came loose in the vice and struck Petitioner's hand. He suffered a fractured middle phalanx in the right little finger which necessitated three surgeries, the last being a fusion at the proximal inter-phalangeal (PIP) joint. Petitioner underwent a Functional Capacity Evaluation on February 21, 2018, which placed Petitioner in

the medium physical demand level. On March 13, 2018, the treating hand surgeon, Dr. Jain Jun Ma, issued permanent restrictions which included a 20-pound limit for the right hand. Petitioner is right-hand dominant. Petitioner's job as a pipefitter fell in the heavy physical demand level. Respondent was unable to accommodate the permanent restrictions and formally terminated Petitioner on March 13, 2018.

Petitioner sought wage loss benefits under Section 8(d)1 and proceeded to trial before Arbitrator Edward Lee on February 24, 2020. As reflected in the arbitration decision, Petitioner claimed he searched for new employment without success from January 2019 through April 29, 2019; however, he offered no job search logs or other evidence corroborating the self-directed job search. Petitioner was then enrolled in a vocational rehabilitation program from April 29, 2019 through November 5, 2019, by which time he secured part-time employment at a Panera Bread restaurant. The Arbitrator found Petitioner had unilaterally limited his available days and hours and his inflexibility in that regard foreclosed consideration by prospective employers looking to hire second and third shift workers. Petitioner, who resided in Sherman, Illinois, also refused to consider employment beyond a certain geographical range despite available employment opportunities in areas like Bloomington, Normal, and Decatur. Petitioner also refused to consider sales jobs. Based on the vocational expert opinion evidence and labor market survey results, along with Petitioner's self-limiting job search efforts, the Arbitrator determined that Petitioner failed to establish entitlement to wage loss benefits. The Arbitrator found Petitioner was disabled to the extent of 25% loss of the person as a whole under Section 8(d)2 of the Act, as Petitioner was incapacitated from pursuing his usual and customary line of employment. The Commission affirmed those findings and decision on review, subject to one modification, on November 20, 2020. The circuit court confirmed the Commission's decision on July 11, 2022. No further appeal was taken and the Commission's decision became final.

Following the Commission's previous decision, Petitioner returned to Dr. Ma for treatment on October 8, 2021. He received additional physical therapy and had two more follow-up evaluations with Dr. Ma. Petitioner's last date of treatment was January 7, 2022. On September 1, 2022, Petitioner timely filed the present petition under Sections 19(h) and 8(a), well within the 30-month time limit for Section 19(h) remedies.

The purpose of a proceeding under Section 19(h) is to determine if a Petitioner's disability has "recurred, increased, diminished or ended" since the time of the Commission's original decision. *820 ILCS 305/19*; *Howard v. Industrial Comm'n*, 89 Ill. 2d 428, 433 N.E.2d 657 (1982). To warrant a change in disability benefits, the change in a Petitioner's disability must be material. In reviewing a Section 19(h) petition, the evidence presented in the original proceeding must be considered to determine whether Petitioner's disability has changed materially since the time of the Commission's first decision. When a material change is found, the Commission must then determine, in a second analytical step, whether the material change was itself causally related to the original work accident. *Miller v. Ill. Workers' Comp. Comm'n*, 2020 IL App (2d)218577WC-U, P57. Only if the claimant's condition has materially changed would there be any occasion to address causation. *Id.* at P57.

February 24, 2020 Hearing

Following the accident, Petitioner received medical treatment with Dr. Ma at Springfield Clinic, Midwest Occupational Health Associates (MOHA), and underwent three surgeries in February 2016, March 2016, and June 2017. The third surgery resulted in a fusion at the proximal inter-phalangeal (PIP) joint. On March 13, 2018, Dr. Ma issued permanent restrictions which resulted in his employment termination. Petitioner testified to his self-directed job search efforts followed by vocational rehabilitation. Petitioner testified he obtained part-time employment with Panera Bread in Springfield, which commenced on November 6, 2019 with a starting wage of $9.60 per hour. He received one pay raise to $9.60 per hour.

During the FCE completed on February 21, 2018, Petitioner's demonstrated maximum lifting capacity for lifting from floor to waist level was assessed at 43 pounds. Petitioner's maximum right-handed grip strength, however, was 20 pounds whereas his left-handed maximum grip strength was 114 pounds based on the three trials/five-second grip test.

Petitioner testified he continued to have loss of strength in his grip and persistent pain "along the outside part of the hand into my finger." Petitioner testified he was no longer able to play golf and could no longer use tools like he used to before the accident. Providing examples of his limitations, Petitioner testified he no longer had sufficient grip strength to properly hold a hammer without risking the chance the hammer might fly out of his hand. Petitioner further testified he was unable to use his right hand to walk his dog because his dog tended to lunge at times which was "very hard on my hand." Petitioner had to use his left hand for dog walking. Petitioner also avoided handshaking in social settings as the pressure on his hand was too painful. Petitioner continued to lift weights for exercise but limited his weightlifting to no more than 20-pounds in keeping with his restriction.

On cross-examination, Petitioner agreed he was able to use his opposite left hand without difficulty and can walk his dog with his left hand. Petitioner agreed he might be able to learn how to use a hammer with his non-dominant left hand. Petitioner agreed he had full use of the remaining four fingers in his right hand and was able to use a computer without using his small finger. Petitioner agreed he could lift 30 pounds with his left hand. Since he could lift 20 pounds with his right hand, Petitioner agreed that could probably lift 50 pounds with both hands assuming he could allocate 30 pounds of the object onto his left hand.

Respondent's vocational counselor, Karen Kane-Thaler, testified concerning her initial vocational assessment in April 2019 and the job placement program she initiated. The vocational counselor testified to Petitioner's self-imposed pre-conditions for his job search efforts. The program ended when Petitioner took the part-time position with Panera Bread.

January 11, 2024 Review Hearing

Petitioner's medical records from Springfield Clinic reflect the following. On October 8, 2021, Petitioner sought treatment with Dr. Ma for complaints for pain involving the ulnar side of

the hand. Per the documented history, the ulnar aspect of the hand "remains painful" and the pain was achy and intermittent. (Px #2 at 34). On examination, Dr. Ma noted mild swelling and tenderness to palpation at the base of the fifth metacarpal. Petitioner demonstrated the ability to form a complete fist and extend all fingers. Sensation was intact. Dr. Ma advised Petitioner that further surgical intervention would not be beneficial. Dr. Ma discussed conservative treatment measures including activity modification, bracing, anti-inflammatories, home exercises, and possibly a steroid injection. (Px #2 at 34) Dr. Ma ordered therapy and indicated an MRI may be needed if symptoms continued to worsen.

On October 13, 2021, Petitioner presented for occupational therapy and complained of an achy pain with occasional sharp pains over the 4th metacarpal (adjacent ring finger) and mild discomfort with wrist flexion. Petitioner also reported feeling numbness in the injured little finger on three occasions during the past year. (Px #2 at 40) Testing with wrist flexion showed 5/5 motor strength for the opposite left hand and 4-/5 motor strength for the injured right hand. Grip strength testing revealed 13 pounds for the right hand versus 95 pounds for the left hand. For comparison, the FCE completed on February 21, 2018, documented maximum grip strength of 20 pounds for the right hand versus 114 pounds for the left hand. Thus, while Petitioner exhibited a 7-pound diminishment with his right-handed grip strength, his uninjured left hand also exhibited a loss of strength, dropping from 114 to 95 pounds.

Petitioner attended five therapy sessions on October 18, October 26, November 1, November 8, and November 16. On October 18, 2021, Petitioner rated his right-hand pain as a 2/10 prior to therapy and a 3/10 at the end of the session. (Px #2 at 44) On November 1, 2021, Petitioner rated his pain as a 2/10 prior to therapy and a 3/10 at the end of the session. (Px #2 at 47)

Dr. Ma re-evaluated Petitioner on November 19, 2021. At that time, Petitioner reported improved strength with therapy and complained of occasional catching pain associated with range of motion. Petitioner indicated his pain was worse around the CMC joint area of the ring finger. Dr. Ma noted Petitioner had tenderness on the dorsal side of the hand close to the CMC joint of the ring finger. Dr. Ma ordered x-rays which showed mild degenerative change involving the CMC joint of the ring finger. The x-rays were negative for complications with the fusion hardware in the little finger and there was no evidence for new fracture or dislocation. (Px #2 at 54) The pain did not cause any sleep difficulty and Petitioner continued to rate his pain as a 2/10. (Px #2 at 55) Dr. Ma's diagnoses included non-specific right hand pain and degenerative arthritis in the finger, presumably the ring finger given the new x-ray results. (Px #2 at 54) Dr. Ma recommended continued therapy.

Petitioner continued with therapy on November 23, 2021. Per the therapist, the achy pain would subside after stretching and Petitioner reported needing fewer rest breaks during exercises. (Px 2 at 61) Petitioner attended additional sessions on November 30, and December 7, 2021.

Petitioner returned to Dr. Ma on January 7, 2022. It was the doctor's impression that "most of the pain is from muscle strain" and he recommended home exercises. (Px #2 at 66) He indicated Petitioner did not require another follow-up appointment and directed Petitioner to return on an as-needed basis. (Px #2 at 66) During this course of treatment, no injection was administered and no MRI was ordered, both of which had been discussed during the first visit on October 8, 2021, as possible options depending on Petitioner's response to treatment.

Dr. Ma authored a report addressed to Petitioner's attorney on July 30, 2023. (Px #1) Dr. Ma noted Petitioner had sustained an intra-articular fracture of the middle phalanx in the right little finger on February 16, 2016, for which an open reduction and internal fixation was needed the next day. A second procedure was performed for removal of the pins on March 24, 2016. Petitioner then developed traumatic arthritis which required the fusion, performed on June 26, 2017. Dr. Ma opined that Petitioner's then current complaints of right-hand pain, especially the pain around the right ring and little fingers are very likely related to the original work injury. In his report, Dr. Ma did not render any opinion on whether Petitioner's condition had materially changed. (Px #1 at 30)

Petitioner testified he had no new injuries to his right hand since the arbitration hearing in February 2020. Petitioner confirmed the last time he had seen Dr. Ma before the arbitration hearing was March 13, 2018, the date on which he received permanent restrictions. Petitioner testified he returned to Dr. Ma on October 8, 2021. During that intervening period, Petitioner self-treated with home exercises using a squeeze ball for strengthening. Petitioner testified he returned to Dr. Ma in October 2021 due to "pain that was starting to spread into different areas." (T. 12) He indicated his pain at the time of the arbitration hearing was confined to his little finger and along the side of the hand. At the time of his return visit on October 8, 2021, Petitioner had developed pain over the top of his hand including the area of the knuckle for the ring finger. (T. 13, 18) Petitioner denied having this pain over the top of his hand when he appeared for the arbitration hearing in 2020. He also denied having prior problems with his ring finger. Petitioner described his current symptoms as hand pain in multiple areas and weakness. He further testified he is now unable to make a complete fist. (T. 16) As Petitioner demonstrated making a fist, his attorney noted for the record that Petitioner's hand appeared to shake. (T. 16) Petitioner testified he can form a fist but not make a tight fist. (T. 17) Petitioner's attorney noted for the record that the little finger remains away from the remaining fingers while closing the hand. (T. 17) Petitioner testified he feels a "strain in his hand" over the top portion of the hand with flexion and extension. (T. 18) Finally, Petitioner testified to having sharp pains in his hand while bathing. (T. 22)

Regarding his employment status, Petitioner testified he left his part-time job at Panera Bread and obtained new employment at Menard's. He then obtained a new job at the Illinois Secretary of State's office which he started on October 2, 2023. (T. 15) His current job duties involve paperwork and taking payments for license plate renewals and titles. Petitioner testified he can experience sharp pains in his hand while moving paper from one spot to another spot. (T. 22)

Petitioner admitted into evidence medical bills from Springfield Clinic. (Px #3) Respondent's counsel advised he had no objection to the admission of the bills; however, he noted the "No" box was checked on six of the nine bills to signify that the treatment services were not work related. (T. 5-6) In response, Petitioner's attorney noted that Dr. Ma opined that the ongoing pain and new symptoms were causally related to the work accident in his narrative report of July 30, 2023. (T. 7) Petitioner testified he had been making payments towards the medical bills incurred for his treatment and therapy in 2021 and 2022. The Commission notes that Dr. Ma causally related the pain complaints in January 2022 to the work accident.

Conclusions of law

Section 19(h):

The purpose of a proceeding under Section 19(h) is to determine if a Petitioner's disability has "recurred, increased, diminished or ended" since the time of the Commission's original decision. *820 ILCS 305/19*; *Howard v. Industrial Comm'n*, 89 Ill. 2d 428, 433 N.E.2d 657 (1982). The proper legal standard in Section 19(h) proceedings was set forth in *Gay vs. Industrial Commission*, 178 Ill. App. 3rd 129, 532 N.E.2d 1149 (1989). In that decision, the Court articulated the following:

> To warrant a change in benefits, the change must be *material*. In reviewing a section 19(h) petition, the evidence presented in the original proceeding must be considered to determine if the petitioner's position has changed materially since the time of the Industrial Commission's first decision. *Gay*, 178 Ill. App. 3rd at 132. (Emphasis added)

Whether there has been a material change in a claimant's disability is an issue of fact to be resolved by the Commission. *Howard*, 89 Ill. 2d at 430. The term "material change" has not been expressly defined for Section 19(h) purposes; however, the Court's decision in *Gay* offers guidance. In *Gay*, the Court indicated that the claimant failed to present evidence of a "substantial difference" in comparison with the disability that existed at the time of the initial arbitration hearing. *Gay*, 178 Ill. App. 3rd at 133.

The decision in *Gay* was also notable in one other respect. In *Gay*, the claimant underwent a total knee replacement after her award; however, the Court determined the Commission properly denied benefits because the *symptoms* described at the 19(h) hearing were also apparent at the original hearing. In other words, the post-award joint replacement in and of itself was not enough to qualify as a material change in disability, particularly since the Commission had previously considered the need for future knee replacement during its original award. *Gay*, 178 Ill. App. 3rd at 133-134. Additionally, results of Functional Capacity Evaluations are not necessarily outcome determinative for determining whether a material change has occurred under Section 19(h). *Craven vs. City of Chicago*, 14 IWCC 218, 2014 Ill. Wrk. Comp. LEXIS 236. Thus, no one single factor is controlling.

Based on the entire record before us, the Commission finds there has been no material change in Petitioner's disability. Petitioner continued to have similar pain in his little finger and along the ulnar side of the hand. Petitioner developed new pain complaints involving the dorsal aspect of the hand and the ring finger; however, Petitioner rated his pain as a 2/10 before his therapy sessions in 2021 and a 3/10 at the end of his sessions. He also rated his pain as a 2/10 during his follow-up visit with Dr. Ma on November 19, 2021. When Petitioner last saw Dr. Ma on January 7, 2022, it was the doctor's impression that "most of the pain is from muscle strain" and he recommended home exercises, which Petitioner had already been performing. (Px #2 at 66) Petitioner exhibited some diminishment in his grip strength; however, there is no evidence that this diminished strength materially impacted functionality in the right hand in comparison with his prior level of functionality. During his February 2020 arbitration hearing, Petitioner testified he did not have sufficient grip strength to properly hold a hammer and he was unable to use his right hand to walk his dog. In 2020, Petitioner also testified he had to avoid handshakes in social settings due to pain from the pressure. Since the Commission's prior decision, there have been no new work restrictions issued and the previously issued permanent restrictions have not been modified. Overall, we discern no material increase in disability to qualify for additional disability benefits. As we find Petitioner failed to prove a material increase in disability, we do not reach the issue of causation. Accordingly, Petitioner's Section 19(h) petition is denied.

Section 8(a):

The Commission finds the treatment provided by Dr. Ma and the therapy received through Springfield Clinic was causally related and reasonable and necessary to cure or relieve the effects of the work-related injury. The Commission therefore finds Petitioner is entitled to an award for the reasonable, necessary, and related medical expenses as exhibited in Petitioner's exhibit #3.

IT IS THEREFORE ORDERED BY THE COMMISSION that Petitioner's Petition under §19(h) of the Act is hereby denied.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay the sum of $3,584.00 for medical expenses under §8(a) of the Act, and subject to the Medical Fee Schedule under §8.2 of the Act.

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

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

Bond for removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $3,684.00. 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.

April 23, 2024
KAD/swj
O: 3/5/24
42

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

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

/s/*Amylee H. Simonovich*
Amylee H. Simonovich

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	22WC009470
Case Name	Rebbecca Bradley v. Allied Power
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b) Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	24IWCC0180
Number of Pages of Decision	15
Decision Issued By	Stephen Mathis, Commissioner

Petitioner Attorney	John Popelka
Respondent Attorney	Paul Berard

DATE FILED: 4/23/2024

/s/Stephen Mathis, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF PEORIA)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Rebbecca Bradley,

Petitioner,

vs. No. 22 WC 09470

Allied Power,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petitions for Review under §19(b) having been filed by the parties herein and proper notice given, the Commission, after considering the issues of accident, causal connection, medical expenses, prospective medical care, temporary disability, penalties and attorney fees, and being advised of the facts and law, expands the Decision of the Arbitrator as stated below and otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof. The Commission further remands this case to the Arbitrator for further proceedings for a determination of a further amount of temporary total compensation, medical benefits or of compensation for permanent disability, if any, pursuant to *Thomas v. Industrial Comm'n*, 78 Ill.2d 327 (1980).

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed October 5, 2022, is hereby expanded, affirmed and adopted.

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

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

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

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

April 23, 2024
SJM/sj
o-3/20/2024
44

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

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

/s/ *Raychel A. Wesley*
Raychel A. Wesley

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	22WC009470
Case Name	Rebbecca Bradley v. Allied Power
Consolidated Cases	
Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	12
Decision Issued By	Adam Hinrichs, Arbitrator

Petitioner Attorney	John Popelka
Respondent Attorney	Paul Berard

DATE FILED: 10/5/2022

THE INTEREST RATE FOR THE WEEK OF OCTOBER 4, 2022 3.85%

/s/Adam Hinrichs, Arbitrator

Signature

STATE OF ILLINOIS)
)SS.
COUNTY OF PEORIA)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

Rebbecca Bradley
Employee/Petitioner

v.

Allied Power
Employer/Respondent

Case # **22** WC **009470**

Consolidated cases: _____

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Adam Hinrichs**, Arbitrator of the Commission, in the city of **Peoria**, on **08/22/2022**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On the date of accident, **03/24/2022**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned **$25,482.29**; the average weekly wage was **$1,381.15**.

On the date of accident, Petitioner was **52** years of age, ***single*** with **0** dependent children.

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

Respondent shall be given a credit of **$16,091.46** for TTD, **$0.00** for TPD, **$0.00** for maintenance, and **$0.00** for other benefits, for a total credit of **$16,091.46**.

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

ORDER

Respondent shall pay the outstanding charges for reasonable and necessary medical services totaling **$98,242.02**, pursuant to the medical fee schedule, as provided in Sections 8(a) and 8.2 of the Act. Respondent shall also reimburse Petitioner for her out of pocket payments for reasonable and necessary medical services totaling **$754.80**. Respondent shall make this payment directly to Petitioner's attorney in accordance with Section 9080.20 of the Rules Governing Practice before the IWCC.

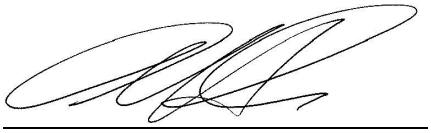
Respondent shall pay Petitioner temporary total disability benefits of **$920.76**/week for **19-2/7** weeks, commencing **04/10/2022** through **08/22/2022**, as provided in Section 8(b) of the Act. Respondent shall receive a full credit for all TTD payments previously made to Petitioner.

Respondent shall provide and pay for the reasonable and necessary medical care as prescribed by Petitioner's treating physician, Dr. Corcoran.

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

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

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



Signature of Arbitrator

October 5, 2022

FINDINGS OF FACT

Rebecca Bradley ("Petitioner") was employed by Allied Power ("Respondent") on March 24, 2022 as a general laborer. (T.10). She had worked for Respondent for the last 18 years during nuclear power outages. (T.11). Petitioner was called back to work for Respondent during this outage, a week prior to the date of the alleged accident. Petitioner was working at the Quad Cities Nuclear Facility in Cordova, Illinois. (*Id*.). She worked in the laundry department and brought scrubs to areas on racks, or gondolas. (T.12-13). The scrubs were transported in two-pound bundles on gondolas weighing 80 to 100 pounds. (T.13). Petitioner spent approximately 90% of her day on her feet with extensive walking. (T.14). The most she would be expected to lift would be 25 to 30 pounds. (*Id*.).

On March 24, 2022, Petitioner arrived at work at approximately 5:15 A.M. (T.15). It was still dark outside, it had rained the evening before, and it was misting rain that morning. (*Id*.). She parked in the employee designated lot and walked to the main security access facility where she had to show her badge and provide hand biometrics. (T.16). She then walked approximately the length of a football field to the next security checkpoint, where she took off her outer garments and emptied her possessions into a bin, before proceeding through a metal detector and an Explosimeter. (T.16-17). She then gathered her items from the bin, went to another hand biometrics and badge reader, and exited the security checkpoint. (T.18). Outside the checkpoint, she walked through a chute of fencing onto an asphalt road, and turned left to the assembly area. (*Id*.). The asphalt road goes around the entire plant and is used for moving equipment, staging equipment, and moving forklifts and truck lifts. (T.19). The general public has no access to this road because it is located in a secure area. (*Id*.) Petitioner took this route into work every day. (*Id*.)

Petitioner testified that the asphalt road was built in the 1960s or 1970s, and was mainly asphalt, but had patches where they had dug or had made repairs. (T.20). She testified it was not in good condition, with debris, divots and indents in the gravel all around. (*Id*.). The asphalt road where she crossed had gravel from deterioration of the road and from gravel, rock and silky material falling off of forklifts and equipment that is moved in that area. (*Id*.). The area in question was near a shipping door. (*Id*.). She testified that the area where she fell was lit, but it was darker than regular street lighting. (T.55). Petitioner testified that they also stage pallets and scaffold on the ground nearby in gravel. (T.21). The pallets would be picked up and would have gravel on them, and on the forks of the forklifts. (*Id*.). The debris would fall off the forklifts and the pallets when the forklifts went through this area on the road. (*Id*.).

On the date of the alleged accident, Petitioner was on the asphalt road walking to her assembly area when she stepped on a rock and her foot rolled one way, and then rolled the other way. (T.21-22). The incident occurred outside the second security area on the road near the service building. (T.22). Petitioner testified that when she stepped on the rock and her foot rolled in and out, she went in the air, fell, and came down on her right knee and ankle. (*Id*.). At the time of the incident, it was still dark outside and the area was poorly lit. (R.22-23). It was approximately 5:30 A.M., and the road was wet and slippery from the mist in the air. (R.23).

Petitioner testified that she noticed a lot of pain in her right heel area, foot and right knee. (T.24). She testified that she felt a pop in the back of her foot when she rolled her ankle. (T.24-25). Petitioner tried to get up but was unable. (T.25). A man who was walking in front of her came back to help and asked her if

she was okay. (T.25-26). That man then picked up the rock and threw it underneath a metal rack holding gas cylinders. (T.26). Petitioner testified that he said he did not want anyone else to fall on it. (T.26-27). Petitioner described the gas cylinders as approximately eight feet long. (R.27). The man who threw the rock under the gas cylinders did not testify at hearing.

On cross-examination, Petitioner testified that the rock was medium-sized. (T.44). The Arbitrator observed Petitioner's estimate of the size of the rock using her fingers, and Petitioner indicated it was approximately one inch in diameter. (T.44). On redirect examination, however, Petitioner testified that she never actually saw the rock she stepped on. (T.68). She testified there was a lot of gravel and debris around the area where she fell. (*Id*.).

The nurse's station was approximately 15 to 20 feet away, and someone came out from the nurse's station from the medical team. (*Id*.). Petitioner was put into a chair and taken to the nurse's office. (T.28). The nursing staff notified Allied Safety immediately. (*Id*.). At the nurse's station, they cleaned Petitioner's knee, applied ice and tried to put a compression on her ankle, but Petitioner testified it was too painful to bear. (*Id*.). Petitioner then received a call from Allied Health Care, who wanted her to return to work and apply ice. (T.28-29). She advised them that she needed immediate medical care. (T.29). Petitioner stayed in the nursing station for approximately two hours, until 7:30 A.M., when she was taken to Physicians Immediate Care ("PIC") in Dixon, IL. (T.29-30).

Petitioner testified she was seen at PIC on March 24, 2022. (T.34). Petitioner reported a fall injury that day at work, but the chart note indicates unsure of MOI ("Mechanism of Injury"). (PX. 1 pp. 58-60). The initial note also indicates that Petitioner recovered fully from a "R Achilles tendon repair 12/2021 and cleared for work." (*Id.).* Petitioner was under the care of Dr. Jeffrey McFadden at PIC. He performed a physical exam, took x-rays, ordered an MRI, prescribed medication and crutches, advised her to be non-weightbearing, provided her a CAM boot, and released her to return to work in a light duty capacity. (*Id*., PX 1 pp. 56-57).

Petitioner testified she did return to sit down work only, but did not use her crutches while at work because they presented more of a hazard with all the stairs she had to encounter. (T.35). Following the MRI, Dr. McFadden referred Petitioner to Dr. Michael Corcoran, and continued her on light duty. (*Id*., PX 1).

On March 31, 2022, Petitioner underwent the MRI at KSB Hospital. (T.36, PX. 1 pp. 94-95). The MRI indicated that Petitioner had a scar procedure on her Achilles a couple months ago, and "recently was (sic) her ankle on the small rock causing significant pain." (*Id*.). The MRI revealed a complete tear of the Achilles tendon with a 3 cm retraction, and a possible chronic partial tear of the anterior talofibular ligament. (*Id*.).

On April 4, 2022, Petitioner was seen by Dr. Corcoran who noted that Petitioner's chronic right Achilles issue that was improved greatly with a Tenex procedure, and that she recently re-injured the right Achilles when she stepped on a rock at work and turned the ankle. (*Id*., PX 2 p. 26). Dr. Corcoran reviewed the MRI, diagnosed a complete Achilles rupture, recommended surgical repair of the ruptured tendon, and released Petitioner to sedentary work only. (PX 2 pp. 29-30.). Petitioner testified she was laid off on April 10, 2022 and began receiving TTD benefits. (T.37).

On April 18, 2022, Petitioner underwent the surgical repair of her Achilles with Dr. Corcoran at Swedish American Hospital. (T.37, PX 3 pp. 30-32).

On May 2, 2022, Dr. Corcoran removed Petitioner's splint, provided her a new CAM boot, referred her to physical therapy and placed her off work. (T.38, PX 2).

Petitioner testified she went to physical therapy at Rock Valley Physical Therapy three times a week between May 6, 2022 and July 15, 2022. (T.38-39). She testified she was in a lot of pain with therapy. (T.39). She returned to Dr. Corcoran on June 1, 2022, who noted that Petitioner was doing well from a pain standpoint, though he recommended more aggressive strengthening in therapy, and was concerned she had stretched out her repair. (T.30, PX 2 p. 11).

On July 14, 2022, Dr. Corcoran advised Petitioner that her surgical repair had failed, and recommended revision of the Achilles reconstruction with a tendon transfer. Dr. Corcoran indicated she was unable to work until the procedure was performed. (T.40, PX 6). Petitioner testified that she still has pain and experiences difficulty walking and getting up and down out of chairs. (T.42-43). Petitioner testified that she wishes to undergo the recommended surgery if it were authorized. (T.40).

Petitioner identified outstanding medical bills totaling $98,242.02, and a claim of reimbursement to her in the amount of $754.80. (T.40-41, PX 7).

Prior to this incident, Petitioner had no problems with her right knee, but had experienced prior problems with her right foot. (T.30). She acknowledged she had been treating for bilateral foot pain for over 10 years. (T.45, PX. 5) She testified that she has had plantar fasciitis in both feet since the early 2000's, and had corrective surgery in 2005. (T.31). She also testified she had a bone spur on the back of her right foot and underwent a Tenex procedure on December 27, 2021. (*Id*.). She described it as a noninvasive ultrasound procedure to clean up the tendonitis in the area. (*Id*.). Petitioner testified that she provided this information to the workers' compensation insurance carrier, Liberty Mutual, and provided them the names of her previous physicians. (T.32). Petitioner testified she last saw Dr. Bonelli, the doctor who did the Tenex procedure, in January 2022. (T.33). She testified the Tenex procedure helped tremendously. (*Id*.).

Petitioner testified that after she started back to work for Respondent, during the one week prior to this incident, she had no problem with her right Achilles at work, was able to perform all aspects of her job and did not miss any time from work due to her right foot. (*Id*.).

Testimony of Garry Stark

Garry Stark testified he worked for Constellation Generation as a site safety advisor. (T.71). He has worked for Constellation for 7.5 years, and has worked the last 4.5 years as the site safety advisor. (*Id*.). He met Petitioner on the date of accident. (T.72). He was notified around 5:15 to 5:20 A.M. that an individual had an accident entering the plant and was taken to the nursing station. (T.73). He testified he did not ask Petitioner to tell him where she fell. (*Id*.). He testified that Petitioner said she stepped on a rock and lost her footing. (T.74). Petitioner also indicated that someone pushed the rock under a pallet of water bottles, but also said that Petitioner indicated someone kicked the rock under a pallet. (*Id*.).

Mr. Stark testified that when Petitioner first said she stepped on a rock, he went to look for it but did not see anything. (*Id*.) He then came back and asked Petitioner where the rock was and was told by Petitioner it was kicked under the water bottle pallet. (T.74-75). Mr. Stark went out to the water bottle pallet, testified there was only one rock under it and he picked it up. (T.75). He testified there was a blacktop road and cement but not many rocks, and there was only one rock under the pallet so he grabbed it. (T.75-76). He then testified he asked Petitioner if that was the rock, and she said, "if it was under the pallet then yes." (T.76). He then put the rock in his pocket, and later kept it on his desk. (*Id*.)

Mr. Stark testified concerning four photographs. He testified that the conditions were very wet that morning, and one of the pictures depicted the road with the rock on it, which he took that morning. (T.81). The first and second pictures that he took of the area, were taken in June when he was requested to do so by representatives from Respondent. (T.81-82).

On cross-examination, Mr. Stark testified he was not aware of an investigation being done by Respondent. (T.87). He further clarified that he was not privy to that investigation. (*Id*.). He testified that Respondent did not ask for any information except for pictures two months later in June. (*Id*.). Mr. Stark identified a picture, RX1, Photo #1, and testified there was a wide area in front of the garage door which he thought may be dried asphalt. (T.89). He also identified a line occurring through the asphalt road, which he testified was a crack in the asphalt. (T.90).

Testimony of Michael Peterson

Michael Peterson has worked for Constellation Generation for the last 24 years. (T.91) He has been the manager of site security operations for the last two years. (T.92). He testified there were no recording cameras in the area where Petitioner fell. (T.93). He testified that the only cameras that record are the ones looking directly at the fence line. (T.94)

Testimony of Tim Nieukirk

Since 2019, Terry Nieukirk has worked for Respondent as a safety professional. (T. 101). He arrived at the plant approximately 25 minutes after the accident. (T. 102). He testified he took Petitioner to PIC that day. (T. 103). Mr. Nieukirk testified that he had Petitioner write a statement. (T. 104).

Mr. Nieukirk testified that he went out to the area where the event took place, and the ground was asphalt, but he saw no rocks whatsoever out there. (T.104-105). He testified that Petitioner told him it must have been a pretty big rock she tripped over, and Mr. Nieukirk told her that according to the rock he was shown it was much smaller. (T. 105). Mr. Nieukirk testified that Petitioner did not tell him that the man in front of her who came to check on her moved the rock, but did tell him to look for it under the cylinder rack for pressurized gas tanks and a plastic pallet for five gallon water jugs. (T.106) Mr. Nieukirk testified he looked for the rock in the afternoon of the incident where Petitioner directed him but could not find anything. (*Id*.). Mr. Nieukirk also testified that he knew Garry Stark went out in the morning and picked up a rock, because Mr. Stark told him and showed him the photos. (*Id*.). He testified that he went out to look for the rock even though Mr. Stark already had retrieved a rock. (T. 107-108).

On cross-examination, Mr. Nieukirk testified that he went out to look for the rock at about 3:00 P.M. on the date of the incident. (T.108-109). He testified that Mr. Stark had already shown him the rock Mr. Stark retrieved at 6:00 AM on his phone. (T.109). When asked why he was looking for the rock at 3:00 PM when Mr. Stark retrieved it at 6:00 AM, he testified that he went to check out the incident location. (T.110). He then testified that he was not looking for a rock or stone at that time. (T.110). Mr. Nieukirk then clarified that he went to check the area where the incident occurred just to see if there was anything that was missed. (T.108).

Mr. Nieukirk reviewed the photograph in RX1, Photo #1, and indicated the line in the road was a line of elevation change. (T.111). Upon reviewing the white area near the garage door, he thought it was concrete patchwork. (R.111-112). He testified that the patchwork was in front of the garage door, and was an area used by service vehicles and forklifts bringing things in and out. (T.112). Mr. Nieukirk testified that this area gets wear and tear right in front of the garage door. (T.112).

Mr. Nieukirk testified that he discussed his investigation findings with Mr. Stark on the day after the accident. (T.114). He testified that it would not be true if Mr. Stark said he did not talk to Mr. Nieukirk or Allied about their investigation. (*Id*.)

Petitioner's Rebuttal Testimony

Petitioner testified that she spoke to Garry Stark while in the nursing station, but did not recall telling him where to look for the rock and does not recall Garry bringing a rock back to the nurse station to show to her. (T.52-53, 116). Moreover, Petitioner also testified that she never told Mr. Stark that if he found it underneath a pallet it must be the rock. (T. 53, 116-117). Petitioner testified the only time she spoke to Mr. Stark was when he came to her in the afternoon when he asked her about not changing the safety lights from green to yellow or red due to this incident occurring. (T. 117). Petitioner testified she continued working following this incident and the red light was never put on, indicating a work accident occurred. (*Id*.).

Petitioner reviewed Photo #1 in RX 1. Petitioner testified that the darkened line was a divot or crease in the asphalt, and there were rocks, stones and gravel in the crease. (T. 118-119). Petitioner testified that the whitened area in front of the garage door was concrete patching around crumbled up asphalt. (T. 119). Petitioner testified that rocks and debris accumulate between the asphalt and the concrete patches. (*Id*.). Petitioner testified that this was the area where the accident occurred. (T. 119-120).

CONCLUSIONS OF LAW

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

The Arbitrator finds that Petitioner sustained an accidental injury arising out of and in the course of her employment with Respondent on March 24, 2022. The Arbitrator finds that Petitioner was exposed to a risk distinctly associated with her employment and finds that Petitioner's testimony was sincere, consistent, and credible.

It is well-established in Illinois that accidental injuries sustained on property that is either owned or controlled by an employer within a reasonable time before or after work are generally deemed to arise out of and in the course of employment when the claimant's injury was sustained as a result of the hazardous condition of the employer's premises. *Archer Daniels Midland Co. v. Industrial Commission, 91 Ill. 2d 210, 216 (1982).* In *McAllister v. Ill. Workers' Comp. Comm'n*, 2020 IL 124848, at ¶ 40, the Illinois Supreme Court reiterated, that "examples of employment-related risks include "tripping on a defect at the employer's premises, falling on uneven or slippery ground at the work site, or performing some work-related tasks which contributes to the risk of falling." quoting *First Cash Financial Services,* 367 Ill.App.3d at 106. It is also well-established that an outdoor, paved surface wet from rainfall does not constitute a "hazardous condition" absent ice, snow or some other defect or hazard. *Dukich v. IWCC, 2017 IL App (2d) 160351 WC (2017).*

In the present case, Petitioner is not alleging that she slipped on a slippery outdoor surface. Instead, she testified that she stepped on a stone that rolled her ankle one way and then the other, causing a pop in the heel region of her right foot and causing her to fall. Petitioner described the area where she fell as a deteriorating asphalt road that was built in the 1960s or 1970s. She testified there was an area of concrete patching on the asphalt road that had crumbling asphalt around it. The patching is depicted in RX 1, Photo #1. That photograph also shows a line, which was described by Petitioner as a crevice where rock, gravel and debris accumulated.

Respondent's witness, Tim Nieukirk also reviewed the photograph in RX1, Photo #1, and indicated the line in the road was an elevation change. (T.111). Upon reviewing the white area near the garage door, he also thought it was concrete patchwork. (R.111-112). He testified that the patchwork was in front of the garage door, and was an area used by service vehicles and forklifts bringing things in and out, and that this area gets wear and tear right in front of the garage door. (R.112)

Petitioner's testimony regarding the photograph mentioned above was consistent with Mr. Nieukirk's. Petitioner also testified that the asphalt road was trafficked by trucks and forklifts moving equipment, including pallets that were staged in gravel. Petitioner testified that when forklifts would pick up pallets, gravel would be picked up both in the pallet and on the forks of the forklift, and the gravel would fall off on the road as it came through the area. Petitioner testified that the staging area was near the area where she fell. Petitioner's testimony in this regard was confirmed by Respondent's witness, Mr. Nieukirk.

Respondent does not dispute that Petitioner stepped on a rock. In fact, Respondent offered into evidence a rock that Respondent alleges was the one Petitioner stepped on. Respondent alleges that the rock is not sizeable enough to constitute a hazard. The gentleman who actually threw the rock aside in order to prevent another incident was not called to testify by either party. The Petitioner denied identifying the rock in evidence as the one she stepped on. But, whether the rock in evidence was or was not the one she stepped on and injured herself is not determinative.

It is unrebutted that Petitioner fell after stepping on a defect, a rock in an area where rock, gravel and debris are present, which was poorly lit while it was still dark outside, wet from rain, and in a place where Petitioner was required to be as part of her employment. This constitutes a hazardous condition on the

employer's premises. This renders the risk of injury a risk incidental to the employment. As the Petitioner was injured by a hazardous condition on the employer's premises, she may recover benefits without having to prove that she was exposed to the risk of that hazard to a greater extent than members of the general public. *Archer Daniels Midland, 91 Ill. 2d at 216.*

Therefore, the Arbitrator finds that Petitioner sustained an accidental injury arising out of and in the course of her employment.

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

The Arbitrator finds that Petitioner has met her burden of proof, and finds that her current condition of ill-being is causally related to the injury. The Arbitrator finds that Petitioner met her burden of proof through a chain of events analysis.

"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 Commission, 93 Ill. 2d 59, 63, 442 N.E.2d 908 (1982).*

Prior to the accident of March 24, 2022, Petitioner was working full duty for Respondent. Petitioner was first seen by her surgeon, Dr. Michael Corcoran on April 4, 2022. Dr. Corcoran's notes reflect a history of Petitioner having a chronic Achilles issue, then having a Tenex procedure and being greatly improved in December 2021. (PX2, p. 26). The chart-note further states that she reinjured the right ankle on March 24, 2022 when she stepped on a rock at work, turned her ankle and fell. *(Id.)* Dr. Corcoran reviewed the MRI of the right foot and diagnosed a rupture of the right Achilles tendon, a new diagnosis for Petitioner, requiring a surgical repair, and placing Petitioner on sedentary duty.

The Arbitrator finds that Petitioner's testimony at arbitration is consistent with the histories contained in the medical records. At the time of her accident at work, Petitioner had no complaints with her right Achilles, was able to perform all aspects of her job and did not miss any time from work with Respondent. Respondent did not present any evidence to the contrary or to rebut a finding of causation.

Relying on the medical records and the Petitioner's credible testimony at arbitration, the Arbitrator finds that Petitioner has met her burden, and her current condition of ill-being is causally related to her work accident.

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

Incorporating the above, the Arbitrator finds that the Petitioner is entitled to prospective medical treatment.

When Petitioner was last seen by Dr. Corcoran on July 14, 2022, Dr. Corcoran indicated that the surgical repair failed and he recommended a revision consisting of an Achilles reconstruction and a tendon transfer.

The Arbitrator finds that the Petitioner has yet to reach maximum medical improvement.

The Arbitrator finds that Dr. Corcoran's prescribed treatment is reasonable and necessary to cure or relieve Petitioner from the effects of her work injury, and orders Respondent to provide and pay for this treatment, pursuant to Section 8(a) and 8.2 and subject to the medical fee schedule, as well as any reasonable, necessary and related follow-up care.

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

Incorporating the above, the Arbitrator finds that all of the medical services provided to Petitioner for treatment following her accident through the date of hearing for her right knee, ankle, and foot was reasonable and necessary. The Respondent has not paid all appropriate charges for these reasonable and necessary medical services.

At arbitration, the Petitioner offered the following outstanding medical bills into evidence:

Provider	Provider's Charges	Petitioner's Out of Pocket
Rock Valley PT	$3,472.00	$47.00
NIHMS		$347.54
Swedish American Pharmacy		$4.84
Rockford Associates Clinical Pathology	$35.60	
Physicians Immediate Care	$101.00	
UW Health - Northern Illinois	$216.00	
UW Health – Northern Illinois	$92,462.42	
UW Health – Northern Illinois	$1,955.00	$355.42
TOTALS	**$98,242.02**	**$754.80**

The Arbitrator awards Petitioner medical bills in the amount of $98,242.02 as provided in Sections 8(a) and 8.2 of the Act, and awards Petitioner reimbursement in the amount of $754.80. The Respondent shall pay all outstanding medical bills for Petitioner's reasonable and necessary medical care pursuant to Sections 8(a) and 8.2 of the Act.

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

Petitioner alleges she was temporarily totally disabled from April 10, 2022 through August 22, 2022, representing 19-2/7 weeks. Petitioner testified she was laid off on April 10, 2022 while under light duty restrictions and has not returned back to work since that time. When Dr. Corcoran last saw her on July 14, 2022, he indicated she was to remain off work until she underwent the revision surgery.

The Arbitrator finds that Petitioner is entitled to TTD benefits from April 10, 2022 through August 22, 2022, representing 19-2/7 weeks, as provided in Section 8(b) of the Act.

Respondent is entitled to a full credit for payment of $16,091.46 in TTD benefits.

Issue (M): Should penalties or fees be imposed upon Respondent?

Petitioner requests an award of penalties under Sections 19(l) and 19(k) of the Act and attorneys' fees under Section 16 of the Act. The issue before the Arbitrator is the reasonableness of Respondent's conduct in light of the totality of the circumstances. *Board of Education of City of Chicago v. Industrial Commission, 93 Ill. 2d 1, 442 N.E. 2d 861 (1982).*

Given the totality of the circumstances, the Arbitrator declines to award penalties or fees to Petitioner.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	19WC002125
Case Name	Monte Jones v. Macoupin Energy
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	24IWCC0181
Number of Pages of Decision	19
Decision Issued By	Maria Portela, Commissioner, Amylee Simonovich, Commissioner

Petitioner Attorney	Roman Kuppart, Steven Hanagan
Respondent Attorney	Kenneth Werts, Julie Webb

DATE FILED: 4/24/2024

/s/Maria Portela, Commissioner

Signature

DISSENT: /s/Amylee Simonovich, Commissioner

Signature

24IWCC0181

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

MONTE JONES,

Petitioner,

vs. NO: 19 WC 02125

MACOUPIN ENERGY,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of accident, causation, and permanent partial disability and being advised of the facts and law, reverses the Decision of the Arbitrator as stated below and otherwise affirms and adopts the Statement of Facts of the Arbitrator, which is attached hereto and made a part hereof.

The Commission reverses the Arbitrator's Decision with respect to accident and finds that the Petitioner failed to prove he sustained a compensable accident.

The burden is on Petitioner to prove by a preponderance of the evidence that coal workers' pneumoconiosis exists in him. *Smith v. Industrial Comm'n*, 98 Ill.2d 201 (1983). To prove his claim by a preponderance of the evidence, Petitioner must show that it is more probably true than not that he has coal workers' pneumoconiosis. *Dubey v. Public Storage*, 395 Ill.3d 342, 353 (1st Dist. 2009).

Petitioner spent approximately 37-37.5 years under ground working in the coal mines wherein he was regularly exposed to coal and rock dust. (T. 7) His testimony was that he stopped working in the mines because he moved to be closer to family. (T. 11) On the date of his last exposure he was 60 years old. (T. 11) He testified that breathing issues did not really play any role in his decision to leave the mine in 2018. (T. 11) In his last 3 years with Macoupin Energy, the

majority of work he did there was underground. He noticed or experienced problems breathing when he was shoveling coal. He just couldn't do it like he used to be able to just as far as the exertion and was breathing harder and had to take more frequent breaks. (T. 17) He also testified that his breathing hasn't gotten any better, but getting older, he would say it's gotten worse. (T. 19)

On May 20, 2019, approximately 1.5 years after Petitioner last worked for Respondent, he first sought medical treatment for his respiratory issues with Dr. Istanbouly at his attorney's request. Petitioner told Dr. Istanbouly he did not leave the coal mine because of any medical reason. (Px1, p. 9)

Petitioner's treating records were submitted into evidence by Respondent and did not show evidence of breathing problems between 2019 and 2022. Petitioner also had several NIOSH screenings for black lung dating back to 1987, with all B-readings interpreted as negative for CWP. Additionally, at every doctor's visit Petitioner's lungs were clear. Petitioner did not complain of breathing problems on exertion or any breathing conditions. Moreover, the spirometry and pulmonary function studies were normal. Petitioner entered into evidence the diagnosis of Dr. Istanbouly and B-reading of Dr. Smith, both of whom found evidence of CWP. Respondent entered into evidence the B-readings of Drs. Meyer and Rosenberg, both of which found no evidence of coal worker's pneumoconiosis.

Petitioner introduced the testimony of Dr. Istanbouly who testified that he characterized what he saw on Petitioner's chest x-ray as mild bilateral interstitial changes involving upper, mid and lower zones, and the profusion was 1/1 per the B-reader Dr. Henry Smith. (Px1, p. 13) Dr. Istanbouly classified what he saw on Petitioner's film as mild or early pneumoconiosis. He could not say whether the film he reviewed in this case had a profusion of 0/1 or 1/0. (Px1, p. 27)

Dr. Meyer testified that the distinction between a 0/1 and 1/0 profusion is a point of emphasis in the B-reader training and examination. Dr. Meyer testified to the training and examination required to become a B-reader. Dr. Istanbouly lacks such training. He is not an A-reader or B-reader of films. While one is not required to be an A-reader or B-reader to interpret films for the presence of pneumoconiosis, having such training and certification certainly lends credibility to a physician's interpretation. The Arbitrator noted that Dr. Istanbouly's testimony revealed his significant experience and credentials in the field of pulmonary studies and that he was board certified in critical care medicine and pulmonary medicine. However, these credentials do not provide any evidence of expertise in interpreting chest x-rays for the presence of pneumoconiosis. In fact, his testimony reveals that he is the least qualified expert in this case to provide interpretations of chest x-rays for pneumoconiosis.

Respondent's Section 12 examiner, Dr. Rosenberg, testified as to the requirements necessary to properly read a chest x-ray for pneumoconiosis. Dr. Rosenberg testified that to have a positive interpretation of a film for pneumoconiosis, 1/0 is considered the lower limits of abnormality. He testified that a profusion of 0/1 is technically negative for pneumoconiosis. Dr. Rosenberg testified that the distinction between a profusion of 1/0 and 0/1 is a fine one and is a point of emphasis in the B-reading course and syllabus.

Respondent's Section 12 examiners found the December 7, 2018 film to be interpreted as negative for pneumoconiosis. Alternatively, Petitioner's Section 12 examiner, Dr. Smith, found the film to show a profusion of 1/1 and opined that Petitioner suffered from simple coal worker's pneumoconiosis.

The Commission takes the qualifications of each of the Section 12 examiners into account. Dr. Meyer has been certified as a B-reader since 1999 and has passed every subsequent recertification exam. While Dr. Smith has been continuously certified as a B-reader since 1987, he testified that he failed the B-reading recertification examination twice around 1999. He testified that he failed because he was overreading the films. He was finding more disease than was present on the standard film. Dr. Smith testified that the syllabus that he uses to study for the B-reading exam he pretty much takes as gospel and that the panel that puts that together are the peers that he aspires to be. Dr. Smith testified that the leaders in the field have been chosen to put that syllabus together. Dr. Smith testified that Dr. Cris Meyer was one of the authors of the new syllabus that has been authored for NIOSH.

Based on the totality of the evidence, the Commission finds the opinions of Drs. Meyer and Rosenberg to be more persuasive than those of Drs. Istanbouly or Smith. As such, the Commission finds that Petitioner failed to prove by a preponderance of the evidence that he suffered from coal workers' pneumoconiosis or any other occupational disease and reverses the Arbitrator's Decision as to accident.

Based on these findings, all other issues are moot.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Arbitration Decision, filed November 17, 2022 is hereby reversed and all awards vacated.

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

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

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.

April 24, 2024

MEP/dmm
O: 030524
49

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

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

DISSENT

I respectfully dissent from the opinion of the majority and would affirm the well-reasoned Decision of the Arbitrator. After carefully considering the totality of the evidence, I believe Petitioner met his burden of proving he sustained an occupational disease and that his CWP condition is causally connected to his exposure in the employ of Respondent.

/s/ *Amylee H. Simonovich*
Amylee H. Simonovich

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	19WC002125
Case Name	Monte Jones v. Macoupin Energy
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	14
Decision Issued By	Edward Lee, Arbitrator

Petitioner Attorney	Steven Hanagan, Roman Kuppart
Respondent Attorney	Kenneth Werts

DATE FILED: 11/17/2022

THE INTEREST RATE FOR THE WEEK OF NOVEMBER 15, 2022 4.44%

/s/Edward Lee, Arbitrator

Signature

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

MONTE JONES
Employee/Petitioner

v.

MACOUPIN ENERGY
Employer/Respondent

Case # **19** WC **002125**

Consolidated cases: _____

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **EDWARD LEE**, Arbitrator of the Commission, in the city of **Springfield**, **Illinois** on **September 29, 2022**. After reviewing all 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 **Disease, causation and Sections 1(d) – (f) of the Occupational Diseases Act**

FINDINGS

On **February 4, 2018**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $**140,000.00**; the average weekly wage was $**2,692.30**.

On the date of accident, Petitioner was **60** years of age, ***married*** with **0** dependent children.

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

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

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

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

ORDER

PETITIONER HAS PROVEN THAT HE HAS COAL WORKERS' PNEUMOCONIOSIS AND IS DISABLED BECAUSE OF HIS OCCUPATIONALLY INDUCED LUNG DISEASE, WHICH WAS CAUSED BY HIS OCCUPATIONAL EXPOSURE WITH RESPONDENT.

PETITIONER HAS PROVEN THAT HIS COAL WORKERS' PNEUMOCONIOSIS WAS PRESENT AND HE WAS DISABLED BY THE DISEASE WITHIN TWO YEARS OF HIS LAST EXPOSURE AS REQUIRED BY SECTION 1(F).

RESPONDENT SHALL PAY THE PETITIONER THE SUM OF $ 790.64 /WEEK FOR A PERIOD OF 25 WEEKS, AS PROVIDED IN SECTION 8(D)(2) OF THE ACT, BECAUSE THE INJURIES SUSTAINED CAUSED A PERMANENT AND PARTIAL DISABLEMENT TO THE EXTENT OF 5 % MAW.

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

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

NOVEMBER 17, 2022

Edward Lee_____
Signature of Arbitrator

Monte Jones v. Macoupin Energy
19 WC 002125

FINDINGS OF FACT

Testimony at Arbitration

On September 29, 2022, Petitioner testified at arbitration. The issues in disputes were accident, disease, causal causation, nature and extent and Sections 1(d), 1(e) and 1(f) of the Occupational Disease Act.

Petitioner testified that he lives in Marion Illinois and his date of birth is October 29, 1958. Petitioner testified he is married and has been for 42 years. Petitioner testified he got a BS from SIU in Carbondale. Petitioner testified he was employed in the coal mines roughly 38 years. Petitioner testified at least 37 or 37 and a half years underground.

In the course of employment with the coal mines Petitionere was regularly exposed to coal and rock dust during his employment. He also had exposure to diesel fumes, smoke, and chemicals. Petitioner testified these bothered him while he was being exposed especially the diesel fumes it would burn his eyes and it made it harder to breathe.

Petitioner's last date of exposure in the coal mines was on February 4th of 2018 and he was working for Macoupin Energy at Shay #1 in Carlinville, Illinois. Petitioner testified on the day of his last exposure he was 60 years old, and his job classification was a shift mine manager. Petitioner testified as a shift mine manager he would be responsible for everything that went on on his shift from production to health and safety to taking around federal and state inspectors. Petitioner testified his BS Degree was in industrial technology with a specialization in mining. Petitioner testified that his work was underground, but he was still responsible for everything that happened on top according to the Federal Government. Petitioner testified that in the course of his work he was exposed to coal dust. Petitioner testified on February 4th of 2018 he was exposed to coal dust at Macoupin Energy.

Petitioner testified he left his employment with Macoupin Energy when he moved back to Marion. Petitioner testified that his breathing issues did not play a role in his decision to leave the mine in 2018. Petitioner testified he was not employed after leaving the mines. Petitioner testified he did not work but lived off his 401K money.

Petitioner testified that he graduated high school in 1976. Petitioner testified that from 1976 through 1980 he attended John A. Logan and SIU Carbondale. Petitioner testified he received a Bachelor of Science degree. Petitioner testified from 1980 through 1983 he was employed by United Coal company or Freeman United. Petitioner testified that at that time he was an industrial engineer. Petitioner testified he mainly went underground time studies, and they were in the process of trying to update their underground miners, and they would usually go underground three days and then go to the office one day and write up a report and then right back underground for probably three straight days for equipment justification purposes. Petitioner testified from 1984 through 1987 he worked as an assistant superintendent and then face boss for Freeman. Petitioner testified that work was underground. Petitioner testified from 1987 through 2003 he worked for Kerr McGee and then American Coal as a senior miner.

Petitioner testified that work he did shovel and that was long wall. Petitioner testified that involved a lot of walking and exertion. Petitioner testified he was a shear operator for probably five or six years and miner operator. Petitioner testified he ran an underground haulage at the face and then just a little bit of everything. Petitioner testified in 2003 and 2004 he worked for American Coal as an outby Forman and mine manager. Petitioner testified that was also underground. Petitioner testified each of these jobs up to this point did involve physical exertion on his part. Petitioner testified in the course of his work with Kerr McGee in the 1987 through 2003 range he first noticed some issues with his breathing. Petitioner testified he first noticed after a long shift on the long wall his chest would hurt from the dust and whatnot. Petitioner testified in 2005 to 2007 he was employed by New Bay Liberty and Black Beauty Coal as an underground operator. Petitioner testified from 2007 through 2009 Night Hawk Coal he was an underground operator. Petitioner testified form 2009 through 2015 he was employed by Macoupin Energy as a mine manager. Petitioner testified in 2014 and 2015 he shifted over to American Coal as an assistant mine foreman as well as Mach Mining. Petitioner testified from 2015 through 2018 he returned to Macoupin Energy. Petitioner testified his last three years was with Macoupin.

Petitioner testified he had mine manger responsibilities he would go to the face and make sure everything was good and check all the outby projects he had going on and delt with state and federal inspectors. Petitioner testified the majority of his work he did was underground there. Petitioner testified he did notice and experienced problems breathing while shoveling coal. Petitioner testified he couldn't do it like he used to as far as exertion he was having to breathe harder and take more frequent breaks. Petitioner testified he developed bronchitis conditions and he had to go to the clinic in Gillespie Illinois to get medicine.

Petitioner testified that according to his industrial engineering back ground that three miles an hour is 100 percent but he can walk three quarters of a mile to a mile before being ready to take a breather. Petitioner testified that he could walk three quarters of a mile. Petitioner testified from the time of the onset of his breathing difficulties until today his breathing has not gotten any better and has gotten worse. Petitioner testified his breathing affects his daily activities because he would have to slow down and take more frequent breaks. Petitioner testified he mows his own yard, but it is with a riding mower and he does weed eat with a battery powered weed eater instead of gas because it is lighter. Petitioner testified he doesn't get out of breath with the battery weed eater, but it alleviates some of the exertion from it. Petitioner testified if he used the gas one it affects his breathing.

Petitioner testified he has given up deer hunting but he will fish but fishes less. Petitioner testified when he was working, he had to stop and take breaks in the jobs that he was doing because of breathing issues. Petitioner testified when he would go with the inspectors underground, they would make the air courses and he would be walking probably maybe four or five miles in a stretch, and he wouldn't be able to stop and take a break he would need to because of his breathing issues.

Petitioner testified he used to set at a desk for about 30 minutes a day because he had to pay everybody and make the work orders up before and after the shift. Petitioner testified he doesn't have any skills with the computers, but he can e-mail and order something on Amazon.

Petitioner testified he currently smokes and started in 1979. Petitioner testified he tried to quit off and, on a few times, but never had any success. Petitioner testified he smokes two to three cigarettes in the morning with coffee. Petitioner testified he started smoking in college. Petitioner testified he can't smoke underground, and he would only smoke two or three times a day. Petitioner testified he would smoke L&M Blue because they were cheap. Petitioner testified he doesn't have any other health issues other a couple kidney stones.

Petitioner testified he was able to complete his job every day, but it got harder to do so. Petitioner testified he was a workaholic and he spent time up there with no family so he would go into work early and stay late and nothing additional.

Petitioner testified that all his employment in mining was in Southern Illinois. Petitioner testified he was at the Freeman mine Orient 4 Pittsburgh. Petitioner testified he quit high school in December of 75 and started John A that January of 76 because he already had enough credits to graduate high school. Petitioner testified he then transferred to SIU. Petitioner testified his primary care has been at HMC Clinic at Marion with Dr. Clayton Ford. Petitioner testified h was always honest with his doctor about his symptoms. Petitioner testified he is not one to go to the doctor unless it's really bad and he also has a daughter who is a nurse practitioner. Petitioner testified he saw Dr. Istanbouly on May 20, 2019, at his attorney's request. Petitioner testified he also went to see a doctor in Evansville, but he can't remember who. Petitioner testified he doesn't remember Dr. Istanbouly's name other than him saying it. Petitioner testified when he saw Dr. Istanbouly he couldn't remember the questions he had asked him, but he was honest with him with all his answers.

Petitioner testified over the years he has done a NIOSH screening. Petitioner testified he didn't bring any letters with him and probably did not keep them. Petitioner testified he use to shovel coal and that was a heavy physical exertion. Petitioner testified that the weed eater he used before he had the battery powered one was gasoline, but he doesn't know how many horses it was he knows it was a Stihl Model FS 65 or something. Petitioner testified it had a shoulder strap to help hold because it was awkward. Petitioner testified the battery powered one is a lot better and a lot lighter. Petitioner testified that if he was walking down the travel way or if walking in the air course that is used for travel like at Shay the intake air course was their takeaway. It had to be graded for a piece of equipment or whatever could go down it the returns not so much. It had to be a permissible piece of equipment.

Petitioner testified that when he went with the federal inspectors underground, he went to all areas of the mine. Petitioner testified other than the escape way he would say the surface of the ground he is walking on is hard rock bottom at Shay but some of the mines he worked in was mud knee deep. Petitioner testified he would have on steel-toed boots and bibs and he would be carrying a self-rescuer on his belt and a light on his helmet with a battery pack. Petitioner testified he also carried screwdrivers, channel locks or crescent wrench and a knife. Petitioner testified he fishs from a boat about three days a week and he puts the boat in his self it is an 18-foot fiberglass Ranger bass boat and he fish's at Crab Orchard. Petitioner testified he went yesterday, and the crappie are starting to bite again. Petitioner testified the horsepower on the boat is 150 not about 50. Petitioner testified he doesn't hunt anymore and the last time he got a deer was probably 2008.

Petitioner testified he would fish during the summer and that takes about three days and the rest of the time he will take care of his grandkid's afterschool for a about three days a week. Petitioner testified he doesn't garden anymore but he use to. Petitioner testified his only hobby is fishing. Petitioner testified he doesn't travel at all, he stays between Marion and Pittsburg. Petitioner testified he lives in a rural subdivision and the is 1.1 acres. Petitioner testified that when launching his boat he puts it in next to the dock and steps in the boat. Petitioner testified he pulled the boat up on the trailer and it latches and locks the boat on the trailer automatically. Petitioner testified there is zero physical exertion launching and reclaiming the boat.

Medical Evidence

On December 16, 2018, Dr. Henry K. Smith reviewed a chest x-ray taken on December 7, 2018. (PX2, exhibit 2). Dr. Smith is board certified in radiology and is a NIOSH certified B-Reader. Dr. Smith passed his initial B-Reader examination in 1987 and maintained his certification status continuously over 32 years. (PX2, exhibit 1). Dr. Smith found that the chest film was a quality 1 film. Dr. Smith's impression was of simple coal workers' pneumoconiosis with small opacities, primary p, secondary p, in all lung zones bilaterally, of a profusion 1/1.

On January 22, 2019, Petitioner filed an Application For Adjustment of Claim with the Illinois Workers' Compensation Commission. Petitioner listed his date of accident as February 4, 2018. Petitioner listed that the accident occurred from inhalation of coal mine dust, including but not limited to, coal dust, rock dust, fumes and vapors for a period in excess of 37 years.

On April 26, 2022, Dr. Suhail Istanbouly testified via evidence deposition at Petitioner's request. (PX1). Dr. Istanbouly testified that he is board certified in critical care medicine and pulmonary medicine. (PX1, p. 5). Dr. Istanbouly testified that he practiced in Southern Illinois from April, 2003, until the end of March, 2019, when he took a position at Hines VA Hospital in Maywood, Illinois. (PX1, p. 5-6). Dr. Istanbouly was the medical director of the pulmonary department at Herrin Hospital since 2005. He was also the director of the Intensive Care Unit at Carbondale Memorial Hospital and that he had been the director of the Intensive Care Unit at Herrin Hospital. (PX1, exhibit 1).

Dr. Istanbouly testified that he evaluated Petitioner on May 20, 2019. (PX1, p. 8). Dr. Istanbouly testified that he took a detailed history from Petitioner, including a medical and occupational history, performed a physical examination, and reviewed the pulmonary function testing and a chest x-ray. (PX1, p. 8).

He testified that Petitioner was a smoker of 2-3 cigarettes for 41years. Petitioner had mild intermittent cough for years, which was worse when he was in the coal mines. The cough was productive of slight clear sputum. Petitioner was able to walk for 1 mile without any breathing problems. (PX1, p. 9).

Dr. Istanbouly testified that it is not unusual for miners with simple coal worker's pneumoconiosis to be asymptomatic. He went on to testify that a coal miner can have coal worker's pneumoconiosis and not know they have it. Dr. Istanbouly testified that Petitioner's physical examination of his chest was normal. Dr. Istanbouly testified that it is not unusual for

someone with early stages of coal workers' pneumoconiosis to have a normal physical examination of the chest. (PX1, p. 10).

Dr. Istanbouly testified that Petitioner's pulmonary function studies were within normal range. Dr. Istanbouly testified that a person with coal workers' pneumoconiosis could have pulmonary function testing that is completely normal, which is not unusual in the early stages of the disease. (PX1, p. 11). He testified that having pulmonary function within the range of normal does not mean that there is no damage to the lungs. Dr. Istanbouly testified that spirometry is a measure of the global impairment of both lungs rather than a focal impairment of a portion of the lungs. He testified that a person could have a certain amount of their lung with focal impairment, yet the global overall function be normal. (PX1, p.11-12). Dr. Istanbouly testified that a person could have shortness of breath and a daily cough but have a normal pulmonary function test. Dr. Istanbouly also testified that a person could have a normal diffusing capacity and have mild coal workers' pneumoconiosis. Dr. Istanbouly testified that a person with mild coal worker's pneumoconiosis can have a normal pulse oximetry on room air. (PX1, p. 12).

Dr. Istanbouly testified that he personally reviewed Petitioner's chest x-ray which was dated December 7, 2018. (PX1. p. 12). Dr. Istanbouly testified that he relied on his findings on Petitioner's chest x-ray and that he customarily reviews and interprets chest x-rays in providing care and treatment to his patients. He testified that the chest x-ray he reviewed was of diagnostic quality, and that it revealed mild interstitial changes involving the lower lung zones bilaterally. Dr. Istanbouly testified that you do not have to be a B-reader in order to diagnose someone with coal workers' pneumoconiosis. He also testified that there are not any B-readers in any of the hospitals that he is affiliated, with the closest B-reader being approximately 100 miles away. (PX1, p. 14). Dr. Istanbouly testified that he personally diagnosed coal miners in his practice with coal worker's pneumoconiosis without the use of a B-reader. Dr. Istanbouly testified that Petitioner's coal workers' pneumoconiosis was due to long term coal dust inhalation. (PX1, p. 15).

Dr. Istanbouly testified that coal workers' pneumoconiosis is caused by the inhalation of coal dust that causes irritation and inflammation that will ultimately end up forming tiny scars. Dr. Istanbouly testified that the scarring is sometimes referred to as fibrosis, and that the scarring and fibrosis are permanent. Dr. Istanbouly further testified that the scarring and fibrosis cannot carry on the function of normal healthy lung tissue. Dr. Istanbouly testified that, by definition, if you have coal workers' pneumoconiosis then you have an impairment of the function of the lungs, at least at the site of the scar or fibrosis. Dr. Istanbouly testified that only exposure to coal dust can cause coal workers' pneumoconiosis. Dr. Istanbouly testified that there is no cure for coal workers' pneumoconiosis. He went on to testify that there is a certain amount of coal dust that is trapped in the miner's lungs, which will remain there for the rest of his life. (PX1-16-18).

Dr. Istanbouly testified that based on Petitioner's diagnosis of coal worker's pneumoconiosis it is not advisable for Petitioner to ever return to work in the coal mines as there is a risk of progression of the disease. Dr. Istanbouly testified that according to the American Thoracis Society there is no safe level of dust exposure for someone with coal worker's pneumoconiosis. Dr. Istanbouly testified that Petitioner has damage to his lungs as a result of his occupational exposure to coal mine dust. (PX1, p. 18-19).

Dr. Istanbouly testified that a person with a chronic lung diseases such as coal workers' pneumoconiosis and chronic bronchitis is more susceptible to pulmonary infections and pneumonias and his coal worker's pneumoconiosis would make it more difficult for him to recover from those pulmonary infections and pneumonias. (PX1, p. 19).

On April 22, 2021, Dr. Christopher A. Meyer testified via evidence deposition at Respondent's request. (RX1). Dr. Meyer testified that he is a board-certified radiologist (RX1, p. 7), who is also a NIOSH Certified B-Reader. (RX1, P. 19). Dr. Meyer testified that he currently works as the Vice Chair of Finance and Business Development and professor of diagnostic radiology at the University of Wisconsin Hospital and Clinics in Madison, Wisconsin. (RX1, P. 13-14).

Dr. Meyer testified that he reviewed a chest x-ray of Petitioner dated December 7, 2018. (RX1, P. 40). Dr. Meyer testified that the film was quality 1. (RX1, P. 40). Dr. Meyer testified that it was his impression that there were no radiographic findings of coal workers' pneumoconiosis on either film. (RX1, P. 40-41). However, Dr. Meyer agreed that it was fair to say that experts with similar credentials may disagree on the reading of chest films, especially those in Category 1 of pneumoconiosis. (RX1, P. 56). Dr. Meyer testified that he became a B-reader in in January, 1999; however he had taken the test before and failed the test the first time he took it. (RX1, p. 46). Dr. Meyer testified that an intelligent physician with extensive knowledge and training in occupational diseases could fail the B-reading test easily. (RX1, p. 57).

On cross-examination, Dr. Meyer agreed that a negative chest x-ray for coal workers' pneumoconiosis does not necessarily rule out the disease. (RX1, P. 46). Dr. Meyer further agreed that many coal miners have had negative chest x-rays for coal workers' pneumoconiosis, but on biopsy or autopsy it is shown that they actually had the condition pathologically. (RX1, P. 46). Dr. Meyers agreed with the Laney and Petsonk study which stated, "[i]ndividual coal macules are generally too small to be appreciated on chest x-rays". (RX1, P. 51). Dr. Meyer could not cite any studies to refute the Laney and Petsonk study. (RX1, p. 53).

On May 2, 2022, Dr. David Rosenberg testified via evidence deposition at Respondent's request. (RX2). Dr. Rosenberg testified that he is board certified in internal medicine, and pulmonary diseases. He also obtained a Master's of public health and is board certified in occupational medicine. (RX2, p. 4-5). Dr. Rosenberg became a B-reader in 2000. (RX2, p. 6-7). He is licensed in Ohio, Kentucky, Tennessee and Florida. (RX2, p. 7). Dr. Rosenberg has examined coal miners for Petitioner's and Respondent's attorneys. Over the years, 95% of the examinations have been done for industry. (RX2, p. 8).

Dr. Rosenberg reviewed Petitioner's medical records as listed on p. 12-16 of his deposition. (RX2, p. 12-16). Dr. Rosenberg reviewed 6 of Petitioner chest films, the films listed in the NIOSH record (RX5), which dated from 10/15/87 to 10/21/14, all of which he read as negative for CWP. He also reviewed the 12/07/18 film taken at Ferrell Hospital. He indicated that the film was a quality 2 due to poor contrast. Dr. Rosenberg found the film to be negative for coal workers' pneumoconiosis. (RX2, exhibit B).

Dr. Rosenberg concluded that Petitioner does not have a pneumoconiosis or any respiratory related condition consequent to his employment in the coal mine industry and has no associated impairment or disability. (RX2, p. 22).

Dr. Rosenberg testified that he does 5 or 6 records reviews a week for coal worker's litigation. He testified that he had approximately 10 to 20 patients that he is treating for black lung. (RX2, p. 24). He went on to testify that he has probably a thousand or two patients in totals, so a very small percentage of Dr. Rosenberg's practice relates to treating coal miners for occupational lung disease. (RX2, p. 24). Dr. Rosenberg testified that he performed black lung examinations for the Department of Labor from 1979 to 1984. He stopped doing the DOL examinations because he left his hospital-based position where they were doing the examinations. (RX2, p. 25). He testified that he still does approximately a couple of hundred examinations per year for occupational disease claims. (RX2, p. 25).

Dr. Rosenberg became a B-reader in 2000 at the hospital or clinic's request. Since they developed the occupational program Dr. Rosenberg felt with his pulmonary background that becoming a B-reader would be a good service to be able to provide companies. He would contract out his services as a B-reader to companies such as General Electric, some steel mills, and some private occupational medicine services. (RX2, p. 26-27).

Dr. Rosenberg agreed that scarring and fibrosis occurs with coal workers' pneumoconiosis. Dr. Rosenberg went on to state that that scarring, and fibrosis caused by coal workers' pneumoconiosis adversely affects lung function. He went on to testify that there is no cure for coal workers' pneumoconiosis and the scarring and fibrosis that is caused by the disease is permanent. (RX2, p. 28). Dr. Rosenberg indicated that coal workers' pneumoconiosis could progress, but it is unusual. He agreed that the best treatment for someone with coal workers' pneumoconiosis is to remove that person from the exposure. Dr. Rosenberg agreed that a person could have coal workers' pneumoconiosis without having chest x-ray evidence of the disease. He also agreed that a person can have coal workers' pneumoconiosis and not know that they have the disease. Dr. Rosenberg agreed that a person could have shortness of breath despite normal pulmonary function. He also agreed that a person could have normal pulmonary function and have coal workers' pneumoconiosis, stating that it would not be unusual, and most would have normal pulmonary function. He agreed that a person could have a certain amount of their lungs with focal areas of impairment, yet their global function be normal. He testified that a person could have a lobe of their lung removed and still have normal pulmonary function. (RX2, p. 28-30). He went on to testify that a person could have a normal diffusing capacity and have simple coal workers' pneumoconiosis. (RX2, p. 31).

Dr. Rosenberg did not take a patient history of Petitioner. He did not speak with Petitioner or any of his examining or treating doctors, nor did he perform a physical examination or do any testing on Petitioner. (RX2, p. 31). Dr. Rosenberg testified that a person does not have to have abnormal findings on physical examination of the chest to have coal workers' pneumoconiosis. (RX2. P. 32-33). He went on to testify that a person with simple coal workers' pneumoconiosis would not have any symptoms. (RX2, p. 33).

Dr. Rosenberg testified that the reading of chest x-rays for coal workers' pneumoconiosis is very subjective. He agreed that it was fair to say that similarly qualified, educated physicians can and do disagree as to the findings on chest x-rays and that would especially be true in borderline cases of 0/1 or 1/0. Dr. Rosenberg agreed that a physician does not have to be a B-reader to diagnose someone with coal workers' pneumoconiosis. He went on to state that the B-reading system was never designed for diagnosis purposes. Dr. Rosenberg testified that B-readings have never been used diagnostically and should never be used diagnostically. (RX2, p. 33-34). Dr. Rosenberg went on to say that according to the American Thoracic Society there is no safe dust level for someone with coal worker's pneumoconiosis. (RX2, p. 35).

On November 4, 2021, Dr. Henry K. Smith testified on behalf of the Petitioner. (PX2). Dr. Smith has been Board certified in Radiology since 1973 and has been a Certified NIOSH B-reader continuously since 1987. (PX2, p. 11). Dr. Smith holds medical licensure in 5 states. (PX2, p. 13). Dr. Smith is affiliated with or has privileges at numerous hospitals and clinics. PX2, Exhibit 1, p. 4-6). Dr. Smith discontinued seeing walk in patients in 2016 but continues to do consulting work to the present. (PX2, p. 15).

Dr. Smith reviewed a chest film of Petitioner dated 12/07/18. His report is dated 12/16/18. (PX2, p. 36). He rated the film a quality 1 and noted the presence of interstitial fibrosis classification p/p, all lung zones bilaterally of a profusion of 1/1. (PX2, p. 35). Dr. Smith opined that Petitioner has coal worker's pneumoconiosis and has damage to his lungs as a result of his coal worker's pneumoconiosis. (PX2, p. 37). Dr. Smith testified that he did not see any poor contrast, mottle, or improper positioning on the film he read. (PX1, p. 36-37).

Respondent's Exhibit 3 are Petitioner's medical records from HMC medical clinic. In reviewing these records, I do not see where they contain any work up for coal worker's pneumoconiosis, chest x-rays or pulmonary function testing. The records do contain entries stating that there is no shortness of breath or dyspnea; however, I give little weight to these records as there are no pulmonary function studies and both Drs. Istanbouly and Lockey agreed that a person can be asymptomatic and have coal worker's pneumoconiosis. The records do contain one chest film dated 01/12/15 read as negative by Dr. H.T. Yousseff. This film states it was taken for "Mach Physical." (RX3, p. 140). Petitioner also has three more years of coal dust exposure after this chest x-ray, which could have added to his CWP.

Respondent's Exhibit 4 is a diffusing capacity test ordered by Respondent. The test was performed by Dr. Jeffrey Selby, who read Petitioner diffusing capacity as normal. No spirometry was performed for some reason. Dr. Selby's credentials are not in the record. (RX4)

Respondent's Exhibit 5 are Petitioner's records from NIOSH consisting five chest films dating from 10/15/87 to 10/21/14. All of these records are read negative for CWP. I give this exhibit little weight as not all of the readers names or credentials are known, and Petitioner had four additional years of coal mine employment after the last film.

CONCLUSIONS OF LAW

WITH RESPECT TO ISSUE (C), DID AN ACCIDENT OCCUR THAT AROSE OUT OF AND IN THE COURSE OF THE PETITIONER'S EMPLOYMENT BY THE RESPONDENT, and WITH RESPECT TO ISSUE (F), IS THE PETITIONER'S PRESENT CONDITION OF ILL-BEING CAUSALLY RELATED TO THE INJURY, THE ARBITRATOR FINDS AS FOLLOWS:

Petitioner has sustained an injury that arose out of an in the course of his employment. Section 1(d) of the Illinois Workers' Compensation Diseases Act states, in pertinent part:

> A disease shall be deemed to arise out of the employment if there is apparent to the rational mind, upon consideration of all the circumstances, a causal connection between the conditions under which the work is performed and the occupational disease. The disease needs not to have been foreseen or expected but after its contraction it must appear to have had its origin or aggravation in a risk connected with the employment and to have flowed from that source as a rational consequence. An employee shall be conclusively deemed to have been exposed to the hazards of an occupational disease when, for any length of time however short, he or she is employed in an occupation or process in which the hazard of the disease exists...If a miner who is suffering or suffered from pneumoconiosis was employed for 10 years or more in one or more coal mines there shall, effective July 1, 1973 be a rebuttable presumption that his or her pneumoconiosis arose out of such employment. 820 ILCS 310/1(d)

On December 16, 2018, Dr. Henry K. Smith reviewed a chest x-ray taken on December 7, 2018. (PX2, exhibit 2). Dr. Smith is board certified in radiology and is a NIOSH certified B-Reader. Dr. Smith passed his initial B-Reader examination in 1987 and maintained his certification status continuously over 32 years. (PX2, exhibit 1). Dr. Smith found that the chest film was a quality 1 film. Dr. Smith's impression was of simple coal workers' pneumoconiosis with small opacities, primary p, secondary p, in all lung zones bilaterally, of a profusion 1/1.

Dr. Istanbouly testified that he physically examined Petitioner and took a detailed medical and occupational history. Dr. Istanbouly testified that the cause of Petitioner's diagnosis of coal worker's pneumoconiosis was exposure to coal mine dust.

Dr. Istanbouly's testimony reveals his significant experience and credentials in the field of pulmonary studies. Dr. Istanbouly testified that he is board certified in critical care medicine and pulmonary medicine. Dr. Istanbouly testified that he does black lung examinations for the U.S. Department of Labor. He has been the medical director of the pulmonary department at Herrin Hospital since 2005. He is also the director of the Intensive Care Unit at Carbondale Memorial Hospital and that he has been the director of the Intensive Care Unit at Herrin Hospital. Drs. Istanbouly and Smith's extensive experience with occupational lung diseases leads the Arbitrator to find that Petitioner has met his burden of proof in establishing that he has simple coal workers' pneumoconiosis.

Although Respondent's experts, Drs. Meyer, and Rosenberg, disagree with the findings and diagnosis of Drs. Smith and Istanbouly, their opinions are found to be less credible by way of their own testimony. On cross-examination, Dr. Meyer agreed that a negative chest x-ray for coal workers' pneumoconiosis does not necessarily rule out the disease. Dr. Meyer further agreed that many coal miners have had negative chest x-rays for coal workers' pneumoconiosis, but on biopsy or autopsy it is shown that they actually had the condition pathologically. Dr. Meyers agreed with the Laney and Petsonk study which stated, "[i]ndividual coal macules are generally too small to be appreciated on chest x-rays".

Dr. Rosenberg conceded that he had never met, spoken to, or physically examined the Petitioner. Dr. Rosenberg testified that 95% of the examinations he does for black lung are for industry. Dr. Rosenberg agreed that a person could have coal workers' pneumoconiosis without having chest x-ray evidence of the disease. He also agreed that a person can have coal workers' pneumoconiosis and not know that they have the disease. Dr. Rosenberg agreed that a person could have shortness of breath despite normal pulmonary function. He also agreed that a person could have normal pulmonary function and have coal workers' pneumoconiosis, stating that it would not be unusual, and most would have normal pulmonary function. He agreed that a person could have a certain amount of their lungs with focal areas of impairment, yet their global function be normal. He went on to testify that a person could have a normal diffusing capacity and have simple coal workers' pneumoconiosis.

Given the totality of the evidence, the Arbitrator finds Drs. Istanbouly and Smith to be more credible than Drs. Meyer, and Rosenberg. Therefore, the Arbitrator finds that Petitioner has satisfied the requirements of Section (d) of the Act. It is apparent that Petitioner's coal workers' pneumoconiosis arose out of his employment as a coal miner, and that there is a causal connection between the conditions under which Petitioner worked and his coal workers' pneumoconiosis. Petitioner worked as a coal miner for approximately 38 years, which is well over the statutorily required 10 years, and he was diagnosed with coal workers' pneumoconiosis. According to Section (d), there is a rebuttable presumption that his coal workers' pneumoconiosis arose out of his employment in the coal mines. The Respondent has not credibly rebutted that presumption. Therefore, Petitioner proved by a preponderance of the evidence that he is afflicted with coal workers' pneumoconiosis and that it arose out of his employment.

WITH RESPECT TO ISSUE (L), WHAT IS THE NATURE AND EXTENT OF THE INJURY, THE ARBITRATOR FINDS AS FOLLOWS:

I find Petitioner has sustained a permanent partial disability of 5% of the person as a whole. This value is supported by the Commission's decision in *Robinson* where that Petitioner had the same diagnosis, similar complaints, and similar x-ray reading of 1/0. *Hugh James Robinson v. The American Coal Company*, 17 I.W.C.C. 0045, 09 W.C. 45865. Also see, *Holley v. The American Coal Company,* 20 IWCC 0345, 15 WC 23353; *Ball v. Monterey Coal Company,* 18 IWCC 0170, 08 WC 53750; *Maynor v. Tri-County Coal, LLC,* 17 IWCC 0394, 13 WC 27093; *Ondo v. Monterey Coal Company,* 17 IWCC 0349, 08 WC 06504; and *Collins v. Freeman United Coal Mining Co.,* 16 IWCC 0204, 09 WC 08264.

WITH RESPECT TO ISSUE (O), THE APPLICABILITY OF SECTIONS 1(e) and 1(f) OF THE OCCUPATIONAL DISEASES ACT, THE ARBITRATOR FINDS AS FOLLOWS:

Section 1(e) of the Occupational Diseases Act states, in pertinent part, "{d}isablement" means an impairment or partial impairment, temporary or permanent, in the function of the body or any of the members of the body." 820 ILCS 310/1(e) The Arbitrator finds that Petitioner has satisfied the requirements of Section (e) of the Act. The Petitioner testified to increased respiratory difficulty with his activities of daily living, like working in the yard or carrying heavy things. He has to take breaks now when he did not use to. Dr. Istanbouly also testified that the inhalation of coal dust that causes irritation and inflammation that will ultimately end up forming tiny scars. Dr. Istanbouly testified that there is no cure for coal workers' pneumoconiosis, and that it is a chronic condition. Dr. Rosenberg agreed that the scarring and fibrosis that occurs in the lungs from pneumoconiosis is irreversible and permanent. Dr. Rosenberg testified that the scarring and fibrosis is an alteration of the lung tissue and is also an alteration of the function of the involved lung tissue.

Section 1(f) of the Occupational Diseases Act states, in pertinent part, "[n]o compensation shall be payable for or on account of any occupational disease unless disablement, as herein defined, occurs within two years after the last day of the last exposure to the hazards of the disease." 820 ILCS 310/1(f) Petitioner last worked a day of coal mine employment on February 4, 2018. Petitioner has not worked in the coal mines and has not had any other exposure to coal mine dust since that date. On December 7, 2018, Petitioner underwent an x-ray with of the chest for pneumoconiosis at Ferrell Hospital. Dr. Smith's impression of that chest x-ray was of simple pneumoconiosis, category p/p, 1/1. Since the Petitioner obtained the coal workers' pneumoconiosis diagnosis within two years of leaving Respondent's employment, he meets the requirement under Section 1(f) of the Act.

I give little weight to Petitioner's treatment records. Although there are notations denying cough, shortness of breath, exertional dyspnea or abnormal physical examination of the chest, all experts agree that these complaints/findings are usually not found in a coal miner with simple coal worker's pneumoconiosis. Also, there were no chest x-rays, pulmonary function studies or pulmonary evaluations contained in any of Petitioner's treatment records.

Although there is testimony in the record about pathological coal workers' pneumoconiosis, there is no pathology evidence in the record. My findings regarding coal workers' pneumoconiosis are based on the radiographic findings that are contained in the record, the testimony of the experts that a miner does not have to have symptoms, abnormal physical examination of the chest, abnormal pulmonary function, or an abnormal diffusing capacity to have coal workers' pneumoconiosis. I also base my decision on the testimony of the witness at arbitration. I find that Petitioner was a credible witness.

Based on the totality of the evidence, and the factual findings above, the Arbitrator finds that the Petitioner is entitled to occupational disease benefits.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC025010
Case Name	Robert Peloza v. ABM Production Services
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b) Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	24IWCC0182
Number of Pages of Decision	16
Decision Issued By	Maria Portela, Commissioner

Petitioner Attorney	James Nawrocki
Respondent Attorney	Natasa Timotijevic

DATE FILED: 4/24/2024

/s/Maria Portela, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Robert Peloza,

Petitioner,

vs. NO: 21 WC 025010

ABM Production Services,

Respondent.

DECISION AND OPINION ON REVIEW

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

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed April 14, 2023 is hereby affirmed and adopted.

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

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

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

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $100.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

April 24, 2024

o041624
MEP/yp
049

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

/s/ *Amylee H. Simonovich*
Amylee H. Simonovich

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC025010
Case Name	Robert Peloza v. ABM Production Services
Consolidated Cases	
Proceeding Type	19(b)/8(a) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	13
Decision Issued By	Ana Vazquez, Arbitrator

Petitioner Attorney	James Nawrocki
Respondent Attorney	Natasa Timotijevic

DATE FILED: 4/14/2023

THE INTEREST RATE FOR THE WEEK OF APRIL 11, 2023 4.79%

/s/ Ana Vazquez, Arbitrator

Signature

STATE OF ILLINOIS)
)SS
COUNTY OF **COOK**)

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

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

ROBERT PELOZA
Employee/Petitioner

v.

ABM PRODUCTION SERVICES
Employer/Respondent

Case # **21** WC **025010**

Consolidated cases:

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Ana Vazquez**, Arbitrator of the Commission, in the city of **Chicago**, on **October 26, 2022**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On the date of accident, **November 12, 2019**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $**23,400.00**; the average weekly wage was $**450.00**

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

Respondent shall be given a credit of $**756.30** for TTD, $**0** for TPD, $**0** for maintenance, and $**0,** for other benefits, for a total credit of $**756.30**.

ORDER

Per the Parties' stipulation, the issues of Respondent's liability for unpaid medical bills and Respondent's claim for an 8(j) credit are reserved for future disposition.

Respondent shall authorize and is liable for the prospective medical treatment plan recommended by Dr. Mark Hamming, including a right total knee arthroplasty, as provided in Section 8(a) and 8.2 of the Act.

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

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

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

Ana Vazquez

APRIL 14, 2023

Signature of Arbitrator

ICArbDec19(b)

PROCEDURAL HISTORY

This matter proceeded to arbitration on October 26, 2022 in Chicago, Illinois before Arbitrator Ana Vazquez pursuant to Sections 19(b) and 8(a) of the Illinois Workers' Compensation Act ("the Act"). The issues in dispute include causal connection and prospective medical. Arbitrator's Exhibit ("Ax") 1. The parties reserved the issues of Respondent's liability for unpaid bills and Respondent's claim for an 8(j) credit for future disposition. Transcript of Proceedings on Arbitration ("Tr.") at 6; Ax1 at No. 7. All other issues have been stipulated. Ax1; Tr. at 90-93.

FINDINGS OF FACT

Petitioner testified that he is a driver for Avis Rent-a-Car ("Avis"), but works for Respondent. Tr. at 11. Petitioner testified that Respondent "[is] a cleaning company, but our portion is transportation. We move vehicles." Tr. at 11. Petitioner moves cars from "point A to point B." Tr. at 11. As part of his duties, Petitioner drives all makes and models of cars. Tr. at 11-12.

Respondent's headquarters are located at O'Hare. Tr. at 12. Petitioner works out of the Libertyville store. Tr. at 12. Petitioner works for Respondent part-time and has a set schedule. Tr. at 45-46, 47.

Petitioner also has a second job as a limo driver, which he works two days a week. Tr. at 22. Petitioner drives the limo locally. Tr. at 49. Petitioner testified that the cars that he drives for Avis are sometimes hard to get in and out of compared to a limo. Tr. at 23. Petitioner began work as a limo driver in April 2021, but also testified that his start date was February 7. Tr. at 23-24. Petitioner also drove for a limo company in 2019 and 2020. Tr. at 46. Petitioner has had other additional part-time employment for the past eight years. Tr. at 47. Petitioner has been a driver for over 20 years. Tr. at 47.

Petitioner testified that prior to November 12, 2019 he had not seen a medical professional for his right knee. Tr. at 12, 54.

Accident

Petitioner testified that on November 12, 2019, he drove to a store in Lincolnwood. Tr. at 12. When he arrived, he parked the car and when he went to get out of the car, his left foot slipped on ice and his right foot went out from under him inside the car and kicked him. Tr. at 13. Petitioner testified that his right knee was painful afterwards. Tr. at 13. Petitioner finished the workday. Tr. at 13-14. He had to return to O'Hare at some point. Tr. at 14.

Notice

Petitioner testified that he reported the injury to his boss, Art Wilmot, in-person on the same date it occurred. Tr. at 14-15.

Pre-accident medical records summary

Petitioner presented at Erie-Waukegan Health Center on November 11, 2014 for complaints of knee pain. Respondent's Exhibit ("Rx") 6 at 19. The record does not specify which knee. Petitioner reported that he fell over a motorcycle on September 13, 2014, had initial bruising, and was experiencing stiffness. Petitioner was unable to straighten his leg and reported no pain, just discomfort. Petitioner's

assessment was knee injury. He was instructed to wear a knee brace, obtain x-rays, and return to the clinic if the pain worsened.

On cross examination, Petitioner testified that he did not treat at Erie-Waukegan Medical Center for his knee in 2014. Tr. at 50. Petitioner was shown the record of November 11, 2014 from Erie-Waukegan Medical Center. Tr. at 51. Petitioner then testified "Left, that was left. I'm sorry. I forgot about that motorcycle accident. That was the left knee." Tr. at 52. Petitioner clarified that he treated with Erie-Foster Avenue in 2014. Tr. at 52. On redirect examination, Petitioner clarified that he did not treat for his left knee at the Erie-Waukegan Medical Center location. Tr. at 53. Petitioner testified that he's "been at Erie-Waukegan since I moved to Grayslake, so that would have been 2019-ish." Tr. at 54.

Medical records summary

Petitioner presented at Erie-Waukegan Health Center on December 5, 2019 and was seen by Miriam T. Rodriguez, APN, FNP-C.[1] Petitioner's Exhibit ("Px") 1. Petitioner presented for right knee pain after a fall on ice three weeks prior. Petitioner described the pain as a sharp pulling sensation and reported stiffness. Petitioner denied a history of chronic knee pain. Swelling to the upper lateral knee was noted. Petitioner's assessment was right knee pain. X-rays of the right knee were obtained and were negative. Px2. Petitioner testified that he first presented for treatment on December 5, 2019 because "I didn't think it was that serious. I just thought it was a pain that would go away." Tr. at 15. Petitioner decided to seek treatment because "[i]t was getting too painful. It wasn't going away." Tr. at 15.

Petitioner followed up with Dr. Bryan T. Killian at Erie-Waukegan Health Center on December 12, 2019. Px1. Petitioner continued to complain of right knee pain. Petitioner reported that there was some pivoting at the time of injury. Petitioner also reported pain with going up and down stairs and being unable to squat. Petitioner further reported having "floating kneecaps" since childhood. X-rays were noted as negative for osseous injury. Petitioner's assessment was acute knee pain. Physical therapy was recommended.

On January 29, 2020, Petitioner presented at Erie-Waukegan Health Center for complaints of left shoulder pain and right knee pain. Px1. Petitioner's assessments were left shoulder pain and right knee pain. Petitioner was referred to an orthopedic specialist and physical therapy was recommended for his right knee.

Petitioner was seen by Dr. Mark G. Hamming at Illinois Bone & Joint Institute on February 18, 2020. [2] Px2. Petitioner reported that on November 21, 2019, he was getting out of his car at work, he slipped on ice, and he twisted his right knee outward, and his foot then kicked him in his buttock. Petitioner reported that he noticed initial pain. He described the pain in his knee as sharp, throbbing, and aching, and moderate-to-severe in nature. Petitioner reported that he experienced right knee pain intermittently, but daily, and that the pain was aggravated when he walked, used stairs, and when squatting. On exam, Dr. Hamming noted that Petitioner ambulated with moderate antalgia, and that Petitioner was using a cane to ambulate. Dr. Hamming noted that Petitioner's knee was stable with varus and valgus stress testing, that Petitioner had mechanical knee symptoms, and a positive McMurray's. Dr. Hamming further noted that Petitioner's knee was tender near both the medial and lateral joint lines. Dr. Hamming also noted that the x-rays of Petitioner's right knee of December 5, 2019 showed no signs of acute displaced fracture and well-preserved joint space. Dr. Hamming's diagnosis was right knee work injury

[1] Respondent also offered records of Erie-Waukegan Health Center as Rx6.
[2] Respondent also offered records of Illinois Bone & Joint Institute as Rx3.

with possible medial and lateral meniscus tearing. Petitioner elected to proceed with a right knee MRI. Petitioner was allowed to work full duty.

Petitioner underwent a right knee MRI on February 21, 2020, which demonstrated (1) complex, unstable tear of the posterior horn and body of the lateral meniscus, (2) healing or healed low grade sprain of the MCL, and (3) patellofemoral and lateral tibiofemoral compartment osteoarthritis. Px2. Petitioner returned to Dr. Hamming on February 28, 2020, at which time, Dr. Hamming diagnosed Petitioner with a right knee lateral meniscus tear with chondromalacia. Px2. Dr. Hamming noted that the MRI demonstrated that Petitioner had a complex unstable tear of the posterior horn and body of the lateral meniscus, what appeared to be a healed MCL sprain, and some mild-to-moderate chondromalacia in the patellofemoral and lateral compartment. Petitioner elected to proceed with a right knee arthroscopy, partial lateral meniscectomy, and chondroplasty. Dr. Hamming further noted that Petitioner understood that he had some underlying chondral changes, and that Dr. Hamming would be unable to completely reverse it and so Petitioner could have some residual symptoms.

Petitioner underwent a right knee arthroscopy and partial lateral meniscectomy on May 5, 2020. Px2. Petitioner's postoperative diagnosis was right knee lateral meniscus tear. The operative report indicates that Petitioner had a complex tear of the midbody and posterior horn of the lateral meniscus, extending into the anterior aspect of the anterior body and that there was a flipped fragment entrapped within the posterior lateral popliteal hiatus region. A combination of shaver and biter and electrocautery wand were used to recontour the meniscus and remove the unhealthy and unstable portions of the meniscus. There was also Grade I chondromalacia within the lateral compartment, but no flaps or chondroplasty were necessary. On May 8, 2020, Petitioner underwent a venus doppler sonogram of his right lower extremity, following complaints of right leg pain and swelling, which was negative for acute deep vein thrombosis. Rx 3 at 46. Petitioner presented for postoperative follow-ups on May 20, 2020, June 19, 2020, and August 11, 2020. On August 11, 2020, Petitioner reported that he was doing well, he still had some difficulty squatting, and that he was able to do everything that he needed to do. Petitioner also reported some numbness over the patella. Petitioner was discharged from Dr. Hamming's care and instructed to return as needed.

Petitioner participated in 17 sessions of postoperative physical therapy from May 8, 2020 through August 10, 2020. Px2. At discharge, it was noted that Petitioner still had stiffness going down steps or pulling his leg up and over the bathtub and driving from O'Hare to Rockford, and that kneeling was a challenge. It was also noted that Petitioner did not have any problems getting in or out of a car or from a chair. It was further noted that Petitioner reported "nothing I can't do at this point for work."

Petitioner returned to Dr. Hamming on April 21, 2021. Px2. Petitioner reported that he had been doing well until a couple of weeks prior and had been noticing a loud pop whenever he twisted or pivoted his knee. He also reported that he felt like his kneecap subluxated with twisting activity, and described the pain as sharp, severe, and intermittent. He complained of a numb spot near the lateral aspect of his knee near the kneecap and of mechanical symptoms. Petitioner denied any specific fall or trauma. On exam, tenderness near both his medial and lateral joint lines and a positive McMurray's were noted. Dr. Hamming's assessment was eleven months status post right knee arthroscopy with partial lateral meniscectomy and new onset of pain and mechanical symptoms. Dr. Hamming noted that treatment options were discussed and that at that time, Petitioner elected to proceed with a right knee MRI to evaluate for meniscus retearing. Petitioner was allowed to continue working full duty. Petitioner testified that he returned to Dr. Hamming after approximately eight months because "[t]he knee was getting sore – or was sore, and it was popping. I was just getting a popping sound and some excruciating pain, and I

had no idea what it was doing or whatever, and I needed to go see somebody." Tr. at 19. Petitioner testified that his right knee was not involved in any accident, traumatic events, falls, or bumps in the period between August 2020 and April 21, 2021. Tr. at 19.

Petitioner underwent a right knee MRI on May 3, 2021, which demonstrated (1) morphologically abnormal posterior horn and body of the lateral meniscus consistent with residual or recurrent meniscal tear, (2) progression of patellofemoral and lateral tibiofemoral compartment osteoarthritis, (3) interval healing of previously seen MCL sprain, and (4) small-to-moderate joint effusion. Px2.

Petitioner again saw Dr. Hamming on May 11, 2021, at which time Petitioner reported that he had noticed increased pain and popping within his knee for the past month. Px2. Dr. Hamming noted that Petitioner complained of mechanical-type symptoms. Petitioner reported that any type of sharp twisting was painful. Dr. Hamming's diagnosis was right knee recurrent lateral meniscus tear with chondromalacia. Petitioner elected to proceed with a right knee cortisone injection. Petitioner was administered a cortisone injection into his right knee. Petitioner was allowed to return to work full duty. Dr. Hamming noted that if Petitioner's symptoms failed to improve, an arthroscopy could be considered. Dr. Hamming noted that the arthroscopy would be for the mechanical aspects to help with Petitioner's recurrent lateral meniscus tear, but that he could not guarantee that Petitioner would not have pain due to the chondromalacia that was present. Petitioner testified that the cortisone injection did not have any effect. Tr. at 19-20.

On June 16, 2021, Petitioner was seen by Dr. Benjamin J. Davis at Northwestern Medicine for a second opinion.[3] Px2. Dr. Davis's diagnosis was primary osteoarthritis of the right knee. Dr. Davis noted that Petitioner was a candidate for viscosupplementation injections as well as a knee arthroscopy. Dr. Davis noted that he explained that a knee arthroscopy in the setting of osteoarthritis could have mixed results and may make Petitioner's pain worse. Petitioner elected to try a viscosupplementation injection. On July 19, 2021, Petitioner was administered a Synvisc-One injection into the right knee. Px2. Petitioner testified that the gel injection "did absolutely nothing to me." Tr. at 20.

Petitioner returned to Dr. Hamming on August 20, 2021 for follow up, and he reported that the Synvisc-One injection did not help. Px2. Petitioner continued to have discomfort all day. Petitioner reported that he noticed that driving all day aggravated his right knee. Dr. Hamming diagnosis was unchanged. Treatment options were discussed, including a right total knee arthroplasty, and Petitioner elected to proceed with conservative management.

Petitioner next saw Dr. Hamming on October 20, 2021. Px2. Dr. Hamming's diagnosis was unchanged. Dr. Hamming noted that Petitioner had failed conservative management and that Petitioner had elected to proceed with surgery.

Current condition

Petitioner testified that as of the date of arbitration, he had not gotten surgery, that he continued to work without restrictions, and that he was not in any therapy for his right knee. Tr. at 39.

Petitioner testified that he would like to undergo surgery because he is tired of the pain, and he wants a better quality of life. Tr. at 22. Petitioner testified that he is limping around and is in pain all the time. Tr. at 22.

[3] Respondent offered records of Northwestern Medicine as Rx5.

Petitioner's rebuttal testimony

Regarding his testimony of working at a limo company at the time of arbitration, Petitioner agreed that he began working for that limo company on April 22, 2021, and that he was sure of the date because "I have my time sheets and my pay stubs." Tr. at 71.

Regarding his testimony of working for a different limo company prior to April 22, 2021, Petitioner testified that he worked for a different limo company in 2016 or 2017. Tr. at 72. Petitioner testified that he did not have secondary employment from November 2019 to April 21, 2021. Tr. at 72.

Testimony of Art Wilmot

Respondent called Mr. Art Wilmot to testify on its behalf. Tr. at 61. Mr. Wilmot works for Respondent as an account manager, or project manager, for Avis Chicago. Tr. at 63. Mr. Wilmot has worked at Respondent as an account manager for 12 years. Tr. at 63, 64. His role is supervisory and at the time of arbitration, he was supervising 145 employees. Tr. at 64. He is responsible for managing the accounts for Avis Chicago which involves moving vehicles throughout the Chicagoland area. Tr. at 64. His duties also include scheduling drivers, and he explained that the majority of the drivers are "on-call" and do not have a set or designated schedule. Tr. at 65. Mr. Wilmot further explained that the demand from Avis determines how many drivers are needed by Respondent at various locations, and that "[a]t that point, I then…notify the leads of how many drivers will be needed for the following day for work." Tr. at 65. Some of the on-call drivers have a set schedule and some do not. Tr. at 65.

Mr. Wilmot testified that he supervised Petitioner and that he had been Petitioner's supervisor for 12 years. Tr. at 64. Mr. Wilmot testified that Petitioner's job title is a transporter or a driver, and that the duties of this position involve moving a car from one location to another by driving the vehicles. Tr. at 66. Mr. Wilmot testified that at the time of arbitration, Petitioner was a part-time employee for Respondent, and had always been a part-time employee for Respondent. Tr. at 66. The number of hours worked by a part-time employee varies and is based on the employee's availability to work. Tr. at 66.

Mr. Wilmot testified that he was Petitioner's supervisor on November 12, 2019, and the lead was Frank Foreman or Clyde Barclay. Tr. at 66. Mr. Wilmot testified that he had an independent recollection of November 12, 2019. Tr. at 66-67. Mr. Wilmot testified that on November 12, 2019, Petitioner and the other drivers from the Libertyville location came into the office, in the afternoon, and someone mentioned to him if he knew that Petitioner slipped and fell on ice. Tr. at 67. Petitioner was present, Mr. Wilmot asked him if that had happened, and Petitioner stated "yes." Tr. at 67. Mr. Wilmot testified that it was at that time that they filled out an Incident Report documenting Petitioner's fall. Tr. at 67. Mr. Wilmot testified that he did not recall Petitioner making any complaints regarding his right knee to him after August 2020 through April 21, 2021. Tr. at 68. Mr. Wilmot testified that he learned about Petitioner's additional right knee complaints the week prior to arbitration. Tr. at 68.

Mr. Wilmot testified that to his knowledge, Petitioner has a second job, and that Petitioner has told him about the second job. Tr. at 69. Regarding his knowledge about Petitioner's second job, Mr. Wilmot testified that Petitioner works for a limo company driving a limo on days that he is not working at Respondent and that Petitioner had been driving a limo for a couple of years. Tr. at 69.

Evidence deposition testimony of Dr. Mark Hamming

Dr. Mark Hamming testified by way of evidence deposition taken on June 8, 2022. Px3. Dr. Hamming is a board-certified orthopedic surgeon. Px3 at 6.

Dr. Hamming testified that his preliminary assessment of Petitioner's condition was right knee work injury and possible medial and lateral meniscus tearing. Px3 at 8. An MRI confirmed a complex unstable tear of the posterior horn and body of the lateral meniscus. Px3 at 9. Petitioner underwent a right knee arthroscopy on May 5, 2021. Px3 at 10. During surgery, Dr. Hamming observed a complex tear of the mid-body and posterior horn of the lateral meniscus that extended anteriorly, and a foot fragment entrapped within the posterolateral aspect of the knee. Px3 at 10. Dr. Hamming explained that a complex tear has multiple cleavage points, or multiple flaps or fragments present, and is not torn in one line. Px3 at 11. Dr. Hamming testified that Petitioner did not have significant arthritis in the knee joints at that time. Px3 at 11. Petitioner participated in post-operative physical therapy. Px3 at 12. Dr. Hamming released Petitioner to return to work on August 11, 2020. Px3 at 12. Dr. Hamming did not see Petitioner between August 11, 2020 and April 21, 2021. Px3 at 12.

Petitioner returned to Dr. Hamming on April 21, 2021. Px3 at 13. Petitioner reported that he had been doing well, but had noticed a loud pop whenever he twisted or pivoted his knee. Px3 at 13. Dr. Hamming testified that he performed a physical examination, and that Petitioner had mechanical-type symptoms, was again tender at the joint line, had pain with deep flexion, and had a positive McMurray's. Px3 at 13. A new MRI was obtained, which demonstrated (1) morphologically abnormal posterior horn and body of the lateral meniscus consistent with residual or recurrent meniscal tearing, (2) progression of patellofemoral and lateral tibial compartment osteoarthritis, (3) interval healing of previously seen MCL sprain, and (4) small-to-moderate joint effusion. Px3 at 14. Dr. Hamming testified that Petitioner reported that he did not have any fall or trauma. Px3 at 15. Petitioner followed up on May 11, 2021, August 20, 2021, and October 20, 2021. Px3 at 16-17. On October 20, 2021, Petitioner elected to proceed with a knee arthroplasty. Px3 at 17. Dr. Hamming testified that at the time of his deposition, he had not seen Petitioner since October 20, 2021. Px3 at 19.

Dr. Hamming prepared a narrative report on December 20, 2021. Px3 at 19. Dr. Hamming testified that Dr. Patari's diagnosis is more specific than his diagnosis, and that his diagnosis is right knee osteoarthritis, which includes the patellofemoral arthritis. Px3 at 20-21. Dr. Hamming testified that he "kind of" disagreed with Dr. Patari's opinion regarding causal connection because Petitioner did not have very advanced cartilage wear or arthritis in his knee at the time of his initial scope. Px3 at 21. Dr. Hamming also disagreed with Dr. Patari's opinion that Petitioner does not have a recurrent lateral meniscus tear and testified that Petitioner had an acute change and that he felt like Petitioner did have a recurrent tear. Px3 at 22. Regarding the proximate cause of Petitioner's right knee condition, Dr. Hamming testified "[w]ell, I think that he had a meniscus tear, and then, you know, we removed the torn portions of the meniscus. And I think he probably had a recurrent tear then. And it's continued – as well as further deterioration of the cartilage within the knee, which can happen sometimes when you lose the cushion or when it's not a hundred percent functioning. And then that can cause some worsening joint degeneration and arthritis over time." Px3 at 22-23. Regarding Petitioner's need for a total knee replacement, Dr. Hamming testified "[w]ell, I think that the most likely explanation is that he had a meniscus tear. The meniscus tore. It renders part of that meniscus not functional. So then it increases the contact pressures of the joint in that compartment and puts extra stress in that area. And then even despite cleaning out the torn portions, it still changes the overall mechanics of the joint, which can thus render it a higher likelihood of having arthritis in the future." Px3 at 23.

Dr. Hamming agreed that he discharged and released Petitioner in August 2020, and that Petitioner returned in April 2021. Px3 at 24. Regarding Petitioner's improved symptoms in August 2020 and the gap in treatment, Dr. Hamming testified that "…if you lose some of the cushion, again, it increases the contact pressure. It can worsen into cartilage wear. And once that cartilage wear sets in, you know, it's kind of the chicken or the egg whether another meniscus tear is happening because he tears it again, and then that causes more arthritis, it makes it more likely for it to re-tear the meniscus again. But I think that's kind of the cycle that it went down just because of probably the altered mechanics of that part of the joint." Px3 at 24-25.

On cross examination, Dr. Hamming testified that Grade I chondromalacia is softening of the cartilage, and he agreed that chondromalacia can become worse from sitting for a prolonged period, such as long car rides. Px3 at 27. Dr. Hamming testified that it was possible that patients with Grade I chondromalacia can show grinding or popping, clicking, grating, or cracking, and that those are clinical symptoms of it. Px3 at 27. Dr. Hamming testified that it was possible that a person with chondromalacia can present with or complain of pain with walking up or down stairs and when standing up from a seated position. Px3 at 28. These are all possible clinical manifestations of chondromalacia. Px3 at 28. Dr. Hamming agreed that knee swelling after prolonged walking or activity is also a clinical manifestation of chondromalacia. Px3 at 28. Dr. Hamming agreed that osteoarthritis and chondromalacia are degenerative diseases that can progress over time. Px3 at 35. Dr. Hamming agreed that Petitioner had some difficulty squatting and numbness over the patella on August 11, 2020. Px3 at 36. Regarding the May 3, 2021 MRI findings, Dr. Hamming agreed that morphologic changes are expected postoperatively and that the postoperative changes can mimic a recurring or residual meniscus tear. Px3 at 38. It can be difficult to determine if there is a tear or if it is a normal postoperative change, and that is why clinicians rely on clinical histories and exams "to help put the whole puzzle together." Px3 at 38-39. Dr. Hamming did not refer Petitioner to Dr. Davis and Dr. Hamming had not recommended gel injections to Petitioner in May 2021. Px3 at 42. Dr. Hamming first recommended a total knee arthroplasty on August 20, 2021. Px3 at 43. The x-rays obtained on October 20, 2021 revealed degenerative changes, osteophytes, and subchondral cysts which can all be signs of progressing osteoarthritis. Px3 at 44. Dr. Hamming did not review Dr. Davis's records in preparation of his narrative report. Px3 at 48.

On redirect examination, Dr. Hamming testified that his opinion did not change if Petitioner had a negative McMurray test on the date of his independent medical examination ("IME"). Px3 at 51. Dr. Hamming explained that people can examine differently at different points in time. Px3 at 51. Regarding what changed in Petitioner's condition between April 2021 and October 2021 in terms of Dr. Hamming recommending a total knee replacement, Dr. Hamming testified that Petitioner had continued symptoms and x-rays that demonstrated further radiographic changes of worsening wear. Px3 at 51-52. Trauma can be a cause of arthritis. Px3 at 52. Dr. Hamming testified that the most accurate way to diagnose arthritis is to see it, probe the cartilage, and feel it. Px3 at 52-53.

Evidence deposition testimony of Respondent's Section 12 Examiner, Dr. Sanjay Patari

Dr. Sanjay Patari testified by way of evidence deposition on August 4, 2022. Rx1. Dr. Patari is an orthopedic surgeon and is board certified in orthopedic surgery and upper extremity surgery. Rx1 at 5. Dr. Patari was asked to examine, interview, and render opinions regarding Petitioner's condition on February 3, 2022. Rx1 at 7. Dr. Patari prepared a report setting forth his physical examination findings and opinions of Petitioner's February 3, 2022 examination. Rx1 at 8.

On February 3, 2022, Dr. Patari obtained a history from Petitioner. Rx1 at 8-11. Dr. Patari had Petitioner demonstrate the original mechanism of injury that occurred on November 21, 2019 and reproduce the popping that Petitioner reported began in 2021 to understand where it was coming from. Rx1 at 11. Dr. Patari also noted Petitioner's complaints as of February 3, 2022 and he performed a physical examination of Petitioner. Rx1 at 11-12. On exam, Petitioner's right knee range of motion was normal, there was no joint line tenderness on the medial side or the lateral side, the medial and lateral McMurray's tests were negative, the anterior/posterior drawer tests were negative, and there was no pain or tenderness on the posterolateral corner. Rx1 at 12. There was a positive patellofemoral crepitus and a positive patellar tilt, and Dr. Patari felt Petitioner's joint slip in and out when he rotated the right knee. Rx1 at 14. Petitioner's left knee did not demonstrate any kind of patellar tilt or grinding. Rx1 at 14.

Dr. Patari reviewed medical records and imaging in preparation of the February 3, 2022 examination. Rx1 at 14-16. Dr. Patari testified that his opinion regarding the February 21, 2020 and May 3, 2021 MRIs was that they documented patellofemoral and lateral tibiofemoral compartment joint space narrowing. Rx1 at 17. Dr. Patari testified that after his examination and review of records, he gave a diagnosis of right knee patellofemoral arthritis and that the grinding was caused by the patella subluxating over the lateral femoral condyle with pivoting. Rx1 at 17-18. Dr. Patari's opinion was that this diagnosis was not due to the workplace accident of November 21, 2019. Dr. Patari explained that osteoarthritis is a progressive condition that is not caused by one incident and that a meniscus tear can be caused by a single traumatic episode. Rx1 at 18. Dr. Patari explained that Petitioner's mechanism of injury was consistent with the lateral meniscus tear. Rx1 at 18. He further explained that Petitioner's lateral meniscus tear was treated with an arthroscopic surgery, Petitioner was discharged from care on August 11, 2020, and that Petitioner had symptoms of the right knee in April 2021, though there was no history of a new traumatic episode. Rx1 at 18-19. Dr. Patari explained that "[t]he development of symptoms months later and the fact that my physical exam seemed to determine that the symptoms were specifically from the kneecap grinding on the femur led me to believe that this is actually just progression of arthritis and not any specific arthritis that occurred as a result of this injury of November 21, 2019 and, therefore, I felt it was unrelated." Rx1 at 19. Dr. Patari testified that it was his opinion that Petitioner did not suffer from a recurrent meniscus tear, and he agreed that it was his opinion that the right knee osteoarthritis was not aggravated by the November 21, 2019 injury. Rx1 at 19. Dr. Patari agreed that a total knee arthroplasty is reasonable to treat Petitioner's diagnosis, but it is not related to the workplace injury. Rx1 at 20. Dr. Patari testified that as of February 3, 2022, Petitioner does not require any medication that is related to the workplace accident and does not require any work restrictions that are related to the workplace accident. Rx1 at 20. Dr. Patari testified that he opined that Petitioner reached maximum medical improvement ("MMI") as of August 11, 2020, when he was discharged from Dr. Hamming.

On cross examination, Dr. Patari testified that he did not ask Petitioner if he had any symptoms between August 11, 2020 and April 2021. Rx1 at 24. Dr. Patari did not recall if he had any patients with a retear and testified "[a]nd the fact that I don't recall indicates that a retear is pretty uncommon in my practice." Rx1 at 29. Dr. Patari did not recall the level of osteoarthritis in Petitioner's right knee at the time that the right knee arthroscopy was performed on May 5, 2020. Rx1 at 30.

On redirect examination, Dr. Patari testified that on February 12, 2022, he felt that Petitioner would benefit from surgical intervention. Rx1 at 31. The medical intervention is not related to the work accident of November 21, 2019. Rx1 at 31. Dr. Patari testified that he based his assumption that Petitioner did not have symptoms between August 2020 and April 2021 on the fact that Petitioner did not tell him that he went for any medical care between that period and that he did not have any record

for that period of Petitioner having any medical care. Rx1 at 31. Dr. Patari testified that his opinions would not change if the medical records of August 11, 2020 indicated that Petitioner had lingering symptoms from his original course of care. Rx1 at 32. Dr. Patari explained that his opinions would not change because the arthroscopic findings of May 5, 2020 documented arthritis in the lateral compartment, and therefore, any residual symptoms that Petitioner might have been feeling on August 11, 2020, was "probably" due to the arthritis. Rx1 at 32. Based on his physical exam findings, Dr. Patari did not feel that Petitioner had a retear, as he did not have joint line tenderness or a McMurray sign which are usually specific exam findings for a meniscus tear, and he did not have any documentation that there was a new meniscus tear. Rx1 at 34.

CONCLUSIONS OF LAW

The Arbitrator adopts the above Findings of Fact in support of the Conclusions of Law set forth below. Decisions of an arbitrator shall be based exclusively on the evidence in the record of the proceeding and material that has been officially noticed. 820 ILCS 305/1.1(e). The burden of proof is on a claimant to establish the elements of his right to compensation, and unless the evidence considered in its entirety supports a finding that the injury resulted from a cause connected with the employment, there is no right to recover. *Board of Trustees v. Industrial Commission,* 44 Ill. 2d 214 (1969).

Credibility is the quality of a witness which renders his evidence worthy of belief. It is the function of the Commission to judge the credibility of the witnesses and to resolve conflicts in the medical evidence and assign weight to witness testimony. *O'Dette v. Industrial Commission*, 79 Ill. 2d 249, 253 (1980); *Hosteny v. Workers' Compensation Commission*, 397 Ill. App. 3d 665, 674 (2009). Where a claimant's testimony is inconsistent with his actual behavior and conduct, the Commission has held that an award cannot stand. *McDonald v. Industrial Commission,* 39 Ill. 2d 396 (1968); *Swift v. Industrial Commission,* 52 Ill. 2d 490 (1972).

In the case at hand, the Arbitrator observed Petitioner during the hearing and finds him to be a credible witness. The Arbitrator compared Petitioner's testimony with the totality of the evidence submitted and did not find any material contradictions that would deem the witness unreliable.

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

To obtain compensation under the Act, a claimant must prove that some act or phase of his employment was a causative factor in his ensuing injuries. A work-related injury need not be the sole or principal causative factor, as long as it was *a* causative factor in the resulting condition of ill-being. *Sisbro, Inc. v. Industrial Comm'n*, 207 Ill. 2d 193, 205 (2003). An employer takes its employees as it finds them. *St. Elizabeth's Hospital v. Illinois Workers' Compensation Comm'n*, 371 Ill. App. 3d 882, 888 (2007). Even if the claimant had a preexisting degenerative condition which made him more vulnerable to injury, recovery for an accidental injury will not be denied if the claimant can show that a work-related injury played a role in aggravating or accelerating his preexisting condition. *Sisbro, Inc. v. Industrial Comm'n*, 207 Ill. 2d 193, 205 (2003). A chain of events which demonstrates a previous condition of good health, an accident, and a subsequent injury resulting in disability may be sufficient to prove a causal connection between the accident and the claimant's injury. *International Harvester v. Industrial Com.*, 93 Ill. 2d 59, 63 (1982).

The Arbitrator finds that Petitioner's current condition of ill-being as to his right knee is causally related to the November 12, 2019 injury. The Arbitrator relies on the following in support of her findings: (1) the medical records of Erie-Waukegan Health Center, (2) the medical records and testimony of Dr. Mark Hamming, (3) Petitioner's credible testimony that he had not seen a medical professional for his right knee prior to November 12, 2019, (4) Petitioner's credible testimony that he was not involved in any new accident, traumatic event, fall or bump between August 11, 2020 and April 21, 2021, and (6) the fact that none of the records in evidence reflect any right knee issues or treatment prior to November 12, 2019. The Arbitrator notes that while the November 11, 2014 record of Erie-Waukegan Health Center reflects that Petitioner presented with complaints of knee pain, the knee affected was not specified, and Petitioner credibly testified that he presented for left knee pain complaints on that date. Regardless, the records offered do not demonstrate that Petitioner presented for any further knee treatment after November 11, 2014 until December 5, 2019.

The Arbitrator has considered the opinions of Dr. Patari and finds that the opinions of Dr. Patari do not outweigh the opinions of Dr. Hamming and that overall, the record supports Dr. Hamming's opinion that following the initial arthroscopy of May 5, 2020, the overall mechanics of the joint were changed which renders it a higher likelihood of Petitioner having arthritis in the future. The Arbitrator notes that (1) Dr. Hamming had an opportunity to observe Petitioner's knee joint during the initial arthroscopy, (2) that the operative report indicates the presence of Grade I chondromalacia in the lateral compartment, but that no flaps or chondroplasty were necessary at that time, and (3) that Dr. Hamming credibly testified that Petitioner did not have advanced cartilage wear or arthritis in his knee at the time of the initial arthroscopy.

Issue K, whether Petitioner is entitled to any prospective medical care, the Arbitrator finds as follows:

Consistent with the Arbitrator's prior finding, and after having considered all the evidence, the Arbitrator finds that Petitioner is entitled to prospective medical care as recommended by Dr. Hamming. Dr. Hamming's treatment recommendations include a right total knee arthroplasty. The Arbitrator notes that despite Dr. Patari's opinion as to causal connection, he agreed that a right total knee arthroplasty is reasonable to treat Petitioner's right knee condition. Accordingly, the Arbitrator finds that Petitioner is entitled to a right total knee arthroplasty, which is contemplated as compensable treatment under Section 8(a) of the Act, and therefore, Respondent is responsible for authorizing and paying for same.

Ana Vazquez

ANA VAZQUEZ, ARBITRATOR

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	05WC041250
Case Name	Christine Cherry v. M & M Mars
Consolidated Cases	13WC007224; 22WC016374; 23WC007327; 23WC009371;
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	24IWCC0183
Number of Pages of Decision	24
Decision Issued By	Amylee Simonovich, Commissioner

Petitioner Attorney	Pro Se
Respondent Attorney	James Clune

DATE FILED: 4/26/2024

/s/Amylee Simonovich, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

CHRISTINE CHERRY,

Petitioner,

vs. NO: 05 WC 41250

M & M MARS,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Petitioner herein and notice given to all parties, the Commission, after considering the issues of accident, medical expenses, notice, employment, occupational disease, statute of limitations, and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed August 10, 2023 is hereby affirmed and adopted.

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

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

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.

The bond requirement in Section 19(f)(2) is applicable only when "the Commission shall have entered an award for the payment of money." *820 ILCS 305/19(f)(2).* Based upon the denial of compensation herein, no bond is set by the Commission.

April 26, 2024
o041624
AHS/ldm
051

/s/*Amylee H. Simonovich*
Amylee H. Simonovich

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	05WC041250
Case Name	Christine Cherry v. M & M Mars
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	21
Decision Issued By	Steven Fruth, Arbitrator

Petitioner Attorney	
Respondent Attorney	James Clune

DATE FILED: 8/10/2023

THE INTEREST RATE FOR THE WEEK OF AUGUST 8, 2023 5.26%

/s/Steven Fruth, Arbitrator

Signature

STATE OF ILLINOIS)
)SS.
COUNTY OF COOK)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Christine Cherry Case # **05 WC 041250**
Employee/Petitioner

v.

M & M Mars
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 **Steven Fruth** Arbitrator of the Commission, in the city of **Chicago**, on **June 6, 2023**. 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: **Statute of Limitations**

FINDINGS

On **10/23/1992**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $**29,640.00**; the average weekly wage was $**570.00**.

On the date of accident, Petitioner was **40** years of age, ***single*** with **1** dependent child.

Petitioner ***has not*** received all reasonable and necessary medical services.

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

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

Respondent is entitled to a credit for all medical bills heretofore paid, if any.

ORDER

Petitioner claimed she was injured on 10/23/1992 but filed her Application for Benefits on 9/19/2005. Petitioner failed to file her Application within the statute of limitations set forth in §6(d) of the Act and, further, failed to prove any exception which would allow the statute of limitations to be extended. All other issues are moot.

Petitioner's Application for Benefits is denied.

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

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

_____ **AUGUST 10, 2023**

Signature of Arbitrator

ICArbDec p. 2

Christine Cherry v. M & M Mars
05 WC 41250, consolidated with 13 WC 7224, 22 WC 16374, 23 WC 7327, & 23 WC 9371

INTRODUCTION

These matters proceeded to hearing before Arbitrator Steven Fruth. The disputed issues were:

05 WC 41250 (DOI: 10/23/1992, injury to vital organs & immune system from exposure to carbon dioxide & freezing temperatures):

C: Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?; ***E:*** Was timely notice of the accident given to Respondent?; ***F:*** Is Petitioner's current condition of ill-being causally related to the accident?; ***J:*** Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?; ***L:*** What is the nature and extent of the injury?; ***M:*** Should penalties be imposed upon Respondent?; ***O:*** Was this claim filed within the Statute of Limitations forth in §6(d) of the Act?

Petitioner asserted a claim for permanent medical leave, which are not within the jurisdiction of the Illinois Workers Compensation Commission.

13 WC 7224 (DOI: 3/13/2012, exposure to blood-borne pathogens):

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?; ***E:*** Was timely notice of the accident given to Respondent?; ***F:*** Is Petitioner's current condition of ill-being causally related to the accident?; ***J:*** Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?; ***K:*** What temporary benefits are in dispute? TTD/Maintenance; ***L:*** What is the nature and extent of the injury?; ***O:*** Was this claim filed within the Statute of Limitations forth in §6(d) of the Act?

22 WC 16374 (DOI: 10/23/1992, radiation poisoning from exposure to ionizing radiation):

C: Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?; ***E:*** Was timely notice of the accident given to Respondent?; ***F:*** Is Petitioner's current condition of ill-being causally related to the accident?; ***J:*** Were the

medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?; ***K:*** What temporary benefits are in dispute? TTD/Maintenance; ***L:*** What is the nature and extent of the injury?; ***M:*** Should penalties be imposed upon Respondent?; ***O:*** Was this claim filed within the Statute of Limitations forth in §6(d) of the Act?

Petitioner asserted claims for long term disability, Medicare, and Social Security, which are not within the jurisdiction of the Illinois Workers Compensation Commission.

23 WC 7327 (DOI: 6/19/1999, L4-5 disc herniation from struggling to free a jammed case):

C: Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?; ***E:*** Was timely notice of the accident given to Respondent?; ***F:*** Is Petitioner's current condition of ill-being causally related to the accident?; ***J:*** Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?; ***K:*** What temporary benefits are in dispute? TTD/Maintenance; ***L:*** What is the nature and extent of the injury?; ***M:*** Should penalties be imposed upon Respondent?; ***O:*** Was this claim filed within the Statute of Limitations forth in §6(d) of the Act?

Petitioner asserted claims for long term disability and Social Security, which are not within the jurisdiction of the Illinois Workers Compensation Commission.

23 WC 9371 (DOI: 2/6/1993, miscarriage from exposure to contaminated hygiene products & environment):

C: Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?; ***E:*** Was timely notice of the accident given to Respondent?; ***F:*** Is Petitioner's current condition of ill-being causally related to the accident?; ***J:*** Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?; ***K:*** What temporary benefits are in dispute? TTD/Maintenance; ***L:*** What is the nature and extent of the injury?; ***M:*** Should penalties be imposed upon Respondent?; ***O:*** Was this claim filed within the Statute of Limitations forth in §6(d) of the Act?

Petitioner asserted claims for long term disability and Social Security, which are not within the jurisdiction of the Illinois Workers Compensation Commission.

Petitioner's Motion to Reopen Proofs was allowed in part and denied in part on June 26, 2023. Petitioner was permitted, without objection, leave to file supplemental records from University of Chicago Medical Center, Mt. Sinai Hospital, and Dr. Elliott but no other records.

STATEMENT OF FACTS

Petitioner Christine Cherry testified that she started as a temporary worker with Respondent M & M Mars in 1989. Once hired full-time, she had a full physical examination and cardiac testing, blood work, urine tests, hearing tests, and a TB test. She also had X-rays and a breathing test. She last worked for Respondent in 2000.

Petitioner testified that she did not read material safety data sheets provided to the employees. Petitioner testified that a new Milky Way product was brought into the plant in 1990 and that she noticed vapors. She said this happened about 1990. She claimed that the candy bar manufacturing process used carbon dioxide and nitrogen or nitrates. She further testified she was working in subzero temperatures but was not provided with an insulated uniform. She stated that during production it was "freezing cold in there."

Petitioner claims in 05 WC 041250 and 22 WC 016374 that she was injured on October 23, 1992. On October 23, 1992, she worked the night shift. She said the line was "dense." Petitioner testified that she had a gradual buildup of an illness, that she noticed that she was feeling different, and she went to report her feelings to the nurse's station. She was feeling bad when she arrived at work, which she related this to problems with the (production) line in the previous weeks.

Petitioner testified that on October 23, 1992 she arrived at work feeling sick and started shivering, an uncontrollable shiver, like she was freezing. She felt a freeze-like sensation in her forehead. She had a hoarseness to her voice. She was feeling weak. She noticed that her legs were getting numb. She noticed that her arm was always "off-center." Prior to this she noticed that when she was at home prior to this she noticed that when she was at home she would trip. She concluded that her safety boots at work supported her and prevented her from falling at work, except on two occasions she stated that she fell at work and reported it to "the healthcare person". She stated that her ankle went under her and she "fell over like this." Also, on October 23 she had chest pains, a sore throat, a headache, felt weak, and felt cold. She went to the nurse's station and told Phyllis that she was not feeling well. Phyllis called the paramedics to pick up the petitioner and she was taken to Gottlieb Hospital, an occupational health site.

Petitioner testified that at Gottlieb a doctor she had seen in the past examined her, checked her pulse, obtained warm blankets which he provided to her, and listened to her heart. He also conducted a pinprick test. Petitioner was not admitted to the hospital. Petitioner had X-rays and blood tests. Petitioner was released to a cab to return to the

job. She was instructed to go home after discussing her condition with the nurse at Mars. She signed a medical release. The nurse gave her a card with a doctor's name on it for her to make an appointment if she desired.

About 4 days after she left Gottlieb Petitioner saw Dr. Henniff at McNeal Hospital. Petitioner testified that she did not have the MacNeal records. She arrived at the hospital feeling weak, sick, and feverish. Dr. Henniff referred Petitioner to an endocrinologist. On November 3, 1992 Petitioner saw Dr. Couropmitree who told her she had had a stroke.

On cross-examination Petitioner was asked about her other claim for the same date of accident on October 23, 1992. She testified that the second claim (22 WC 16374) is a continuation of the initial claim (05 WC 041250). She testified that she believed that when she was sent home from Gottlieb instead of being admitted to the hospital, that's when everything became worse and so she considered this to be a continuation of the original claim. After her discussion with the doctor, she had a blood test and X-rays. Dr. Couropmitree asked her to obtain her employer's "injury insurance" because he did not accept her HMO.

Petitioner did not immediately follow up with Dr. Couropmitree but went to the University of Chicago Medical Center ("U of C"). At the University of Chicago, Petitioner had work for her thyroid at U of C. She was also treated for a miscarriage. Petitioner relates her internal injuries, "gastro system," and kidney problems to her accident of October 23, 1992. Petitioner was hospitalized with chest pains at Mount Sinai Hospital which she relates to her October 23, 1992 accident.

Petitioner testified that in her opinion her illnesses were related to a lack of oxygen when the manufacturing line was closed, and she could smell odors. To the extent she was giving an opinion regarding causation, the respondent's objection to the opinion was sustained, but to the extent the petitioner sensed odors, that testimony was allowed to stand.

Petitioner testified that she has been diagnosed with a chronic illness and a thyroid disorder. She also believes her endometriosis is related to her October 23, 1992 accident. Petitioner claims the following conditions of Ill-being because of exposures to toxic substances at Mars: thyroid disorder, chest pain treated at Mt. Sinai in 2002, gastrointestinal disorder, edema, polyps, "urology", cerebral injury, endometriosis, "mental health", deteriorated spine, abnormal mammograms, vision problems, Graves' disease, and insomnia.

In claim her 23 WC 009371 Petitioner claims she was injured, a miscarriage, on February 6, 1993. She testified that she treated at the U of C. She believes the miscarriage was related to her work at Mars. She testified that she had returned to work after October 1992 until 1995 and during that time she worked on the same process line. Her

miscarriage occurred at home. She followed up with U of C for her miscarriage, but her treatment was delayed due to her thyroid and a heart condition.

In claim her 23 WC 007327 Petitioner claims she was injured on June 19, 1999. She was scheduled to work on the "Munch line" making "Munch bars" on June 19. She noted that the line was in disrepair. Boxes were getting stuck on the line. Petitioner testified she bent over to help push a box through to the "caser." Just as she bent over, she felt pain in her back. She continued to work because other workers were not available to help her. Petitioner said she notified her group leaders, Tony and Barbara, that she needed to go home because she injured her back. The next day Petitioner returned to work feeling better, but upon performing cleaning duties she felt worse and notified her supervisor. She kept working because she believed she might be fired if she stopped.

On the following Monday Petitioner testified she was advised by a nurse from Mars that she was to go to her doctor. She saw yet another doctor who prescribed physical therapy and medications. Her doctor referred her to a rheumatologist at Rush Hospital for specialized physical therapy. She followed this doctor when he changed practice locations to Northwestern. There she received aqua therapy and a cortisone injection. She had an MRI in 2000. Also, in 2000 she entered Christ Hospital for mental health issues but did not receive back treatment while in Christ Hospital.

Petitioner testified that the 2000 MRI showed disc pathology at L4 through S1. She purchased workout equipment so that she could strengthen herself. She testified that she reinjured herself while using her workout equipment. She received treatment at West Suburban Hospital for this reinjury. Petitioner testified she received physical therapy, shots, and medication. She testified that the effects of her back injury have been ongoing, including depression.

On cross-examination Petitioner identified RX #3, a Settlement Contract approved by Arbitrator Doherty on May 10, 2013, 00 WC 50577, 00 WC 50578, 00 WC 59042, and 01 WC 2350. She acknowledged that RX #3 lists her claim of injury on June 19, 1999 as one of the claims settled.

In claim 13 WC 007224 Petitioner claims an injury on March 13, 2012. She testified that she was at the IWCC building, the James R. Thompson Center, waiting for her lawyer outside chambers. She was there for a scheduled trial for other claims. She noted something in her medical records while interacting with her attorney. Petitioner testified that as she looked at her medical records, she noted something called "infectious capillaries." Since she did not have a claim filed for infectious capillaries, she filed a claim to "safeguard" herself. Petitioner testified, "I had no just cause to file that claim." She testified that the reason she filed the claim was because of her medical records on the table. In answer to the Arbitrator's question of what injury she suffered on March 13, 2012

at the Workers' Compensation Commission at the Thompson Center, Petitioner answered, "There was nothing."

Petitioner intended to introduce her medical records from Christ Hospital regarding her mental health status. She claims that she has suffered a mental health injury because of all her workers compensation claims.

On cross-examination Petitioner acknowledged Respondent's Exhibit #3, a settlement contract approved by Arbitrator Doherty on May 10, 2013 for the consolidated matters of 00 WC 50577, 00 WC 50578, 00 WC 59042, and 01 WC 2350. Among the accident dates on the settlement contract was the date of accident of June 19, 1999. The Rider to that settlement contract stated that Petitioner was settling all accident and injury claims arising from an incident or incidents on June 19, 1999. Respondent's Exhibit #4 is Arbitrator Doherty's Order denying Petitioner's motion to set aside the settlement for a clerical or scrivener's error. Respondent's Exhibit #5 is the Order of the Commission affirming Arbitrator Doherty denial of Petitioner's motion to set aside.

Respondent called Linnea Pearson as a witness. Ms. Pearson was the risk manager for casualty and claims for the Americas for both Mars and Wrigley. In her capacity as the risk manager for claims she had the opportunity and responsibility to visit all plants, including the plant on Oak Park Avenue in Chicago where the petitioner worked. Ms. Pearson visited the facility monthly. She was familiar with the manufacturing processes, the environment of the facility, safety, and the occupational health nurses. Ms. Pearson confirmed there were no excessive amounts of carbon dioxide, nitrogen, or nitrates at Oak Park Avenue. No workers wore protective breathing apparatus or protective clothing except for warmer jackets as necessary in the cooling area. In the history of Mars there has never been a claim for radiological exposure.

Respondent's Exhibit #1, the evidence deposition of Dr. David Hartman on January 13, 2022 was admitted in evidence. Dr. Hartman is a licensed clinical psychologist and a board-certified Forensic Neuropsychologist. Dr. Hartman interviewed Petitioner on July 25, 2011 and administered a variety of testing, including the MMPI-2-RF, the Battery for Health Improvement, an intellectual screening test, and a test of basic verbal memory and motivation to produce adequate memory. In addition, Petitioner completed a medical history questionnaire, a symptom questionnaire, and a "Pain Catastrophizing Scale." He understood his evaluation of Petitioner was in the context of her Workers Compensation claim. The doctor refreshed his memory from his narrative report, HartmanDepX #2.

Dr. Hartman testified that Petitioner believed she had been exposed to carbon dioxide and nitrates while working at M&M Mars. She reported her exposure caused a variety of neurocognitive problems. The doctor reviewed her history of multiple psychiatric hospitalizations, and also her history of thyroid disease, Graves' disease,

Hashimoto's thyroiditis, and hypertension. He noted Petitioner had a number of medical and psychiatric conditions that would impair her behavior and quality of thinking. He also noted petitioner strong family history of psychotic disorder in schizophrenic disorder, she had been repeatedly diagnosed with either bipolar disorder or a schizophrenic disorder, which are typically genetic.

Dr. Hartman found no evidence of a workplace disorder caused by exposure to carbon dioxide, nitrates, nitrogen, or freezing temperatures. Petitioner's chronic condition of ill-being is a conventional psychiatric disorder. He did not believe Petitioner's beliefs were based in any reasonable reality. Further, he did not believe Petitioner's motivation was based on financial gain.

On cross-examination Dr. Hartman acknowledged that he had not reviewed Petitioner's records from Gottlieb Memorial Hospital or MacNeal Memorial Hospital.

Neurosurgeon Dr. Andrew Zelby performed a §12 IME of Petitioner on November 11, 2011. In addition to a clinical examination, Dr. Zelby reviewed Petitioner's medical records, including reports of radiological studies. He prepared a written report on November 11 which was marked as Exhibit # 2 at his evidence deposition on February 7 2022 (RX #2). Dr. Zelby 's report was admitted in evidence without objection.

At the November 11 IME Petitioner gave a history of exposure to carbon dioxide and silver nitrate refrigerant at work in 1992. She believed that exposure damaged the calcium in her bones. Petitioner also developed left leg pain followed by weakness and numbness over the entire left side. Petitioner stated that in early 1993, when doing nothing is special, she developed lower back pain which radiated into her left leg. She was seen at Oak Park Hospital where X-rays were taken. She had continuing off and on low back pain and pain in the lateral aspect of the left thigh, which continued for about 6 years. ZelbyDepX #2

Petitioner also gave a history that while cleaning a ceiling at work in 1999 she felt pain in the mid-thoracic region which radiated into her chest. She stated she was told by a doctor this was muscle strain. She later developed sharp low back pain when pulling on a jammed product case. That pain radiated into circumferential tingling in both legs. She reported that she had been told she had 2 herniated discs. She received physical therapy for one month but returned to regular work. ZelbyDepX #2

In December 1999 Petitioner was pushing a 100 pound barrel with her hip when she felt an increase in low back pain that went into the front of her left leg. She returned to her doctor and had 3 more months of physical therapy. She reported that she did not get any improvement but was told she was not a candidate for surgery.

Petitioner reported that she has had pain over the years which comes and goes depending on activity. The pain is in the back and the anterior aspects of the thighs, left more than right. She reported that she had had maybe 4 epidural steroid injections in her back over the last 10 years and multiple cycles of physical therapy. Her last course of therapy was in 2010. Petitioner also reported numbness in her hands since the mid 90s, affecting the 3rd, 4th, and 5th digits. She was told she had carpal tunnel syndrome. She specifically stated numbness was not in the lateral fingers, but the medial fingers. She has some pain at least 3 to 5 days of the week for at least one to 2 hours. ZelbyDepX #2

Petitioners past medical history included hypertension, hyperlipidemia, GERD, endometriosis, Hashimoto's thyroiditis, Graves' disease, hypoparathyroidism, bipolar disorder, and schizophrenia. She reported that her work varied between light and heavy physical labor. She smoked for 23 years. She could tolerate sitting or standing for less than one hour and could tolerate walking less than 2 blocks. She presented with pain rated at 7/10. ZelbyDepX #2

On examination Dr. Zelby noted essentially normal cervical range of motion. Spurling's maneuver and Hoffman's sign were negative. Lumbar range of motion was diminished. Straight-leg raise was negative on both sides in lying and sitting positions. Patrick's Maneuver and FABRE tests were negative on both sides. Pinprick testing demonstrated diminished sensation in the medial 3 fingers of both hands, both thighs circumferentially, and both feet. Vibratory sensation to the upper and lower extremities was normal, except for diminished sensation circumferentially in both thighs. Dr. Zelby noted inconsistent behavioral responses in non-anatomic sensory changes. Tinel's was negative at both wrists and both elbows. Phalen's was negative at both wrists. Adson's Maneuver was negative bilaterally.

Dr. Zelby noted cervical X-rays from February 19, 1997 were normal. Lumbar X-rays from July 14, 2004 showed early osteophyte formation at L4-5 and L5-S1. A January 25, 2000 lumbar MRI showed a left lateral herniated disc at L4-5 and a central disc bulge at L5-S1. An October 29, 2001 lumbar MRI showed end plate degenerative changes and disc desiccation at L4-5 and L5 S1. There was a central disc extrusion at L5-S1. An EMG on November 12, 1996 showed left ulnar neuropathy and bilateral carpal tunnel syndrome. A June 28, 2000 EMG noted mild bilateral carpal tunnel syndrome.

Dr. Zelby noted Petitioner consulted Dr. Basha in May (probably 1999) with a complaint of low back pain. She reported she went to the ER and was told she had a back sprain. Petitioner followed up with Dr. Leavitt on June 22, 1999 when lower back pain returned while she was "watching" (probably washing) high walls going side to side. Petition continued to follow with Dr Leavitt. She was seen in the emergency department of West Suburban Hospital on December 6, 1999 for left gluteal pain going down the middle of her thigh secondary to her work. Petitioner returned to Dr. Leavitt on December 21, 1999 with tingling in her left leg going into the buttock down the leg and

sometimes to the toes. Petitioner had a history of muscle strain starting in July 1999 after lifting a heavy object. Dr. Leavitt prescribed physical therapy and followed Petitioner into 2000. Dr. Leavitt had taken her off work but suggested a trial returned to work in March, which Petitioner did not want to do. On April 14, 2000 Petitioner reiterated that she did not want to return to work for fear she would reinjure her back. She was referred to Dr. Goldberg for a second opinion. Dr. Leavitt ordered a new nerve conduction study, noting a previous study in 1996.

Dr. Zelby also noted that Petitioner consulted Dr. Ruderman on May 17 2000 for a rheumatology evaluation. Dr. Ruderman noted Petitioner's herniated disc at L4-5 but thought much of her current symptomology was related to left sided trochanteric bursitis. Petitioner continued to follow with Dr. Ruderman in 2004, 2008, and 2009. By October 13, 2009 Dr. Ruderman 's impression was lumbar disc disease but suspected there were secondary issues that far eclipsed the anatomical disease.

Petitioner consulted Dr. Kalainov on January 26, 2005 when the doctor diagnosed bilateral carpal tunnel syndrome. The doctor thought the EMG studies from 1996 and 2000 were fairly unimpressive but strongly suspected some relationship between Petitioner's symptoms and her underlying hyperthyroidism. The doctor did not believe Petitioner was a surgical candidate but did administer steroid injections in both hands in December 2005.

Dr. Zelby also reviewed Petitioner's evaluation by Dr. Blonsky on June 1320 oh 6. Dr. Blonsky noted the complexity of Petitioner's case due to the numerous reported injuries at work and at home, as well as her psychiatric diagnosis. The doctor concluded Petitioner had degenerative changes at L4-5 and L5-S1 unrelated to her work activities and a resolved left trochanteric bursitis. An October 2001 MRI noted an L5-S1 extrusion, which was a progression of her condition despite her not working. He noted that petitioners work was not the only basis of her pain complaints. Dr. Blonsky also noted Petitioner apparently was able to do those things that she was interested in doing but chose not to return to work. He also noted Petitioner's carpal tunnel syndrome was mild at best and would not have prevented her from working. After reviewing various job descriptions, he could not identify any repetitive forceful grasping that would have in any way contributed to petitioners carpal tunnel syndrome. The doctor did not believe Petitioner's conditions were disabling and was uncertain why she had taken off work since March 2000.

Dr. Zelby reviewed the records of Dr. Park of Schwab Rehabilitation Hospital from November 32,009. Dr. Park found diffuse multiple tender points which met the criteria for fibromyalgia. Dr. Park noted Petitioner was seeing a psychologist for anxiety with a previous history of bipolar disorder and acute psychosis. The doctor started a tricyclic antidepressant. Dr. Park reevaluated Petitioner on August 31, 2009, at which time the doctor noted that nothing could be offered to her.

In summary, Dr. Zelby noted he had reviewed Petitioner's records from Northwestern Memorial Hospital, RUSH University Medical Center, and Mount Sinai Hospital. He noted she had been diagnosed with bipolar disorder and psychosis and also with a schizoaffective disorder and schizophrenia. He reviewed various other medical records including physical therapy records.

Dr. Zelby noted that Petitioner sustained injuries at work and away from work. He opined that at most her work injuries were soft tissue muscular strains and nothing more. He did note a disc protrusion at L4-5 noted on the 1999 MRI with possible impingement on the left L4 nerve root. Dr. Zelby noted Petitioner's complaint of radicular left leg pain down the posterior aspect of her thigh and sometimes into her toes followed an S1 dermatome, 2 levels away from the area of abnormality. He found these symptoms completely unrelated to her radiographic abnormalities. Dr. Zelby found that Petitioner did not have an identifiable objective condition associated with her spine or nervous system that would be disabling in any manner. She had no objective condition which would preclude her ability to work. He opined that her absence from work over the previous 11 years appeared to be a personal decision and not due to any objective medical condition. He found no objective findings associated with her reported injuries or her regular job activities. He finally opined that Petitioner's current complaints, and any ongoing treatment were unrelated to her reported job injuries or job activities.

Dr. Zelby testified at his evidence deposition on February 7 2022, RX #2. Dr. Zelby testified that he is a board-certified neurosurgeon. He refreshed his memory from the report he prepared regarding his IME of Petitioner on November 11, 2011 (ZelbyDepX #2).

Dr. Zelby reiterated all of the exam findings and review of Petitioner's records set forth in his November 11, 2011 report. At the end of his examination and records review Dr. Zelby diagnosed lumbar degenerative spondylosis and lumbar strain. He did not find any causal relation to those conditions and Petitioner's claimed exposure to carbon dioxide or silver nitrate.

CONCLUSIONS OF LAW

05 WC 41250 (DOI: 10/23/1992, injury to vital organs & immune system from exposure to carbon dioxide & freezing temperatures):

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

The Arbitrator finds that Petitioner failed to prove that she sustained an accidental injury that arose out of and in the course of her employment by Respondent. Petitioner failed to prove that she was exposed to excessive or deleterious levels of carbon dioxide

silver nitrate, nitrates, or nitrogen. Petitioner failed to present any evidence of what levels or what concentrations of carbon dioxide or silver nitrate or nitrates or nitrogen were in the atmosphere in which she worked, or what level of those substances were harmful to humans.

Further, Petitioner failed to file this matter within the limitations period set forth in §6(d) of the Act.

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

The Arbitrator has found that Petitioner failed to prove that she sustained an accidental injury that arose out of and in the course of her employment. The Arbitrator also found that Petitioner failed to file this matter within the limitations period set forth in s§6(d) of the Act. Therefore, this issue is moot.

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

The Arbitrator has found that Petitioner failed to prove that she sustained an accidental injury that arose out of and in the course of her employment. The Arbitrator also found that Petitioner failed to file this matter within the limitations period set forth in s§6(d) of the Act. Therefore, this issue is moot.

Even so, the Arbitrator has found that Petitioner failed to prove that any claimed condition of ill-being was causally related to claimed exposure to excessive levels of carbon dioxide, silver nitrate, nitrates, or nitrogen. Petitioner offered no medical evidence or opinion causally relating the claimed exposure to any diagnosed medical condition.

Dr. Andrew Zelby, Respondent's IME examiner, opined that there was no causal relation between Petitioner's medical condition and claimed exposure to excessive levels of carbon dioxide, silver nitrate, nitrates, or nitrogen. There was no rebuttal to Dr. Zelby's opinions.

Dr. David Hartman, Respondent's IME neuropsychological examiner, opined that there was no causal relation between Petitioner's medical condition and claimed exposure to excessive levels of carbon dioxide, silver nitrate, nitrates, or nitrogen. There was no rebuttal to Dr. Hartman's opinions.

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

The Arbitrator has found that Petitioner failed to prove that she sustained an accidental injury that arose out of and in the course of her employment. The Arbitrator also found that Petitioner failed to file this matter within the limitations period set forth in s§6(d) of the Act. Therefore, this issue is moot.

L: *What is the nature and extent of the injury?*

The Arbitrator has found that Petitioner failed to prove that she sustained an accidental injury that arose out of and in the course of her employment. The Arbitrator also found that Petitioner failed to file this matter within the limitations period set forth in s§6(d) of the Act. Therefore, this issue is moot.

M: *Should penalties be imposed upon Respondent?*

The Arbitrator has found that Petitioner failed to prove that she sustained an accidental injury that arose out of and in the course of her employment. The Arbitrator also found that Petitioner failed to file this matter within the limitations period set forth in s§6(d) of the Act. Therefore, this issue is moot.

O: *Was this claim filed within the Statute of Limitations forth in §6(d) of the Act?*

Petitioner claimed she sustained a work related injury on October 23, 1992. She filed her Application for Benefits on September 19, 2005. Petitioner filed her Application more than 3 years after the limitation set forth in §6(d) of the Act.

The Arbitrator finds that Petitioner failed to file her Application for Benefits within the period of limitations set forth in §6(d) of the Act, and, therefore, Petitioner's Application for Benefits is denied.

13 WC 7224 (DOI: 3/13/2012, exposure to blood-borne pathogens):

B: *Was there an employee-employer relationship?*

Petitioner failed to prove that she was employed by Respondent on March 13, 2012. Petitioner testified that she was last employed by Respondent in the year 2000.

Petitioner testified that on March 13 2012 she was present at the Workers' Compensation Commission in the James R Thompson Center for a scheduled matter on a different pending claim.

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

The Arbitrator has found that Petitioner failed to prove that she was an employee of Respondent on March 13 2012. Therefore, this issue is moot.

Even so, Petitioner testified that on March 13 2012 she was present at the Workers' Compensation Commission in the James R. Thompson center for a scheduled matter on a different pending claim. She could not have been engaged in any activity that rose out of or in the course of her employment.

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

The Arbitrator has found that Petitioner failed to prove that she was an employee of Respondent on March 13 2012. Therefore, this issue is moot.

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

The Arbitrator has found that Petitioner failed to prove that she was an employee of Respondent on March 13 2012. Therefore, this issue is moot.

Even so, Petitioner failed to produce any evidence that she was ever exposed to a blood-borne pathogen at any time during her employment by Respondent.

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

The Arbitrator has found that Petitioner failed to prove that she was an employee of Respondent on March 13 2012. Therefore, this issue is moot.

K: *What temporary benefits are in dispute? TTD/Maintenance*

The Arbitrator has found that Petitioner failed to prove that she was an employee of Respondent on March 13 2012. Therefore, this issue is moot.

L: *What is the nature and extent of the injury?*

The Arbitrator has found that Petitioner failed to prove that she was an employee of Respondent on March 13 2012. Therefore, this issue is moot.

O: *Was this claim filed within the Statute of Limitations forth in §6(d) of the Act?*

The Arbitrator has found that Petitioner failed to prove that she was an employee of Respondent on March 13 2012. Therefore, this issue is moot.

22 WC 16374 (DOI: 10/23/1992, radiation poisoning from exposure to ionizing radiation):

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

Petitioner failed to prove that she was injured in an accident that arose out of and in the course of her employment by Respondent.

Petitioner claims to have sustained radiation poisoning from exposure to ionizing radiation. Petitioner failed to produce evidence of exposure to atomic radiation verified by the records of the central registry of radiation exposure maintained by the Department

of Public Health or by some other recognized governmental agency maintaining records of such exposures whenever and to the extent the records are on file with the Department of Public health or the agency, as required by §1(d) of the Occupational Diseases Act, 820 ILCS 310 *et seq*.

Further, Petitioner failed to file this matter within the limitations period set forth in §6(d) of the Act.

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

The Arbitrator has found that Petitioner failed to prove that she sustained an accidental injury that arose out of and in the course of her employment. The Arbitrator also found that Petitioner failed to file this matter within the limitations period set forth in s§6(d) of the Act. Therefore, this issue is moot.

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

The Arbitrator has found that Petitioner failed to prove that she sustained an accidental injury that arose out of and in the course of her employment. The Arbitrator also found that Petitioner failed to file this matter within the limitations period set forth in s§6(d) of the Act. Therefore, this issue is moot.

Even so, Petitioner failed to produce evidence or medical opinion that she suffered radiation poisoning.

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

The Arbitrator has found that Petitioner failed to prove that she sustained an accidental injury that arose out of and in the course of her employment. The Arbitrator also found that Petitioner failed to file this matter within the limitations period set forth in s§6(d) of the Act. Therefore, this issue is moot.

K: *What temporary benefits are in dispute? TTD/Maintenance*

The Arbitrator has found that Petitioner failed to prove that she sustained an accidental injury that arose out of and in the course of her employment. The Arbitrator also found that Petitioner failed to file this matter within the limitations period set forth in s§6(d) of the Act. Therefore, this issue is moot.

L: *What is the nature and extent of the injury?*

The Arbitrator has found that Petitioner failed to prove that she sustained an accidental injury that arose out of and in the course of her employment. The Arbitrator also found that Petitioner failed to file this matter within the limitations period set forth in s§6(d) of the Act. Therefore, this issue is moot.

M: *Should penalties be imposed upon Respondent?*

The Arbitrator has found that Petitioner failed to prove that she sustained an accidental injury that arose out of and in the course of her employment. The Arbitrator also found that Petitioner failed to file this matter within the limitations period set forth in s§6(d) of the Act. Therefore, this issue is moot.

O: *Was this claim filed within the Statute of Limitations forth in §6(d) of the Act?*

The Arbitrator finds that Petitioner failed to prove that she filed her claim within the Statute of Limitations set forth in §6(d) of the Act.

§6(d) of the Act provides that in case of injury caused by exposure to radiological materials an application for compensation may be filed within 25 years after the last date that the employee was employed in an environment of hazardous radiological activity, otherwise the right to file shall be barred. Here Petitioner failed to prove that she worked in an environment of hazardous radiological activity. She failed to present any evidence whatever of the presence of ionizing radiation anywhere within her workplace.

In failing to establish any date of exposure to ionizing radiation Petitioner is unable to establish when the 25 year statute began.

23 WC 7327 (DOI: 6/19/1999, L4-5 disc herniation from struggling to free a jammed case):

This claim was included in a settlement approved by Arbitrator Carolyn Doherty in the consolidated matters Christine Cherry v. M & M Mars Company: 00 WC 5057, 00 WC 50578, 00 WC 59042, and 01 WC 2350. Petitioner signed the settlement contract. Arbitrator Doherty approved this settlement contract on May 10, 2013 (RX #3). Petitioner moved to vacate the settlement, which Arbitrator Doherty denied on May 30, 2013 (RX #4). Petitioner sought review of Arbitrator Doherty's Order before the Illinois Workers' Compensation Commission. The Commission affirmed and adopted Arbitrator Doherty's decision on November 13, 2014 (RX #5).

Petitioner's claim is an effort to relitigate a matter that was resolved by settlement and release. By analogy, if this matter were a civil lawsuit it would be dismissed in accord with §619(a)(6) of the Code of Civil Procedure, 735 ILCS *et seq*.

Petitioner's claim is denied, having failed to file this claim within the time limits set forth in §6(d) of the Act. Petitioner claimed she sustained a work related injury on June 19, 1999. She filed her Application for Benefits on March 17, 2013. Petitioner filed her Application more than 3 years after the limitation set forth in §6(d) of the Act.

The Arbitrator also finds that Petitioner failed to file her Application for Benefits within the period of limitations set forth in §6(d) of the Act, and, therefore, Petitioner's Application for Benefits is denied.

23 WC 9371 (DOI: 2/6/1993, miscarriage from exposure to contaminated hygiene products & environment):

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

The Arbitrator finds the Petitioner failed to prove that she sustained an accidental injury, namely a miscarriage of a pregnancy, that arose out of and in the course of her employment by Respondent.

Petitioner failed to present any evidence or medical opinion that her miscarriage occurred during performance of her work duties or activities. Petitioner failed to present any evidence or medical opinion that Respondent supplied hygiene products of any sort that were required for performance of he work duties or activities.

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

The Arbitrator has found that Petitioner failed to prove that she sustained an accidental injury that arose out of and in the course of her employment. The Arbitrator also found that Petitioner failed to file this matter within the limitations period set forth in s§6(d) of the Act. Therefore, this issue is moot.

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

The Arbitrator finds that Petitioner failed to prove that her claim condition of ill-being was causally related to a workplace accident.

Petitioner failed to present any evidence or medical opinion that her miscarriage of a pregnancy was causally related to any of her work duties or activities.

The Arbitrator also found that Petitioner failed to file this matter within the limitations period set forth in s§6(d) of the Act. Therefore, this issue is moot.

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

The Arbitrator has found that Petitioner failed to prove that she sustained an accidental injury that arose out of and in the course of her employment. The Arbitrator also found that Petitioner failed to file this matter within the limitations period set forth in s§6(d) of the Act. Therefore, this issue is moot.

K: *What temporary benefits are in dispute? TTD/Maintenance*

The Arbitrator has found that Petitioner failed to prove that she sustained an accidental injury that arose out of and in the course of her employment. The Arbitrator also found that Petitioner failed to file this matter within the limitations period set forth in s§6(d) of the Act. Therefore, this issue is moot.

L: *What is the nature and extent of the injury?*

The Arbitrator has found that Petitioner failed to prove that she sustained an accidental injury that arose out of and in the course of her employment. The Arbitrator also found that Petitioner failed to file this matter within the limitations period set forth in s§6(d) of the Act. Therefore, this issue is moot.

M: *Should penalties be imposed upon Respondent?*

The Arbitrator has found that Petitioner failed to prove that she sustained an accidental injury that arose out of and in the course of her employment. The Arbitrator also found that Petitioner failed to file this matter within the limitations period set forth in s§6(d) of the Act. Therefore, this issue is moot.

O: *Was this claim filed within the Statute of Limitations forth in §6(d) of the Act?*

Petitioner's claim is denied, having failed to file this claim within the time limits set forth in §6(d) of the Act. Petitioner claimed she sustained a work related injury on February 6, 1993. She filed her Application for Benefits on April 10, 2023. Petitioner filed her Application more than 3 years after the limitation set forth in §6(d) of the Act.

The Arbitrator finds that Petitioner failed to file her Application for Benefits within the period of limitations set forth in §6(d) of the Act, and, therefore, Petitioner's Application for Benefits is denied.

Steven J. Fruth, Arbitrator

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	13WC007224
Case Name	Christine Cherry v. M & M Mars
Consolidated Cases	05WC041250; 22WC016374; 23WC007327; 23WC009371;
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	24IWCC0184
Number of Pages of Decision	24
Decision Issued By	Amylee Simonovich, Commissioner

Petitioner Attorney	Pro Se
Respondent Attorney	James Clune

DATE FILED: 4/26/2024

/s/ Amylee Simonovich, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

CHRISTINE CHERRY,

Petitioner,

vs. NO: 13 WC 07224

M & M MARS,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Petitioner herein and notice given to all parties, the Commission, after considering the issues of accident, medical expenses, notice, employment, occupational disease, statute of limitations, and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed August 10, 2023 is hereby affirmed and adopted.

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

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

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.

The bond requirement in Section 19(f)(2) is applicable only when "the Commission shall have entered an award for the payment of money." *820 ILCS 305/19(f)(2).* Based upon the denial of compensation herein, no bond is set by the Commission.

April 26, 2024
o041624
AHS/ldm
051

/s/*Amylee H. Simonovich*
Amylee H. Simonovich

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	13WC007224
Case Name	Christine Cherry v. M & M Mars
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	21
Decision Issued By	Steven Fruth, Arbitrator

Petitioner Attorney	
Respondent Attorney	James Clune

DATE FILED: 8/10/2023

THE INTEREST RATE FOR THE WEEK OF AUGUST 8, 2023 5.26%

/s/Steven Fruth, Arbitrator

Signature

STATE OF ILLINOIS)
)SS.
COUNTY OF COOK)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Christine Cherry **Case # 13 WC 007224**
Employee/Petitioner

v.

M & M Mars
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 **Steven Fruth** Arbitrator of the Commission, in the city of **Chicago**, on **June 6, 2023**. 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

B. ☐ 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: **Statute of Limitations**

FINDINGS

On **3/13/2012**, Respondent ***was*** operating under and subject to the provisions of the Act.

On this date, an employee-employer relationship ***did not*** exist between Petitioner and Respondent.

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

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

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

In the year preceding the injury, Petitioner earned $**29,640.00**; the average weekly wage was $**570.00**.

On the date of accident, Petitioner was **40** years of age, ***single*** with **1** dependent child.

Petitioner ***has not*** received all reasonable and necessary medical services.

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

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

Respondent is entitled to a credit for all medical bills heretofore paid, if any.

ORDER

Petitioner testified that she was last employed by Respondent in 2000 and, therefore, was not employed by Respondent on 3/13/2012. Further, Petitioner testified that she did not sustain an injury when she was attending a scheduled hearing at the Workers' Compensation Commission at the James R. Thompson Center on 3/13/2012. By her own testimony Petitioner did not have a valid claim for benefits. All other issues are moot.

Petitioner's Application for Benefits is denied.

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

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

_____ **AUGUST 10, 2023**

Signature of Arbitrator

ICArbDec p. 2

Christine Cherry v. M & M Mars
05 WC 41250, consolidated with 13 WC 7224, 22 WC 16374, 23 WC 7327, & 23 WC 9371

INTRODUCTION

These matters proceeded to hearing before Arbitrator Steven Fruth. The disputed issues were:

05 WC 41250 (DOI: 10/23/1992, injury to vital organs & immune system from exposure to carbon dioxide & freezing temperatures):

C: Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?; ***E:*** Was timely notice of the accident given to Respondent?; ***F:*** Is Petitioner's current condition of ill-being causally related to the accident?; ***J:*** Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?; ***L:*** What is the nature and extent of the injury?; ***M:*** Should penalties be imposed upon Respondent?; ***O:*** Was this claim filed within the Statute of Limitations forth in §6(d) of the Act?

Petitioner asserted a claim for permanent medical leave, which are not within the jurisdiction of the Illinois Workers Compensation Commission.

13 WC 7224 (DOI: 3/13/2012, exposure to blood-borne pathogens):

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?; ***E:*** Was timely notice of the accident given to Respondent?; ***F:*** Is Petitioner's current condition of ill-being causally related to the accident?; ***J:*** Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?; ***K:*** What temporary benefits are in dispute? TTD/Maintenance; ***L:*** What is the nature and extent of the injury?; ***O:*** Was this claim filed within the Statute of Limitations forth in §6(d) of the Act?

22 WC 16374 (DOI: 10/23/1992, radiation poisoning from exposure to ionizing radiation):

C: Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?; ***E:*** Was timely notice of the accident given to Respondent?; ***F:*** Is Petitioner's current condition of ill-being causally related to the accident?; ***J:*** Were the

medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?; ***K:*** What temporary benefits are in dispute? TTD/Maintenance; ***L:*** What is the nature and extent of the injury?; ***M:*** Should penalties be imposed upon Respondent?; ***O:*** Was this claim filed within the Statute of Limitations forth in §6(d) of the Act?

Petitioner asserted claims for long term disability, Medicare, and Social Security, which are not within the jurisdiction of the Illinois Workers Compensation Commission.

23 WC 7327 (DOI: 6/19/1999, L4-5 disc herniation from struggling to free a jammed case):

C: Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?; ***E:*** Was timely notice of the accident given to Respondent?; ***F:*** Is Petitioner's current condition of ill-being causally related to the accident?; ***J:*** Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?; ***K:*** What temporary benefits are in dispute? TTD/Maintenance; ***L:*** What is the nature and extent of the injury?; ***M:*** Should penalties be imposed upon Respondent?; ***O:*** Was this claim filed within the Statute of Limitations forth in §6(d) of the Act?

Petitioner asserted claims for long term disability and Social Security, which are not within the jurisdiction of the Illinois Workers Compensation Commission.

23 WC 9371 (DOI: 2/6/1993, miscarriage from exposure to contaminated hygiene products & environment):

C: Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?; ***E:*** Was timely notice of the accident given to Respondent?; ***F:*** Is Petitioner's current condition of ill-being causally related to the accident?; ***J:*** Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?; ***K:*** What temporary benefits are in dispute? TTD/Maintenance; ***L:*** What is the nature and extent of the injury?; ***M:*** Should penalties be imposed upon Respondent?; ***O:*** Was this claim filed within the Statute of Limitations forth in §6(d) of the Act?

Petitioner asserted claims for long term disability and Social Security, which are not within the jurisdiction of the Illinois Workers Compensation Commission.

Petitioner's Motion to Reopen Proofs was allowed in part and denied in part on June 26, 2023. Petitioner was permitted, without objection, leave to file supplemental records from University of Chicago Medical Center, Mt. Sinai Hospital, and Dr. Elliott but no other records.

STATEMENT OF FACTS

Petitioner Christine Cherry testified that she started as a temporary worker with Respondent M & M Mars in 1989. Once hired full-time, she had a full physical examination and cardiac testing, blood work, urine tests, hearing tests, and a TB test. She also had X-rays and a breathing test. She last worked for Respondent in 2000.

Petitioner testified that she did not read material safety data sheets provided to the employees. Petitioner testified that a new Milky Way product was brought into the plant in 1990 and that she noticed vapors. She said this happened about 1990. She claimed that the candy bar manufacturing process used carbon dioxide and nitrogen or nitrates. She further testified she was working in subzero temperatures but was not provided with an insulated uniform. She stated that during production it was "freezing cold in there."

Petitioner claims in 05 WC 041250 and 22 WC 016374 that she was injured on October 23, 1992. On October 23, 1992, she worked the night shift. She said the line was "dense." Petitioner testified that she had a gradual buildup of an illness, that she noticed that she was feeling different, and she went to report her feelings to the nurse's station. She was feeling bad when she arrived at work, which she related this to problems with the (production) line in the previous weeks.

Petitioner testified that on October 23, 1992 she arrived at work feeling sick and started shivering, an uncontrollable shiver, like she was freezing. She felt a freeze-like sensation in her forehead. She had a hoarseness to her voice. She was feeling weak. She noticed that her legs were getting numb. She noticed that her arm was always "off-center." Prior to this she noticed that when she was at home prior to this she noticed that when she was at home she would trip. She concluded that her safety boots at work supported her and prevented her from falling at work, except on two occasions she stated that she fell at work and reported it to "the healthcare person". She stated that her ankle went under her and she "fell over like this." Also, on October 23 she had chest pains, a sore throat, a headache, felt weak, and felt cold. She went to the nurse's station and told Phyllis that she was not feeling well. Phyllis called the paramedics to pick up the petitioner and she was taken to Gottlieb Hospital, an occupational health site.

Petitioner testified that at Gottlieb a doctor she had seen in the past examined her, checked her pulse, obtained warm blankets which he provided to her, and listened to her heart. He also conducted a pinprick test. Petitioner was not admitted to the hospital. Petitioner had X-rays and blood tests. Petitioner was released to a cab to return to the

job. She was instructed to go home after discussing her condition with the nurse at Mars. She signed a medical release. The nurse gave her a card with a doctor's name on it for her to make an appointment if she desired.

About 4 days after she left Gottlieb Petitioner saw Dr. Henniff at McNeal Hospital. Petitioner testified that she did not have the MacNeal records. She arrived at the hospital feeling weak, sick, and feverish. Dr. Henniff referred Petitioner to an endocrinologist. On November 3, 1992 Petitioner saw Dr. Couropmitree who told her she had had a stroke.

On cross-examination Petitioner was asked about her other claim for the same date of accident on October 23, 1992. She testified that the second claim (22 WC 16374) is a continuation of the initial claim (05 WC 041250). She testified that she believed that when she was sent home from Gottlieb instead of being admitted to the hospital, that's when everything became worse and so she considered this to be a continuation of the original claim. After her discussion with the doctor, she had a blood test and X-rays. Dr. Couropmitree asked her to obtain her employer's "injury insurance" because he did not accept her HMO.

Petitioner did not immediately follow up with Dr. Couropmitree but went to the University of Chicago Medical Center ("U of C"). At the University of Chicago, Petitioner had work for her thyroid at U of C. She was also treated for a miscarriage. Petitioner relates her internal injuries, "gastro system," and kidney problems to her accident of October 23, 1992. Petitioner was hospitalized with chest pains at Mount Sinai Hospital which she relates to her October 23, 1992 accident.

Petitioner testified that in her opinion her illnesses were related to a lack of oxygen when the manufacturing line was closed, and she could smell odors. To the extent she was giving an opinion regarding causation, the respondent's objection to the opinion was sustained, but to the extent the petitioner sensed odors, that testimony was allowed to stand.

Petitioner testified that she has been diagnosed with a chronic illness and a thyroid disorder. She also believes her endometriosis is related to her October 23, 1992 accident. Petitioner claims the following conditions of Ill-being because of exposures to toxic substances at Mars: thyroid disorder, chest pain treated at Mt. Sinai in 2002, gastrointestinal disorder, edema, polyps, "urology", cerebral injury, endometriosis, "mental health", deteriorated spine, abnormal mammograms, vision problems, Graves' disease, and insomnia.

In claim her 23 WC 009371 Petitioner claims she was injured, a miscarriage, on February 6, 1993. She testified that she treated at the U of C. She believes the miscarriage was related to her work at Mars. She testified that she had returned to work after October 1992 until 1995 and during that time she worked on the same process line. Her

miscarriage occurred at home. She followed up with U of C for her miscarriage, but her treatment was delayed due to her thyroid and a heart condition.

In claim her 23 WC 007327 Petitioner claims she was injured on June 19, 1999. She was scheduled to work on the "Munch line" making "Munch bars" on June 19. She noted that the line was in disrepair. Boxes were getting stuck on the line. Petitioner testified she bent over to help push a box through to the "caser." Just as she bent over, she felt pain in her back. She continued to work because other workers were not available to help her. Petitioner said she notified her group leaders, Tony and Barbara, that she needed to go home because she injured her back. The next day Petitioner returned to work feeling better, but upon performing cleaning duties she felt worse and notified her supervisor. She kept working because she believed she might be fired if she stopped.

On the following Monday Petitioner testified she was advised by a nurse from Mars that she was to go to her doctor. She saw yet another doctor who prescribed physical therapy and medications. Her doctor referred her to a rheumatologist at Rush Hospital for specialized physical therapy. She followed this doctor when he changed practice locations to Northwestern. There she received aqua therapy and a cortisone injection. She had an MRI in 2000. Also, in 2000 she entered Christ Hospital for mental health issues but did not receive back treatment while in Christ Hospital.

Petitioner testified that the 2000 MRI showed disc pathology at L4 through S1. She purchased workout equipment so that she could strengthen herself. She testified that she reinjured herself while using her workout equipment. She received treatment at West Suburban Hospital for this reinjury. Petitioner testified she received physical therapy, shots, and medication. She testified that the effects of her back injury have been ongoing, including depression.

On cross-examination Petitioner identified RX #3, a Settlement Contract approved by Arbitrator Doherty on May 10, 2013, 00 WC 50577, 00 WC 50578, 00 WC 59042, and 01 WC 2350. She acknowledged that RX #3 lists her claim of injury on June 19, 1999 as one of the claims settled.

In claim 13 WC 007224 Petitioner claims an injury on March 13, 2012. She testified that she was at the IWCC building, the James R. Thompson Center, waiting for her lawyer outside chambers. She was there for a scheduled trial for other claims. She noted something in her medical records while interacting with her attorney. Petitioner testified that as she looked at her medical records, she noted something called "infectious capillaries." Since she did not have a claim filed for infectious capillaries, she filed a claim to "safeguard" herself. Petitioner testified, "I had no just cause to file that claim." She testified that the reason she filed the claim was because of her medical records on the table. In answer to the Arbitrator's question of what injury she suffered on March 13, 2012

at the Workers' Compensation Commission at the Thompson Center, Petitioner answered, "There was nothing."

Petitioner intended to introduce her medical records from Christ Hospital regarding her mental health status. She claims that she has suffered a mental health injury because of all her workers compensation claims.

On cross-examination Petitioner acknowledged Respondent's Exhibit #3, a settlement contract approved by Arbitrator Doherty on May 10, 2013 for the consolidated matters of 00 WC 50577, 00 WC 50578, 00 WC 59042, and 01 WC 2350. Among the accident dates on the settlement contract was the date of accident of June 19, 1999. The Rider to that settlement contract stated that Petitioner was settling all accident and injury claims arising from an incident or incidents on June 19, 1999. Respondent's Exhibit #4 is Arbitrator Doherty's Order denying Petitioner's motion to set aside the settlement for a clerical or scrivener's error. Respondent's Exhibit #5 is the Order of the Commission affirming Arbitrator Doherty denial of Petitioner's motion to set aside.

Respondent called Linnea Pearson as a witness. Ms. Pearson was the risk manager for casualty and claims for the Americas for both Mars and Wrigley. In her capacity as the risk manager for claims she had the opportunity and responsibility to visit all plants, including the plant on Oak Park Avenue in Chicago where the petitioner worked. Ms. Pearson visited the facility monthly. She was familiar with the manufacturing processes, the environment of the facility, safety, and the occupational health nurses. Ms. Pearson confirmed there were no excessive amounts of carbon dioxide, nitrogen, or nitrates at Oak Park Avenue. No workers wore protective breathing apparatus or protective clothing except for warmer jackets as necessary in the cooling area. In the history of Mars there has never been a claim for radiological exposure.

Respondent's Exhibit #1, the evidence deposition of Dr. David Hartman on January 13, 2022 was admitted in evidence. Dr. Hartman is a licensed clinical psychologist and a board-certified Forensic Neuropsychologist. Dr. Hartman interviewed Petitioner on July 25, 2011 and administered a variety of testing, including the MMPI-2-RF, the Battery for Health Improvement, an intellectual screening test, and a test of basic verbal memory and motivation to produce adequate memory. In addition, Petitioner completed a medical history questionnaire, a symptom questionnaire, and a "Pain Catastrophizing Scale." He understood his evaluation of Petitioner was in the context of her Workers Compensation claim. The doctor refreshed his memory from his narrative report, HartmanDepX #2.

Dr. Hartman testified that Petitioner believed she had been exposed to carbon dioxide and nitrates while working at M&M Mars. She reported her exposure caused a variety of neurocognitive problems. The doctor reviewed her history of multiple psychiatric hospitalizations, and also her history of thyroid disease, Graves' disease,

Hashimoto's thyroiditis, and hypertension. He noted Petitioner had a number of medical and psychiatric conditions that would impair her behavior and quality of thinking. He also noted petitioner strong family history of psychotic disorder in schizophrenic disorder, she had been repeatedly diagnosed with either bipolar disorder or a schizophrenic disorder, which are typically genetic.

Dr. Hartman found no evidence of a workplace disorder caused by exposure to carbon dioxide, nitrates, nitrogen, or freezing temperatures. Petitioner's chronic condition of ill-being is a conventional psychiatric disorder. He did not believe Petitioner's beliefs were based in any reasonable reality. Further, he did not believe Petitioner's motivation was based on financial gain.

On cross-examination Dr. Hartman acknowledged that he had not reviewed Petitioner's records from Gottlieb Memorial Hospital or MacNeal Memorial Hospital.

Neurosurgeon Dr. Andrew Zelby performed a §12 IME of Petitioner on November 11, 2011. In addition to a clinical examination, Dr. Zelby reviewed Petitioner's medical records, including reports of radiological studies. He prepared a written report on November 11 which was marked as Exhibit # 2 at his evidence deposition on February 7 2022 (RX #2). Dr. Zelby 's report was admitted in evidence without objection.

At the November 11 IME Petitioner gave a history of exposure to carbon dioxide and silver nitrate refrigerant at work in 1992. She believed that exposure damaged the calcium in her bones. Petitioner also developed left leg pain followed by weakness and numbness over the entire left side. Petitioner stated that in early 1993, when doing nothing is special, she developed lower back pain which radiated into her left leg. She was seen at Oak Park Hospital where X-rays were taken. She had continuing off and on low back pain and pain in the lateral aspect of the left thigh, which continued for about 6 years. ZelbyDepX #2

Petitioner also gave a history that while cleaning a ceiling at work in 1999 she felt pain in the mid-thoracic region which radiated into her chest. She stated she was told by a doctor this was muscle strain. She later developed sharp low back pain when pulling on a jammed product case. That pain radiated into circumferential tingling in both legs. She reported that she had been told she had 2 herniated discs. She received physical therapy for one month but returned to regular work. ZelbyDepX #2

In December 1999 Petitioner was pushing a 100 pound barrel with her hip when she felt an increase in low back pain that went into the front of her left leg. She returned to her doctor and had 3 more months of physical therapy. She reported that she did not get any improvement but was told she was not a candidate for surgery.

Petitioner reported that she has had pain over the years which comes and goes depending on activity. The pain is in the back and the anterior aspects of the thighs, left more than right. She reported that she had had maybe 4 epidural steroid injections in her back over the last 10 years and multiple cycles of physical therapy. Her last course of therapy was in 2010. Petitioner also reported numbness in her hands since the mid 90s, affecting the 3rd, 4th, and 5th digits. She was told she had carpal tunnel syndrome. She specifically stated numbness was not in the lateral fingers, but the medial fingers. She has some pain at least 3 to 5 days of the week for at least one to 2 hours. ZelbyDepX #2

Petitioners past medical history included hypertension, hyperlipidemia, GERD, endometriosis, Hashimoto's thyroiditis, Graves' disease, hypoparathyroidism, bipolar disorder, and schizophrenia. She reported that her work varied between light and heavy physical labor. She smoked for 23 years. She could tolerate sitting or standing for less than one hour and could tolerate walking less than 2 blocks. She presented with pain rated at 7/10. ZelbyDepX #2

On examination Dr. Zelby noted essentially normal cervical range of motion. Spurling's maneuver and Hoffman's sign were negative. Lumbar range of motion was diminished. Straight-leg raise was negative on both sides in lying and sitting positions. Patrick's Maneuver and FABRE tests were negative on both sides. Pinprick testing demonstrated diminished sensation in the medial 3 fingers of both hands, both thighs circumferentially, and both feet. Vibratory sensation to the upper and lower extremities was normal, except for diminished sensation circumferentially in both thighs. Dr. Zelby noted inconsistent behavioral responses in non-anatomic sensory changes. Tinel's was negative at both wrists and both elbows. Phalen's was negative at both wrists. Adson's Maneuver was negative bilaterally.

Dr. Zelby noted cervical X-rays from February 19, 1997 were normal. Lumbar X-rays from July 14, 2004 showed early osteophyte formation at L4-5 and L5-S1. A January 25, 2000 lumbar MRI showed a left lateral herniated disc at L4-5 and a central disc bulge at L5-S1. An October 29, 2001 lumbar MRI showed end plate degenerative changes and disc desiccation at L4-5 and L5 S1. There was a central disc extrusion at L5-S1. An EMG on November 12, 1996 showed left ulnar neuropathy and bilateral carpal tunnel syndrome. A June 28, 2000 EMG noted mild bilateral carpal tunnel syndrome.

Dr. Zelby noted Petitioner consulted Dr. Basha in May (probably 1999) with a complaint of low back pain. She reported she went to the ER and was told she had a back sprain. Petitioner followed up with Dr. Leavitt on June 22, 1999 when lower back pain returned while she was "watching" (probably washing) high walls going side to side. Petition continued to follow with Dr Leavitt. She was seen in the emergency department of West Suburban Hospital on December 6, 1999 for left gluteal pain going down the middle of her thigh secondary to her work. Petitioner returned to Dr. Leavitt on December 21, 1999 with tingling in her left leg going into the buttock down the leg and

sometimes to the toes. Petitioner had a history of muscle strain starting in July 1999 after lifting a heavy object. Dr. Leavitt prescribed physical therapy and followed Petitioner into 2000. Dr. Leavitt had taken her off work but suggested a trial returned to work in March, which Petitioner did not want to do. On April 14, 2000 Petitioner reiterated that she did not want to return to work for fear she would reinjure her back. She was referred to Dr. Goldberg for a second opinion. Dr. Leavitt ordered a new nerve conduction study, noting a previous study in 1996.

Dr. Zelby also noted that Petitioner consulted Dr. Ruderman on May 17 2000 for a rheumatology evaluation. Dr. Ruderman noted Petitioner's herniated disc at L4-5 but thought much of her current symptomology was related to left sided trochanteric bursitis. Petitioner continued to follow with Dr. Ruderman in 2004, 2008, and 2009. By October 13, 2009 Dr. Ruderman 's impression was lumbar disc disease but suspected there were secondary issues that far eclipsed the anatomical disease.

Petitioner consulted Dr. Kalainov on January 26, 2005 when the doctor diagnosed bilateral carpal tunnel syndrome. The doctor thought the EMG studies from 1996 and 2000 were fairly unimpressive but strongly suspected some relationship between Petitioner's symptoms and her underlying hyperthyroidism. The doctor did not believe Petitioner was a surgical candidate but did administer steroid injections in both hands in December 2005.

Dr. Zelby also reviewed Petitioner's evaluation by Dr. Blonsky on June 1320 oh 6. Dr. Blonsky noted the complexity of Petitioner's case due to the numerous reported injuries at work and at home, as well as her psychiatric diagnosis. The doctor concluded Petitioner had degenerative changes at L4-5 and L5-S1 unrelated to her work activities and a resolved left trochanteric bursitis. An October 2001 MRI noted an L5-S1 extrusion, which was a progression of her condition despite her not working. He noted that petitioners work was not the only basis of her pain complaints. Dr. Blonsky also noted Petitioner apparently was able to do those things that she was interested in doing but chose not to return to work. He also noted Petitioner's carpal tunnel syndrome was mild at best and would not have prevented her from working. After reviewing various job descriptions, he could not identify any repetitive forceful grasping that would have in any way contributed to petitioners carpal tunnel syndrome. The doctor did not believe Petitioner's conditions were disabling and was uncertain why she had taken off work since March 2000.

Dr. Zelby reviewed the records of Dr. Park of Schwab Rehabilitation Hospital from November 32,009. Dr. Park found diffuse multiple tender points which met the criteria for fibromyalgia. Dr. Park noted Petitioner was seeing a psychologist for anxiety with a previous history of bipolar disorder and acute psychosis. The doctor started a tricyclic antidepressant. Dr. Park reevaluated Petitioner on August 31, 2009, at which time the doctor noted that nothing could be offered to her.

In summary, Dr. Zelby noted he had reviewed Petitioner's records from Northwestern Memorial Hospital, RUSH University Medical Center, and Mount Sinai Hospital. He noted she had been diagnosed with bipolar disorder and psychosis and also with a schizoaffective disorder and schizophrenia. He reviewed various other medical records including physical therapy records.

Dr. Zelby noted that Petitioner sustained injuries at work and away from work. He opined that at most her work injuries were soft tissue muscular strains and nothing more. He did note a disc protrusion at L4-5 noted on the 1999 MRI with possible impingement on the left L4 nerve root. Dr. Zelby noted Petitioner's complaint of radicular left leg pain down the posterior aspect of her thigh and sometimes into her toes followed an S1 dermatome, 2 levels away from the area of abnormality. He found these symptoms completely unrelated to her radiographic abnormalities. Dr. Zelby found that Petitioner did not have an identifiable objective condition associated with her spine or nervous system that would be disabling in any manner. She had no objective condition which would preclude her ability to work. He opined that her absence from work over the previous 11 years appeared to be a personal decision and not due to any objective medical condition. He found no objective findings associated with her reported injuries or her regular job activities. He finally opined that Petitioner's current complaints, and any ongoing treatment were unrelated to her reported job injuries or job activities.

Dr. Zelby testified at his evidence deposition on February 7 2022, RX #2. Dr. Zelby testified that he is a board-certified neurosurgeon. He refreshed his memory from the report he prepared regarding his IME of Petitioner on November 11, 2011 (ZelbyDepX #2).

Dr. Zelby reiterated all of the exam findings and review of Petitioner's records set forth in his November 11, 2011 report. At the end of his examination and records review Dr. Zelby diagnosed lumbar degenerative spondylosis and lumbar strain. He did not find any causal relation to those conditions and Petitioner's claimed exposure to carbon dioxide or silver nitrate.

CONCLUSIONS OF LAW

05 WC 41250 (DOI: 10/23/1992, injury to vital organs & immune system from exposure to carbon dioxide & freezing temperatures):

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

The Arbitrator finds that Petitioner failed to prove that she sustained an accidental injury that arose out of and in the course of her employment by Respondent. Petitioner failed to prove that she was exposed to excessive or deleterious levels of carbon dioxide

silver nitrate, nitrates, or nitrogen. Petitioner failed to present any evidence of what levels or what concentrations of carbon dioxide or silver nitrate or nitrates or nitrogen were in the atmosphere in which she worked, or what level of those substances were harmful to humans.

Further, Petitioner failed to file this matter within the limitations period set forth in §6(d) of the Act.

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

The Arbitrator has found that Petitioner failed to prove that she sustained an accidental injury that arose out of and in the course of her employment. The Arbitrator also found that Petitioner failed to file this matter within the limitations period set forth in s§6(d) of the Act. Therefore, this issue is moot.

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

The Arbitrator has found that Petitioner failed to prove that she sustained an accidental injury that arose out of and in the course of her employment. The Arbitrator also found that Petitioner failed to file this matter within the limitations period set forth in s§6(d) of the Act. Therefore, this issue is moot.

Even so, the Arbitrator has found that Petitioner failed to prove that any claimed condition of ill-being was causally related to claimed exposure to excessive levels of carbon dioxide, silver nitrate, nitrates, or nitrogen. Petitioner offered no medical evidence or opinion causally relating the claimed exposure to any diagnosed medical condition.

Dr. Andrew Zelby, Respondent's IME examiner, opined that there was no causal relation between Petitioner's medical condition and claimed exposure to excessive levels of carbon dioxide, silver nitrate, nitrates, or nitrogen. There was no rebuttal to Dr. Zelby's opinions.

Dr. David Hartman, Respondent's IME neuropsychological examiner, opined that there was no causal relation between Petitioner's medical condition and claimed exposure to excessive levels of carbon dioxide, silver nitrate, nitrates, or nitrogen. There was no rebuttal to Dr. Hartman's opinions.

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

The Arbitrator has found that Petitioner failed to prove that she sustained an accidental injury that arose out of and in the course of her employment. The Arbitrator also found that Petitioner failed to file this matter within the limitations period set forth in s§6(d) of the Act. Therefore, this issue is moot.

L: *What is the nature and extent of the injury?*

The Arbitrator has found that Petitioner failed to prove that she sustained an accidental injury that arose out of and in the course of her employment. The Arbitrator also found that Petitioner failed to file this matter within the limitations period set forth in s§6(d) of the Act. Therefore, this issue is moot.

M: *Should penalties be imposed upon Respondent?*

The Arbitrator has found that Petitioner failed to prove that she sustained an accidental injury that arose out of and in the course of her employment. The Arbitrator also found that Petitioner failed to file this matter within the limitations period set forth in s§6(d) of the Act. Therefore, this issue is moot.

O: *Was this claim filed within the Statute of Limitations forth in §6(d) of the Act?*

Petitioner claimed she sustained a work related injury on October 23, 1992. She filed her Application for Benefits on September 19, 2005. Petitioner filed her Application more than 3 years after the limitation set forth in §6(d) of the Act.

The Arbitrator finds that Petitioner failed to file her Application for Benefits within the period of limitations set forth in §6(d) of the Act, and, therefore, Petitioner's Application for Benefits is denied.

13 WC 7224 (DOI: 3/13/2012, exposure to blood-borne pathogens):

B: *Was there an employee-employer relationship?*

Petitioner failed to prove that she was employed by Respondent on March 13, 2012. Petitioner testified that she was last employed by Respondent in the year 2000.

Petitioner testified that on March 13 2012 she was present at the Workers' Compensation Commission in the James R Thompson Center for a scheduled matter on a different pending claim.

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

The Arbitrator has found that Petitioner failed to prove that she was an employee of Respondent on March 13 2012. Therefore, this issue is moot.

Even so, Petitioner testified that on March 13 2012 she was present at the Workers' Compensation Commission in the James R. Thompson center for a scheduled matter on a different pending claim. She could not have been engaged in any activity that rose out of or in the course of her employment.

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

The Arbitrator has found that Petitioner failed to prove that she was an employee of Respondent on March 13 2012. Therefore, this issue is moot.

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

The Arbitrator has found that Petitioner failed to prove that she was an employee of Respondent on March 13 2012. Therefore, this issue is moot.

Even so, Petitioner failed to produce any evidence that she was ever exposed to a blood-borne pathogen at any time during her employment by Respondent.

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

The Arbitrator has found that Petitioner failed to prove that she was an employee of Respondent on March 13 2012. Therefore, this issue is moot.

K: *What temporary benefits are in dispute? TTD/Maintenance*

The Arbitrator has found that Petitioner failed to prove that she was an employee of Respondent on March 13 2012. Therefore, this issue is moot.

L: *What is the nature and extent of the injury?*

The Arbitrator has found that Petitioner failed to prove that she was an employee of Respondent on March 13 2012. Therefore, this issue is moot.

O: *Was this claim filed within the Statute of Limitations forth in §6(d) of the Act?*

The Arbitrator has found that Petitioner failed to prove that she was an employee of Respondent on March 13 2012. Therefore, this issue is moot.

22 WC 16374 (DOI: 10/23/1992, radiation poisoning from exposure to ionizing radiation):

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

Petitioner failed to prove that she was injured in an accident that arose out of and in the course of her employment by Respondent.

Petitioner claims to have sustained radiation poisoning from exposure to ionizing radiation. Petitioner failed to produce evidence of exposure to atomic radiation verified by the records of the central registry of radiation exposure maintained by the Department

of Public Health or by some other recognized governmental agency maintaining records of such exposures whenever and to the extent the records are on file with the Department of Public health or the agency, as required by §1(d) of the Occupational Diseases Act, 820 ILCS 310 *et seq*.

Further, Petitioner failed to file this matter within the limitations period set forth in §6(d) of the Act.

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

The Arbitrator has found that Petitioner failed to prove that she sustained an accidental injury that arose out of and in the course of her employment. The Arbitrator also found that Petitioner failed to file this matter within the limitations period set forth in s§6(d) of the Act. Therefore, this issue is moot.

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

The Arbitrator has found that Petitioner failed to prove that she sustained an accidental injury that arose out of and in the course of her employment. The Arbitrator also found that Petitioner failed to file this matter within the limitations period set forth in s§6(d) of the Act. Therefore, this issue is moot.

Even so, Petitioner failed to produce evidence or medical opinion that she suffered radiation poisoning.

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

The Arbitrator has found that Petitioner failed to prove that she sustained an accidental injury that arose out of and in the course of her employment. The Arbitrator also found that Petitioner failed to file this matter within the limitations period set forth in s§6(d) of the Act. Therefore, this issue is moot.

K: *What temporary benefits are in dispute? TTD/Maintenance*

The Arbitrator has found that Petitioner failed to prove that she sustained an accidental injury that arose out of and in the course of her employment. The Arbitrator also found that Petitioner failed to file this matter within the limitations period set forth in s§6(d) of the Act. Therefore, this issue is moot.

L: *What is the nature and extent of the injury?*

The Arbitrator has found that Petitioner failed to prove that she sustained an accidental injury that arose out of and in the course of her employment. The Arbitrator also found that Petitioner failed to file this matter within the limitations period set forth in s§6(d) of the Act. Therefore, this issue is moot.

M: *Should penalties be imposed upon Respondent?*

The Arbitrator has found that Petitioner failed to prove that she sustained an accidental injury that arose out of and in the course of her employment. The Arbitrator also found that Petitioner failed to file this matter within the limitations period set forth in s§6(d) of the Act. Therefore, this issue is moot.

O: *Was this claim filed within the Statute of Limitations forth in §6(d) of the Act?*

The Arbitrator finds that Petitioner failed to prove that she filed her claim within the Statute of Limitations set forth in §6(d) of the Act.

§6(d) of the Act provides that in case of injury caused by exposure to radiological materials an application for compensation may be filed within 25 years after the last date that the employee was employed in an environment of hazardous radiological activity, otherwise the right to file shall be barred. Here Petitioner failed to prove that she worked in an environment of hazardous radiological activity. She failed to present any evidence whatever of the presence of ionizing radiation anywhere within her workplace.

In failing to establish any date of exposure to ionizing radiation Petitioner is unable to establish when the 25 year statute began.

23 WC 7327 (DOI: 6/19/1999, L4-5 disc herniation from struggling to free a jammed case):

This claim was included in a settlement approved by Arbitrator Carolyn Doherty in the consolidated matters Christine Cherry v. M & M Mars Company: 00 WC 5057, 00 WC 50578, 00 WC 59042, and 01 WC 2350. Petitioner signed the settlement contract. Arbitrator Doherty approved this settlement contract on May 10, 2013 (RX #3). Petitioner moved to vacate the settlement, which Arbitrator Doherty denied on May 30, 2013 (RX #4). Petitioner sought review of Arbitrator Doherty's Order before the Illinois Workers' Compensation Commission. The Commission affirmed and adopted Arbitrator Doherty's decision on November 13, 2014 (RX #5).

Petitioner's claim is an effort to relitigate a matter that was resolved by settlement and release. By analogy, if this matter were a civil lawsuit it would be dismissed in accord with §619(a)(6) of the Code of Civil Procedure, 735 ILCS *et seq*.

Petitioner's claim is denied, having failed to file this claim within the time limits set forth in §6(d) of the Act. Petitioner claimed she sustained a work related injury on June 19, 1999. She filed her Application for Benefits on March 17, 2013. Petitioner filed her Application more than 3 years after the limitation set forth in §6(d) of the Act.

The Arbitrator also finds that Petitioner failed to file her Application for Benefits within the period of limitations set forth in §6(d) of the Act, and, therefore, Petitioner's Application for Benefits is denied.

23 WC 9371 (DOI: 2/6/1993, miscarriage from exposure to contaminated hygiene products & environment):

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

The Arbitrator finds the Petitioner failed to prove that she sustained an accidental injury, namely a miscarriage of a pregnancy, that arose out of and in the course of her employment by Respondent.

Petitioner failed to present any evidence or medical opinion that her miscarriage occurred during performance of her work duties or activities. Petitioner failed to present any evidence or medical opinion that Respondent supplied hygiene products of any sort that were required for performance of he work duties or activities.

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

The Arbitrator has found that Petitioner failed to prove that she sustained an accidental injury that arose out of and in the course of her employment. The Arbitrator also found that Petitioner failed to file this matter within the limitations period set forth in s§6(d) of the Act. Therefore, this issue is moot.

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

The Arbitrator finds that Petitioner failed to prove that her claim condition of ill-being was causally related to a workplace accident.

Petitioner failed to present any evidence or medical opinion that her miscarriage of a pregnancy was causally related to any of her work duties or activities.

The Arbitrator also found that Petitioner failed to file this matter within the limitations period set forth in s§6(d) of the Act. Therefore, this issue is moot.

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

The Arbitrator has found that Petitioner failed to prove that she sustained an accidental injury that arose out of and in the course of her employment. The Arbitrator also found that Petitioner failed to file this matter within the limitations period set forth in s§6(d) of the Act. Therefore, this issue is moot.

K: *What temporary benefits are in dispute? TTD/Maintenance*

The Arbitrator has found that Petitioner failed to prove that she sustained an accidental injury that arose out of and in the course of her employment. The Arbitrator also found that Petitioner failed to file this matter within the limitations period set forth in s§6(d) of the Act. Therefore, this issue is moot.

L: *What is the nature and extent of the injury?*

The Arbitrator has found that Petitioner failed to prove that she sustained an accidental injury that arose out of and in the course of her employment. The Arbitrator also found that Petitioner failed to file this matter within the limitations period set forth in s§6(d) of the Act. Therefore, this issue is moot.

M: *Should penalties be imposed upon Respondent?*

The Arbitrator has found that Petitioner failed to prove that she sustained an accidental injury that arose out of and in the course of her employment. The Arbitrator also found that Petitioner failed to file this matter within the limitations period set forth in s§6(d) of the Act. Therefore, this issue is moot.

O: *Was this claim filed within the Statute of Limitations forth in §6(d) of the Act?*

Petitioner's claim is denied, having failed to file this claim within the time limits set forth in §6(d) of the Act. Petitioner claimed she sustained a work related injury on February 6, 1993. She filed her Application for Benefits on April 10, 2023. Petitioner filed her Application more than 3 years after the limitation set forth in §6(d) of the Act.

The Arbitrator finds that Petitioner failed to file her Application for Benefits within the period of limitations set forth in §6(d) of the Act, and, therefore, Petitioner's Application for Benefits is denied.

Steven J. Fruth, Arbitrator

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	22WC016374
Case Name	Christine Cherry v. M & M Mars
Consolidated Cases	05WC041250; 13WC007224; 23WC007327; 23WC009371;
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	24IWCC0185
Number of Pages of Decision	25
Decision Issued By	Amylee Simonovich, Commissioner

Petitioner Attorney	Pro Se
Respondent Attorney	James Clune

DATE FILED: 4/26/2024

/s/ Amylee Simonovich, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

CHRISTINE CHERRY,

Petitioner,

vs. NO: 22 WC 16374

M & M MARS,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Petitioner herein and notice given to all parties, the Commission, after considering the issues of accident, medical expenses, notice, employment, occupational disease, statute of limitations, and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed August 10, 2023 is hereby affirmed and adopted.

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

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

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.

The bond requirement in Section 19(f)(2) is applicable only when "the Commission shall have entered an award for the payment of money." *820 ILCS 305/19(f)(2).* Based upon the denial of compensation herein, no bond is set by the Commission.

April 26, 2024

o041624
AHS/ldm
051

/s/*Amylee H. Simonovich*
Amylee H. Simonovich

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	22WC016374
Case Name	Christine Cherry v. M & M Mars
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	22
Decision Issued By	Steven Fruth, Arbitrator

Petitioner Attorney	
Respondent Attorney	James Clune

DATE FILED: 8/10/2023

THE INTEREST RATE FOR THE WEEK OF AUGUST 8, 2023 5.26%

/s/Steven Fruth, Arbitrator

Signature

STATE OF ILLINOIS)
)SS.
COUNTY OF COOK)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Christine Cherry Case # **22 WC 016374**
Employee/Petitioner

v.

M & M Mars
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 **Steven Fruth** Arbitrator of the Commission, in the city of **Chicago**, on **June 6, 2023**. 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: **Statute of Limitations**

FINDINGS

On **10/23/1992**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $**29,640.00**; the average weekly wage was $**570.00**.

On the date of accident, Petitioner was **40** years of age, ***single*** with **1** dependent child.

Petitioner ***has not*** received all reasonable and necessary medical services.

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

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

Respondent is entitled to a credit for all medical bills heretofore paid, if any.

ORDER

Petitioner claimed she was injured on 10/23/1992 but filed her Application for Benefits on 6/23/2022. Petitioner failed to file her Application within the statute of limitations set forth in §6(d) of the Act and, further, failed to prove any exception which would allow the statute of limitations to be extended.

Further, Petitioner failed to present evidence of exposure to atomic radiation verified by the records of the central registry of radiation exposure maintained by the Department of Public Health or by some other recognized governmental agency maintaining records for such exposures whenever and to the extent that the records are on file with the Department of Public Health or the agency, as required by the Occupational Diseases Act, 820 ILCS 310/§1(d).

Petitioner's Application for Benefits is denied.

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

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

_____ **AUGUST 10, 2023**

Signature of Arbitrator

Christine Cherry v. M & M Mars
05 WC 41250, consolidated with 13 WC 7224, 22 WC 16374, 23 WC 7327, & 23 WC 9371

INTRODUCTION

These matters proceeded to hearing before Arbitrator Steven Fruth. The disputed issues were:

05 WC 41250 (DOI: 10/23/1992, injury to vital organs & immune system from exposure to carbon dioxide & freezing temperatures):

C: Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?; ***E:*** Was timely notice of the accident given to Respondent?; ***F:*** Is Petitioner's current condition of ill-being causally related to the accident?; ***J:*** Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?; ***L:*** What is the nature and extent of the injury?; ***M:*** Should penalties be imposed upon Respondent?; ***O:*** Was this claim filed within the Statute of Limitations forth in §6(d) of the Act?

Petitioner asserted a claim for permanent medical leave, which are not within the jurisdiction of the Illinois Workers Compensation Commission.

13 WC 7224 (DOI: 3/13/2012, exposure to blood-borne pathogens):

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?; ***E:*** Was timely notice of the accident given to Respondent?; ***F:*** Is Petitioner's current condition of ill-being causally related to the accident?; ***J:*** Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?; ***K:*** What temporary benefits are in dispute? TTD/Maintenance; ***L:*** What is the nature and extent of the injury?; ***O:*** Was this claim filed within the Statute of Limitations forth in §6(d) of the Act?

22 WC 16374 (DOI: 10/23/1992, radiation poisoning from exposure to ionizing radiation):

C: Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?; ***E:*** Was timely notice of the accident given to Respondent?; ***F:*** Is Petitioner's current condition of ill-being causally related to the accident?; ***J:*** Were the

medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?; ***K:*** What temporary benefits are in dispute? TTD/Maintenance; ***L:*** What is the nature and extent of the injury?; ***M:*** Should penalties be imposed upon Respondent?; ***O:*** Was this claim filed within the Statute of Limitations forth in §6(d) of the Act?

Petitioner asserted claims for long term disability, Medicare, and Social Security, which are not within the jurisdiction of the Illinois Workers Compensation Commission.

23 WC 7327 (DOI: 6/19/1999, L4-5 disc herniation from struggling to free a jammed case):

C: Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?; ***E:*** Was timely notice of the accident given to Respondent?; ***F:*** Is Petitioner's current condition of ill-being causally related to the accident?; ***J:*** Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?; ***K:*** What temporary benefits are in dispute? TTD/Maintenance; ***L:*** What is the nature and extent of the injury?; ***M:*** Should penalties be imposed upon Respondent?; ***O:*** Was this claim filed within the Statute of Limitations forth in §6(d) of the Act?

Petitioner asserted claims for long term disability and Social Security, which are not within the jurisdiction of the Illinois Workers Compensation Commission.

23 WC 9371 (DOI: 2/6/1993, miscarriage from exposure to contaminated hygiene products & environment):

C: Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?; ***E:*** Was timely notice of the accident given to Respondent?; ***F:*** Is Petitioner's current condition of ill-being causally related to the accident?; ***J:*** Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?; ***K:*** What temporary benefits are in dispute? TTD/Maintenance; ***L:*** What is the nature and extent of the injury?; ***M:*** Should penalties be imposed upon Respondent?; ***O:*** Was this claim filed within the Statute of Limitations forth in §6(d) of the Act?

Petitioner asserted claims for long term disability and Social Security, which are not within the jurisdiction of the Illinois Workers Compensation Commission.

Petitioner's Motion to Reopen Proofs was allowed in part and denied in part on June 26, 2023. Petitioner was permitted, without objection, leave to file supplemental records from University of Chicago Medical Center, Mt. Sinai Hospital, and Dr. Elliott but no other records.

STATEMENT OF FACTS

Petitioner Christine Cherry testified that she started as a temporary worker with Respondent M & M Mars in 1989. Once hired full-time, she had a full physical examination and cardiac testing, blood work, urine tests, hearing tests, and a TB test. She also had X-rays and a breathing test. She last worked for Respondent in 2000.

Petitioner testified that she did not read material safety data sheets provided to the employees. Petitioner testified that a new Milky Way product was brought into the plant in 1990 and that she noticed vapors. She said this happened about 1990. She claimed that the candy bar manufacturing process used carbon dioxide and nitrogen or nitrates. She further testified she was working in subzero temperatures but was not provided with an insulated uniform. She stated that during production it was "freezing cold in there."

Petitioner claims in 05 WC 041250 and 22 WC 016374 that she was injured on October 23, 1992. On October 23, 1992, she worked the night shift. She said the line was "dense." Petitioner testified that she had a gradual buildup of an illness, that she noticed that she was feeling different, and she went to report her feelings to the nurse's station. She was feeling bad when she arrived at work, which she related this to problems with the (production) line in the previous weeks.

Petitioner testified that on October 23, 1992 she arrived at work feeling sick and started shivering, an uncontrollable shiver, like she was freezing. She felt a freeze-like sensation in her forehead. She had a hoarseness to her voice. She was feeling weak. She noticed that her legs were getting numb. She noticed that her arm was always "off-center." Prior to this she noticed that when she was at home prior to this she noticed that when she was at home she would trip. She concluded that her safety boots at work supported her and prevented her from falling at work, except on two occasions she stated that she fell at work and reported it to "the healthcare person". She stated that her ankle went under her and she "fell over like this." Also, on October 23 she had chest pains, a sore throat, a headache, felt weak, and felt cold. She went to the nurse's station and told Phyllis that she was not feeling well. Phyllis called the paramedics to pick up the petitioner and she was taken to Gottlieb Hospital, an occupational health site.

Petitioner testified that at Gottlieb a doctor she had seen in the past examined her, checked her pulse, obtained warm blankets which he provided to her, and listened to her heart. He also conducted a pinprick test. Petitioner was not admitted to the hospital. Petitioner had X-rays and blood tests. Petitioner was released to a cab to return to the

job. She was instructed to go home after discussing her condition with the nurse at Mars. She signed a medical release. The nurse gave her a card with a doctor's name on it for her to make an appointment if she desired.

About 4 days after she left Gottlieb Petitioner saw Dr. Henniff at McNeal Hospital. Petitioner testified that she did not have the MacNeal records. She arrived at the hospital feeling weak, sick, and feverish. Dr. Henniff referred Petitioner to an endocrinologist. On November 3, 1992 Petitioner saw Dr. Couropmitree who told her she had had a stroke.

On cross-examination Petitioner was asked about her other claim for the same date of accident on October 23, 1992. She testified that the second claim (22 WC 16374) is a continuation of the initial claim (05 WC 041250). She testified that she believed that when she was sent home from Gottlieb instead of being admitted to the hospital, that's when everything became worse and so she considered this to be a continuation of the original claim. After her discussion with the doctor, she had a blood test and X-rays. Dr. Couropmitree asked her to obtain her employer's "injury insurance" because he did not accept her HMO.

Petitioner did not immediately follow up with Dr. Couropmitree but went to the University of Chicago Medical Center ("U of C"). At the University of Chicago, Petitioner had work for her thyroid at U of C. She was also treated for a miscarriage. Petitioner relates her internal injuries, "gastro system," and kidney problems to her accident of October 23, 1992. Petitioner was hospitalized with chest pains at Mount Sinai Hospital which she relates to her October 23, 1992 accident.

Petitioner testified that in her opinion her illnesses were related to a lack of oxygen when the manufacturing line was closed, and she could smell odors. To the extent she was giving an opinion regarding causation, the respondent's objection to the opinion was sustained, but to the extent the petitioner sensed odors, that testimony was allowed to stand.

Petitioner testified that she has been diagnosed with a chronic illness and a thyroid disorder. She also believes her endometriosis is related to her October 23, 1992 accident. Petitioner claims the following conditions of Ill-being because of exposures to toxic substances at Mars: thyroid disorder, chest pain treated at Mt. Sinai in 2002, gastrointestinal disorder, edema, polyps, "urology", cerebral injury, endometriosis, "mental health", deteriorated spine, abnormal mammograms, vision problems, Graves' disease, and insomnia.

In claim her 23 WC 009371 Petitioner claims she was injured, a miscarriage, on February 6, 1993. She testified that she treated at the U of C. She believes the miscarriage was related to her work at Mars. She testified that she had returned to work after October 1992 until 1995 and during that time she worked on the same process line. Her

miscarriage occurred at home. She followed up with U of C for her miscarriage, but her treatment was delayed due to her thyroid and a heart condition.

In claim her 23 WC 007327 Petitioner claims she was injured on June 19, 1999. She was scheduled to work on the "Munch line" making "Munch bars" on June 19. She noted that the line was in disrepair. Boxes were getting stuck on the line. Petitioner testified she bent over to help push a box through to the "caser." Just as she bent over, she felt pain in her back. She continued to work because other workers were not available to help her. Petitioner said she notified her group leaders, Tony and Barbara, that she needed to go home because she injured her back. The next day Petitioner returned to work feeling better, but upon performing cleaning duties she felt worse and notified her supervisor. She kept working because she believed she might be fired if she stopped.

On the following Monday Petitioner testified she was advised by a nurse from Mars that she was to go to her doctor. She saw yet another doctor who prescribed physical therapy and medications. Her doctor referred her to a rheumatologist at Rush Hospital for specialized physical therapy. She followed this doctor when he changed practice locations to Northwestern. There she received aqua therapy and a cortisone injection. She had an MRI in 2000. Also, in 2000 she entered Christ Hospital for mental health issues but did not receive back treatment while in Christ Hospital.

Petitioner testified that the 2000 MRI showed disc pathology at L4 through S1. She purchased workout equipment so that she could strengthen herself. She testified that she reinjured herself while using her workout equipment. She received treatment at West Suburban Hospital for this reinjury. Petitioner testified she received physical therapy, shots, and medication. She testified that the effects of her back injury have been ongoing, including depression.

On cross-examination Petitioner identified RX #3, a Settlement Contract approved by Arbitrator Doherty on May 10, 2013, 00 WC 50577, 00 WC 50578, 00 WC 59042, and 01 WC 2350. She acknowledged that RX #3 lists her claim of injury on June 19, 1999 as one of the claims settled.

In claim 13 WC 007224 Petitioner claims an injury on March 13, 2012. She testified that she was at the IWCC building, the James R. Thompson Center, waiting for her lawyer outside chambers. She was there for a scheduled trial for other claims. She noted something in her medical records while interacting with her attorney. Petitioner testified that as she looked at her medical records, she noted something called "infectious capillaries." Since she did not have a claim filed for infectious capillaries, she filed a claim to "safeguard" herself. Petitioner testified, "I had no just cause to file that claim." She testified that the reason she filed the claim was because of her medical records on the table. In answer to the Arbitrator's question of what injury she suffered on March 13, 2012

at the Workers' Compensation Commission at the Thompson Center, Petitioner answered, "There was nothing."

Petitioner intended to introduce her medical records from Christ Hospital regarding her mental health status. She claims that she has suffered a mental health injury because of all her workers compensation claims.

On cross-examination Petitioner acknowledged Respondent's Exhibit #3, a settlement contract approved by Arbitrator Doherty on May 10, 2013 for the consolidated matters of 00 WC 50577, 00 WC 50578, 00 WC 59042, and 01 WC 2350. Among the accident dates on the settlement contract was the date of accident of June 19, 1999. The Rider to that settlement contract stated that Petitioner was settling all accident and injury claims arising from an incident or incidents on June 19, 1999. Respondent's Exhibit #4 is Arbitrator Doherty's Order denying Petitioner's motion to set aside the settlement for a clerical or scrivener's error. Respondent's Exhibit #5 is the Order of the Commission affirming Arbitrator Doherty denial of Petitioner's motion to set aside.

Respondent called Linnea Pearson as a witness. Ms. Pearson was the risk manager for casualty and claims for the Americas for both Mars and Wrigley. In her capacity as the risk manager for claims she had the opportunity and responsibility to visit all plants, including the plant on Oak Park Avenue in Chicago where the petitioner worked. Ms. Pearson visited the facility monthly. She was familiar with the manufacturing processes, the environment of the facility, safety, and the occupational health nurses. Ms. Pearson confirmed there were no excessive amounts of carbon dioxide, nitrogen, or nitrates at Oak Park Avenue. No workers wore protective breathing apparatus or protective clothing except for warmer jackets as necessary in the cooling area. In the history of Mars there has never been a claim for radiological exposure.

Respondent's Exhibit #1, the evidence deposition of Dr. David Hartman on January 13, 2022 was admitted in evidence. Dr. Hartman is a licensed clinical psychologist and a board-certified Forensic Neuropsychologist. Dr. Hartman interviewed Petitioner on July 25, 2011 and administered a variety of testing, including the MMPI-2-RF, the Battery for Health Improvement, an intellectual screening test, and a test of basic verbal memory and motivation to produce adequate memory. In addition, Petitioner completed a medical history questionnaire, a symptom questionnaire, and a "Pain Catastrophizing Scale." He understood his evaluation of Petitioner was in the context of her Workers Compensation claim. The doctor refreshed his memory from his narrative report, HartmanDepX #2.

Dr. Hartman testified that Petitioner believed she had been exposed to carbon dioxide and nitrates while working at M&M Mars. She reported her exposure caused a variety of neurocognitive problems. The doctor reviewed her history of multiple psychiatric hospitalizations, and also her history of thyroid disease, Graves' disease,

Hashimoto's thyroiditis, and hypertension. He noted Petitioner had a number of medical and psychiatric conditions that would impair her behavior and quality of thinking. He also noted petitioner strong family history of psychotic disorder in schizophrenic disorder, she had been repeatedly diagnosed with either bipolar disorder or a schizophrenic disorder, which are typically genetic.

Dr. Hartman found no evidence of a workplace disorder caused by exposure to carbon dioxide, nitrates, nitrogen, or freezing temperatures. Petitioner's chronic condition of ill-being is a conventional psychiatric disorder. He did not believe Petitioner's beliefs were based in any reasonable reality. Further, he did not believe Petitioner's motivation was based on financial gain.

On cross-examination Dr. Hartman acknowledged that he had not reviewed Petitioner's records from Gottlieb Memorial Hospital or MacNeal Memorial Hospital.

Neurosurgeon Dr. Andrew Zelby performed a §12 IME of Petitioner on November 11, 2011. In addition to a clinical examination, Dr. Zelby reviewed Petitioner's medical records, including reports of radiological studies. He prepared a written report on November 11 which was marked as Exhibit # 2 at his evidence deposition on February 7 2022 (RX #2). Dr. Zelby 's report was admitted in evidence without objection.

At the November 11 IME Petitioner gave a history of exposure to carbon dioxide and silver nitrate refrigerant at work in 1992. She believed that exposure damaged the calcium in her bones. Petitioner also developed left leg pain followed by weakness and numbness over the entire left side. Petitioner stated that in early 1993, when doing nothing is special, she developed lower back pain which radiated into her left leg. She was seen at Oak Park Hospital where X-rays were taken. She had continuing off and on low back pain and pain in the lateral aspect of the left thigh, which continued for about 6 years. ZelbyDepX #2

Petitioner also gave a history that while cleaning a ceiling at work in 1999 she felt pain in the mid-thoracic region which radiated into her chest. She stated she was told by a doctor this was muscle strain. She later developed sharp low back pain when pulling on a jammed product case. That pain radiated into circumferential tingling in both legs. She reported that she had been told she had 2 herniated discs. She received physical therapy for one month but returned to regular work. ZelbyDepX #2

In December 1999 Petitioner was pushing a 100 pound barrel with her hip when she felt an increase in low back pain that went into the front of her left leg. She returned to her doctor and had 3 more months of physical therapy. She reported that she did not get any improvement but was told she was not a candidate for surgery.

Petitioner reported that she has had pain over the years which comes and goes depending on activity. The pain is in the back and the anterior aspects of the thighs, left more than right. She reported that she had had maybe 4 epidural steroid injections in her back over the last 10 years and multiple cycles of physical therapy. Her last course of therapy was in 2010. Petitioner also reported numbness in her hands since the mid 90s, affecting the 3rd, 4th, and 5th digits. She was told she had carpal tunnel syndrome. She specifically stated numbness was not in the lateral fingers, but the medial fingers. She has some pain at least 3 to 5 days of the week for at least one to 2 hours. ZelbyDepX #2

Petitioners past medical history included hypertension, hyperlipidemia, GERD, endometriosis, Hashimoto's thyroiditis, Graves' disease, hypoparathyroidism, bipolar disorder, and schizophrenia. She reported that her work varied between light and heavy physical labor. She smoked for 23 years. She could tolerate sitting or standing for less than one hour and could tolerate walking less than 2 blocks. She presented with pain rated at 7/10. ZelbyDepX #2

On examination Dr. Zelby noted essentially normal cervical range of motion. Spurling's maneuver and Hoffman's sign were negative. Lumbar range of motion was diminished. Straight-leg raise was negative on both sides in lying and sitting positions. Patrick's Maneuver and FABRE tests were negative on both sides. Pinprick testing demonstrated diminished sensation in the medial 3 fingers of both hands, both thighs circumferentially, and both feet. Vibratory sensation to the upper and lower extremities was normal, except for diminished sensation circumferentially in both thighs. Dr. Zelby noted inconsistent behavioral responses in non-anatomic sensory changes. Tinel's was negative at both wrists and both elbows. Phalen's was negative at both wrists. Adson's Maneuver was negative bilaterally.

Dr. Zelby noted cervical X-rays from February 19, 1997 were normal. Lumbar X-rays from July 14, 2004 showed early osteophyte formation at L4-5 and L5-S1. A January 25, 2000 lumbar MRI showed a left lateral herniated disc at L4-5 and a central disc bulge at L5-S1. An October 29, 2001 lumbar MRI showed end plate degenerative changes and disc desiccation at L4-5 and L5 S1. There was a central disc extrusion at L5-S1. An EMG on November 12, 1996 showed left ulnar neuropathy and bilateral carpal tunnel syndrome. A June 28, 2000 EMG noted mild bilateral carpal tunnel syndrome.

Dr. Zelby noted Petitioner consulted Dr. Basha in May (probably 1999) with a complaint of low back pain. She reported she went to the ER and was told she had a back sprain. Petitioner followed up with Dr. Leavitt on June 22, 1999 when lower back pain returned while she was "watching" (probably washing) high walls going side to side. Petition continued to follow with Dr Leavitt. She was seen in the emergency department of West Suburban Hospital on December 6, 1999 for left gluteal pain going down the middle of her thigh secondary to her work. Petitioner returned to Dr. Leavitt on December 21, 1999 with tingling in her left leg going into the buttock down the leg and

sometimes to the toes. Petitioner had a history of muscle strain starting in July 1999 after lifting a heavy object. Dr. Leavitt prescribed physical therapy and followed Petitioner into 2000. Dr. Leavitt had taken her off work but suggested a trial returned to work in March, which Petitioner did not want to do. On April 14, 2000 Petitioner reiterated that she did not want to return to work for fear she would reinjure her back. She was referred to Dr. Goldberg for a second opinion. Dr. Leavitt ordered a new nerve conduction study, noting a previous study in 1996.

Dr. Zelby also noted that Petitioner consulted Dr. Ruderman on May 17 2000 for a rheumatology evaluation. Dr. Ruderman noted Petitioner's herniated disc at L4-5 but thought much of her current symptomology was related to left sided trochanteric bursitis. Petitioner continued to follow with Dr. Ruderman in 2004, 2008, and 2009. By October 13, 2009 Dr. Ruderman 's impression was lumbar disc disease but suspected there were secondary issues that far eclipsed the anatomical disease.

Petitioner consulted Dr. Kalainov on January 26, 2005 when the doctor diagnosed bilateral carpal tunnel syndrome. The doctor thought the EMG studies from 1996 and 2000 were fairly unimpressive but strongly suspected some relationship between Petitioner's symptoms and her underlying hyperthyroidism. The doctor did not believe Petitioner was a surgical candidate but did administer steroid injections in both hands in December 2005.

Dr. Zelby also reviewed Petitioner's evaluation by Dr. Blonsky on June 1320 oh 6. Dr. Blonsky noted the complexity of Petitioner's case due to the numerous reported injuries at work and at home, as well as her psychiatric diagnosis. The doctor concluded Petitioner had degenerative changes at L4-5 and L5-S1 unrelated to her work activities and a resolved left trochanteric bursitis. An October 2001 MRI noted an L5-S1 extrusion, which was a progression of her condition despite her not working. He noted that petitioners work was not the only basis of her pain complaints. Dr. Blonsky also noted Petitioner apparently was able to do those things that she was interested in doing but chose not to return to work. He also noted Petitioner's carpal tunnel syndrome was mild at best and would not have prevented her from working. After reviewing various job descriptions, he could not identify any repetitive forceful grasping that would have in any way contributed to petitioners carpal tunnel syndrome. The doctor did not believe Petitioner's conditions were disabling and was uncertain why she had taken off work since March 2000.

Dr. Zelby reviewed the records of Dr. Park of Schwab Rehabilitation Hospital from November 32,009. Dr. Park found diffuse multiple tender points which met the criteria for fibromyalgia. Dr. Park noted Petitioner was seeing a psychologist for anxiety with a previous history of bipolar disorder and acute psychosis. The doctor started a tricyclic antidepressant. Dr. Park reevaluated Petitioner on August 31, 2009, at which time the doctor noted that nothing could be offered to her.

In summary, Dr. Zelby noted he had reviewed Petitioner's records from Northwestern Memorial Hospital, RUSH University Medical Center, and Mount Sinai Hospital. He noted she had been diagnosed with bipolar disorder and psychosis and also with a schizoaffective disorder and schizophrenia. He reviewed various other medical records including physical therapy records.

Dr. Zelby noted that Petitioner sustained injuries at work and away from work. He opined that at most her work injuries were soft tissue muscular strains and nothing more. He did note a disc protrusion at L4-5 noted on the 1999 MRI with possible impingement on the left L4 nerve root. Dr. Zelby noted Petitioner's complaint of radicular left leg pain down the posterior aspect of her thigh and sometimes into her toes followed an S1 dermatome, 2 levels away from the area of abnormality. He found these symptoms completely unrelated to her radiographic abnormalities. Dr. Zelby found that Petitioner did not have an identifiable objective condition associated with her spine or nervous system that would be disabling in any manner. She had no objective condition which would preclude her ability to work. He opined that her absence from work over the previous 11 years appeared to be a personal decision and not due to any objective medical condition. He found no objective findings associated with her reported injuries or her regular job activities. He finally opined that Petitioner's current complaints, and any ongoing treatment were unrelated to her reported job injuries or job activities.

Dr. Zelby testified at his evidence deposition on February 7 2022, RX #2. Dr. Zelby testified that he is a board-certified neurosurgeon. He refreshed his memory from the report he prepared regarding his IME of Petitioner on November 11, 2011 (ZelbyDepX #2).

Dr. Zelby reiterated all of the exam findings and review of Petitioner's records set forth in his November 11, 2011 report. At the end of his examination and records review Dr. Zelby diagnosed lumbar degenerative spondylosis and lumbar strain. He did not find any causal relation to those conditions and Petitioner's claimed exposure to carbon dioxide or silver nitrate.

CONCLUSIONS OF LAW

05 WC 41250 (DOI: 10/23/1992, injury to vital organs & immune system from exposure to carbon dioxide & freezing temperatures):

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

The Arbitrator finds that Petitioner failed to prove that she sustained an accidental injury that arose out of and in the course of her employment by Respondent. Petitioner failed to prove that she was exposed to excessive or deleterious levels of carbon dioxide

silver nitrate, nitrates, or nitrogen. Petitioner failed to present any evidence of what levels or what concentrations of carbon dioxide or silver nitrate or nitrates or nitrogen were in the atmosphere in which she worked, or what level of those substances were harmful to humans.

Further, Petitioner failed to file this matter within the limitations period set forth in §6(d) of the Act.

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

The Arbitrator has found that Petitioner failed to prove that she sustained an accidental injury that arose out of and in the course of her employment. The Arbitrator also found that Petitioner failed to file this matter within the limitations period set forth in s§6(d) of the Act. Therefore, this issue is moot.

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

The Arbitrator has found that Petitioner failed to prove that she sustained an accidental injury that arose out of and in the course of her employment. The Arbitrator also found that Petitioner failed to file this matter within the limitations period set forth in s§6(d) of the Act. Therefore, this issue is moot.

Even so, the Arbitrator has found that Petitioner failed to prove that any claimed condition of ill-being was causally related to claimed exposure to excessive levels of carbon dioxide, silver nitrate, nitrates, or nitrogen. Petitioner offered no medical evidence or opinion causally relating the claimed exposure to any diagnosed medical condition.

Dr. Andrew Zelby, Respondent's IME examiner, opined that there was no causal relation between Petitioner's medical condition and claimed exposure to excessive levels of carbon dioxide, silver nitrate, nitrates, or nitrogen. There was no rebuttal to Dr. Zelby's opinions.

Dr. David Hartman, Respondent's IME neuropsychological examiner, opined that there was no causal relation between Petitioner's medical condition and claimed exposure to excessive levels of carbon dioxide, silver nitrate, nitrates, or nitrogen. There was no rebuttal to Dr. Hartman's opinions.

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

The Arbitrator has found that Petitioner failed to prove that she sustained an accidental injury that arose out of and in the course of her employment. The Arbitrator also found that Petitioner failed to file this matter within the limitations period set forth in s§6(d) of the Act. Therefore, this issue is moot.

L: *What is the nature and extent of the injury?*

The Arbitrator has found that Petitioner failed to prove that she sustained an accidental injury that arose out of and in the course of her employment. The Arbitrator also found that Petitioner failed to file this matter within the limitations period set forth in s§6(d) of the Act. Therefore, this issue is moot.

M: *Should penalties be imposed upon Respondent?*

The Arbitrator has found that Petitioner failed to prove that she sustained an accidental injury that arose out of and in the course of her employment. The Arbitrator also found that Petitioner failed to file this matter within the limitations period set forth in s§6(d) of the Act. Therefore, this issue is moot.

O: *Was this claim filed within the Statute of Limitations forth in §6(d) of the Act?*

Petitioner claimed she sustained a work related injury on October 23, 1992. She filed her Application for Benefits on September 19, 2005. Petitioner filed her Application more than 3 years after the limitation set forth in §6(d) of the Act.

The Arbitrator finds that Petitioner failed to file her Application for Benefits within the period of limitations set forth in §6(d) of the Act, and, therefore, Petitioner's Application for Benefits is denied.

13 WC 7224 (DOI: 3/13/2012, exposure to blood-borne pathogens):

B: *Was there an employee-employer relationship?*

Petitioner failed to prove that she was employed by Respondent on March 13, 2012. Petitioner testified that she was last employed by Respondent in the year 2000.

Petitioner testified that on March 13 2012 she was present at the Workers' Compensation Commission in the James R Thompson Center for a scheduled matter on a different pending claim.

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

The Arbitrator has found that Petitioner failed to prove that she was an employee of Respondent on March 13 2012. Therefore, this issue is moot.

Even so, Petitioner testified that on March 13 2012 she was present at the Workers' Compensation Commission in the James R. Thompson center for a scheduled matter on a different pending claim. She could not have been engaged in any activity that rose out of or in the course of her employment.

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

The Arbitrator has found that Petitioner failed to prove that she was an employee of Respondent on March 13 2012. Therefore, this issue is moot.

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

The Arbitrator has found that Petitioner failed to prove that she was an employee of Respondent on March 13 2012. Therefore, this issue is moot.

Even so, Petitioner failed to produce any evidence that she was ever exposed to a blood-borne pathogen at any time during her employment by Respondent.

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

The Arbitrator has found that Petitioner failed to prove that she was an employee of Respondent on March 13 2012. Therefore, this issue is moot.

K: *What temporary benefits are in dispute? TTD/Maintenance*

The Arbitrator has found that Petitioner failed to prove that she was an employee of Respondent on March 13 2012. Therefore, this issue is moot.

L: *What is the nature and extent of the injury?*

The Arbitrator has found that Petitioner failed to prove that she was an employee of Respondent on March 13 2012. Therefore, this issue is moot.

O: *Was this claim filed within the Statute of Limitations forth in §6(d) of the Act?*

The Arbitrator has found that Petitioner failed to prove that she was an employee of Respondent on March 13 2012. Therefore, this issue is moot.

22 WC 16374 (DOI: 10/23/1992, radiation poisoning from exposure to ionizing radiation):

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

Petitioner failed to prove that she was injured in an accident that arose out of and in the course of her employment by Respondent.

Petitioner claims to have sustained radiation poisoning from exposure to ionizing radiation. Petitioner failed to produce evidence of exposure to atomic radiation verified by the records of the central registry of radiation exposure maintained by the Department

of Public Health or by some other recognized governmental agency maintaining records of such exposures whenever and to the extent the records are on file with the Department of Public health or the agency, as required by §1(d) of the Occupational Diseases Act, 820 ILCS 310 *et seq*.

Further, Petitioner failed to file this matter within the limitations period set forth in §6(d) of the Act.

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

The Arbitrator has found that Petitioner failed to prove that she sustained an accidental injury that arose out of and in the course of her employment. The Arbitrator also found that Petitioner failed to file this matter within the limitations period set forth in s§6(d) of the Act. Therefore, this issue is moot.

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

The Arbitrator has found that Petitioner failed to prove that she sustained an accidental injury that arose out of and in the course of her employment. The Arbitrator also found that Petitioner failed to file this matter within the limitations period set forth in s§6(d) of the Act. Therefore, this issue is moot.

Even so, Petitioner failed to produce evidence or medical opinion that she suffered radiation poisoning.

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

The Arbitrator has found that Petitioner failed to prove that she sustained an accidental injury that arose out of and in the course of her employment. The Arbitrator also found that Petitioner failed to file this matter within the limitations period set forth in s§6(d) of the Act. Therefore, this issue is moot.

K: *What temporary benefits are in dispute? TTD/Maintenance*

The Arbitrator has found that Petitioner failed to prove that she sustained an accidental injury that arose out of and in the course of her employment. The Arbitrator also found that Petitioner failed to file this matter within the limitations period set forth in s§6(d) of the Act. Therefore, this issue is moot.

L: *What is the nature and extent of the injury?*

The Arbitrator has found that Petitioner failed to prove that she sustained an accidental injury that arose out of and in the course of her employment. The Arbitrator also found that Petitioner failed to file this matter within the limitations period set forth in s§6(d) of the Act. Therefore, this issue is moot.

M: *Should penalties be imposed upon Respondent?*

The Arbitrator has found that Petitioner failed to prove that she sustained an accidental injury that arose out of and in the course of her employment. The Arbitrator also found that Petitioner failed to file this matter within the limitations period set forth in s§6(d) of the Act. Therefore, this issue is moot.

O: *Was this claim filed within the Statute of Limitations forth in §6(d) of the Act?*

The Arbitrator finds that Petitioner failed to prove that she filed her claim within the Statute of Limitations set forth in §6(d) of the Act.

§6(d) of the Act provides that in case of injury caused by exposure to radiological materials an application for compensation may be filed within 25 years after the last date that the employee was employed in an environment of hazardous radiological activity, otherwise the right to file shall be barred. Here Petitioner failed to prove that she worked in an environment of hazardous radiological activity. She failed to present any evidence whatever of the presence of ionizing radiation anywhere within her workplace.

In failing to establish any date of exposure to ionizing radiation Petitioner is unable to establish when the 25 year statute began.

23 WC 7327 (DOI: 6/19/1999, L4-5 disc herniation from struggling to free a jammed case):

This claim was included in a settlement approved by Arbitrator Carolyn Doherty in the consolidated matters Christine Cherry v. M & M Mars Company: 00 WC 5057, 00 WC 50578, 00 WC 59042, and 01 WC 2350. Petitioner signed the settlement contract. Arbitrator Doherty approved this settlement contract on May 10, 2013 (RX #3). Petitioner moved to vacate the settlement, which Arbitrator Doherty denied on May 30, 2013 (RX #4). Petitioner sought review of Arbitrator Doherty's Order before the Illinois Workers' Compensation Commission. The Commission affirmed and adopted Arbitrator Doherty's decision on November 13, 2014 (RX #5).

Petitioner's claim is an effort to relitigate a matter that was resolved by settlement and release. By analogy, if this matter were a civil lawsuit it would be dismissed in accord with §619(a)(6) of the Code of Civil Procedure, 735 ILCS *et seq*.

Petitioner's claim is denied, having failed to file this claim within the time limits set forth in §6(d) of the Act. Petitioner claimed she sustained a work related injury on June 19, 1999. She filed her Application for Benefits on March 17, 2013. Petitioner filed her Application more than 3 years after the limitation set forth in §6(d) of the Act.

The Arbitrator also finds that Petitioner failed to file her Application for Benefits within the period of limitations set forth in §6(d) of the Act, and, therefore, Petitioner's Application for Benefits is denied.

23 WC 9371 (DOI: 2/6/1993, miscarriage from exposure to contaminated hygiene products & environment):

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

The Arbitrator finds the Petitioner failed to prove that she sustained an accidental injury, namely a miscarriage of a pregnancy, that arose out of and in the course of her employment by Respondent.

Petitioner failed to present any evidence or medical opinion that her miscarriage occurred during performance of her work duties or activities. Petitioner failed to present any evidence or medical opinion that Respondent supplied hygiene products of any sort that were required for performance of he work duties or activities.

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

The Arbitrator has found that Petitioner failed to prove that she sustained an accidental injury that arose out of and in the course of her employment. The Arbitrator also found that Petitioner failed to file this matter within the limitations period set forth in s§6(d) of the Act. Therefore, this issue is moot.

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

The Arbitrator finds that Petitioner failed to prove that her claim condition of ill-being was causally related to a workplace accident.

Petitioner failed to present any evidence or medical opinion that her miscarriage of a pregnancy was causally related to any of her work duties or activities.

The Arbitrator also found that Petitioner failed to file this matter within the limitations period set forth in s§6(d) of the Act. Therefore, this issue is moot.

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

The Arbitrator has found that Petitioner failed to prove that she sustained an accidental injury that arose out of and in the course of her employment. The Arbitrator also found that Petitioner failed to file this matter within the limitations period set forth in s§6(d) of the Act. Therefore, this issue is moot.

K: *What temporary benefits are in dispute? TTD/Maintenance*

The Arbitrator has found that Petitioner failed to prove that she sustained an accidental injury that arose out of and in the course of her employment. The Arbitrator also found that Petitioner failed to file this matter within the limitations period set forth in s§6(d) of the Act. Therefore, this issue is moot.

L: *What is the nature and extent of the injury?*

The Arbitrator has found that Petitioner failed to prove that she sustained an accidental injury that arose out of and in the course of her employment. The Arbitrator also found that Petitioner failed to file this matter within the limitations period set forth in s§6(d) of the Act. Therefore, this issue is moot.

M: *Should penalties be imposed upon Respondent?*

The Arbitrator has found that Petitioner failed to prove that she sustained an accidental injury that arose out of and in the course of her employment. The Arbitrator also found that Petitioner failed to file this matter within the limitations period set forth in s§6(d) of the Act. Therefore, this issue is moot.

O: *Was this claim filed within the Statute of Limitations forth in §6(d) of the Act?*

Petitioner's claim is denied, having failed to file this claim within the time limits set forth in §6(d) of the Act. Petitioner claimed she sustained a work related injury on February 6, 1993. She filed her Application for Benefits on April 10, 2023. Petitioner filed her Application more than 3 years after the limitation set forth in §6(d) of the Act.

The Arbitrator finds that Petitioner failed to file her Application for Benefits within the period of limitations set forth in §6(d) of the Act, and, therefore, Petitioner's Application for Benefits is denied.

Steven J. Fruth, Arbitrator

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	23WC007327
Case Name	Christine Cherry v. M & M Mars
Consolidated Cases	05WC041250; 13WC007224; 22WC016374; 23WC009371;
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	24IWCC0186
Number of Pages of Decision	25
Decision Issued By	Amylee Simonovich, Commissioner

Petitioner Attorney	Pro Se
Respondent Attorney	James Clune

DATE FILED: 4/26/2024

/s/ Amylee Simonovich, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

CHRISTINE CHERRY,

Petitioner,

vs. NO: 23 WC 07327

M & M MARS,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Petitioner herein and notice given to all parties, the Commission, after considering the issues of accident, medical expenses, notice, employment, occupational disease, statute of limitations, and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed August 10, 2023 is hereby affirmed and adopted.

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

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

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.

The bond requirement in Section 19(f)(2) is applicable only when "the Commission shall have entered an award for the payment of money." *820 ILCS 305/19(f)(2).* Based upon the denial of compensation herein, no bond is set by the Commission.

April 26, 2024

o041624
AHS/ldm
051

/s/*Amylee H. Simonovich*
Amylee H. Simonovich

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	23WC007327
Case Name	Christine Cherry v. M & M Mars
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	22
Decision Issued By	Steven Fruth, Arbitrator

Petitioner Attorney	
Respondent Attorney	James Clune

DATE FILED: 8/10/2023

THE INTEREST RATE FOR THE WEEK OF AUGUST 8, 2023 5.26%

/s/Steven Fruth, Arbitrator

Signature

STATE OF ILLINOIS)
)SS.
COUNTY OF COOK)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Christine Cherry **Case # 23 WC 007327**
Employee/Petitioner

v.

M & M Mars
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 **Steven Fruth** Arbitrator of the Commission, in the city of **Chicago**, on **June 6, 2023**. 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: **Statute of Limitations**

FINDINGS

On **6/19/1999**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $**29,640.00**; the average weekly wage was $**570.00**.

On the date of accident, Petitioner was **47** years of age, ***single*** with **0** dependent children.

Petitioner ***has not*** received all reasonable and necessary medical services.

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

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

Respondent is entitled to a credit for all medical bills heretofore paid, if any.

ORDER

Petitioner claimed she was injured on 6/19/1999 but filed her Application for Benefits on 3/17/2023. Petitioner failed to file her Application within the statute of limitations set forth in §6(d) of the Act and, further, failed to prove any exception which would allow the statute of limitations to be extended.

Also, Petitioner previously settled her claim for all injuries on 6/19/1999 on May 10, 2013 for the consolidated matters of 00 WC 50577, 00 WC 50578, 00 WC 59042, and 01 WC 2350. The settlement was affirmed on review by the Workers' Compensation Commission. Petitioner's claim has been settled and released.

Petitioner's Application for Benefits is denied.

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

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

_____ **AUGUST 10, 2023**

Signature of Arbitrator

Christine Cherry v. M & M Mars
05 WC 41250, consolidated with 13 WC 7224, 22 WC 16374, 23 WC 7327, & 23 WC 9371

INTRODUCTION

These matters proceeded to hearing before Arbitrator Steven Fruth. The disputed issues were:

05 WC 41250 (DOI: 10/23/1992, injury to vital organs & immune system from exposure to carbon dioxide & freezing temperatures):

C: Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?; ***E:*** Was timely notice of the accident given to Respondent?; ***F:*** Is Petitioner's current condition of ill-being causally related to the accident?; ***J:*** Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?; ***L:*** What is the nature and extent of the injury?; ***M:*** Should penalties be imposed upon Respondent?; ***O:*** Was this claim filed within the Statute of Limitations forth in §6(d) of the Act?

Petitioner asserted a claim for permanent medical leave, which are not within the jurisdiction of the Illinois Workers Compensation Commission.

13 WC 7224 (DOI: 3/13/2012, exposure to blood-borne pathogens):

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?; ***E:*** Was timely notice of the accident given to Respondent?; ***F:*** Is Petitioner's current condition of ill-being causally related to the accident?; ***J:*** Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?; ***K:*** What temporary benefits are in dispute? TTD/Maintenance; ***L:*** What is the nature and extent of the injury?; ***O:*** Was this claim filed within the Statute of Limitations forth in §6(d) of the Act?

22 WC 16374 (DOI: 10/23/1992, radiation poisoning from exposure to ionizing radiation):

C: Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?; ***E:*** Was timely notice of the accident given to Respondent?; ***F:*** Is Petitioner's current condition of ill-being causally related to the accident?; ***J:*** Were the

medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?; ***K:*** What temporary benefits are in dispute? TTD/Maintenance; ***L:*** What is the nature and extent of the injury?; ***M:*** Should penalties be imposed upon Respondent?; ***O:*** Was this claim filed within the Statute of Limitations forth in §6(d) of the Act?

Petitioner asserted claims for long term disability, Medicare, and Social Security, which are not within the jurisdiction of the Illinois Workers Compensation Commission.

23 WC 7327 (DOI: 6/19/1999, L4-5 disc herniation from struggling to free a jammed case):

C: Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?; ***E:*** Was timely notice of the accident given to Respondent?; ***F:*** Is Petitioner's current condition of ill-being causally related to the accident?; ***J:*** Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?; ***K:*** What temporary benefits are in dispute? TTD/Maintenance; ***L:*** What is the nature and extent of the injury?; ***M:*** Should penalties be imposed upon Respondent?; ***O:*** Was this claim filed within the Statute of Limitations forth in §6(d) of the Act?

Petitioner asserted claims for long term disability and Social Security, which are not within the jurisdiction of the Illinois Workers Compensation Commission.

23 WC 9371 (DOI: 2/6/1993, miscarriage from exposure to contaminated hygiene products & environment):

C: Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?; ***E:*** Was timely notice of the accident given to Respondent?; ***F:*** Is Petitioner's current condition of ill-being causally related to the accident?; ***J:*** Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?; ***K:*** What temporary benefits are in dispute? TTD/Maintenance; ***L:*** What is the nature and extent of the injury?; ***M:*** Should penalties be imposed upon Respondent?; ***O:*** Was this claim filed within the Statute of Limitations forth in §6(d) of the Act?

Petitioner asserted claims for long term disability and Social Security, which are not within the jurisdiction of the Illinois Workers Compensation Commission.

Petitioner's Motion to Reopen Proofs was allowed in part and denied in part on June 26, 2023. Petitioner was permitted, without objection, leave to file supplemental records from University of Chicago Medical Center, Mt. Sinai Hospital, and Dr. Elliott but no other records.

STATEMENT OF FACTS

Petitioner Christine Cherry testified that she started as a temporary worker with Respondent M & M Mars in 1989. Once hired full-time, she had a full physical examination and cardiac testing, blood work, urine tests, hearing tests, and a TB test. She also had X-rays and a breathing test. She last worked for Respondent in 2000.

Petitioner testified that she did not read material safety data sheets provided to the employees. Petitioner testified that a new Milky Way product was brought into the plant in 1990 and that she noticed vapors. She said this happened about 1990. She claimed that the candy bar manufacturing process used carbon dioxide and nitrogen or nitrates. She further testified she was working in subzero temperatures but was not provided with an insulated uniform. She stated that during production it was "freezing cold in there."

Petitioner claims in 05 WC 041250 and 22 WC 016374 that she was injured on October 23, 1992. On October 23, 1992, she worked the night shift. She said the line was "dense." Petitioner testified that she had a gradual buildup of an illness, that she noticed that she was feeling different, and she went to report her feelings to the nurse's station. She was feeling bad when she arrived at work, which she related this to problems with the (production) line in the previous weeks.

Petitioner testified that on October 23, 1992 she arrived at work feeling sick and started shivering, an uncontrollable shiver, like she was freezing. She felt a freeze-like sensation in her forehead. She had a hoarseness to her voice. She was feeling weak. She noticed that her legs were getting numb. She noticed that her arm was always "off-center." Prior to this she noticed that when she was at home prior to this she noticed that when she was at home she would trip. She concluded that her safety boots at work supported her and prevented her from falling at work, except on two occasions she stated that she fell at work and reported it to "the healthcare person". She stated that her ankle went under her and she "fell over like this." Also, on October 23 she had chest pains, a sore throat, a headache, felt weak, and felt cold. She went to the nurse's station and told Phyllis that she was not feeling well. Phyllis called the paramedics to pick up the petitioner and she was taken to Gottlieb Hospital, an occupational health site.

Petitioner testified that at Gottlieb a doctor she had seen in the past examined her, checked her pulse, obtained warm blankets which he provided to her, and listened to her heart. He also conducted a pinprick test. Petitioner was not admitted to the hospital. Petitioner had X-rays and blood tests. Petitioner was released to a cab to return to the

job. She was instructed to go home after discussing her condition with the nurse at Mars. She signed a medical release. The nurse gave her a card with a doctor's name on it for her to make an appointment if she desired.

About 4 days after she left Gottlieb Petitioner saw Dr. Henniff at McNeal Hospital. Petitioner testified that she did not have the MacNeal records. She arrived at the hospital feeling weak, sick, and feverish. Dr. Henniff referred Petitioner to an endocrinologist. On November 3, 1992 Petitioner saw Dr. Couropmitree who told her she had had a stroke.

On cross-examination Petitioner was asked about her other claim for the same date of accident on October 23, 1992. She testified that the second claim (22 WC 16374) is a continuation of the initial claim (05 WC 041250). She testified that she believed that when she was sent home from Gottlieb instead of being admitted to the hospital, that's when everything became worse and so she considered this to be a continuation of the original claim. After her discussion with the doctor, she had a blood test and X-rays. Dr. Couropmitree asked her to obtain her employer's "injury insurance" because he did not accept her HMO.

Petitioner did not immediately follow up with Dr. Couropmitree but went to the University of Chicago Medical Center ("U of C"). At the University of Chicago, Petitioner had work for her thyroid at U of C. She was also treated for a miscarriage. Petitioner relates her internal injuries, "gastro system," and kidney problems to her accident of October 23, 1992. Petitioner was hospitalized with chest pains at Mount Sinai Hospital which she relates to her October 23, 1992 accident.

Petitioner testified that in her opinion her illnesses were related to a lack of oxygen when the manufacturing line was closed, and she could smell odors. To the extent she was giving an opinion regarding causation, the respondent's objection to the opinion was sustained, but to the extent the petitioner sensed odors, that testimony was allowed to stand.

Petitioner testified that she has been diagnosed with a chronic illness and a thyroid disorder. She also believes her endometriosis is related to her October 23, 1992 accident. Petitioner claims the following conditions of Ill-being because of exposures to toxic substances at Mars: thyroid disorder, chest pain treated at Mt. Sinai in 2002, gastrointestinal disorder, edema, polyps, "urology", cerebral injury, endometriosis, "mental health", deteriorated spine, abnormal mammograms, vision problems, Graves' disease, and insomnia.

In claim her 23 WC 009371 Petitioner claims she was injured, a miscarriage, on February 6, 1993. She testified that she treated at the U of C. She believes the miscarriage was related to her work at Mars. She testified that she had returned to work after October 1992 until 1995 and during that time she worked on the same process line. Her

miscarriage occurred at home. She followed up with U of C for her miscarriage, but her treatment was delayed due to her thyroid and a heart condition.

In claim her 23 WC 007327 Petitioner claims she was injured on June 19, 1999. She was scheduled to work on the "Munch line" making "Munch bars" on June 19. She noted that the line was in disrepair. Boxes were getting stuck on the line. Petitioner testified she bent over to help push a box through to the "caser." Just as she bent over, she felt pain in her back. She continued to work because other workers were not available to help her. Petitioner said she notified her group leaders, Tony and Barbara, that she needed to go home because she injured her back. The next day Petitioner returned to work feeling better, but upon performing cleaning duties she felt worse and notified her supervisor. She kept working because she believed she might be fired if she stopped.

On the following Monday Petitioner testified she was advised by a nurse from Mars that she was to go to her doctor. She saw yet another doctor who prescribed physical therapy and medications. Her doctor referred her to a rheumatologist at Rush Hospital for specialized physical therapy. She followed this doctor when he changed practice locations to Northwestern. There she received aqua therapy and a cortisone injection. She had an MRI in 2000. Also, in 2000 she entered Christ Hospital for mental health issues but did not receive back treatment while in Christ Hospital.

Petitioner testified that the 2000 MRI showed disc pathology at L4 through S1. She purchased workout equipment so that she could strengthen herself. She testified that she reinjured herself while using her workout equipment. She received treatment at West Suburban Hospital for this reinjury. Petitioner testified she received physical therapy, shots, and medication. She testified that the effects of her back injury have been ongoing, including depression.

On cross-examination Petitioner identified RX #3, a Settlement Contract approved by Arbitrator Doherty on May 10, 2013, 00 WC 50577, 00 WC 50578, 00 WC 59042, and 01 WC 2350. She acknowledged that RX #3 lists her claim of injury on June 19, 1999 as one of the claims settled.

In claim 13 WC 007224 Petitioner claims an injury on March 13, 2012. She testified that she was at the IWCC building, the James R. Thompson Center, waiting for her lawyer outside chambers. She was there for a scheduled trial for other claims. She noted something in her medical records while interacting with her attorney. Petitioner testified that as she looked at her medical records, she noted something called "infectious capillaries." Since she did not have a claim filed for infectious capillaries, she filed a claim to "safeguard" herself. Petitioner testified, "I had no just cause to file that claim." She testified that the reason she filed the claim was because of her medical records on the table. In answer to the Arbitrator's question of what injury she suffered on March 13, 2012

at the Workers' Compensation Commission at the Thompson Center, Petitioner answered, "There was nothing."

Petitioner intended to introduce her medical records from Christ Hospital regarding her mental health status. She claims that she has suffered a mental health injury because of all her workers compensation claims.

On cross-examination Petitioner acknowledged Respondent's Exhibit #3, a settlement contract approved by Arbitrator Doherty on May 10, 2013 for the consolidated matters of 00 WC 50577, 00 WC 50578, 00 WC 59042, and 01 WC 2350. Among the accident dates on the settlement contract was the date of accident of June 19, 1999. The Rider to that settlement contract stated that Petitioner was settling all accident and injury claims arising from an incident or incidents on June 19, 1999. Respondent's Exhibit #4 is Arbitrator Doherty's Order denying Petitioner's motion to set aside the settlement for a clerical or scrivener's error. Respondent's Exhibit #5 is the Order of the Commission affirming Arbitrator Doherty denial of Petitioner's motion to set aside.

Respondent called Linnea Pearson as a witness. Ms. Pearson was the risk manager for casualty and claims for the Americas for both Mars and Wrigley. In her capacity as the risk manager for claims she had the opportunity and responsibility to visit all plants, including the plant on Oak Park Avenue in Chicago where the petitioner worked. Ms. Pearson visited the facility monthly. She was familiar with the manufacturing processes, the environment of the facility, safety, and the occupational health nurses. Ms. Pearson confirmed there were no excessive amounts of carbon dioxide, nitrogen, or nitrates at Oak Park Avenue. No workers wore protective breathing apparatus or protective clothing except for warmer jackets as necessary in the cooling area. In the history of Mars there has never been a claim for radiological exposure.

Respondent's Exhibit #1, the evidence deposition of Dr. David Hartman on January 13, 2022 was admitted in evidence. Dr. Hartman is a licensed clinical psychologist and a board-certified Forensic Neuropsychologist. Dr. Hartman interviewed Petitioner on July 25, 2011 and administered a variety of testing, including the MMPI-2-RF, the Battery for Health Improvement, an intellectual screening test, and a test of basic verbal memory and motivation to produce adequate memory. In addition, Petitioner completed a medical history questionnaire, a symptom questionnaire, and a "Pain Catastrophizing Scale." He understood his evaluation of Petitioner was in the context of her Workers Compensation claim. The doctor refreshed his memory from his narrative report, HartmanDepX #2.

Dr. Hartman testified that Petitioner believed she had been exposed to carbon dioxide and nitrates while working at M&M Mars. She reported her exposure caused a variety of neurocognitive problems. The doctor reviewed her history of multiple psychiatric hospitalizations, and also her history of thyroid disease, Graves' disease,

Hashimoto's thyroiditis, and hypertension. He noted Petitioner had a number of medical and psychiatric conditions that would impair her behavior and quality of thinking. He also noted petitioner strong family history of psychotic disorder in schizophrenic disorder, she had been repeatedly diagnosed with either bipolar disorder or a schizophrenic disorder, which are typically genetic.

Dr. Hartman found no evidence of a workplace disorder caused by exposure to carbon dioxide, nitrates, nitrogen, or freezing temperatures. Petitioner's chronic condition of ill-being is a conventional psychiatric disorder. He did not believe Petitioner's beliefs were based in any reasonable reality. Further, he did not believe Petitioner's motivation was based on financial gain.

On cross-examination Dr. Hartman acknowledged that he had not reviewed Petitioner's records from Gottlieb Memorial Hospital or MacNeal Memorial Hospital.

Neurosurgeon Dr. Andrew Zelby performed a §12 IME of Petitioner on November 11, 2011. In addition to a clinical examination, Dr. Zelby reviewed Petitioner's medical records, including reports of radiological studies. He prepared a written report on November 11 which was marked as Exhibit # 2 at his evidence deposition on February 7 2022 (RX #2). Dr. Zelby 's report was admitted in evidence without objection.

At the November 11 IME Petitioner gave a history of exposure to carbon dioxide and silver nitrate refrigerant at work in 1992. She believed that exposure damaged the calcium in her bones. Petitioner also developed left leg pain followed by weakness and numbness over the entire left side. Petitioner stated that in early 1993, when doing nothing is special, she developed lower back pain which radiated into her left leg. She was seen at Oak Park Hospital where X-rays were taken. She had continuing off and on low back pain and pain in the lateral aspect of the left thigh, which continued for about 6 years. ZelbyDepX #2

Petitioner also gave a history that while cleaning a ceiling at work in 1999 she felt pain in the mid-thoracic region which radiated into her chest. She stated she was told by a doctor this was muscle strain. She later developed sharp low back pain when pulling on a jammed product case. That pain radiated into circumferential tingling in both legs. She reported that she had been told she had 2 herniated discs. She received physical therapy for one month but returned to regular work. ZelbyDepX #2

In December 1999 Petitioner was pushing a 100 pound barrel with her hip when she felt an increase in low back pain that went into the front of her left leg. She returned to her doctor and had 3 more months of physical therapy. She reported that she did not get any improvement but was told she was not a candidate for surgery.

Petitioner reported that she has had pain over the years which comes and goes depending on activity. The pain is in the back and the anterior aspects of the thighs, left more than right. She reported that she had had maybe 4 epidural steroid injections in her back over the last 10 years and multiple cycles of physical therapy. Her last course of therapy was in 2010. Petitioner also reported numbness in her hands since the mid 90s, affecting the 3rd, 4th, and 5th digits. She was told she had carpal tunnel syndrome. She specifically stated numbness was not in the lateral fingers, but the medial fingers. She has some pain at least 3 to 5 days of the week for at least one to 2 hours. ZelbyDepX #2

Petitioners past medical history included hypertension, hyperlipidemia, GERD, endometriosis, Hashimoto's thyroiditis, Graves' disease, hypoparathyroidism, bipolar disorder, and schizophrenia. She reported that her work varied between light and heavy physical labor. She smoked for 23 years. She could tolerate sitting or standing for less than one hour and could tolerate walking less than 2 blocks. She presented with pain rated at 7/10. ZelbyDepX #2

On examination Dr. Zelby noted essentially normal cervical range of motion. Spurling's maneuver and Hoffman's sign were negative. Lumbar range of motion was diminished. Straight-leg raise was negative on both sides in lying and sitting positions. Patrick's Maneuver and FABRE tests were negative on both sides. Pinprick testing demonstrated diminished sensation in the medial 3 fingers of both hands, both thighs circumferentially, and both feet. Vibratory sensation to the upper and lower extremities was normal, except for diminished sensation circumferentially in both thighs. Dr. Zelby noted inconsistent behavioral responses in non-anatomic sensory changes. Tinel's was negative at both wrists and both elbows. Phalen's was negative at both wrists. Adson's Maneuver was negative bilaterally.

Dr. Zelby noted cervical X-rays from February 19, 1997 were normal. Lumbar X-rays from July 14, 2004 showed early osteophyte formation at L4-5 and L5-S1. A January 25, 2000 lumbar MRI showed a left lateral herniated disc at L4-5 and a central disc bulge at L5-S1. An October 29, 2001 lumbar MRI showed end plate degenerative changes and disc desiccation at L4-5 and L5 S1. There was a central disc extrusion at L5-S1. An EMG on November 12, 1996 showed left ulnar neuropathy and bilateral carpal tunnel syndrome. A June 28, 2000 EMG noted mild bilateral carpal tunnel syndrome.

Dr. Zelby noted Petitioner consulted Dr. Basha in May (probably 1999) with a complaint of low back pain. She reported she went to the ER and was told she had a back sprain. Petitioner followed up with Dr. Leavitt on June 22, 1999 when lower back pain returned while she was "watching" (probably washing) high walls going side to side. Petition continued to follow with Dr Leavitt. She was seen in the emergency department of West Suburban Hospital on December 6, 1999 for left gluteal pain going down the middle of her thigh secondary to her work. Petitioner returned to Dr. Leavitt on December 21, 1999 with tingling in her left leg going into the buttock down the leg and

sometimes to the toes. Petitioner had a history of muscle strain starting in July 1999 after lifting a heavy object. Dr. Leavitt prescribed physical therapy and followed Petitioner into 2000. Dr. Leavitt had taken her off work but suggested a trial returned to work in March, which Petitioner did not want to do. On April 14, 2000 Petitioner reiterated that she did not want to return to work for fear she would reinjure her back. She was referred to Dr. Goldberg for a second opinion. Dr. Leavitt ordered a new nerve conduction study, noting a previous study in 1996.

Dr. Zelby also noted that Petitioner consulted Dr. Ruderman on May 17 2000 for a rheumatology evaluation. Dr. Ruderman noted Petitioner's herniated disc at L4-5 but thought much of her current symptomology was related to left sided trochanteric bursitis. Petitioner continued to follow with Dr. Ruderman in 2004, 2008, and 2009. By October 13, 2009 Dr. Ruderman 's impression was lumbar disc disease but suspected there were secondary issues that far eclipsed the anatomical disease.

Petitioner consulted Dr. Kalainov on January 26, 2005 when the doctor diagnosed bilateral carpal tunnel syndrome. The doctor thought the EMG studies from 1996 and 2000 were fairly unimpressive but strongly suspected some relationship between Petitioner's symptoms and her underlying hyperthyroidism. The doctor did not believe Petitioner was a surgical candidate but did administer steroid injections in both hands in December 2005.

Dr. Zelby also reviewed Petitioner's evaluation by Dr. Blonsky on June 1320 oh 6. Dr. Blonsky noted the complexity of Petitioner's case due to the numerous reported injuries at work and at home, as well as her psychiatric diagnosis. The doctor concluded Petitioner had degenerative changes at L4-5 and L5-S1 unrelated to her work activities and a resolved left trochanteric bursitis. An October 2001 MRI noted an L5-S1 extrusion, which was a progression of her condition despite her not working. He noted that petitioners work was not the only basis of her pain complaints. Dr. Blonsky also noted Petitioner apparently was able to do those things that she was interested in doing but chose not to return to work. He also noted Petitioner's carpal tunnel syndrome was mild at best and would not have prevented her from working. After reviewing various job descriptions, he could not identify any repetitive forceful grasping that would have in any way contributed to petitioners carpal tunnel syndrome. The doctor did not believe Petitioner's conditions were disabling and was uncertain why she had taken off work since March 2000.

Dr. Zelby reviewed the records of Dr. Park of Schwab Rehabilitation Hospital from November 32,009. Dr. Park found diffuse multiple tender points which met the criteria for fibromyalgia. Dr. Park noted Petitioner was seeing a psychologist for anxiety with a previous history of bipolar disorder and acute psychosis. The doctor started a tricyclic antidepressant. Dr. Park reevaluated Petitioner on August 31, 2009, at which time the doctor noted that nothing could be offered to her.

In summary, Dr. Zelby noted he had reviewed Petitioner's records from Northwestern Memorial Hospital, RUSH University Medical Center, and Mount Sinai Hospital. He noted she had been diagnosed with bipolar disorder and psychosis and also with a schizoaffective disorder and schizophrenia. He reviewed various other medical records including physical therapy records.

Dr. Zelby noted that Petitioner sustained injuries at work and away from work. He opined that at most her work injuries were soft tissue muscular strains and nothing more. He did note a disc protrusion at L4-5 noted on the 1999 MRI with possible impingement on the left L4 nerve root. Dr. Zelby noted Petitioner's complaint of radicular left leg pain down the posterior aspect of her thigh and sometimes into her toes followed an S1 dermatome, 2 levels away from the area of abnormality. He found these symptoms completely unrelated to her radiographic abnormalities. Dr. Zelby found that Petitioner did not have an identifiable objective condition associated with her spine or nervous system that would be disabling in any manner. She had no objective condition which would preclude her ability to work. He opined that her absence from work over the previous 11 years appeared to be a personal decision and not due to any objective medical condition. He found no objective findings associated with her reported injuries or her regular job activities. He finally opined that Petitioner's current complaints, and any ongoing treatment were unrelated to her reported job injuries or job activities.

Dr. Zelby testified at his evidence deposition on February 7 2022, RX #2. Dr. Zelby testified that he is a board-certified neurosurgeon. He refreshed his memory from the report he prepared regarding his IME of Petitioner on November 11, 2011 (ZelbyDepX #2).

Dr. Zelby reiterated all of the exam findings and review of Petitioner's records set forth in his November 11, 2011 report. At the end of his examination and records review Dr. Zelby diagnosed lumbar degenerative spondylosis and lumbar strain. He did not find any causal relation to those conditions and Petitioner's claimed exposure to carbon dioxide or silver nitrate.

CONCLUSIONS OF LAW

05 WC 41250 (DOI: 10/23/1992, injury to vital organs & immune system from exposure to carbon dioxide & freezing temperatures):

C: *Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?*

The Arbitrator finds that Petitioner failed to prove that she sustained an accidental injury that arose out of and in the course of her employment by Respondent. Petitioner failed to prove that she was exposed to excessive or deleterious levels of carbon dioxide

silver nitrate, nitrates, or nitrogen. Petitioner failed to present any evidence of what levels or what concentrations of carbon dioxide or silver nitrate or nitrates or nitrogen were in the atmosphere in which she worked, or what level of those substances were harmful to humans.

Further, Petitioner failed to file this matter within the limitations period set forth in §6(d) of the Act.

E: *Was timely notice of the accident given to Respondent?*

The Arbitrator has found that Petitioner failed to prove that she sustained an accidental injury that arose out of and in the course of her employment. The Arbitrator also found that Petitioner failed to file this matter within the limitations period set forth in s§6(d) of the Act. Therefore, this issue is moot.

F: *Is Petitioner's current condition of ill-being causally related to the accident?*

The Arbitrator has found that Petitioner failed to prove that she sustained an accidental injury that arose out of and in the course of her employment. The Arbitrator also found that Petitioner failed to file this matter within the limitations period set forth in s§6(d) of the Act. Therefore, this issue is moot.

Even so, the Arbitrator has found that Petitioner failed to prove that any claimed condition of ill-being was causally related to claimed exposure to excessive levels of carbon dioxide, silver nitrate, nitrates, or nitrogen. Petitioner offered no medical evidence or opinion causally relating the claimed exposure to any diagnosed medical condition.

Dr. Andrew Zelby, Respondent's IME examiner, opined that there was no causal relation between Petitioner's medical condition and claimed exposure to excessive levels of carbon dioxide, silver nitrate, nitrates, or nitrogen. There was no rebuttal to Dr. Zelby's opinions.

Dr. David Hartman, Respondent's IME neuropsychological examiner, opined that there was no causal relation between Petitioner's medical condition and claimed exposure to excessive levels of carbon dioxide, silver nitrate, nitrates, or nitrogen. There was no rebuttal to Dr. Hartman's opinions.

J: *Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?*

The Arbitrator has found that Petitioner failed to prove that she sustained an accidental injury that arose out of and in the course of her employment. The Arbitrator also found that Petitioner failed to file this matter within the limitations period set forth in s§6(d) of the Act. Therefore, this issue is moot.

L: *What is the nature and extent of the injury?*

The Arbitrator has found that Petitioner failed to prove that she sustained an accidental injury that arose out of and in the course of her employment. The Arbitrator also found that Petitioner failed to file this matter within the limitations period set forth in s§6(d) of the Act. Therefore, this issue is moot.

M: *Should penalties be imposed upon Respondent?*

The Arbitrator has found that Petitioner failed to prove that she sustained an accidental injury that arose out of and in the course of her employment. The Arbitrator also found that Petitioner failed to file this matter within the limitations period set forth in s§6(d) of the Act. Therefore, this issue is moot.

O: *Was this claim filed within the Statute of Limitations forth in §6(d) of the Act?*

Petitioner claimed she sustained a work related injury on October 23, 1992. She filed her Application for Benefits on September 19, 2005. Petitioner filed her Application more than 3 years after the limitation set forth in §6(d) of the Act.

The Arbitrator finds that Petitioner failed to file her Application for Benefits within the period of limitations set forth in §6(d) of the Act, and, therefore, Petitioner's Application for Benefits is denied.

13 WC 7224 (DOI: 3/13/2012, exposure to blood-borne pathogens):

B: *Was there an employee-employer relationship?*

Petitioner failed to prove that she was employed by Respondent on March 13, 2012. Petitioner testified that she was last employed by Respondent in the year 2000.

Petitioner testified that on March 13 2012 she was present at the Workers' Compensation Commission in the James R Thompson Center for a scheduled matter on a different pending claim.

C: *Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?*

The Arbitrator has found that Petitioner failed to prove that she was an employee of Respondent on March 13 2012. Therefore, this issue is moot.

Even so, Petitioner testified that on March 13 2012 she was present at the Workers' Compensation Commission in the James R. Thompson center for a scheduled matter on a different pending claim. She could not have been engaged in any activity that rose out of or in the course of her employment.

E: *Was timely notice of the accident given to Respondent?*

The Arbitrator has found that Petitioner failed to prove that she was an employee of Respondent on March 13 2012. Therefore, this issue is moot.

F: *Is Petitioner's current condition of ill-being causally related to the accident?*

The Arbitrator has found that Petitioner failed to prove that she was an employee of Respondent on March 13 2012. Therefore, this issue is moot.

Even so, Petitioner failed to produce any evidence that she was ever exposed to a blood-borne pathogen at any time during her employment by Respondent.

J: *Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?*

The Arbitrator has found that Petitioner failed to prove that she was an employee of Respondent on March 13 2012. Therefore, this issue is moot.

K: *What temporary benefits are in dispute? TTD/Maintenance*

The Arbitrator has found that Petitioner failed to prove that she was an employee of Respondent on March 13 2012. Therefore, this issue is moot.

L: *What is the nature and extent of the injury?*

The Arbitrator has found that Petitioner failed to prove that she was an employee of Respondent on March 13 2012. Therefore, this issue is moot.

O: *Was this claim filed within the Statute of Limitations forth in §6(d) of the Act?*

The Arbitrator has found that Petitioner failed to prove that she was an employee of Respondent on March 13 2012. Therefore, this issue is moot.

22 WC 16374 (DOI: 10/23/1992, radiation poisoning from exposure to ionizing radiation):

C: *Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?*

Petitioner failed to prove that she was injured in an accident that arose out of and in the course of her employment by Respondent.

Petitioner claims to have sustained radiation poisoning from exposure to ionizing radiation. Petitioner failed to produce evidence of exposure to atomic radiation verified by the records of the central registry of radiation exposure maintained by the Department

of Public Health or by some other recognized governmental agency maintaining records of such exposures whenever and to the extent the records are on file with the Department of Public health or the agency, as required by §1(d) of the Occupational Diseases Act, 820 ILCS 310 *et seq*.

Further, Petitioner failed to file this matter within the limitations period set forth in §6(d) of the Act.

E: *Was timely notice of the accident given to Respondent?*

The Arbitrator has found that Petitioner failed to prove that she sustained an accidental injury that arose out of and in the course of her employment. The Arbitrator also found that Petitioner failed to file this matter within the limitations period set forth in s§6(d) of the Act. Therefore, this issue is moot.

F: *Is Petitioner's current condition of ill-being causally related to the accident?*

The Arbitrator has found that Petitioner failed to prove that she sustained an accidental injury that arose out of and in the course of her employment. The Arbitrator also found that Petitioner failed to file this matter within the limitations period set forth in s§6(d) of the Act. Therefore, this issue is moot.

Even so, Petitioner failed to produce evidence or medical opinion that she suffered radiation poisoning.

J: *Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?*

The Arbitrator has found that Petitioner failed to prove that she sustained an accidental injury that arose out of and in the course of her employment. The Arbitrator also found that Petitioner failed to file this matter within the limitations period set forth in s§6(d) of the Act. Therefore, this issue is moot.

K: *What temporary benefits are in dispute? TTD/Maintenance*

The Arbitrator has found that Petitioner failed to prove that she sustained an accidental injury that arose out of and in the course of her employment. The Arbitrator also found that Petitioner failed to file this matter within the limitations period set forth in s§6(d) of the Act. Therefore, this issue is moot.

L: *What is the nature and extent of the injury?*

The Arbitrator has found that Petitioner failed to prove that she sustained an accidental injury that arose out of and in the course of her employment. The Arbitrator also found that Petitioner failed to file this matter within the limitations period set forth in s§6(d) of the Act. Therefore, this issue is moot.

M: *Should penalties be imposed upon Respondent?*

The Arbitrator has found that Petitioner failed to prove that she sustained an accidental injury that arose out of and in the course of her employment. The Arbitrator also found that Petitioner failed to file this matter within the limitations period set forth in s§6(d) of the Act. Therefore, this issue is moot.

O: *Was this claim filed within the Statute of Limitations forth in §6(d) of the Act?*

The Arbitrator finds that Petitioner failed to prove that she filed her claim within the Statute of Limitations set forth in §6(d) of the Act.

§6(d) of the Act provides that in case of injury caused by exposure to radiological materials an application for compensation may be filed within 25 years after the last date that the employee was employed in an environment of hazardous radiological activity, otherwise the right to file shall be barred. Here Petitioner failed to prove that she worked in an environment of hazardous radiological activity. She failed to present any evidence whatever of the presence of ionizing radiation anywhere within her workplace.

In failing to establish any date of exposure to ionizing radiation Petitioner is unable to establish when the 25 year statute began.

23 WC 7327 (DOI: 6/19/1999, L4-5 disc herniation from struggling to free a jammed case):

This claim was included in a settlement approved by Arbitrator Carolyn Doherty in the consolidated matters Christine Cherry v. M & M Mars Company: 00 WC 5057, 00 WC 50578, 00 WC 59042, and 01 WC 2350. Petitioner signed the settlement contract. Arbitrator Doherty approved this settlement contract on May 10, 2013 (RX #3). Petitioner moved to vacate the settlement, which Arbitrator Doherty denied on May 30, 2013 (RX #4). Petitioner sought review of Arbitrator Doherty's Order before the Illinois Workers' Compensation Commission. The Commission affirmed and adopted Arbitrator Doherty's decision on November 13, 2014 (RX #5).

Petitioner's claim is an effort to relitigate a matter that was resolved by settlement and release. By analogy, if this matter were a civil lawsuit it would be dismissed in accord with §619(a)(6) of the Code of Civil Procedure, 735 ILCS *et seq*.

Petitioner's claim is denied, having failed to file this claim within the time limits set forth in §6(d) of the Act. Petitioner claimed she sustained a work related injury on June 19, 1999. She filed her Application for Benefits on March 17, 2013. Petitioner filed her Application more than 3 years after the limitation set forth in §6(d) of the Act.

The Arbitrator also finds that Petitioner failed to file her Application for Benefits within the period of limitations set forth in §6(d) of the Act, and, therefore, Petitioner's Application for Benefits is denied.

23 WC 9371 (DOI: 2/6/1993, miscarriage from exposure to contaminated hygiene products & environment):

C: *Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?*

The Arbitrator finds the Petitioner failed to prove that she sustained an accidental injury, namely a miscarriage of a pregnancy, that arose out of and in the course of her employment by Respondent.

Petitioner failed to present any evidence or medical opinion that her miscarriage occurred during performance of her work duties or activities. Petitioner failed to present any evidence or medical opinion that Respondent supplied hygiene products of any sort that were required for performance of he work duties or activities.

E: *Was timely notice of the accident given to Respondent?*

The Arbitrator has found that Petitioner failed to prove that she sustained an accidental injury that arose out of and in the course of her employment. The Arbitrator also found that Petitioner failed to file this matter within the limitations period set forth in s§6(d) of the Act. Therefore, this issue is moot.

F: *Is Petitioner's current condition of ill-being causally related to the accident?*

The Arbitrator finds that Petitioner failed to prove that her claim condition of ill-being was causally related to a workplace accident.

Petitioner failed to present any evidence or medical opinion that her miscarriage of a pregnancy was causally related to any of her work duties or activities.

The Arbitrator also found that Petitioner failed to file this matter within the limitations period set forth in s§6(d) of the Act. Therefore, this issue is moot.

J: *Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?*

The Arbitrator has found that Petitioner failed to prove that she sustained an accidental injury that arose out of and in the course of her employment. The Arbitrator also found that Petitioner failed to file this matter within the limitations period set forth in s§6(d) of the Act. Therefore, this issue is moot.

K: *What temporary benefits are in dispute? TTD/Maintenance*

The Arbitrator has found that Petitioner failed to prove that she sustained an accidental injury that arose out of and in the course of her employment. The Arbitrator also found that Petitioner failed to file this matter within the limitations period set forth in s§6(d) of the Act. Therefore, this issue is moot.

L: *What is the nature and extent of the injury?*

The Arbitrator has found that Petitioner failed to prove that she sustained an accidental injury that arose out of and in the course of her employment. The Arbitrator also found that Petitioner failed to file this matter within the limitations period set forth in s§6(d) of the Act. Therefore, this issue is moot.

M: *Should penalties be imposed upon Respondent?*

The Arbitrator has found that Petitioner failed to prove that she sustained an accidental injury that arose out of and in the course of her employment. The Arbitrator also found that Petitioner failed to file this matter within the limitations period set forth in s§6(d) of the Act. Therefore, this issue is moot.

O: *Was this claim filed within the Statute of Limitations forth in §6(d) of the Act?*

Petitioner's claim is denied, having failed to file this claim within the time limits set forth in §6(d) of the Act. Petitioner claimed she sustained a work related injury on February 6, 1993. She filed her Application for Benefits on April 10, 2023. Petitioner filed her Application more than 3 years after the limitation set forth in §6(d) of the Act.

The Arbitrator finds that Petitioner failed to file her Application for Benefits within the period of limitations set forth in §6(d) of the Act, and, therefore, Petitioner's Application for Benefits is denied.

Steven J. Fruth, Arbitrator

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	23WC009371
Case Name	Christine Cherry v. M & M Mars
Consolidated Cases	05WC041250; 13WC007224; 22WC016374; 23WC007327;
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	24IWCC0187
Number of Pages of Decision	24
Decision Issued By	Amylee Simonovich, Commissioner

Petitioner Attorney	Pro Se
Respondent Attorney	James Clune

DATE FILED: 4/26/2024

/s/ Amylee Simonovich, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

☒ Affirm and adopt (no changes)	☐ Injured Workers' Benefit Fund (§4(d))
☐ Affirm with changes	☐ Rate Adjustment Fund (§8(g))
☐ Reverse	☐ Second Injury Fund (§8(e)18)
	☐ PTD/Fatal denied
☐ Modify	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

CHRISTINE CHERRY,

Petitioner,

vs. NO: 23 WC 09371

M & M MARS,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Petitioner herein and notice given to all parties, the Commission, after considering the issues of accident, medical expenses, notice, employment, occupational disease, statute of limitations, and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed August 10, 2023 is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent pay to Petitioner interest under §19(n) of the Act, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent shall have credit for all amounts paid, if any, to or on behalf of the Petitioner on account of said accidental injury.

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.

The bond requirement in Section 19(f)(2) is applicable only when "the Commission shall have entered an award for the payment of money." *820 ILCS 305/19(f)(2).* Based upon the denial of compensation herein, no bond is set by the Commission.

April 26, 2024
o041624
AHS/ldm
051

/s/*Amylee H. Simonovich*
Amylee H. Simonovich

/s/*Maria E. Portela*
Maria E. Portela

/s/*Kathryn A. Doerries*
Kathryn A. Doerries

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	23WC009371
Case Name	Christine Cherry v. M & M Mars
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	21
Decision Issued By	Steven Fruth, Arbitrator

Petitioner Attorney	
Respondent Attorney	James Clune

DATE FILED: 8/10/2023

THE INTEREST RATE FOR THE WEEK OF AUGUST 8, 2023 5.26%

/s/Steven Fruth, Arbitrator

Signature

STATE OF ILLINOIS)
)SS.
COUNTY OF COOK)

☐ Injured Workers' Benefit Fund (§4(d))
☐ Rate Adjustment Fund (§8(g))
☐ Second Injury Fund (§8(e)18)
☒ None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Christine Cherry **Case # 23 W C009371**
Employee/Petitioner

v.

M & M Mars
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 **Steven Fruth** Arbitrator of the Commission, in the city of **Chicago**, on **June 6, 2023**. 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: **Statute of Limitations**

FINDINGS

On **2/6/1993**, Respondent ***was*** operating under and subject to the provisions of the Act.

On this date, an employee-employer relationship ***did*** exist between Petitioner and Respondent.

On this date, Petitioner ***did not*** sustain an accident that arose out of and in the course of employment.

Timely notice of this accident ***was not*** given to Respondent.

Petitioner's current condition of ill-being ***is not*** causally related to the accident.

In the year preceding the injury, Petitioner earned $**29,640.00**; the average weekly wage was $**570.00**.

On the date of accident, Petitioner was **40** years of age, ***single*** with **1** dependent child.

Petitioner ***has not*** received all reasonable and necessary medical services.

Respondent ***has not*** paid all appropriate charges for all reasonable and necessary medical services.

Respondent shall be given a credit of $**0** for TTD, $**0** for TPD, $**0** for maintenance, and $**0** for other benefits, for a total credit of $**0**.

Respondent is entitled to a credit for all medical bills heretofore paid, if any.

ORDER

Petitioner claimed she was injured on 2/6/1993 but filed her Application for Benefits on 4/10/2023. Petitioner failed to file her Application within the statute of limitations set forth in §6(d) of the Act and, further, failed to prove any exception which would allow the statute of limitations to be extended.

Also, Petitioner failed to present evidence or medical opinion that her claimed miscarriage was causally related to exposure to contaminated hygiene products or her work environment. All other issues are moot.

Petitioner's Application for Benefits is denied.

RULES REGARDING APPEALS: Unless a party files a *Petition for Review* within 30 days after receipt of this decision and perfects a Review in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

STATEMENT OF INTEREST RATE: If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

AUGUST 10, 2023

Signature of Arbitrator

ICArbDec p. 2

Christine Cherry v. M & M Mars
05 WC 41250, consolidated with 13 WC 7224, 22 WC 16374, 23 WC 7327, & 23 WC 9371

INTRODUCTION

These matters proceeded to hearing before Arbitrator Steven Fruth. The disputed issues were:

05 WC 41250 (DOI: 10/23/1992, injury to vital organs & immune system from exposure to carbon dioxide & freezing temperatures):

C: Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?; ***E:*** Was timely notice of the accident given to Respondent?; ***F:*** Is Petitioner's current condition of ill-being causally related to the accident?; ***J:*** Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?; ***L:*** What is the nature and extent of the injury?; ***M:*** Should penalties be imposed upon Respondent?; ***O:*** Was this claim filed within the Statute of Limitations forth in §6(d) of the Act?

Petitioner asserted a claim for permanent medical leave, which are not within the jurisdiction of the Illinois Workers Compensation Commission.

13 WC 7224 (DOI: 3/13/2012, exposure to blood-borne pathogens):

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?; ***E:*** Was timely notice of the accident given to Respondent?; ***F:*** Is Petitioner's current condition of ill-being causally related to the accident?; ***J:*** Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?; ***K:*** What temporary benefits are in dispute? TTD/Maintenance; ***L:*** What is the nature and extent of the injury?; ***O:*** Was this claim filed within the Statute of Limitations forth in §6(d) of the Act?

22 WC 16374 (DOI: 10/23/1992, radiation poisoning from exposure to ionizing radiation):

C: Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?; ***E:*** Was timely notice of the accident given to Respondent?; ***F:*** Is Petitioner's current condition of ill-being causally related to the accident?; ***J:*** Were the

medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?; ***K:*** What temporary benefits are in dispute? TTD/Maintenance; ***L:*** What is the nature and extent of the injury?; ***M:*** Should penalties be imposed upon Respondent?; ***O:*** Was this claim filed within the Statute of Limitations forth in §6(d) of the Act?

Petitioner asserted claims for long term disability, Medicare, and Social Security, which are not within the jurisdiction of the Illinois Workers Compensation Commission.

23 WC 7327 (DOI: 6/19/1999, L4-5 disc herniation from struggling to free a jammed case):

C: Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?; ***E:*** Was timely notice of the accident given to Respondent?; ***F:*** Is Petitioner's current condition of ill-being causally related to the accident?; ***J:*** Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?; ***K:*** What temporary benefits are in dispute? TTD/Maintenance; ***L:*** What is the nature and extent of the injury?; ***M:*** Should penalties be imposed upon Respondent?; ***O:*** Was this claim filed within the Statute of Limitations forth in §6(d) of the Act?

Petitioner asserted claims for long term disability and Social Security, which are not within the jurisdiction of the Illinois Workers Compensation Commission.

23 WC 9371 (DOI: 2/6/1993, miscarriage from exposure to contaminated hygiene products & environment):

C: Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?; ***E:*** Was timely notice of the accident given to Respondent?; ***F:*** Is Petitioner's current condition of ill-being causally related to the accident?; ***J:*** Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?; ***K:*** What temporary benefits are in dispute? TTD/Maintenance; ***L:*** What is the nature and extent of the injury?; ***M:*** Should penalties be imposed upon Respondent?; ***O:*** Was this claim filed within the Statute of Limitations forth in §6(d) of the Act?

Petitioner asserted claims for long term disability and Social Security, which are not within the jurisdiction of the Illinois Workers Compensation Commission.

Petitioner's Motion to Reopen Proofs was allowed in part and denied in part on June 26, 2023. Petitioner was permitted, without objection, leave to file supplemental records from University of Chicago Medical Center, Mt. Sinai Hospital, and Dr. Elliott but no other records.

STATEMENT OF FACTS

Petitioner Christine Cherry testified that she started as a temporary worker with Respondent M & M Mars in 1989. Once hired full-time, she had a full physical examination and cardiac testing, blood work, urine tests, hearing tests, and a TB test. She also had X-rays and a breathing test. She last worked for Respondent in 2000.

Petitioner testified that she did not read material safety data sheets provided to the employees. Petitioner testified that a new Milky Way product was brought into the plant in 1990 and that she noticed vapors. She said this happened about 1990. She claimed that the candy bar manufacturing process used carbon dioxide and nitrogen or nitrates. She further testified she was working in subzero temperatures but was not provided with an insulated uniform. She stated that during production it was "freezing cold in there."

Petitioner claims in 05 WC 041250 and 22 WC 016374 that she was injured on October 23, 1992. On October 23, 1992, she worked the night shift. She said the line was "dense." Petitioner testified that she had a gradual buildup of an illness, that she noticed that she was feeling different, and she went to report her feelings to the nurse's station. She was feeling bad when she arrived at work, which she related this to problems with the (production) line in the previous weeks.

Petitioner testified that on October 23, 1992 she arrived at work feeling sick and started shivering, an uncontrollable shiver, like she was freezing. She felt a freeze-like sensation in her forehead. She had a hoarseness to her voice. She was feeling weak. She noticed that her legs were getting numb. She noticed that her arm was always "off-center." Prior to this she noticed that when she was at home prior to this she noticed that when she was at home she would trip. She concluded that her safety boots at work supported her and prevented her from falling at work, except on two occasions she stated that she fell at work and reported it to "the healthcare person". She stated that her ankle went under her and she "fell over like this." Also, on October 23 she had chest pains, a sore throat, a headache, felt weak, and felt cold. She went to the nurse's station and told Phyllis that she was not feeling well. Phyllis called the paramedics to pick up the petitioner and she was taken to Gottlieb Hospital, an occupational health site.

Petitioner testified that at Gottlieb a doctor she had seen in the past examined her, checked her pulse, obtained warm blankets which he provided to her, and listened to her heart. He also conducted a pinprick test. Petitioner was not admitted to the hospital. Petitioner had X-rays and blood tests. Petitioner was released to a cab to return to the

job. She was instructed to go home after discussing her condition with the nurse at Mars. She signed a medical release. The nurse gave her a card with a doctor's name on it for her to make an appointment if she desired.

About 4 days after she left Gottlieb Petitioner saw Dr. Henniff at McNeal Hospital. Petitioner testified that she did not have the MacNeal records. She arrived at the hospital feeling weak, sick, and feverish. Dr. Henniff referred Petitioner to an endocrinologist. On November 3, 1992 Petitioner saw Dr. Couropmitree who told her she had had a stroke.

On cross-examination Petitioner was asked about her other claim for the same date of accident on October 23, 1992. She testified that the second claim (22 WC 16374) is a continuation of the initial claim (05 WC 041250). She testified that she believed that when she was sent home from Gottlieb instead of being admitted to the hospital, that's when everything became worse and so she considered this to be a continuation of the original claim. After her discussion with the doctor, she had a blood test and X-rays. Dr. Couropmitree asked her to obtain her employer's "injury insurance" because he did not accept her HMO.

Petitioner did not immediately follow up with Dr. Couropmitree but went to the University of Chicago Medical Center ("U of C"). At the University of Chicago, Petitioner had work for her thyroid at U of C. She was also treated for a miscarriage. Petitioner relates her internal injuries, "gastro system," and kidney problems to her accident of October 23, 1992. Petitioner was hospitalized with chest pains at Mount Sinai Hospital which she relates to her October 23, 1992 accident.

Petitioner testified that in her opinion her illnesses were related to a lack of oxygen when the manufacturing line was closed, and she could smell odors. To the extent she was giving an opinion regarding causation, the respondent's objection to the opinion was sustained, but to the extent the petitioner sensed odors, that testimony was allowed to stand.

Petitioner testified that she has been diagnosed with a chronic illness and a thyroid disorder. She also believes her endometriosis is related to her October 23, 1992 accident. Petitioner claims the following conditions of Ill-being because of exposures to toxic substances at Mars: thyroid disorder, chest pain treated at Mt. Sinai in 2002, gastrointestinal disorder, edema, polyps, "urology", cerebral injury, endometriosis, "mental health", deteriorated spine, abnormal mammograms, vision problems, Graves' disease, and insomnia.

In claim her 23 WC 009371 Petitioner claims she was injured, a miscarriage, on February 6, 1993. She testified that she treated at the U of C. She believes the miscarriage was related to her work at Mars. She testified that she had returned to work after October 1992 until 1995 and during that time she worked on the same process line. Her

miscarriage occurred at home. She followed up with U of C for her miscarriage, but her treatment was delayed due to her thyroid and a heart condition.

In claim her 23 WC 007327 Petitioner claims she was injured on June 19, 1999. She was scheduled to work on the "Munch line" making "Munch bars" on June 19. She noted that the line was in disrepair. Boxes were getting stuck on the line. Petitioner testified she bent over to help push a box through to the "caser." Just as she bent over, she felt pain in her back. She continued to work because other workers were not available to help her. Petitioner said she notified her group leaders, Tony and Barbara, that she needed to go home because she injured her back. The next day Petitioner returned to work feeling better, but upon performing cleaning duties she felt worse and notified her supervisor. She kept working because she believed she might be fired if she stopped.

On the following Monday Petitioner testified she was advised by a nurse from Mars that she was to go to her doctor. She saw yet another doctor who prescribed physical therapy and medications. Her doctor referred her to a rheumatologist at Rush Hospital for specialized physical therapy. She followed this doctor when he changed practice locations to Northwestern. There she received aqua therapy and a cortisone injection. She had an MRI in 2000. Also, in 2000 she entered Christ Hospital for mental health issues but did not receive back treatment while in Christ Hospital.

Petitioner testified that the 2000 MRI showed disc pathology at L4 through S1. She purchased workout equipment so that she could strengthen herself. She testified that she reinjured herself while using her workout equipment. She received treatment at West Suburban Hospital for this reinjury. Petitioner testified she received physical therapy, shots, and medication. She testified that the effects of her back injury have been ongoing, including depression.

On cross-examination Petitioner identified RX #3, a Settlement Contract approved by Arbitrator Doherty on May 10, 2013, 00 WC 50577, 00 WC 50578, 00 WC 59042, and 01 WC 2350. She acknowledged that RX #3 lists her claim of injury on June 19, 1999 as one of the claims settled.

In claim 13 WC 007224 Petitioner claims an injury on March 13, 2012. She testified that she was at the IWCC building, the James R. Thompson Center, waiting for her lawyer outside chambers. She was there for a scheduled trial for other claims. She noted something in her medical records while interacting with her attorney. Petitioner testified that as she looked at her medical records, she noted something called "infectious capillaries." Since she did not have a claim filed for infectious capillaries, she filed a claim to "safeguard" herself. Petitioner testified, "I had no just cause to file that claim." She testified that the reason she filed the claim was because of her medical records on the table. In answer to the Arbitrator's question of what injury she suffered on March 13, 2012

at the Workers' Compensation Commission at the Thompson Center, Petitioner answered, "There was nothing."

Petitioner intended to introduce her medical records from Christ Hospital regarding her mental health status. She claims that she has suffered a mental health injury because of all her workers compensation claims.

On cross-examination Petitioner acknowledged Respondent's Exhibit #3, a settlement contract approved by Arbitrator Doherty on May 10, 2013 for the consolidated matters of 00 WC 50577, 00 WC 50578, 00 WC 59042, and 01 WC 2350. Among the accident dates on the settlement contract was the date of accident of June 19, 1999. The Rider to that settlement contract stated that Petitioner was settling all accident and injury claims arising from an incident or incidents on June 19, 1999. Respondent's Exhibit #4 is Arbitrator Doherty's Order denying Petitioner's motion to set aside the settlement for a clerical or scrivener's error. Respondent's Exhibit #5 is the Order of the Commission affirming Arbitrator Doherty denial of Petitioner's motion to set aside.

Respondent called Linnea Pearson as a witness. Ms. Pearson was the risk manager for casualty and claims for the Americas for both Mars and Wrigley. In her capacity as the risk manager for claims she had the opportunity and responsibility to visit all plants, including the plant on Oak Park Avenue in Chicago where the petitioner worked. Ms. Pearson visited the facility monthly. She was familiar with the manufacturing processes, the environment of the facility, safety, and the occupational health nurses. Ms. Pearson confirmed there were no excessive amounts of carbon dioxide, nitrogen, or nitrates at Oak Park Avenue. No workers wore protective breathing apparatus or protective clothing except for warmer jackets as necessary in the cooling area. In the history of Mars there has never been a claim for radiological exposure.

Respondent's Exhibit #1, the evidence deposition of Dr. David Hartman on January 13, 2022 was admitted in evidence. Dr. Hartman is a licensed clinical psychologist and a board-certified Forensic Neuropsychologist. Dr. Hartman interviewed Petitioner on July 25, 2011 and administered a variety of testing, including the MMPI-2-RF, the Battery for Health Improvement, an intellectual screening test, and a test of basic verbal memory and motivation to produce adequate memory. In addition, Petitioner completed a medical history questionnaire, a symptom questionnaire, and a "Pain Catastrophizing Scale." He understood his evaluation of Petitioner was in the context of her Workers Compensation claim. The doctor refreshed his memory from his narrative report, HartmanDepX #2.

Dr. Hartman testified that Petitioner believed she had been exposed to carbon dioxide and nitrates while working at M&M Mars. She reported her exposure caused a variety of neurocognitive problems. The doctor reviewed her history of multiple psychiatric hospitalizations, and also her history of thyroid disease, Graves' disease,

Hashimoto's thyroiditis, and hypertension. He noted Petitioner had a number of medical and psychiatric conditions that would impair her behavior and quality of thinking. He also noted petitioner strong family history of psychotic disorder in schizophrenic disorder, she had been repeatedly diagnosed with either bipolar disorder or a schizophrenic disorder, which are typically genetic.

Dr. Hartman found no evidence of a workplace disorder caused by exposure to carbon dioxide, nitrates, nitrogen, or freezing temperatures. Petitioner's chronic condition of ill-being is a conventional psychiatric disorder. He did not believe Petitioner's beliefs were based in any reasonable reality. Further, he did not believe Petitioner's motivation was based on financial gain.

On cross-examination Dr. Hartman acknowledged that he had not reviewed Petitioner's records from Gottlieb Memorial Hospital or MacNeal Memorial Hospital.

Neurosurgeon Dr. Andrew Zelby performed a §12 IME of Petitioner on November 11, 2011. In addition to a clinical examination, Dr. Zelby reviewed Petitioner's medical records, including reports of radiological studies. He prepared a written report on November 11 which was marked as Exhibit # 2 at his evidence deposition on February 7 2022 (RX #2). Dr. Zelby 's report was admitted in evidence without objection.

At the November 11 IME Petitioner gave a history of exposure to carbon dioxide and silver nitrate refrigerant at work in 1992. She believed that exposure damaged the calcium in her bones. Petitioner also developed left leg pain followed by weakness and numbness over the entire left side. Petitioner stated that in early 1993, when doing nothing is special, she developed lower back pain which radiated into her left leg. She was seen at Oak Park Hospital where X-rays were taken. She had continuing off and on low back pain and pain in the lateral aspect of the left thigh, which continued for about 6 years. ZelbyDepX #2

Petitioner also gave a history that while cleaning a ceiling at work in 1999 she felt pain in the mid-thoracic region which radiated into her chest. She stated she was told by a doctor this was muscle strain. She later developed sharp low back pain when pulling on a jammed product case. That pain radiated into circumferential tingling in both legs. She reported that she had been told she had 2 herniated discs. She received physical therapy for one month but returned to regular work. ZelbyDepX #2

In December 1999 Petitioner was pushing a 100 pound barrel with her hip when she felt an increase in low back pain that went into the front of her left leg. She returned to her doctor and had 3 more months of physical therapy. She reported that she did not get any improvement but was told she was not a candidate for surgery.

Petitioner reported that she has had pain over the years which comes and goes depending on activity. The pain is in the back and the anterior aspects of the thighs, left more than right. She reported that she had had maybe 4 epidural steroid injections in her back over the last 10 years and multiple cycles of physical therapy. Her last course of therapy was in 2010. Petitioner also reported numbness in her hands since the mid 90s, affecting the 3rd, 4th, and 5th digits. She was told she had carpal tunnel syndrome. She specifically stated numbness was not in the lateral fingers, but the medial fingers. She has some pain at least 3 to 5 days of the week for at least one to 2 hours. ZelbyDepX #2

Petitioners past medical history included hypertension, hyperlipidemia, GERD, endometriosis, Hashimoto's thyroiditis, Graves' disease, hypoparathyroidism, bipolar disorder, and schizophrenia. She reported that her work varied between light and heavy physical labor. She smoked for 23 years. She could tolerate sitting or standing for less than one hour and could tolerate walking less than 2 blocks. She presented with pain rated at 7/10. ZelbyDepX #2

On examination Dr. Zelby noted essentially normal cervical range of motion. Spurling's maneuver and Hoffman's sign were negative. Lumbar range of motion was diminished. Straight-leg raise was negative on both sides in lying and sitting positions. Patrick's Maneuver and FABRE tests were negative on both sides. Pinprick testing demonstrated diminished sensation in the medial 3 fingers of both hands, both thighs circumferentially, and both feet. Vibratory sensation to the upper and lower extremities was normal, except for diminished sensation circumferentially in both thighs. Dr. Zelby noted inconsistent behavioral responses in non-anatomic sensory changes. Tinel's was negative at both wrists and both elbows. Phalen's was negative at both wrists. Adson's Maneuver was negative bilaterally.

Dr. Zelby noted cervical X-rays from February 19, 1997 were normal. Lumbar X-rays from July 14, 2004 showed early osteophyte formation at L4-5 and L5-S1. A January 25, 2000 lumbar MRI showed a left lateral herniated disc at L4-5 and a central disc bulge at L5-S1. An October 29, 2001 lumbar MRI showed end plate degenerative changes and disc desiccation at L4-5 and L5 S1. There was a central disc extrusion at L5-S1. An EMG on November 12, 1996 showed left ulnar neuropathy and bilateral carpal tunnel syndrome. A June 28, 2000 EMG noted mild bilateral carpal tunnel syndrome.

Dr. Zelby noted Petitioner consulted Dr. Basha in May (probably 1999) with a complaint of low back pain. She reported she went to the ER and was told she had a back sprain. Petitioner followed up with Dr. Leavitt on June 22, 1999 when lower back pain returned while she was "watching" (probably washing) high walls going side to side. Petition continued to follow with Dr Leavitt. She was seen in the emergency department of West Suburban Hospital on December 6, 1999 for left gluteal pain going down the middle of her thigh secondary to her work. Petitioner returned to Dr. Leavitt on December 21, 1999 with tingling in her left leg going into the buttock down the leg and

sometimes to the toes. Petitioner had a history of muscle strain starting in July 1999 after lifting a heavy object. Dr. Leavitt prescribed physical therapy and followed Petitioner into 2000. Dr. Leavitt had taken her off work but suggested a trial returned to work in March, which Petitioner did not want to do. On April 14, 2000 Petitioner reiterated that she did not want to return to work for fear she would reinjure her back. She was referred to Dr. Goldberg for a second opinion. Dr. Leavitt ordered a new nerve conduction study, noting a previous study in 1996.

Dr. Zelby also noted that Petitioner consulted Dr. Ruderman on May 17 2000 for a rheumatology evaluation. Dr. Ruderman noted Petitioner's herniated disc at L4-5 but thought much of her current symptomology was related to left sided trochanteric bursitis. Petitioner continued to follow with Dr. Ruderman in 2004, 2008, and 2009. By October 13, 2009 Dr. Ruderman 's impression was lumbar disc disease but suspected there were secondary issues that far eclipsed the anatomical disease.

Petitioner consulted Dr. Kalainov on January 26, 2005 when the doctor diagnosed bilateral carpal tunnel syndrome. The doctor thought the EMG studies from 1996 and 2000 were fairly unimpressive but strongly suspected some relationship between Petitioner's symptoms and her underlying hyperthyroidism. The doctor did not believe Petitioner was a surgical candidate but did administer steroid injections in both hands in December 2005.

Dr. Zelby also reviewed Petitioner's evaluation by Dr. Blonsky on June 1320 oh 6. Dr. Blonsky noted the complexity of Petitioner's case due to the numerous reported injuries at work and at home, as well as her psychiatric diagnosis. The doctor concluded Petitioner had degenerative changes at L4-5 and L5-S1 unrelated to her work activities and a resolved left trochanteric bursitis. An October 2001 MRI noted an L5-S1 extrusion, which was a progression of her condition despite her not working. He noted that petitioners work was not the only basis of her pain complaints. Dr. Blonsky also noted Petitioner apparently was able to do those things that she was interested in doing but chose not to return to work. He also noted Petitioner's carpal tunnel syndrome was mild at best and would not have prevented her from working. After reviewing various job descriptions, he could not identify any repetitive forceful grasping that would have in any way contributed to petitioners carpal tunnel syndrome. The doctor did not believe Petitioner's conditions were disabling and was uncertain why she had taken off work since March 2000.

Dr. Zelby reviewed the records of Dr. Park of Schwab Rehabilitation Hospital from November 32,009. Dr. Park found diffuse multiple tender points which met the criteria for fibromyalgia. Dr. Park noted Petitioner was seeing a psychologist for anxiety with a previous history of bipolar disorder and acute psychosis. The doctor started a tricyclic antidepressant. Dr. Park reevaluated Petitioner on August 31, 2009, at which time the doctor noted that nothing could be offered to her.

In summary, Dr. Zelby noted he had reviewed Petitioner's records from Northwestern Memorial Hospital, RUSH University Medical Center, and Mount Sinai Hospital. He noted she had been diagnosed with bipolar disorder and psychosis and also with a schizoaffective disorder and schizophrenia. He reviewed various other medical records including physical therapy records.

Dr. Zelby noted that Petitioner sustained injuries at work and away from work. He opined that at most her work injuries were soft tissue muscular strains and nothing more. He did note a disc protrusion at L4-5 noted on the 1999 MRI with possible impingement on the left L4 nerve root. Dr. Zelby noted Petitioner's complaint of radicular left leg pain down the posterior aspect of her thigh and sometimes into her toes followed an S1 dermatome, 2 levels away from the area of abnormality. He found these symptoms completely unrelated to her radiographic abnormalities. Dr. Zelby found that Petitioner did not have an identifiable objective condition associated with her spine or nervous system that would be disabling in any manner. She had no objective condition which would preclude her ability to work. He opined that her absence from work over the previous 11 years appeared to be a personal decision and not due to any objective medical condition. He found no objective findings associated with her reported injuries or her regular job activities. He finally opined that Petitioner's current complaints, and any ongoing treatment were unrelated to her reported job injuries or job activities.

Dr. Zelby testified at his evidence deposition on February 7 2022, RX #2. Dr. Zelby testified that he is a board-certified neurosurgeon. He refreshed his memory from the report he prepared regarding his IME of Petitioner on November 11, 2011 (ZelbyDepX #2).

Dr. Zelby reiterated all of the exam findings and review of Petitioner's records set forth in his November 11, 2011 report. At the end of his examination and records review Dr. Zelby diagnosed lumbar degenerative spondylosis and lumbar strain. He did not find any causal relation to those conditions and Petitioner's claimed exposure to carbon dioxide or silver nitrate.

CONCLUSIONS OF LAW

05 WC 41250 (DOI: 10/23/1992, injury to vital organs & immune system from exposure to carbon dioxide & freezing temperatures):

C: *Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?*

The Arbitrator finds that Petitioner failed to prove that she sustained an accidental injury that arose out of and in the course of her employment by Respondent. Petitioner failed to prove that she was exposed to excessive or deleterious levels of carbon dioxide

silver nitrate, nitrates, or nitrogen. Petitioner failed to present any evidence of what levels or what concentrations of carbon dioxide or silver nitrate or nitrates or nitrogen were in the atmosphere in which she worked, or what level of those substances were harmful to humans.

Further, Petitioner failed to file this matter within the limitations period set forth in §6(d) of the Act.

E: *Was timely notice of the accident given to Respondent?*

The Arbitrator has found that Petitioner failed to prove that she sustained an accidental injury that arose out of and in the course of her employment. The Arbitrator also found that Petitioner failed to file this matter within the limitations period set forth in s§6(d) of the Act. Therefore, this issue is moot.

F: *Is Petitioner's current condition of ill-being causally related to the accident?*

The Arbitrator has found that Petitioner failed to prove that she sustained an accidental injury that arose out of and in the course of her employment. The Arbitrator also found that Petitioner failed to file this matter within the limitations period set forth in s§6(d) of the Act. Therefore, this issue is moot.

Even so, the Arbitrator has found that Petitioner failed to prove that any claimed condition of ill-being was causally related to claimed exposure to excessive levels of carbon dioxide, silver nitrate, nitrates, or nitrogen. Petitioner offered no medical evidence or opinion causally relating the claimed exposure to any diagnosed medical condition.

Dr. Andrew Zelby, Respondent's IME examiner, opined that there was no causal relation between Petitioner's medical condition and claimed exposure to excessive levels of carbon dioxide, silver nitrate, nitrates, or nitrogen. There was no rebuttal to Dr. Zelby's opinions.

Dr. David Hartman, Respondent's IME neuropsychological examiner, opined that there was no causal relation between Petitioner's medical condition and claimed exposure to excessive levels of carbon dioxide, silver nitrate, nitrates, or nitrogen. There was no rebuttal to Dr. Hartman's opinions.

J: *Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?*

The Arbitrator has found that Petitioner failed to prove that she sustained an accidental injury that arose out of and in the course of her employment. The Arbitrator also found that Petitioner failed to file this matter within the limitations period set forth in s§6(d) of the Act. Therefore, this issue is moot.

L: *What is the nature and extent of the injury?*

The Arbitrator has found that Petitioner failed to prove that she sustained an accidental injury that arose out of and in the course of her employment. The Arbitrator also found that Petitioner failed to file this matter within the limitations period set forth in s§6(d) of the Act. Therefore, this issue is moot.

M: *Should penalties be imposed upon Respondent?*

The Arbitrator has found that Petitioner failed to prove that she sustained an accidental injury that arose out of and in the course of her employment. The Arbitrator also found that Petitioner failed to file this matter within the limitations period set forth in s§6(d) of the Act. Therefore, this issue is moot.

O: *Was this claim filed within the Statute of Limitations forth in §6(d) of the Act?*

Petitioner claimed she sustained a work related injury on October 23, 1992. She filed her Application for Benefits on September 19, 2005. Petitioner filed her Application more than 3 years after the limitation set forth in §6(d) of the Act.

The Arbitrator finds that Petitioner failed to file her Application for Benefits within the period of limitations set forth in §6(d) of the Act, and, therefore, Petitioner's Application for Benefits is denied.

13 WC 7224 (DOI: 3/13/2012, exposure to blood-borne pathogens):

B: *Was there an employee-employer relationship?*

Petitioner failed to prove that she was employed by Respondent on March 13, 2012. Petitioner testified that she was last employed by Respondent in the year 2000.

Petitioner testified that on March 13 2012 she was present at the Workers' Compensation Commission in the James R Thompson Center for a scheduled matter on a different pending claim.

C: *Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?*

The Arbitrator has found that Petitioner failed to prove that she was an employee of Respondent on March 13 2012. Therefore, this issue is moot.

Even so, Petitioner testified that on March 13 2012 she was present at the Workers' Compensation Commission in the James R. Thompson center for a scheduled matter on a different pending claim. She could not have been engaged in any activity that rose out of or in the course of her employment.

E: *Was timely notice of the accident given to Respondent?*

The Arbitrator has found that Petitioner failed to prove that she was an employee of Respondent on March 13 2012. Therefore, this issue is moot.

F: *Is Petitioner's current condition of ill-being causally related to the accident?*

The Arbitrator has found that Petitioner failed to prove that she was an employee of Respondent on March 13 2012. Therefore, this issue is moot.

Even so, Petitioner failed to produce any evidence that she was ever exposed to a blood-borne pathogen at any time during her employment by Respondent.

J: *Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?*

The Arbitrator has found that Petitioner failed to prove that she was an employee of Respondent on March 13 2012. Therefore, this issue is moot.

K: *What temporary benefits are in dispute? TTD/Maintenance*

The Arbitrator has found that Petitioner failed to prove that she was an employee of Respondent on March 13 2012. Therefore, this issue is moot.

L: *What is the nature and extent of the injury?*

The Arbitrator has found that Petitioner failed to prove that she was an employee of Respondent on March 13 2012. Therefore, this issue is moot.

O: *Was this claim filed within the Statute of Limitations forth in §6(d) of the Act?*

The Arbitrator has found that Petitioner failed to prove that she was an employee of Respondent on March 13 2012. Therefore, this issue is moot.

22 WC 16374 (DOI: 10/23/1992, radiation poisoning from exposure to ionizing radiation):

C: *Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?*

Petitioner failed to prove that she was injured in an accident that arose out of and in the course of her employment by Respondent.

Petitioner claims to have sustained radiation poisoning from exposure to ionizing radiation. Petitioner failed to produce evidence of exposure to atomic radiation verified by the records of the central registry of radiation exposure maintained by the Department

of Public Health or by some other recognized governmental agency maintaining records of such exposures whenever and to the extent the records are on file with the Department of Public health or the agency, as required by §1(d) of the Occupational Diseases Act, 820 ILCS 310 *et seq*.

Further, Petitioner failed to file this matter within the limitations period set forth in §6(d) of the Act.

E: *Was timely notice of the accident given to Respondent?*

The Arbitrator has found that Petitioner failed to prove that she sustained an accidental injury that arose out of and in the course of her employment. The Arbitrator also found that Petitioner failed to file this matter within the limitations period set forth in s§6(d) of the Act. Therefore, this issue is moot.

F: *Is Petitioner's current condition of ill-being causally related to the accident?*

The Arbitrator has found that Petitioner failed to prove that she sustained an accidental injury that arose out of and in the course of her employment. The Arbitrator also found that Petitioner failed to file this matter within the limitations period set forth in s§6(d) of the Act. Therefore, this issue is moot.

Even so, Petitioner failed to produce evidence or medical opinion that she suffered radiation poisoning.

J: *Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?*

The Arbitrator has found that Petitioner failed to prove that she sustained an accidental injury that arose out of and in the course of her employment. The Arbitrator also found that Petitioner failed to file this matter within the limitations period set forth in s§6(d) of the Act. Therefore, this issue is moot.

K: *What temporary benefits are in dispute? TTD/Maintenance*

The Arbitrator has found that Petitioner failed to prove that she sustained an accidental injury that arose out of and in the course of her employment. The Arbitrator also found that Petitioner failed to file this matter within the limitations period set forth in s§6(d) of the Act. Therefore, this issue is moot.

L: *What is the nature and extent of the injury?*

The Arbitrator has found that Petitioner failed to prove that she sustained an accidental injury that arose out of and in the course of her employment. The Arbitrator also found that Petitioner failed to file this matter within the limitations period set forth in s§6(d) of the Act. Therefore, this issue is moot.

M: *Should penalties be imposed upon Respondent?*

The Arbitrator has found that Petitioner failed to prove that she sustained an accidental injury that arose out of and in the course of her employment. The Arbitrator also found that Petitioner failed to file this matter within the limitations period set forth in s§6(d) of the Act. Therefore, this issue is moot.

O: *Was this claim filed within the Statute of Limitations forth in §6(d) of the Act?*

The Arbitrator finds that Petitioner failed to prove that she filed her claim within the Statute of Limitations set forth in §6(d) of the Act.

§6(d) of the Act provides that in case of injury caused by exposure to radiological materials an application for compensation may be filed within 25 years after the last date that the employee was employed in an environment of hazardous radiological activity, otherwise the right to file shall be barred. Here Petitioner failed to prove that she worked in an environment of hazardous radiological activity. She failed to present any evidence whatever of the presence of ionizing radiation anywhere within her workplace.

In failing to establish any date of exposure to ionizing radiation Petitioner is unable to establish when the 25 year statute began.

23 WC 7327 (DOI: 6/19/1999, L4-5 disc herniation from struggling to free a jammed case):

This claim was included in a settlement approved by Arbitrator Carolyn Doherty in the consolidated matters Christine Cherry v. M & M Mars Company: 00 WC 5057, 00 WC 50578, 00 WC 59042, and 01 WC 2350. Petitioner signed the settlement contract. Arbitrator Doherty approved this settlement contract on May 10, 2013 (RX #3). Petitioner moved to vacate the settlement, which Arbitrator Doherty denied on May 30, 2013 (RX #4). Petitioner sought review of Arbitrator Doherty's Order before the Illinois Workers' Compensation Commission. The Commission affirmed and adopted Arbitrator Doherty's decision on November 13, 2014 (RX #5).

Petitioner's claim is an effort to relitigate a matter that was resolved by settlement and release. By analogy, if this matter were a civil lawsuit it would be dismissed in accord with §619(a)(6) of the Code of Civil Procedure, 735 ILCS *et seq*.

Petitioner's claim is denied, having failed to file this claim within the time limits set forth in §6(d) of the Act. Petitioner claimed she sustained a work related injury on June 19, 1999. She filed her Application for Benefits on March 17, 2013. Petitioner filed her Application more than 3 years after the limitation set forth in §6(d) of the Act.

The Arbitrator also finds that Petitioner failed to file her Application for Benefits within the period of limitations set forth in §6(d) of the Act, and, therefore, Petitioner's Application for Benefits is denied.

23 WC 9371 (DOI: 2/6/1993, miscarriage from exposure to contaminated hygiene products & environment):

C: *Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?*

The Arbitrator finds the Petitioner failed to prove that she sustained an accidental injury, namely a miscarriage of a pregnancy, that arose out of and in the course of her employment by Respondent.

Petitioner failed to present any evidence or medical opinion that her miscarriage occurred during performance of her work duties or activities. Petitioner failed to present any evidence or medical opinion that Respondent supplied hygiene products of any sort that were required for performance of he work duties or activities.

E: *Was timely notice of the accident given to Respondent?*

The Arbitrator has found that Petitioner failed to prove that she sustained an accidental injury that arose out of and in the course of her employment. The Arbitrator also found that Petitioner failed to file this matter within the limitations period set forth in s§6(d) of the Act. Therefore, this issue is moot.

F: *Is Petitioner's current condition of ill-being causally related to the accident?*

The Arbitrator finds that Petitioner failed to prove that her claim condition of ill-being was causally related to a workplace accident.

Petitioner failed to present any evidence or medical opinion that her miscarriage of a pregnancy was causally related to any of her work duties or activities.

The Arbitrator also found that Petitioner failed to file this matter within the limitations period set forth in s§6(d) of the Act. Therefore, this issue is moot.

J: *Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?*

The Arbitrator has found that Petitioner failed to prove that she sustained an accidental injury that arose out of and in the course of her employment. The Arbitrator also found that Petitioner failed to file this matter within the limitations period set forth in s§6(d) of the Act. Therefore, this issue is moot.

K: *What temporary benefits are in dispute? TTD/Maintenance*

The Arbitrator has found that Petitioner failed to prove that she sustained an accidental injury that arose out of and in the course of her employment. The Arbitrator also found that Petitioner failed to file this matter within the limitations period set forth in s§6(d) of the Act. Therefore, this issue is moot.

L: *What is the nature and extent of the injury?*

The Arbitrator has found that Petitioner failed to prove that she sustained an accidental injury that arose out of and in the course of her employment. The Arbitrator also found that Petitioner failed to file this matter within the limitations period set forth in s§6(d) of the Act. Therefore, this issue is moot.

M: *Should penalties be imposed upon Respondent?*

The Arbitrator has found that Petitioner failed to prove that she sustained an accidental injury that arose out of and in the course of her employment. The Arbitrator also found that Petitioner failed to file this matter within the limitations period set forth in s§6(d) of the Act. Therefore, this issue is moot.

O: *Was this claim filed within the Statute of Limitations forth in §6(d) of the Act?*

Petitioner's claim is denied, having failed to file this claim within the time limits set forth in §6(d) of the Act. Petitioner claimed she sustained a work related injury on February 6, 1993. She filed her Application for Benefits on April 10, 2023. Petitioner filed her Application more than 3 years after the limitation set forth in §6(d) of the Act.

The Arbitrator finds that Petitioner failed to file her Application for Benefits within the period of limitations set forth in §6(d) of the Act, and, therefore, Petitioner's Application for Benefits is denied.

Steven J. Fruth, Arbitrator

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	18WC016581
Case Name	Antwon Harris v. Furst Services Co. dba Furst Staffing
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	24IWCC0188
Number of Pages of Decision	10
Decision Issued By	Kathryn Doerries, Commissioner

Petitioner Attorney	Jason Esmond
Respondent Attorney	Ingrid Lulich

DATE FILED: 4/26/2024

/s/Kathryn Doerries, Commissioner

Signature

24IWCC0188

STATE OF ILLINOIS)
) SS.
COUNTY OF)
WINNEBAGO

☐ Affirm and adopt (no changes)	☐ Injured Workers' Benefit Fund (§4(d))
☒ Affirm with changes	☐ Rate Adjustment Fund (§8(g))
☐ Reverse Choose reason	☐ Second Injury Fund (§8(e)18)
	☐ PTD/Fatal denied
☐ Modify Choose direction	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

ANTWON HARRIS,

Petitioner,

vs. NO: 18 WC 16581

FURST SERVICES CO. d/b/a FURSTSTAFFING,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Petitioner herein and notice given to all parties, the Commission, after considering the issues of accident, notice, medical, and nature and extent of injury, and being advised of the facts and law, modifies the Decision of the Arbitrator as stated below and otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

The Commission modifies the third sentence in the second paragraph on page two, so that the Decision reads: "The wage records document that Petitioner did not return to work after April 19, 2018." The Commission strikes the next sentence "Petitioner worked April 9, April 10 and April 11, 2018."

The Commission further modifies the first sentence in the first paragraph on page three and strikes "does not find" and replaces it with "finds."

IT IS THEREFORE ORDERED BY THE COMMISSION that the Arbitrator's Decision is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that the Petitioner has not proven by a preponderance of the evidence that an accident occurred which arose out of and in the course of his employment. All benefits are denied.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall have credit for all amounts paid, if any, to or on behalf of Petitioner on account of said accidental injury.

The bond requirement in Section 19(f)(2) is applicable only when "the Commission shall have entered an award for the payment of money." *820 ILCS 305/19(f)(2) (West 2013)*. Based upon the denial of compensation herein, no bond is set by the Commission. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

April 26, 2024
KAD/swj
O 4/16/24
42

/s/*Kathryn A. Doerries*
Kathryn A. Doerries

/s/*Maria E. Portela*
Maria E. Portela

/s/*Amylee H. Simonovich*
Amylee H. Simonovich

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	18WC016581
Case Name	Antwon Harris v. Furst Services Co. d/b/a FurstStaffing
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	7
Decision Issued By	Gerald Napleton, Arbitrator

Petitioner Attorney	Jason Esmond
Respondent Attorney	Ingrid Lulich

DATE FILED: 5/18/2023

THE INTEREST RATE FOR THE WEEK OF MAY 16, 2023 4.98%

/s/Gerald Napleton, Arbitrator

Signature

STATE OF ILLINOIS)
)SS.
COUNTY OF **Winnebago**)

☐ Injured Workers' Benefit Fund (§4(d))
☐ Rate Adjustment Fund (§8(g))
☐ Second Injury Fund (§8(e)18)
☒ None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Antwon Harris
Employee/Petitioner

v.

Furst Services Co. d/b/a FurstStaffing
Employer/Respondent

Case # **18** WC **16581**

Consolidated cases: _____

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Gerald Napleton**, Arbitrator of the Commission, in the city of **Rockford**, on **2/24/2023**. 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 **Medical chain of treatment**

FINDINGS

On **4/15/2018**, Respondent ***was*** operating under and subject to the provisions of the Act.

On this date, an employee-employer relationship ***did*** exist between Petitioner and Respondent.

On this date, Petitioner ***did not*** sustain an accident that arose out of and in the course of employment.

Timely notice of this accident ***was not*** given to Respondent.

Petitioner's current condition of ill-being ***is not*** causally related to the accident.

In the year preceding the injury, Petitioner earned $**22,880.00**; the average weekly wage was $**440.00**.

On the date of accident, Petitioner was **47** years of age, ***married*** with **3** dependent children.

ORDER

THE ARBITRATOR FINDS THAT THE PETITIONER HAS NOT PROVEN BY A PREPONDERANCE OF THE EVIDENCE THAT AN ACCIDENT OCCURRED WHICH AROSE OUT OF AND IN THE COURSE OF HIS EMPLOYMENT. ALL BENEFITS ARE DENIED.

RULES REGARDING APPEALS Unless a party files a *Petition for Review* within 30 days after receipt of this decision, and perfects a review in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

STATEMENT OF INTEREST RATE If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

/s/ Gerald Napleton

Signature of Arbitrator

MAY 18, 2023

ADDENDUM TO ARBITRATION DECISION
FINDINGS OF FACT AND CONCLUSIONS OF LAW

FINDINGS OF FACT

On April 15, 2018, Petitioner was 47 years of age, married, with 3 dependent children. (Arb. Ex. 1) and employed by Respondent, Furst Services Co. d/b/a FurstStaffing. Petitioner testified he had been placed at a Lowe's Distribution Center, and that his job duties involved loading and unloading semis by hand. Jennifer Howell, Human Resources Manager, testified on behalf of the Respondent. She testified that at the Lowe's Distribution Center lifting up to 50 pounds was done individually and that anything over 50 pounds was to be done as a team lift. Petitioner reported to his treating physicians that he had to lift boxes weighing 50-100 pounds. Resp. Ex. 8 is a job duty summary from FurstStaffing regarding job duties at the Lowe's Distribution Center. Lifting was noted to more typically be of 30-50 pounds. Petitioner and Respondent testified that Petitioner received a copy of the Employment Notice, Resp. Ex. 8, containing the job duty summary. At no time did Petitioner advise he was not able to perform this type of work.

Petitioner testified that on April 15, 2018, he injured his lower back while loading and unloading boxes that contained lawnmowers and air conditioners. Petitioner testified he did not recall the details of the injury, but that he felt sharp pain in his back that traveled to both legs, along the front and the back, when he lifted a box. He testified the pain alternated between the left and right legs, and the front and back of the legs. Petitioner testified he reported this to his foreman but could not recall details of when and to whom he reported the injury. He testified he told his foreman he could not keep working. Petitioner testified he went home and then to the emergency room. He did not recall which hospital. He testified he did not return to work. There are no medical records from April 15, 2018, documenting medical treatment.

Petitioner testified he treated conservatively with Rockford City of Wellness, Rockford Pain Center, Rockford Spine Center, OSF Parkview, and Aunt Martha's. Petitioner had an MRI at Summit Radiology on April 30, 2018. He treated with injections, therapy, and aquatic therapy. He has not been recommended for surgery. He was prescribed Norco. He testified his treatment consists of medication management. No medical records were admitted into evidence for medical treatment after August of 2021.

Petitioner testified that he did have a pre-existing injury where he had a lumbar fusion, which was performed by Dr. Chan. He testified he had been "doing fine" since the lumbar fusion surgery. Petitioner testified that since his injury he has worked odd jobs on and off: restaurant jobs, factory jobs and the like.

On cross-examination, Petitioner admitted that at the time of injury he was a recipient of Social Security Disability benefits. Petitioner testified that Respondent's Exhibit 16, Notice of Decision – Fully Favorable, dated February 23, 2012, was received by him, and awarded disability benefits for degenerative disease of the lumbar spine, and of the knees, obesity, and obstructive sleep apnea. Resp. Ex. 16, p. 7. Petitioner testified he did not advise Respondent that he was on Social Security Disability or that he had work restrictions. Petitioner testified on cross-examination he was actively receiving SSDI benefits when he began employment for FurstStaffing. Per Respondent's Exhibit 16, Petitioner had chronic pain features of the lumbar spine, and neurogenic distribution of pain with limitation of spinal range of motion, for which Dr. Lesser noted an inability to tolerate employment following Petitioner's laminectomy/fusion surgery of 2009. Resp. Ex. 16, p.4.

Respondent testified Petitioner did not provide notice of an accident or lumbar injury. Respondent testified that she telephoned Petitioner on April 23d as he missed his scheduled shift, and Petitioner advised her he would not be returning to work due to personal reasons. No medical documentation of an injury or medical reports were provided. Respondent's first notice of the claimed work injury was receipt of the Application for Adjustment of Claim, which was filed on May 29, 2018, and received in June of 2018. Petitioner did not notify Respondent's HR division on April 15, 2018.

Petitioner's hours worked and wages were introduced into evidence as Respondent's Exhibit 7. Respondent testified that Petitioner had been placed on probation due to attendance issues. Petitioner began his employment on March 5, 2018. The wage records document that Petitioner did not return to work after April 11, 2018. Petitioner worked April 9, April 10, and April 11, 2018. Petitioner advised Respondent on April 23d that he would not continue working due to personal reasons. Respondent testified she did not receive any notice from Lowe's of a workplace injury and that she followed up with Lowe's who confirmed no notice of injury was given to them by Petitioner.

On cross-examination, Petitioner admitted to pleading guilty to several felonies including a recent retail theft felony in June of 2022. Respondent's Exhibit 18 outlines Petitioner's prior convictions. The Arbitrator finds those convictions that involve dishonesty or false statement from the last 10 years to be admissible evidence against Petitioner's credibility. IL. R. Evid. 609 Petitioner admitted to felonies convictions on cross-examination. When asked if Petitioner did not return to work as he was in court or because he did not have ride, Petitioner could not recall. The Winnebago County Court Records, Resp. Ex. 3, document that on April 12, 2018, Petitioner was found guilty of a charge from March 13, 2018, for driving above the speed limit in a school zone. Petitioner testified he did not recall if he was in court or jail on or around that date.

I. CONCLUSIONS OF LAW

Section 1(b)3(d) of the Act provides that in order to obtain compensation under the Act, the employee bears the burden of showing by a preponderance of the evidence that he or she has sustained accidental injuries arising out of and in the course of the employment. 820 ILCS 305/1(b)3(d). To obtain compensation under the Act, the petitioner has the burden of proving by a preponderance of the evidence all the elements of his claim, O'Dette v. Industrial Commission, 79 Ill.2d 249,253 (1980), including that there is some causal relationship between his employment and his injury. Caterpillar Tractor Co. v. Industrial Commission, 129 Ill.2d 52, 63 (1989). For an accidental injury to come within the meaning of the Act, it must be traceable to a definite time, place and cause and occur in the course of employment unexpectedly and without affirmative act or design of the employee. *International Harvester Company vs. Industrial Commission*, 56 Ill. 2d 84 (1973).

Decisions of an Arbitrator shall be based exclusively on evidence in the record or proceeding and material that has been officially noticed. 820 ILCD 305/1.1(e). It is within the province of the Commission to assess the credibility of witnesses, resolve conflicts in the evidence, assign weight to be accorded the evidence, and draw reasonable inferences from the evidence. *Hosteny v. Illinois Workers' Compensation Comm'n,* 397 Ill.App. 3d 665, 674 (1st Dist., 2009). Where a claimant's testimony is inconsistent with his/her actual behavior and conduct, the Commission has held that an award cannot stand. McDonald v. Industrial Commission, 39 Ill. 2d 396 (1968);

Swift v. Industrial Commission, 52 Ill. 2d 490 (1972). Internal inconsistencies in a claimant's testimony, as well as conflicts between the claimant's testimony and medical records, may be taken to indicate unreliability. Gilbert v. Martin & Bayley/Hucks, 08 ILWC 004187 (2010)

The Arbitrator does not find that the testimony of the Petitioner when viewed in conjunction with the record as a whole is not sufficient to meet the requisite evidentiary burden of proof in this matter. The Arbitrator finds Petitioner failed to prove by a preponderance of the evidence that he sustained accidental injuries on April 15, 2018, while in the employ of Respondent. The Arbitrator must take Petitioner's credibility into consideration and notes that some of Petitioner's recent felonies involve dishonesty. The Arbitrator finds Petitioner's evasiveness regarding past medical treatment for his back and receipt of Social Security Disability benefits for his prior back injury troubling. Petitioner denied advising Respondent of any work restrictions for his back due to his prior lumbar fusion surgery but was receiving Social Security Disability benefits.

The Arbitrator also finds the Petitioner failed to prove an accident occurred on April 15, 2018, as Petitioner did not work on this date. The Petitioner's wage records document that Petitioner's last date worked was April 11, 2018. Petitioner testified to a specific injury, and not to repetitive trauma. The Arbitrator finds Respondent's testimony more credible regarding Petitioner's failure to give notice of injury.

Petitioner's extensive medical history with regards to his back are well documented, as are his chronic complaints of sciatica. As recent as January 30, 2018, Petitioner reported to Lori Wendt, APN that he had chronic back and knee joint pain. Pet. Ex. 1, p. 18. Petitioner had also been seen at Physician's Immediate Care on February 13, 2018, prior to the accident, for a drug screen and his past medical history was significant for his spine surgery and arthritis at multiple sites. Resp. Ex 10.

The Arbitrator notes that no medical records were introduced into evidence regarding treatment for injuries on April 15, 2018, to which Petitioner testified. On April 25, 2018, Petitioner called his primary care physician asking for pain medication for his sciatic pain. He was referred to OrthoIllinois. Pet. Ex. 1. 24. No history of accident was given on this date. Petitioner was diagnosed with sciatica, and an MRI was recommended.

Petitioner presented to the emergency room at Swedish American Hospital on June 11, 2018. He reported that he had a prior spinal fusion but had an increase in lower back pain for the past 2.5 months. He denied new injury, trauma, numbness, tingling, bowel/bladder incontinence, or saddle anesthesia. Petitioner reported he had been drinking alcohol to subside the pain. His diagnosis was of back pain with sciatica. He was prescribed Norco and discharged to follow up with his private physician. Petitioner presented to the emergency room as a walk in at Swedish American Hospital on June 30, 2018. Petitioner reported chronic pain with an increase in the past 2 months and he reported that he was running out of pain medications. He reported similar episodes in the back. He reported he had an epidural injection on June 22, 2018, without any relief of pain. A CT scan of the back was obtained. Per the radiologist, there were no acute osseous abnormalities, and post-op changes from the surgical fusion seen at L4-5. He was provided cyclobenzaprine and Norco and advised to perform back exercises. Resp. Ex. 9.

Petitioner was examined by Dr. Jeffrey Coe on September 25, 2018, who found a causal relationship between his employment duties and state of impairment. Pet. Ex. 5. However, the Arbitrator notes that the Petitioner was diagnosed by Dr. Coe with a repetitive lower back injury. Petitioner's Application for Adjustment of Claim, and testimony, claim a single episode which caused pain. The Arbitrator questions the accuracy of Dr. Coe's opinion if it was based on a history given by Petitioner which, as we have seen, does not have a credible foundation.

Petitioner was examined by Dr. Carl Graf on May 17, 2019. Resp. Ex. 15. Petitioner reported to Dr. Graf that he had an injury in March of 2018. He reported that he had to lift 75-100 pounds and was working a 10-hour shift. He reported his job consisted of loading trucks on the dock by hand. Petitioner reported his pain got to be unbearable, so he quit in April of 2018. Petitioner reported that after his lumbar fusion in 2010, he believed he could work again. Petitioner denied any pain prior to the injury. Mr. Harris presented to the examination wearing a lumbar brace and using a walker. Petitioner presented 6 non-organic pain signs on examination, such as nonatomic distribution of numbness throughout the right lower extremity, and pain improvement with distraction. Dr. Graf diagnosed vague complaints of bilateral leg pain. Dr. Graf did not find a causal relationship of Petitioner's back radiating leg pain to an injury at work on April 15, 2018. Per Dr. Graf, Petitioner has a small paracentral disc bulge at L5-S1, adjacent to a previous level fusion, but that this did not substantiate his subjective complaints. Dr. Graf disagreed with Dr. Coe and stated that the small right paracentral disc bulge at L5-S1 does not correlate to Mr. Harris' complaints of low back and bilateral leg pain, left side greater than right, contralateral to the location of the disc bulge.

The Arbitrator notes Petitioner had an EMG on November 1, 2018 that was normal. Petitioner was seen by provider Angela D. Johnson, APN who noted that his EMG was not matching up with the lumbar pathology. He was noted to have "pain and paresthesia of the back and lower extremities of uncertain etiology as he does not have lumbar pathology in his distribution." Petitioner was reassured that his complaints were not related to spinal pathology nor was there any finding on EMG or laboratory evidence of a nerve or muscular disorder that could be contributing to his symptoms. He was released back to his primary care physician. Pet. Ex. 3, p. 125.

For the above-mentioned reasons, with respect to issue (c), the Arbitrator finds that Petitioner has not met his burden to establish by a preponderance of the credible evidence that an accident occurred that arose out of and in the course of his employment.

All benefits are denied. Issues E, F, J, K, and L are moot.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC019949
Case Name	Tonya Maines v. Hoyleton Youth & Family Services
Consolidated Cases	21WC019950
Proceeding Type	Petition for Review under 19(b)
Decision Type	Commission Decision
Commission Decision Number	24IWCC0189
Number of Pages of Decision	26
Decision Issued By	Raychel Wesley, Commissioner

Petitioner Attorney	Thomas C Rich
Respondent Attorney	Gregory Keltner

DATE FILED: 4/29/2024

/s/ Raychel Wesley, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF MADISON)

☒ Affirm and adopt (no changes)	☐ Injured Workers' Benefit Fund (§4(d))
☐ Affirm with changes	☐ Rate Adjustment Fund (§8(g))
☐ Reverse	☐ Second Injury Fund (§8(e)18)
	☐ PTD/Fatal denied
☐ Modify	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

TONYA MAINES,

Petitioner,

vs. NO: 21 WC 19949

HOYLETON YOUTH & FAMILY SERVICES,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by the Petitioner herein and notice given to all parties, the Commission, after considering the issues of causal connection, medical expenses, prospective medical care, and temporary total disability, and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

PROLOGUE

The parties stipulated that this hearing occurring on January 31, 2023 was limited to issues surrounding Petitioner's cervical spine, and that this ruling would not be a bar to further hearing and determination of any additional benefits regarding Petitioner's right shoulder after March 4, 2022. *Transcript, p.11-12*. On the Request for Hearing form, Respondent stipulated to liability for reasonable and necessary medical expenses solely for Petitioner's shoulder through March 4, 2022, but disputes liability for expenses related to the cervical spine.

The parties also stipulated to accident in the instant case. However, the Arbitrator denied causal connection between the instant accident and Petitioner's current cervical spine condition of ill-being, and also declined to award medical expenses, prospective medical care, and temporary total disability benefits. The Commission affirms the denial of causal connection, and accordingly

affirms the denial of medical expenses, prospective medical care, and temporary total disability benefits herein. However, we do award such benefits in consolidated case 21 WC 19950, which also involves Petitioner's cervical spine.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed April 3, 2023 is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent shall have credit for all amounts paid, if any, to or on behalf of the Petitioner on account of said accidental injury.

The bond requirement in §19(f)(2) of the Act is applicable only when "the Commission shall have entered an award for the payment of money." 820 ILCS 305/19(f)(2). Based upon the denial of compensation herein, no bond for the removal of this cause to the Circuit Court is required. 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.

April 29, 2024

/s/ *Raychel A. Wesley*

RAW/wde

O: 3/20/24

43

/s/ *Stephen J. Mathis*

/s/ *Deborah L. Simpson*

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC019949
Case Name	Tonya Maines v. Hoyleton Youth & Family Services
Consolidated Cases	
Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	23
Decision Issued By	Linda Cantrell, Arbitrator

Petitioner Attorney	Thomas Rich
Respondent Attorney	Gregory Keltner

DATE FILED: 4/3/2023

THE INTEREST RATE FOR THE WEEK OF MARCH 28, 2023 4.65%

/s/Linda Cantrell, Arbitrator

Signature

STATE OF ILLINOIS)
)SS.
COUNTY OF **Madison**)

☐ Injured Workers' Benefit Fund (§4(d))
☐ Rate Adjustment Fund (§8(g))
☐ Second Injury Fund (§8(e)18)
☒ None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

Tonya Maines
Employee/Petitioner

v.

Hoyleton Youth & Family Services
Employer/Respondent

Case # **21** WC **019949**

Consolidated cases:

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Linda J. Cantrell**, Arbitrator of the Commission, in the city of **Collinsville, Illinois**, on **1/31/23**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
B. ☐ Was there an employee-employer relationship?
C. ☐ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
D. ☐ What was the date of the accident?
E. ☐ Was timely notice of the accident given to Respondent?
F. ☒ Is Petitioner's current condition of ill-being causally related to the injury?
G. ☐ What were Petitioner's earnings?
H. ☐ What was Petitioner's age at the time of the accident?
I. ☐ What was Petitioner's marital status at the time of the accident?
J. ☒ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
K. ☒ Is Petitioner entitled to any prospective medical care?
L. ☒ What temporary benefits are in dispute?
☐ TPD ☐ Maintenance ☒ TTD
M. ☐ Should penalties or fees be imposed upon Respondent?
N. ☐ Is Respondent due any credit?
O. ☐ Other _____

FINDINGS

On the date of accident, **10/23/19**, Respondent ***was*** operating under and subject to the provisions of the Act.

On this date, an employee-employer relationship ***did*** exist between Petitioner and Respondent.

On this date, Petitioner ***did*** sustain an accident that arose out of and in the course of employment.

Timely notice of this accident ***was*** given to Respondent.

Petitioner's current condition of ill-being in her cervical spine ***is not*** causally related to the accident.

In the year preceding the injury, Petitioner earned $**33,061.08**; the average weekly wage was $**635.79**.

On the date of accident, Petitioner was **40** years of age, ***single*** with **5** dependent children.

Respondent ***has*** paid all reasonable and necessary charges for all reasonable and necessary medical services related to Petitioner's cervical spine.

Respondent shall be given a credit of $**0** for TTD, $**0** for TPD, $**0** for maintenance, and $**0** for other benefits, for a total credit of $**0**.

Respondent is entitled to a credit of $**TBD and any and all** under Section 8(j) of the Act, pursuant to the stipulation of the parties.

ORDER

Based on the Arbitrator's finding as to causal connection with regard to Petitioner's cervical spine, the Arbitrator finds that Petitioner is not entitled to medical expenses, temporary total disability benefits, or prospective medical care as it relates to her cervical spine and said benefits are denied.

Based on the party's stipulation that the instant hearing is solely limited to issues related to Petitioner's cervical spine, the Arbitrator makes no findings and awards no benefits related to Petitioner's right shoulder.

This award shall in no instance be a bar to further hearing and determination of any additional amount of benefits with respect to Petitioner's right shoulder after 3/4/22, as stipulated by the parties.

RULES REGARDING APPEALS Unless a party files a *Petition for Review* within 30 days after receipt of this decision, and perfects a review in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

STATEMENT OF INTEREST RATE If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

APRIL 3, 2023

Arbitrator Linda J. Cantrell

ICArbDec19(b)

STATE OF ILLINOIS)
) SS
COUNTY OF MADISON)

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

TONYA MAINES,	)	
	)	
Petitioner,	)	
	)	
v.	)	**Case No: 21-WC-019949**
	)	
HOYLETON YOUTH & FAMILY SERVICES,	)	**Consolidated Case No. 21-WC-019950**
	)	
	)	
Respondent.	)	

FINDINGS OF FACT

These claims came before Arbitrator Linda J. Cantrell for trial in Collinsville on January 31, 2023. On July 13, 2021, Petitioner filed an Application for Adjustment of Claim alleging injuries to her right shoulder, neck, and body as a whole as a result of restraining a combative client on 10/25/19. (Case No. 21-WC-019949) Petitioner moved to amend the Application for Adjustment of Claim to reflect a date of accident of 10/23/19. The motion was granted without objection. On July 13, 2021, Petitioner filed an Application for Adjustment of Claim alleging injuries to her left shoulder and body as a whole as a result of being hit by a combative client on 11/2/19. (Case No. 21-WC-019950)

The parties stipulated that only issues related to Petitioner's cervical spine were the subject of the instant hearing, and that Petitioner would not be precluded from litigating entitlement to any further benefits with respect to her right shoulder after 3/4/22. The issues in dispute in Case No. 21-WC-019949 are causal connection, medical expenses, temporary total disability benefits, and prospective medical care with respect to Petitioner's cervical spine only. The parties stipulated to an average weekly wage of $635.79. Petitioner claims entitlement to medical expenses contained in PX1. Respondent stipulated to liability for all reasonable and necessary medical expenses up to and including 3/4/22 that relate solely to Petitioner's shoulder. Respondent disputes liability for all medical expenses related to Petitioner's cervical spine. The parties stipulated that Respondent is entitled to a credit for any and all medical expenses paid by Respondent's group medical plan, pursuant to Section 8(j) of the Act. Petitioner claims entitlement to temporary total disability benefits from 4/19/21 through 10/1/21 and the parties stipulated that Respondent paid TTD benefits from 4/19/21 through 5/19/21. Respondent disputes liability for payment of additional TTD benefits after 5/19/21.

The Arbitrator has simultaneously issued a separate Decision in Case No. 21-WC-019950.

TESTIMONY

Petitioner was 40 years old, single, with five dependent children at the time of accident. Petitioner was employed by Respondent for over 16 years as a youth care worker and cook. On 10/23/19, Petitioner sustained accidental injuries while attempting to transport a disruptive youth to his room. Petitioner testified that she and another staff member used a "yoke" technique by taking the youth underneath the arm to transport him/her. During the transport the youth continued to be combative and pulled Petitioner's shoulder and she simultaneously felt a pulling sensation in her neck. Petitioner completed her shift and continued to work subsequent days with constant pain in her shoulder and neck.

On 11/2/19, Petitioner sustained another work accident. She testified that she and a co-worker were with a youth inside a vehicle when the youth began kicking the back of the driver's seat while her co-worker was driving. The youth began bucking his body and scratching his neck on a piece of plastic on the back of the seat. Petitioner extended her left arm to prevent the youth from injuring himself or causing an accident and she felt pain in her left shoulder. Petitioner presented to the emergency department at St. Mary's Hospital the next day.

Petitioner testified she did not receive treatment for injuries sustained on 10/23/19 until she went to the emergency room on 11/3/19 because she thought it was muscle pain and would improve. She reported both accidents to the emergency room personnel on 11/3/19. Petitioner followed up with her primary care provider Tracie Foster and reported neck and right shoulder pain. Petitioner testified she had neck pain prior to 10/23/19 that she described as occasional, aching, and irritating. Prior to 2019, she underwent a cervical MRI and did not receive any injections or surgery. Petitioner testified that in the weeks leading up to 10/23/19, she did not have any cervical spine symptoms.

Petitioner was referred to Southern Illinois Orthopedics and she underwent physical therapy. She treated with Dr. Freehill at the Orthopedic Center of Southern Illinois who ordered an MRI of her right shoulder and administered injections. Petitioner testified that the injections and physical therapy did not help her shoulder or neck pain.

Petitioner testified that she was treating with Dr. Kovalsky for low back symptoms at the time of her work accident. She returned to Dr. Kovalsky for a cervical spine evaluation, and he ordered a cervical MRI. She testified that Dr. Kovalsky recommended a cervical spine surgery which was placed on hold while Dr. Freehill addressed her right shoulder. Petitioner underwent right shoulder surgery and was placed off work from 4/19/21 through 10/1/21. Following shoulder surgery Petitioner was examined by Dr. Kevin Rutz for her cervical spine in July 2022. Dr. Rutz recommends surgery at C5-6 which Petitioner desires to undergo.

Petitioner testified she cannot perform many activities due to her neck symptoms. She cannot play basketball with her children like she did prior to the accident. Her neck pain interferes with her sleep. Petitioner began employment at One Hope United in January 2022 as a

youth care worker. She stated her job duties do not affect her neck. She works the night shift and is basically a "babysitter" because the youths are sleeping during her shift. She testified she is not able to restrain the youths or perform the physical part of the job like she did working for Respondent. She stated she is not able to lift or carrying anything. Petitioner testified she does not do anything to cause a difference in her neck pain and she has good and bad days.

On cross-examination, Petitioner testified that since 10/23/19 she has had constant tension, pain, and tightness in her neck and shoulder that radiates to the right side. She has occasional pain around her shoulder blade. Her pain is located in the middle of the back of her neck. Petitioner testified she really does not utilize her right arm and her left arm is getting worse and she has always had tightness since she injured it. She has radiating pain down her right arm to her elbow and occasional numbness and tingling in her hand. She has had headaches since both accidents.

Petitioner agreed she treated with Dr. Mohamed at Egyptian Spine for neck problems dating back to 2013. She also treated with him in June 2016 and underwent a cervical MRI on 6/9/16. She returned to Dr. Mohamed again on 3/9/20 with neck and left arm pain. She thinks she told Dr. Mohamed about her two work accidents. She could not recall if she told him her neck pain radiated down her right arm. Dr. Mohamed ordered a cervical MRI and recommended surgery at C3-4. She stated Dr. Rutz recommends surgery at C5-6.

Petitioner was examined by Dr. Coyle on two occasions pursuant to Section 12 of the Act. Petitioner examined the Patient Registration forms that she filled out at Dr. Coyle's office and agreed she signed and dated the first and last pages of each form. (RX1, Exhibits 2A and 2B). She agreed she made the markings on the pain diagrams on both forms and stated they were accurate at the time she made them. Petitioner stated that the accident date she reported on the forms was the injury she sustained to her SI joint on 10/26/18, which is supported by the Settlement Contract she signed related to that work accident. (RX4) Petitioner testified she did not know which work accident she was being examined by Dr. Coyle for when she went. She testified that she did not speak to Dr. Coyle much about her low back injury or her neck and shoulder injuries.

MEDICAL HISTORY

Pre-accident medical records were admitted into evidence. On 6/2/16, Petitioner saw Dr. Dr. Ahmed Mohamed for a six-month history of pain in her low back, left lower extremity, and neck, with left radicular pain, which began without any preceding events or trauma. (RX6) Dr. Mohamed noted Petitioner had been thoroughly worked up by Dr. Aziz who referred Petitioner to his office. She had constant 10/10 pain in a clear SI distribution. She was compliant with physical therapy which provided minimal relief. Dr. Mohamed assessed low back pain, neck pain, and left lower and upper extremity radicular pain associated with numbness and tingling. A cervical MRI was performed on 6/9/16 that was compared to a cervical MRI dated 10/7/13. The 2016 MRI revealed an increase in size of a central disc herniation at C3-4, and moderate canal stenosis with mild impingement at C3-4. The radiologist noted there was no impingement at C3-4 on the 2013 study. The 2016 MRI also revealed degenerative changes from C4 through C7. Dr. Mohamed's assessment was a moderately large central disc herniation at C3-4 with degenerative

disc disease from C4 through C7 without herniation or stenosis. Dr. Mohamed noted Petitioner had failed nonoperative treatment, including injections. She had significant stenosis associated with weakness and her pain caused dysfunction. He discussed with Petitioner that surgery was a reasonable option to alleviate her radicular symptoms. He discussed an anterior cervical discectomy and fusion at C3-4.

On 11/3/19, Petitioner presented to the emergency room at St. Mary's Hospital with complaints of bilateral shoulder pain and posterior cervical neck pain for one week. She reported that one week prior she had to restrain and hold a resident due to an altercation which resulted in right shoulder pain. She also reported that one day prior she had to break up a fight between kids and was experiencing left shoulder and cervical neck discomfort. She described the discomfort as an intermittent, sharp, burning sensation that was worsened by quick neck movement or shoulder strain. She had tried medications at home without relief. (PX3)

Physical examination revealed cervical tenderness on the right side with deep palpation. Her shoulders were unremarkable. X-rays of the bilateral shoulders and cervical spine revealed advanced degenerative changes at C5-6. She was diagnosed with bilateral shoulder strains and muscle spasms. She was prescribed Prednisone and instructed to follow up with her primary care physician.

On 11/4/19, Petitioner presented to Tracie Foster, APRN and reported both accidents. She complained of pain in her bilateral shoulders and neck. Petitioner was positive for myalgias, neck pain, and bilateral shoulder pain. Physical examination of her cervical spine revealed normal range of motion. She was diagnosed with acute bilateral shoulder and neck pain and referred to physical therapy.

On 11/22/19, Petitioner returned to APRN Foster with continued symptoms in her bilateral shoulders and neck, along with pelvic pain and back spasms. Her physical therapy had not been approved. She was assessed with pain of both shoulder joints, muscle spasm, and neck pain.

On 3/9/20, Petitioner returned to Dr. Mohamed with complaints of low back pain, neck pain, left arm pain, and leg pain. (RX6) Dr. Mohamed noted Petitioner fell in 2018 and fractured her tailbone. She described constant, severe low back pain which did not improve with therapy and injections. She reported balance problems and difficulty walking and standing for long periods of time. Dr. Mohamed did not note the work accidents of 10/23/19 or 11/2/19. He reviewed a cervical spine x-ray dated 11/3/19 for right shoulder pain which showed moderately advanced degenerative changes at C5-6 with milder degenerative changes above and below. He opined that physical examination, history, and radiographic findings are compatible with neck pain, tingling and numbness, and radicular arm pain distribution in the setting of a moderately large central disc herniation at C3-4 with degenerative disc disease from C4 through C7 without herniation or stenosis. He noted that Petitioner's history and examination from 2016 and old MRIs were consistent with cervical disc herniation, spinal canal stenosis, and radiculopathy. He stated that the recent fall may have aggravated her condition. He ordered a new cervical MRI.

Petitioner underwent the cervical MRI at St. Mary's Hospital on 3/16/20 that showed a re-identified central disc herniation at C3-4, with mild to moderate canal stenosis and minimal cord compression, and a central disc protrusion at C5-6 with mild canal stenosis and no compression. (RX5)

On 4/16/20, Dr. Mohamed noted Petitioner continued to complain of pain in her neck and low back with difficulty walking, standing, sleeping, and performing daily activities. He noted that Petitioner stated, "all this has become a lot worse after the fall in 2018". Again, Dr. Mohamed opined that Petitioner's history, physical examination, and radiographic findings are compatible with neck pain, tingling and numbness, and radicular arm pain distribution in the setting of a moderately large central disc herniation at C3-4 with degenerative disc disease from C4 through C7 without herniation or stenosis. He felt Petitioner's main problem was coming from the herniation at C3-4 with compression of the spinal cord and again recommended an anterior cervical discectomy and fusion at C3-4. Petitioner advised she wanted time to consider surgery.

On 4/17/20, Petitioner returned to APRN Foster with ongoing shoulder pain since October 2019. (PX4, p. 18) Her physical therapy referral was not approved by workers' comp. She felt her right shoulder was getting worse and fatigued, and she had some pain in her left shoulder. Petitioner had normal range of motion in her cervical spine upon exam. APRN Foster again referred Petitioner for physical therapy for chronic right shoulder pain.

On 8/7/20, Petitioner presented to APRN Foster with right shoulder pain that had been present for several months as a result of work-related injuries. Her physical therapy was still being denied. She stated that she "has hurt for so long she does not know what to do and just feels pain every day." Physical examination revealed limited range of motion in the right shoulder. Examination of her cervical spine was normal. There were no complaints of neck pain or radicular symptoms noted. Physical therapy was again recommended.

On 8/10/20, Petitioner presented to the Orthopedic Center of Southern Illinois where she was examined by Jamie Smith, FNP. (PX5, p. 1) She provided a history of constant right shoulder pain and decreased range of motion since her work accident in October 2019. She rated her pain 8/10 and it interfered with her sleep. She described her pain as sharp, dull, throbbing, aching, and burning in quality, accompanied by numbness, tingling, and weakness. Her symptoms worsened with lifting, exercise, lying in bed, activity, pushing, and pulling. Petitioner reported on the intake form her chief complaint was bilateral shoulder pain, worse on the right. She did not report any neck or radicular symptoms. (PX5, p. 4) Physical examination of the right shoulder showed decreased range of motion, positive impingement signs, and increased pain with flexion, abduction, and rotation. A right shoulder MRI was ordered.

On 8/30/20, Petitioner presented to the emergency department at St. Mary's Hospital with bilateral shoulder and low back pain. (PX3) She reported multiple work injuries that caused her symptoms. She reported taking Tramadol, Naproxen, and Norflex and that she had undergone therapy and injections. Symptom review was positive for back pain, joint pain, and myalgias. Physical examination showed tenderness in the bilateral shoulders and low back, and pain in the right shoulder. The impression was body aches, for which she was given prescriptions for

Toradol, Norflex, Fentanyl, and Clonidine. She was instructed to follow up with her primary care physician. There were no documented complaints of neck pain or radiculopathy.

On 8/31/20, Petitioner returned to APRN Foster as a follow up to the emergency room. Petitioner stated she was injured three years ago and was having a flare up. RN Foster noted Petitioner has had general body aches, bilateral shoulder pain, and neck pain. (PX4, p. 32) Physical examination revealed normal range of motion of the cervical spine. Examination of the bilateral shoulders revealed decreased range of motion, tenderness, and pain. She was diagnosed with chronic bilateral shoulder pain and arthralgia. MRIs of Petitioner's bilateral shoulders were ordered, and she was placed off work.

A right shoulder MRI was performed on 9/15/20 and revealed a tear of the inferior quadrant of the anterior labrum, an interstitial split at the supraspinatous myotendinous junction, moderate glenohumeral osteoarthritis, and denervation-related atrophy of the teres minor muscle. (RX5, p. 6)

On 9/17/20, Petitioner returned to FNP Smith at the Orthopedic Center of Southern Illinois with right shoulder pain of 6/10. She was referred to physical therapy and given a cortisone injection into the subacromial space of the right shoulder.

On 10/15/20, Petitioner was examined by Dr. James Coyle pursuant to Section 12 of the Act. (RX9) Petitioner told Dr. Coyle that in October 2018 she sustained an injury when she slipped on the floor and landed on her back and buttocks while taking a combative client to his room. Dr. Coyle reviewed records from Dr. Mohamed which discussed cervical treatment in 2016 and 2020. On examination, Dr. Coyle noted Petitioner did not complain of any significant neck pain. She reported no symptoms of numbness, tingling, or weakness in her upper extremities. Her chief complaints were pain in a band-like pattern at the belt line, bilateral hip pain, right greater than left buttock pain, and groin pain bilaterally. She denied a prior history of neck injuries, neck symptoms, or treatment. Dr. Coyle diagnosed discogenic low back pain and non-symptomatic degenerative cervical disc disease without radiculopathy. He did not recommend any treatment to the cervical spine.

On 10/19/20, Petitioner followed up with FNP Smith and reported the injection only improved her symptoms for a couple of days.

On 10/29/20, Petitioner underwent physical therapy at the Orthopedic Center of Southern Illinois/Physical Rehabilitation Center. She reported right shoulder pain and minimum to moderate tenderness over the inferior/medial border of the right scapula. Treatment was limited to the right shoulder. Petitioner did not report any symptoms in her neck or radiation of symptoms into her right shoulder or down her right arm. (PX5 at 121-126)

On 11/30/20, Petitioner reported to FNP Smith that she completed physical therapy, but that it had not significantly improved her condition, and that her pain was 5/10. She denied any new injury or trauma. FNP Smith instructed Petitioner to follow up with Dr. Freehill for further evaluation.

On 12/1/20, Petitioner underwent a physical therapy session at the Physical Rehabilitation Center. (PX5 at 127) She reported continued pain in the right shoulder. Petitioner was not sure if the pain was coming from her neck. Petitioner reported that her pain was increased but she did not know why. She reported difficulty sleeping secondary to shoulder and/or neck pain. Petitioner reported that her symptoms were continuous subsequent to an injury at work in October 2019.

On 1/14/21, Petitioner was examined by Dr. Angela Freehill for right shoulder pain since her work injury in October 2019. (PX5, p. 18) She had numbness and tingling in her arm. Dr. Freehill noted she had 20% relief of symptoms with a cortisone injection, and she underwent physical therapy. Dr. Freehill noted Petitioner had a chronic neck problem and was hurting every day. She has a history of a herniated cervical disc dating back to 2013 which was never addressed. Dr. Freehill reviewed her right shoulder MRI dated 9/15/20 that showed mild subacromial bursa, mild swelling, and a mild amount of fluid around the proximal biceps. Physical examination of the right shoulder revealed no atrophy or swelling, minimal tenderness throughout the shoulder, negative Hawkin's test, mildly positive Speed test, mildly positive impingement, and 5/5 strength with minimal pain with Lift off testing.

Dr. Freehill reviewed a cervical MRI from March 2020 that showed a large central herniation at C3-4 with indentation of the thecal sac extending to the spinal cord. Physical examination of the cervical spine revealed good range of motion with flexion, extension, and side bending, side bending to the right and left reproduced some shoulder and neck pain, and flexion reproduced right shoulder pain.

Dr. Freehill assessed right shoulder rotator cuff impingement with concomitant cervical spine disease, including a large herniated central disc at C3-4. Dr. Freehill noted Petitioner may be a surgical candidate for her shoulder but felt that her neck problem needed to be addressed first and referred her to Dr. Kovalsky.

On 1/25/21, Petitioner saw Dr. Don Kovalsky for neck pain. (PX5, p. 21) Dr. Kovalsky noted Petitioner was currently off work as she was recovering from a right SI joint fusion that was performed on December 23rd. She ambulated with a walker. Petitioner complained of neck pain, and numbness and tingling in her arms, left greater than right. He noted there was no history of a recent fall or trauma. Petitioner reported weakness with overhead lifting with her left arm. Cervical exam demonstrated trapezius and paracervical muscle spasms bilaterally with tenderness, positive Spurling's and Tinel's testing on the left and negative on the right. Dr. Kovalsky diagnosed probably cephalgia due to degenerative disc disease and recommended a cervical MRI.

Petitioner's new patient history form indicated that she had neck pain with headaches and radicular pain down her left arm into her hand, which was exacerbated after a work injury in October 2019. (PX5, p. 22) It was noted that Petitioner's axial neck pain had a duration of greater than five years; however, her radicular arm pain had a duration of greater than one year. *Id.* at 28.

The cervical spine MRI was performed on 1/29/21 and showed a small central disc protrusion without stenosis that was slightly superiorly extruded at C3-4, and a moderately large, broad-based disc herniation at C5-6 with slight central prominence and minimal inferior extrusion, and moderately severe spinal stenosis. (PX5, p. 35) The left-sided neural foramen was 50% narrowed due to degenerative changes and right-sided neural foramen narrowing was minimal. Two benign perineural cysts were present in the right neural foramen. The radiologist commented that the mild increased signal within the cervical spinal cord at C5-6 might be due to gliosis.

On 2/22/21, Dr. Kovalsky noted the MRI was of good quality and showed mild spondylosis at C5-6 and C6-7 with a large left central disc herniation at C5-6, which was causing mild foraminal stenosis on the left and minimal on the right. He noted minimal spondylosis at C6-7 with mild foraminal narrowing on the left. Dr. Kovalsky opined it was clear Petitioner's right shoulder pain was coming from her shoulder, but that her neck and arm pain were coming from the disc herniation of C5-6. He stated that Petitioner's symptoms started in October 2019. She stated that due to her recent SI joint fusion, he recommended translaminar epidural steroid injections at C5-6. He stated that if the injections did not provide relief Petitioner would require surgery.

On 2/25/21, Dr. Freehill performed another injection into Petitioner's right shoulder and recommended additional injection therapy and home exercises.

On 4/6/21, Petitioner underwent a translaminar epidural steroid injection at C6-7 with Dr. Aiping Smith at the referral of Dr. Kovalsky.

On 4/19/21, Petitioner followed up with Dr. Kovalsky and reported the injection provided 50-60% improvement in her neck and left arm pain. She denied numbness and tingling in her right arm. He noted Petitioner had right rotator cuff dysfunction and urged Petitioner to speak with Dr. Freehill about undergoing a right shoulder arthroscopy. He recommended a second epidural steroid injection in Petitioner's cervical spine. He felt that if Petitioner only received temporary benefit from the epidural injections, she would be a candidate for a two-level cervical surgery.

On 4/29/21, Dr. Freehill who noted Dr. Kovalsky placed Petitioner's cervical spine treatment on hold pending shoulder surgery. Dr. Freehill recommended a right shoulder arthroscopy and subacromial decompression with possible rotator cuff repair.

On 5/11/21, Dr. Freehill placed Petitioner off work. (PX5, p. 58) On 5/19/21, Dr. Freehill performed a right shoulder arthroscopic subacromial decompression, proximal biceps tenotomy, and glenoid chondroplasty. (PX3, p. 158-160) Postoperative diagnosis was right shoulder grade III glenoid chondromalacia, superior degenerative labral tear with proximal biceps tendinopathy, and rotate cuff impingement.

On 5/27/21, Dr. Freehill noted Petitioner was doing well. Petitioner was referred to physical therapy and continued off work. Petitioner underwent physical therapy at Orthopedic Center of Southern Illinois through 9/16/21.

On 6/7/21, Petitioner returned to Dr. Kovalsky with continued neck pain rated 6/10, with intermittent headaches and radiation into her right arm. (PX5, p. 71) He noted that Petitioner's second cervical epidural steroid injection was postponed by Dr. Freehill because it was going to interfere with her shoulder surgery date. Dr. Kovalsky referred Petitioner back to Dr. Smith for a second translaminar epidural steroid injection at C6-7.

On 6/17/21, Dr. Freehill noted Petitioner was making good progress in physical therapy, but still had pain at 6/10. (PX5, p. 74) Dr. Freehill recommended continued physical therapy.

On 7/15/21, Dr. Freehill noted Petitioner had shoulder stiffness. Examination revealed her rotation was limited to 20° with a mechanical block. Dr. Freehill diagnosed postoperative adhesive capsulitis and recommended an intra-articular cortisone injection into the glenohumeral joint.

On 7/21/21, Petitioner presented to Dr. Smith for an epidural steroid injection recommended by Dr. Kovalsky. Due to Petitioner's elevated blood pressure the procedure was postponed. (PX5, p. 82)

On 7/28/21, Petitioner underwent a right shoulder glenohumeral joint intra-articular steroid injection at St. Mary's Hospital. (PX3, p. 335) Pre-procedure pain was rated at 8/10 and post-procedure pain was rated 0/10.

Petitioner returned to Dr. Kovalsky on 8/3/21 with continued neck and arm pain that she rated 7/10. (PX5, p. 83) Dr. Kovalsky opined that the left central disc herniation at C5-6 was not likely to resorb the disc fragment and that Petitioner was a candidate for an anterior cervical discectomy and fusion at C5-6. He opined that because of her moderate spondylosis, she was not an ideal candidate for disc replacement. He ordered a new cervical MRI.

The cervical MRI was performed on 8/19/21 which showed a small central disc protrusion at C3-4 without mass effect on the spinal cord or stenosis. (PX5, p. 89) At C5-6, the large, central disc herniation was still present and had increased in size since the January 2021 MRI, as had the severity of Petitioner's severe central canal stenosis.

On 8/26/21, Petitioner presented to Dr. Freehill with symptoms of continued stiffness and pain in her right shoulder. Dr. Freehill felt that Petitioner's range of motion had improved, although she still had pain. She was instructed her to continue physical therapy.

On 8/27/21, Petitioner returned to Dr. Kovalsky who noted the cervical spine MRI showed the large herniation at C5-6 had increased in size, causing moderate to severe stenosis, and that she had mild diffuse disc bulge without stenosis or compression at C6-7. He referred her to Dr. Phillips for a cervical discectomy and fusion.

On 9/3/21, Petitioner saw Dr. Matthew Phillips who had previously performed her SI joint fusion. He noted Petitioner had neck pain since October 2019, along with headaches and radicular arm symptoms. Exam showed positive Spurling's on the right, neck pain with flexion

and extension, and bilateral tenderness of the paraspinal muscles. He assessed C5-6 cervical stenosis with neck pain, headaches, and left arm radiculopathy. Petitioner failed conservative treatment. He recommended a C5-6 discectomy and fusion.

On 9/30/21, Dr. Freehill noted Petitioner still had shoulder stiffness and pain with flexion. She recommended light duty restrictions of no overhead lifting and prescribed Meloxicam.

On 12/9/21, Dr. Freehill noted Petitioner had 3/10 pain and the adhesive capsulitis was improving. She recommended continued use of Meloxicam and Voltaren gel.

On 1/25/22, Petitioner was examined a second time by Dr. Coyle pursuant to Section 12 of the Act. (RX9). Dr. Coyle commented that November 2019 records from Tracie Foster reflected complaints of bilateral shoulder pain and neck pain but no cervical radiculopathy. Petitioner advised Dr. Coyle that her right shoulder was not doing well, and she was planning on undergoing a cervical fusion. She reported headaches intermittently three to four times per week and posterior neck pain. She denied pain in the left upper extremity and reported pain along the right medial border of the scapula with occasional numbness and tingling in all the fingers of the right hand. She denied numbness or tingling in the fingers on the left hand.

Dr. Coyle diagnosed cervicalgia. He stated that the 3/16/20 cervical MRI showed a degenerative disc at C5-6 with spondylosis and that plain film x-rays taken on 10/25/13 also showed spondylosis at C5-6. He noted that x-rays taken of the cervical spine on 1/14/21 showed increased spondylosis at C5-6 and that the cervical MRI of 6/9/16 showed disc degeneration at C5-6 and other multiple levels. He commented that the 3/16/20 cervical MRI showed a central protrusion at C5-6 with no evidence of disc herniation. In contrast, he said that the 1/29/21 cervical MRI showed a moderately large, broad-based disc herniation in the slight central prominence and minimal inferior extrusion with moderately severe stenosis, and minimal right sided neural foraminal narrowing. He noted that the disc herniation at C5-6 was not present on the 3/16/20 MRI and was a new finding. Dr. Coyle noted the 8/19/21 MRI showed a very large disc herniation at C5-6 with spinal cord compression. He noted that the C5-6 disc was well hydrated, and that this represented an acute finding.

Dr. Coyle opined that Petitioner sustained an acute C5-6 disc herniation at some point between 3/16/20 and 1/29/21. He opined that surgery would be reasonable and appropriate to treat the herniation, but that the herniation was not related to the work accidents of 2018 or 2019. He recommended an anterior cervical discectomy and arthrodesis. He recommended that due to the disc herniation that occurred between 3/16/20 and 1/19/21, Petitioner should avoid overhead lifting or lifting greater than 20 pounds. He said these restrictions were not necessary as a result of the 2019 injuries.

On 3/4/22, Petitioner was examined by orthopedic surgeon Dr. David King pursuant to Section 12 of the Act. Dr. King opined that Petitioner's right shoulder condition was causally related to the 10/23/19 and 11/2/19 work injuries. He opined that all of the treatment to date to the right shoulder was reasonable and necessary as a result of the 10/23/19 accident. He opined that Petitioner was at maximum medical improvement as of the 9/30/21 evaluation by Dr.

Freehill. He opined that Petitioner was capable of full duty job activities regarding her shoulder, and that no additional treatment was necessary. He opined that her current subjective complaints regarding the right shoulder were related to her glenoid degenerative joint disease and that any future treatment was unrelated to the work injury, and due to the progressive degenerative process. Dr. King opined that Petitioner's work injuries caused a left shoulder strain that was resolved. He opined that no additional treatment was necessary regarding the left shoulder and no restrictions were necessary.

On 5/24/22, Petitioner returned to Dr. Phillips for continued neck and radicular left arm pain and headaches. Petitioner reported that her neck pain started in 2013 but became worse after her 2019 work accident. Dr. Phillips recommended a new cervical MRI.

On 6/9/22, Petitioner followed up with Dr. Freehill with continued right shoulder pain and stiffness. Dr. Freehill administered an injection and ordered Petitioner to continue Meloxicam.

The cervical MRI was performed on 6/14/22 and revealed circumferential disc bulging and no focal disc herniation at C5-6, with mild to moderate canal stenosis, mild impingement on the ventral thecal sac, and mild left-sided foraminal stenosis without cord compression.

On 6/22/22, Petitioner underwent a right shoulder fluoroscopy-guided injection ordered by Dr. Freehill. (PX3)

On 7/7/22, Petitioner was examined by Dr. Kevin Rutz at Orthopedic Specialists. (PX6) Dr. Rutz noted that Petitioner was injured in October 2019 when her arm was yanked by a client, causing shoulder and neck pain. He noted she had continuous symptoms of neck pain, radiation down her right arm, tingling in her hand, headaches, and difficulty sleeping secondary to pain. Dr. Rutz noted Petitioner's treatment with Dr. Kovalsky and Dr. Phillips and that she had been referred to him for possible surgical intervention. Petitioner informed Dr. Rutz of her prior cervical spine problems from 2013.

Physical exam showed tenderness to palpation in the cervical paraspinal muscles on the right, pain with cervical flexion and extension, and bilaterally absent biceps and triceps reflexes. Dr. Rutz stated that by her report, Petitioner had a herniation at C5-6. He did not review any MRI films. He interpreted plain x-rays taken that day as showing interior osteophyte spurring at C4-5 and C5-6. He diagnosed cervical disc herniation at C5-6 with right arm radiculopathy.

On the symptom diagram portion of the intake questionnaire Petitioner completed for Dr. Rutz, she indicated that shortly after the injury she had symptoms at the base of her cervical spine, right shoulder, right scapula, right elbow, right hand and fingers, and in the mid back and that her pain was 10/10. (PX6, p. 14) She indicated that her current symptoms were identical to those shortly after the injury.

On 7/17/22, Petitioner was seen in the emergency department at St. Mary's Hospital with symptoms of neck and left shoulder pain. (PX3) She reported a history of pushing up on the ground with her left arm when she heard a pop and experienced worsening pain. Petitioner had

left shoulder tenderness and pain with movement. Examination of her cervical spine revealed decreased range of motion, tenderness with palpation around the left scapula, and muscle spasms. She was prescribed Norco, Norflex, and Toradol, and was given Lidocaine patches.

On 9/15/22, Petitioner reported to Dr. Freehill that the injection had provided her with two to three weeks of relief. (PX5, p. 116) Dr. Freehill recommended Voltaren gel and Tramadol. On 11/1/22, Dr. Freehill noted Petitioner continued to have pain at 4/10 at rest. She recommended a repeat injection into the glenohumeral joint as well as continued use of Voltaren gel. On 11/9/22, Petitioner underwent a fluoroscopy-guided right shoulder injection at St. Mary's Hospital. (PX3)

Dr. Kevin Rutz testified by way of deposition on 11/22/22. (PX7) Dr. Rutz is a board-certified orthopedic surgeon that specializes in spine surgery. He performs over 500 spinal surgeries per year. He testified that there are advantages to cervical disc arthroplasties verses cervical fusions, as with arthroplasty, a patient's motion is maintained, the risk of accelerating degeneration is lower, and the risk of hardware failure is much lower.

Dr. Rutz testified that he saw Petitioner one time on 7/7/22 and reviewed her records from SSM Hospital, Orthopedic Center of Southern Illinois, Dr. Coyle's Section 12 reports, and images of Petitioner's cervical spine MRIs performed in 2013, 2016, 2020, and 2022, and MRI reports of January and August 2021. Based on his review of the medical records, diagnostic studies, Petitioner's history, and clinical examination, Dr. Rutz diagnosed a C5-6 cervical disc herniation and opined it was caused by her 2019 work incident.

Dr. Rutz testified that the 2013 MRI showed a moderately sized central disc herniation at C3-4. The 2016 MRI showed the disc herniation at C3-4 had increased in size, and there was no herniation at C5-6 on that study. He opined that the 2020 MRI showed that the C3-4 herniation was unchanged; however, but there was now a broad-based more left-sided disc herniation present at C5-6 that was not present on the 2016 MRI. Dr. Rutz testified that the 2022 MRI showed that the C3-4 disc herniation had almost completely resorbed, and although it has been a concern in the past, he testified that it was basically gone.

Dr. Rutz testified that the symptoms of a C3-4 disc injury include neck pain that tends to be higher up in the neck, headaches, and radiation into the upper trapezius and clavicular area. He testified that a disc injury at C5-6 could produce neck pain that is lower down in the neck, pain between the shoulder blades, headaches, and radiation through the shoulder, down the arm and into the thumb and index finger if the C6 nerve is irritated. He testified that the 4 nerve that comes out of C3-4 does not radiate down the arm; however, C5-6 can radiate from the arm all the way to the hand. He recommended a C5-6 cervical disc replacement based on the fact Petitioner had neck pain with radiation in her arms since her 2019 accident that had not resolved with time. Dr. Rutz noted that Dr. Phillips and Dr. Kovalsky recommended surgery at that level in 2021.

Dr. Rutz disagreed with Dr. Coyle's interpretation of the 3/16/20 MRI as not showing a disc herniation at C5-6. He reviewed the films again the day of his deposition and clearly noted a broad-based herniation a little more to the left side, which is causing some narrowing of the

foramen on both sides. Although Dr. Rutz did not have the films of the 2021 MRIs to review, he testified that both reports note a disc herniation at C5-6, which is larger on the second MRI. He compared the images of the 2022 MRI to the 2020 MRI and testified they basically look the same and demonstrated a broad-based, more left-sided disc herniation at C5-6. Dr. Rutz testified that Petitioner did not report any new trauma incidents that occurred between the time of her 2020 MRI and the date he examined her.

On cross-examination, Dr. Rutz testified that Petitioner's symptoms included neck pain with some radiation down her right arm and tingling in her hand. He testified that her symptoms were worsened by coughing, exercise, activity, and lifting. He testified that Petitioner was forthcoming regarding her prior cervical spine problems that began in 2013. He testified that although his treatment note stated, "I consented her for a C5-6 discectomy and total disc arthroplasty," he was not going to sign her up for surgery until he could actually see her disc on the MRI, which he read a week later. He explained that when he said in his note that he "consented her," that meant that he told her what the risks and complications or of surgery were.

Dr. James Coyle testified by way of evidence deposition on 12/2/22. (RX1) He is a board-certified orthopedic spine surgeon with fellowship training in spinal surgery. Dr. Coyle testified that when he initially saw Petitioner on 10/15/20 she reported a history of accident on 10/6/18 and did not report her 2019 work accident. Dr. Coyle testified that Petitioner completed an intake form for each examination. On the form dated 10/15/20, Petitioner indicated no prior history of neck or back injuries other than the October 2018 accident or indicate any symptoms in her neck, left shoulder, right shoulder, left arm, or right arm. She indicated symptoms only in her low back, hips, and buttock. (RX1, Ex. 2A)

Dr. Coyle testified that he asked Petitioner whether she had any symptoms in her neck, scapular area, or upper extremities. Dr. Coyle testified that she reported no complaints of significant neck pain, or tingling, numbness, or weakness in her upper extremities. Her complaints were pain in a band-like pattern about the beltline, hip pain, and right greater than left buttock pain. Petitioner denied a history of prior neck injuries, symptoms, or treatment when asked by Dr. Coyle.

Dr. Coyle noted Petitioner's prior treatment in 2013 and 2016 with Dr. Mohamed. A cervical MRI performed in 2016 showed a cervical disc herniation at C3-4 with cord impingement and disc degeneration at C4-5 and C5-6. Dr. Mohamed recommended surgery at that time at the C3-4 level which Petitioner did not undergo. Dr. Coyle reviewed the 2016 MRI films and report and only the report of the 2013 MRI. He noted the 2013 MRI report indicated a herniation at C3-4 and mild disc bulging at the annulus at C5-6 and C6-7.

Dr. Coyle testified he focused his examination on Petitioner's lumbar spine based on her medical history and her denial of neck symptoms. However, he examined Petitioner cervical spine and found her range of motion was 80% of normal and there was a negative Spurling's sign. She had no weakness or numbness in her upper extremities. He made no treatment recommendations regarding the cervical spine.

Dr. Coyle testified that when Petitioner returned on 1/25/22 she filled out another intake form and indicated pain in the back of her neck into the right trapezius, right shoulder, and fingers of the right hand. (RX1, Ex. 2-B) Petitioner stated her injury was work related but did not provide any dates of accident. Dr. Coyle reviewed the 1/29/21 and 8/19/21 MRI films and reports and concurred with the radiologist's interpretation. He testified that both MRIs show a large C5-6 cervical disc extrusion with severe cervical stenosis. He compared the 2021 MRI films to the 3/16/20 MRI film and observed significant interval changes. He testified that a comparison of the axial views from 2020, with the axial views from January 2021 and August 2021, shows disc extrusion with severe cord compression at C5-6 that is not present on the March 2020 MRI. He testified that the March 2020 MRI shows a disc bulge at C5-6 which was also present on the 2016 MRI. Given the difference between the March 2020 and January 2021 MRIs, Dr. Coyle concluded the extrusion at C5-6 must have occurred between the time the two studies were performed.

Dr. Coyle explained that the January 2021 film shows spinal cord compression and a blown out disc at C5-6. He testified that the important distinction between the March 2020 and January 2021 films is that while the 2020 film showed a disc bulge at the arthritic C5-6 level, the January 2021 film shows a blown out disc that is compressing the spinal cord. He testified that the August 2021 MRI also showed a hydrated C5-6 disc, indicating that the herniation is acute, rather than chronic. Dr. Coyle testified that if the disc herniation was several years old it would have a different appearance.

Dr. Coyle diagnosed Petitioner with an acute cervical disc herniation at C5-6 that occurred between March 2020 and January 2021. He recommended an anterior cervical discectomy and fusion at C5-6. He opined that the need for surgery and Petitioner's current complaints and symptoms were unrelated to the 2019 injuries. He opined there was no causal relationship between the disc pathology at C5-6 which appeared on the 1/29/21 MRI and the 2019 work accidents. He testified that common symptoms associated with a C5-6 injury are radicular symptoms in the biceps, radial aspect of the forearm, arm and shoulder elevation, numbness and tingling in the thumb and index finger, neck pain. He testified that a disc injury at C3-4 does not typically result in radiculopathy

On cross-examination, Dr. Coyle testified that the decision to operate is based on a constellation of signs and symptoms. He testified that the March 2016 MRI showed disc degeneration without herniation at C5-6. He testified that the March 2020 MRI showed a central disc protrusion at C5-6 as identified by the radiologist. He disagreed with Dr. Rutz's opinion that the 2020 MRI showed a disc herniation at C5-6. He agreed the 2022 MRI showed the C3-4 disc resorbed. Dr. Coyle testified that a C3-4 disc injury could produce C6 radiculopathy-type symptoms.

Dr. Coyle testified he does not currently perform disc replacement surgeries and the last time he did so was when he was a fellow. Dr. Coyle agreed that the MRIs performed in January and August 2021 showed disc herniations at C5-6. He testified that the pathology on the 2021 MRIs was dramatically different than the March 2020 MRI.

Dr. Coyle testified that Petitioner was not exaggerating her symptoms or malingering. He testified that both 2019 accidents involved altercations with combative clients. He testified that hypothetically those types of accidents could cause cervical spine injuries, but he would be speculating that Petitioner sustained any injury, including a cervical strain, as he examined her approximately a year after the 2019 incidents at which time she was asymptomatic. He testified that Petitioner denied any neck pain, tingling, or numbness, and her examination was normal one year after the accident. He testified that two years later she had a new disc herniation. He opined that at best Petitioner sustained a cervical strain as a result of the 2019 accident. Dr. Coyle testified that symptoms can wax and wane in individuals like Petitioner who have degenerative disc disease.

CONCLUSIONS OF LAW

Issue (F): Is Petitioner's current condition of ill-being causally related to the injury?

It is undisputed Petitioner sustained accidental injuries on 10/23/19 and 11/2/19 which resulted in neck and bilateral shoulder pain. In dispute is whether Petitioner's current condition of ill-being with regard to her cervical spine is causally connected to either or both work accidents.

It is also undisputed Petitioner treated for neck pain dating back to 2013. In June 2016, Dr. Mohamed ordered a new cervical MRI that was compared to an MRI performed in 2013. It was noted that the central disc herniation at C3-4 had increased in size and was now causing mild impingement. Dr. Mohamed noted Petitioner had significant stenosis associated with weakness and her pain caused dysfunction. He recommended an anterior cervical discectomy and fusion at C3-4.

Following the 2019 work accidents, Petitioner presented to the emergency room at St. Mary's Hospital with complaints of bilateral shoulder pain and posterior cervical neck pain she related to both accidents. Physical examination revealed cervical tenderness on the right side with deep palpation. X-rays of the cervical spine revealed advanced degenerative changes at C5-6. No diagnosis was made with regard to Petitioner's neck.

On 11/4/19, Petitioner was examined by APRN Tracie Foster for pain in her bilateral shoulders and neck. Petitioner was positive for neck pain and examination of her cervical spine revealed normal range of motion.

On 3/9/20, Petitioner returned to Dr. Mohamed with complaints of low back pain, neck pain, left arm pain, and leg pain. Dr. Mohamed did not note either of Petitioner's 2019 accidents, but instead noted she fell in 2018 and fractured her tailbone. She described constant, severe low back pain which did not improve with therapy and injections. She reported balance problems and difficulty walking and standing for long periods of time. He reviewed a cervical spine x-ray dated 11/3/19 for right shoulder pain which showed moderately advanced degenerative changes at C5-6 with milder degenerative changes above and below. He opined that physical examination, history, and radiographic findings were compatible with neck pain, tingling and numbness, and radicular arm pain distribution in the setting of a moderately large central disc herniation at C3-4 with degenerative disc disease from C4 through C7 without herniation or

stenosis. He noted that Petitioner's history and examination from 2016 and old MRIs were consistent with cervical disc herniation, spinal canal stenosis, and radiculopathy. He stated that the recent fall may have aggravated her condition. He ordered a new cervical MRI.

According to the radiologist, the 3/16/20 MRI showed a re-identified central disc herniation at C3-4, with mild to moderate canal stenosis and minimal cord compression, and a central disc protrusion at C5-6 with mild canal stenosis and no compression.

Petitioner returned to Dr. Mohamed on 4/16/20 and noted Petitioner stated, "all this has become a lot worse after the fall in 2018". He felt that Petitioner's main problem was coming from the herniation at C3-4 with compression of the spinal cord and again recommended an anterior cervical discectomy and fusion at C3-4. He interpreted the March 2020 MRI as showing degenerative disc disease at C5-6 without herniation or stenosis. He did not recommend treatment at level C5-6. Petitioner advised she wanted time to consider surgery.

On 4/17/20, APRN Foster noted normal range of motion in Petitioner's cervical spine, with ongoing right shoulder symptoms and some pain in her left shoulder. On 8/7/20, Petitioner's cervical spine examination was again normal.

Petitioner was examined by Jamie Smith, FNP, at the Orthopedic Center of Southern Illinois on 8/10/20 for her right shoulder. Petitioner reported on the intake form her chief complaint was bilateral shoulder pain, worse on the right. She did not report any neck or radicular symptoms.

On 8/30/30, Petitioner presented to the emergency department at St. Mary's Hospital with bilateral shoulder and low back pain. There were no documented complaints of neck pain or radiculopathy.

On 8/31/20, APRN Foster noted normal range of motion of Petitioner's cervical spine. Petitioner subsequently underwent a right shoulder MRI and an injection and physical therapy with regard to her shoulder. At her therapy visit on 10/29/20, Petitioner did not report any symptoms in her neck or radiation of symptoms into her right shoulder or down her right arm.

On 1/14/21, Petitioner was examined by Dr. Angela Freehill who noted Petitioner had a chronic neck problem causing daily pain. Dr. Freehill noted Petitioner's history of a herniated cervical disc dating back to 2013 which was never addressed. She reviewed the March 2020 cervical MRI that showed a large central disc herniation at C3-4 with indentation of the thecal sac extending to the spinal cord. Physical examination of the cervical spine revealed good range of motion with flexion, extension, and side bending, side bending to the right and left reproduced some shoulder and neck pain, and flexion reproduced right shoulder pain. Petitioner was referred to Dr. Kovalsky for further evaluation of her cervical spine prior to undergoing shoulder surgery.

On 1/25/21, Dr. Kovalsky noted Petitioner was off work recovering from a right SI joint fusion that was performed on 12/23/20. He noted Petitioner's complaints of neck pain, and numbness and tingling in her arms, left greater than right. He noted there was no history of a recent fall or trauma. Dr. Kovalsky did not mention either of Petitioner's 2019 work accidents or

any prior cervical MRIs that were performed, including the 2013 and 2016 MRIs. Examination of her cervical spine demonstrated trapezius and paracervical muscle spasms bilaterally with tenderness, positive Spurling's and Tinel's testing on the left and negative on the right. Dr. Kovalsky diagnosed probably cephalgia due to degenerative disc disease and recommended a cervical MRI.

Petitioner's new patient history form completed in Dr. Kovalsky's office indicated she had neck pain with headaches and radicular pain down her left arm into her hand, which was exacerbated after a work injury in October 2019. There is no indication in Dr. Kovalsky's record that he discussed any accident or injury with Petitioner. The intake form notes Petitioner's neck pain had a duration of greater than five years and her radicular arm pain had a duration of greater than one year.

The cervical spine MRI was performed on 1/29/21 and noted no comparison studies were available. The MRI showed a small central disc protrusion without stenosis that was slightly superiorly extruded at C3-4, and a moderately large, broad-based disc herniation at C5-6 with slight central prominence and minimal inferior extrusion, and moderately severe spinal stenosis. The left-sided neural foramen was 50% narrowed due to degenerative changes and right-sided neural foramen narrowing was minimal. Two benign perineural cysts were present in the right neural foramen. The radiologist commented that the mild increased signal within the cervical spinal cord at C5-6 might be due to gliosis.

Dr. Kovalsky noted the MRI was of good quality. He felt the MRI showed mild spondylosis at C5-6 and C6-7 with a large left central disc herniation at C5-6, which was causing mild foraminal stenosis on the left and minimal on the right. Dr. Kovalsky opined that Petitioner's neck and arm pain were coming from the disc herniation of C5-6 and that her symptoms started in October 2019. He did not provide a history of any work accidents. Due to Petitioner's recent SI joint fusion, Dr. Kovalsky recommended translaminar epidural steroid injections at C5-6 and surgery if the injections did not provide relief.

Petitioner underwent injections in her right shoulder and C6-7. She followed up with Dr. Kovalsky on 4/19/21 and for the first time he mentioned Petitioner had an old work comp injury dating back to October 2019. He noted Petitioner had spondylosis at C5-6 and C6-7, and a left central disc herniation at C6-7. He noted the C6-7 injection provided 50-60% improvement in her neck and left arm pain. She denied numbness and tingling in her right arm. He recommended that Petitioner address her right shoulder condition and undergo another epidural steroid injection at C6-7. He stated that if Petitioner received only temporary benefit from the epidural injections, she would be a candidate for a cervical discectomy and fusion at C5-6 and C6-7.

Petitioner underwent a right shoulder surgery on 5/19/21. She returned to Dr. Kovalsky on 6/7/21 with continued neck pain rated 6/10, intermittent headaches, and radiation into her right arm. On 8/3/21, Dr. Kovalsky noted the second injection was cancelled due to high blood pressure. He stated Petitioner had a moderate sized left central disc herniation at C5-6 and spondylosis at C6-7. He now recommended a one-level anterior discectomy and fusion at C5-6. He stated that given the fact her symptoms started in 2020, the disc is unlikely to resorb.

The cervical MRI performed on 8/19/21 showed a small central disc protrusion at C3-4 without mass effect on the spinal cord or stenosis, and the C5-6 central disc herniation had increased in size since the January 2021 MRI, as well as the severity of the severe central canal stenosis. Dr. Kovalsky referred Petitioner to Dr. Phillips for surgery.

Another cervical MRI was performed on 6/14/22 per Dr. Phillip's orders which showed circumferential disc bulging and no focal disc herniation at C5-6, with mild to moderate canal stenosis, mild impingement on the ventral thecal sac, and mild left-sided foraminal stenosis without cord compression.

On 7/7/22, Petitioner was examined by Dr. Rutz. He noted her October 2019 work accident and stated that by Petitioner's history she sustained a herniation at C5-6. He did not review any MRI films. He interpreted plain x-rays taken that day as showing interior osteophyte spurring at C4-5 and C5-6. He diagnosed cervical disc herniation at C5-6 with right arm radiculopathy and recommended a C5-6 discectomy and total disc arthroplasty. He wanted to review the MRI films before proceeding with surgery.

If the significant pathology at C5-6 which Dr. Rutz identified appeared on the March 2020 MRI, it is highly likely that Dr. Mohamed and/or the radiologist would have so indicated in their reports. Particularly if the disc was blown out and had severe cord compression as Dr. Coyle interpreted the 2021 MRI as showing. That they did not do so strongly suggests that the C5-6 pathology which appeared on the January 2021 MRI was not present on 3/16/20.

When Petitioner saw Dr. Coyle on 10/15/20 she denied neck pain. She reported no symptoms of numbness, tingling, or weakness in her upper extremities. She only reported her work accident of 2018 and neither of the work accidents in 2019. Her chief complaints were pain in a band-like pattern about the belt line, bilateral hip pain, right greater than left buttock pain, and groin pain bilaterally. The Arbitrator does not find Petitioner's testimony credible that she did not know why she was being seen by Dr. Coyle in October 2020, suggesting she would have disclosed her cervical and radicular pain and the 2019 accidents had she known that is what she was being examined for; particularly since Petitioner denied a prior history of neck injuries, neck symptoms, or treatment. When she returned to his office on 1/25/22, Petitioner filled out another intake form and stated her injuries were work related and did not provide any dates of accident. At that time she complained of pain in the back of her neck into the right trapezius, right shoulder, and fingers of the right hand.

Dr. Coyle reviewed the 2013 MRI report that indicated mild disc bulging at the annulus at C5-6 and C6-7. He reviewed the 2016 MRI films that showed disc degeneration at C4-5 and C5-6. He reviewed the 2020 MRI films and noted a disc bulge at the arthritic C5-6 level. He reviewed the MRI films of 1/29/21 and 8/19/21 that both showed a large C5-6 cervical disc extrusion with severe cervical stenosis, which was significantly changed in comparison to the 2020 MRI films. He testified that the disc extrusion with severe cord compression at C5-6 seen in 2021 was not present on the 2020 MRI. He explained that the January 2021 film shows spinal cord compression and a blown out disc at C5-6. He testified that the August 2021 MRI also showed a hydrated C5-6 disc, indicating that the herniation was acute and did not occur several years prior. Given the difference between the March 2020 and 2021 MRIs, Dr. Coyle concluded

the extrusion at C5-6 must have occurred between the time the two studies were performed and was not a result of the 2019 work accidents.

Dr. Rutz only saw Petitioner one time on 7/7/22, which was over two and a half years after Petitioner's work accidents. He noted her October 2019 work accident and did not review any medical records or MRIs at the time of his exam. He recommended a C5-6 discectomy and total disc arthroplasty assuming it was supported by MRI which he requested to review. Dr. Rutz testified that the 2016 MRI did not show a herniation at C5-6. Although Dr. Rutz did not have the films of the 2021 MRIs to review, he testified that both reports noted a disc herniation at C5-6, which was larger on the second MRI.

Given the totality of the medical evidence, the Arbitrator finds Dr. Coyle's opinion that the pathology at C5-6 did not occur until sometime after 3/16/20 to be more credible and persuasive than Dr. Rutz's opinion that the herniation occurred as a result of the 2019 accidents and was present on the March 2020 MRI. Dr. Rutz's opinion is inconsistent with Dr. Patel's reading of the MRI film. It is also inconsistent with Dr. Mohamed's interpretation of the film and recommendation for treatment limited to C3-4. Further, the records from the Orthopedic Center of Southern Illinois from 8/10/20 through 11/30/20 do not document any complaints of neck pain or radiation of neck pain into either shoulder or upper extremity. Petitioner's testimony that her neck and upper extremity radicular symptoms were essentially continuous from the 2019 accidents through the date of arbitration is inconsistent with the records, the intake forms she completed, and the histories she provided to her treating physicians and Dr. Coyle.

Therefore, the Arbitrator finds that Petitioner's current condition of ill-being in her cervical spine is not causally connected to either work accident of 10/23/19 or 11/2/19.

Issue (J): Were the medical services that were provided for Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?

Based on the Arbitrator's finding as to causal connection, the Arbitrator finds that Respondent is not liable for Petitioner's medical expenses as it relates to her cervical spine and said benefits are denied. Based on the party's stipulation that the instant hearing is solely limited to issues related to Petitioner's cervical spine, the Arbitrator makes no findings and awards no benefits related to Petitioner's right shoulder.

Issue (K): Is Petitioner entitled to any prospective medical treatment?

Based on the Arbitrator's finding as to causal connection, the Arbitrator finds that Petitioner is not entitled to prospective medical treatment for her cervical spine and said benefits are denied. Based on the party's stipulation that the instant hearing is solely limited to issues related to Petitioner's cervical spine, the Arbitrator makes no findings and awards no benefits related to Petitioner's right shoulder.

Issue (L): **What temporary benefits are in dispute? TTD**

Based on the Arbitrator's finding as to causal connection, the Arbitrator finds that Petitioner is not entitled to temporary total disability benefits as it relates to her cervical spine and said benefits are denied. Based on the party's stipulation that the instant hearing is solely limited to issues related to Petitioner's cervical spine, the Arbitrator makes no findings and awards no benefits related to Petitioner's right shoulder.

This award shall in no instance be a bar to further hearing and determination of any additional amount of benefits with respect to Petitioner's right shoulder after 3/4/22, as stipulated by the parties.

Arbitrator Linda J. Cantrell Date

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC019950
Case Name	Tonya Maines v. Hoyleton Youth & Family Services
Consolidated Cases	21WC019949;
Proceeding Type	Petition for Review under 19(b) Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	24IWCC0190
Number of Pages of Decision	10
Decision Issued By	Raychel Wesley, Commissioner

Petitioner Attorney	Thomas C Rich
Respondent Attorney	Gregory Keltner

DATE FILED: 4/29/2024

/s/ Raychel Wesley, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF MADISON)

☐ Affirm and adopt (no changes)	☐ Injured Workers' Benefit Fund (§4(d))
☐ Affirm with changes	☐ Rate Adjustment Fund (§8(g))
☒ Reverse causal connection	☐ Second Injury Fund (§8(e)18)
	☐ PTD/Fatal denied
☐ Modify	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

TONYA MAINES,

Petitioner,

vs. NO: 21 WC 19950

HOYLETON YOUTH & FAMILY SERVICES,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by the Petitioner herein and notice given to all parties, the Commission, after considering the issues of causal connection, medical expenses, prospective medical care, and temporary total disability, and being advised of the facts and law, reverses the Decision of the Arbitrator. The Commission remands this case to the Arbitrator for further proceedings for a determination of a further amount of temporary total compensation or of compensation for permanent disability, if any, pursuant to *Thomas v. Industrial Commission*, 78 Ill. 2d 327 (1980).

PROLOGUE

The parties stipulated that the January 31, 2023 hearing for this case was limited to issues surrounding Petitioner's cervical spine, and that this ruling would not be a bar to further hearing and determination of any additional benefits regarding Petitioner's right shoulder after March 4, 2022. *Transcript, p.11-12*. Further, on the Request for Hearing form, Respondent stipulated to liability for reasonable and necessary medical expenses solely for Petitioner's shoulder through March 4, 2022, but disputes liability for expenses related to the cervical spine.

The parties also stipulated to accident in the instant case. However, the Arbitrator denied causal connection between the instant accident and Petitioner's current cervical spine condition of ill-being, and also declined to award medical expenses, prospective medical care, and temporary total disability benefits. For the reasons set forth below, the Commission reverses the arbitrator, and finds causal connection between the instant accident and Petitioner's current cervical condition. The Commission also reverses the denial of medical expenses, prospective medical care, and temporary total disability benefits herein.

FINDINGS OF FACT

The Commission adopts the Findings of Fact in the Decision of the Arbitrator and incorporates such facts herein, but adds additional findings of fact as noted below.

On March 16, 2020, a cervical MRI performed by Dr. Neetin Patel revealed reidentification of a central disc herniation at C3-4, with mild to moderate stenosis, and minimal cord compression. Also, degeneration at C4-5, and a protrusion at C5-6 with mild stenosis, but no foraminal stenosis or cord compression. No focal herniation was found. *RX 5*. X-rays revealed no significant posterior spurring. *RX 6, p.8.*

On December 23, 2020, Petitioner underwent an S.I. joint fusion surgery with Dr. Matthew Phillips at Orthopaedic Center of Southern Illinois. She had post-operative complications, but indicated her S.I. joint pain had resolved by February 22, 2021, although she still had mild to moderate buttocks pain. *See PX 5, p.37*.

On January 14, 2021, Petitioner followed up with Dr. Angela Freehill for her right shoulder. Incidentally, Dr. Freehill also noted Petitioner's chronic neck problem that "hurts her every day." It was noted that her herniated disc suffered in 2013 was never addressed. Physical examination revealed neck pain with side bending to the left and right. Cervical x-rays revealed diffuse degenerative cervical spine spondylosis. Dr. Freehill reviewed the March 2020 cervical MRI, finding a large central herniated disc at C3-4 with indentation of the thecal sac extending to the spinal cord. Dr. Freehill diagnosed concomitant cervical spine disease including a C3-4 large herniated central disc. She recommended Petitioner consult with Dr. Don A. Kovalsky for conservative treatment of her cervical spine. Dr. Freehill noted Petitioner may be a right shoulder surgical candidate, but opined that her neck problem needed to be treated first. *PX 5, p.18-19, 23*.

On February 22, 2021, Petitioner reported to Dr. Kovalsky that her neck pain was a "5." She had a positive Spurling's test on the left, pain with cervical extension, and right shoulder rotator cuff dysfunction. Dr. Kovalsky reviewed the January 29, 2021 cervical MRI, finding mild spondylosis from C5-7 with a large left central herniation at C5-6 causing mild foraminal stenosis on the left, minimal on the right. C6-7 had minimal spondylosis and mild foraminal narrowing on the left. Dr. Kovalsky opined it was clear Petitioner's right shoulder pain was emanating from the shoulder and not her cervical spine. However, he opined her neck and arm pain was coming from the C5-6 herniation. Symptoms began in October 2019. *PX 5, p.37-38*.

Dr. Kovalsky recommended two epidural injections at C5-6. Petitioner believed her shoulder pain was causing more dysfunction than her neck, so Dr. Kovalsky opined her shoulder

should be surgically treated next. If the injections failed, an anterior cervical discectomy and fusion at C5-6 and possibly C6-7 would be required. Petitioner was kept off work through March 16, 2021. *PX 5, p.37-38, 41-42*.

Respondent's §12 examiner, Dr. James Coyle testified via deposition on December 2, 2022. Therein, he opined that cervical x-rays were also taken on March 16, 2020, which revealed disc osteophyte complex (bone spurs) bilaterally at C5-6. He went on to state that a disc will follow the contour of an osteophyte, causing it to protrude. He opined there was no spinal cord compression on this MRI, but that there was compression on the January 29, 2021 and August 19, 2021 cervical MRI's.

Respondent offered MRI films from March 16, 2020 into evidence. Dr. Coyle discussed his view of the films during his deposition, testifying that the first view is looking at the spine from the left side over to the right. *Deposition Dr. Coyle, EX 3-A*. A second view from this date is looking up at the spine from Petitioner's feet (axial image). *Deposition Dr. Coyle, EX 3-B*. Dr. Coyle marked the C5-6 disc interspace that he opined differed from the 2021 MRI's, and revealed that the disc at C5-6 was protruding due to bone spurs.

CONCLUSIONS OF LAW

I. Causal Connection

It is well established that an accident need not be the sole or primary cause—as long as employment is a cause—of a claimant's condition. *Sisbro, Inc. v. Industrial Commission*, 207 Ill. 2d 193, 205 (2003). Furthermore, an employer takes its employees as it finds them (*St. Elizabeth's Hospital v. Illinois Workers' Compensation Commission*, 371 Ill. App. 3d 882, 888 (5th Dist. 2007)), and a claimant with a pre-existing condition may recover where employment aggravates or accelerates that condition. *Caterpillar Tractor Co. v. Industrial Commission*, 92 Ill. 2d 30, 36 (1982). As the Appellate Court held in *Schroeder v. Illinois Workers' Compensation Commission*, 2017 IL App (4th) 160192WC, the inquiry focuses on whether there has been a deterioration in the claimant's condition:

> That is, if a claimant is in a certain condition, an accident occurs, and following the accident, the claimant's condition has deteriorated, it is plainly inferable that the intervening accident caused the deterioration. The salient factor is not the precise previous condition; it is the resulting deterioration from whatever the previous condition had been. *Schroeder, at P26*.

In the instant case, Petitioner testified she worked for Respondent as a youth care worker and cook for over 16 years. She admitted to occasional cervical pain beginning in 2013, which is when she began treating with Dr. Ahmed Mohamed at Egyptian Spine Clinic. The record reflects she last treated for her cervical spine in June of 2016. On June 9, 2016, a cervical MRI revealed degenerative disc disease (DDD) from C4-7 without herniation or stenosis. At C3-4 there was herniation, canal stenosis, and impingement. A C3-4 discectomy and fusion was recommended, but Petitioner did not undergo the surgery. The Commission finds no indication in the record that

Petitioner was treating for her cervical spine leading up to October 23, 2019. In fact, she testified that in the weeks leading up to October 23, 2019, she had no symptoms or problems in her neck.

After suffering the October 23, 2019 accident (companion case 21 WC 10049), and complaining of neck and right shoulder pain, Petitioner continued working without seeking medical treatment, waiting to see if her symptoms would subside. However, after the instant November 2, 2019 accident, involving an attempt to subdue a client, which led to neck and left shoulder pain, Petitioner sought treatment at St. Mary's Hospital emergency room the next day. She complained of cervical and shoulder discomfort, and a **physical examination revealed** cervical muscle tenderness with palpation. Subsequently, Petitioner's complaints included cervical muscle tenderness and radiating pain with positive Spurling's tests. A March 16, 2020 cervical MRI revealed reidentification of a central disc herniation at C3-4, with mild to moderate stenosis, and minimal cord compression, as well as a C5-6 protrusion with mild stenosis. The Commission notes that these C5-6 findings were absent from the pre-accident MRI on June 9, 2016.

On October 15, 2020, Petitioner underwent a §12 examination at Respondent's request with Dr. James Coyle. The examination included a discussion of an unrelated accident occurring October 26, 2018 (19 WC 26859), wherein Petitioner was taking a combative 10 year-old client to his room when she slipped and landed on her back and buttocks. Petitioner did not indicate any neck injuries, symptoms, or treatment on the intake form. However, she also testified on re-direct that she was unsure which accident Dr. Coyle was examining her for, because Dr. Coyle asked her about more than one accident. This explains why Petitioner put "October 26, 2018" as the date of accident on the Patient Registration form.

In the interim, Petitioner was also treating for her right shoulder and low back issues. On December 23, 2020 she underwent an S.I. joint fusion. While treating with Dr. Angela Freehill for her right shoulder on January 14, 2021, Petitioner's chronic cervical complaints were noted, leading to a referral to Dr. Kovalsky for further treatment.

Petitioner began treating with Dr. Kovalsky on January 25, 2021 with continued neck pain and radicular complaints. A January 29, 2021 cervical MRI revealed a large disc herniation at C5-6 with moderately severe spinal stenosis. On February 22, 2021, Petitioner rated her neck pain a "5." Dr. Kovalsky opined that Petitioner's neck and arm pain was coming from the C5-6 herniation. He recommended cervical injections, but indicated that if they failed, a cervical discectomy and fusion would be required. However, he also noted that Petitioner's shoulder pain was currently causing more dysfunction and should be next in line for surgical treatment.

The record reflects Petitioner continued treating with Dr. Kovalsky periodically throughout the remainder of 2021 with consistent complaints of neck and radicular pain, and several positive Spurling's test findings. In the interim, Petitioner underwent a cervical injection on April 6, 2021, which temporarily improved her neck pain 50 to 60 percent, and also improved her radicular pain. She also underwent right shoulder surgery on May 19, 2021. However, by June 7, 2021, her neck pain had returned, as she rated it a "6." At that time Dr. Kovalsky recommended Petitioner wait 4-6 months after the shoulder surgery before considering cervical surgery.

On August 3, 2021, Petitioner's complaints continued, and Dr. Kovalsky recommended a new cervical MRI. He indicated that if the MRI was unchanged, he would refer Petitioner to Dr. Matthew Phillips for surgery. On August 19, 2021, a cervical MRI revealed the C5-6 herniation had increased since January 2021, as had the central canal spinal stenosis. On August 27, 2021, Dr. Kovalsky opined Petitioner had recovered enough from shoulder surgery to undergo cervical surgery.

On September 3, 2021, Dr. Phillips examined Petitioner and reviewed the August 19, 2021 MRI. He found degenerative disc disease at C5-6 with a large herniation and stenosis. He opined Petitioner could continue treating conservatively or undergo the recommended discectomy and fusion. Eight months later, on May 24, 2022, Dr. Phillips recommended a new MRI since the most recent one was nine months old. On June 14, 2022, a cervical MRI revealed C5-6 circumferential disc bulging, no focal herniation, mild disc space narrowing, no evidence of cord compression, mild to moderate canal stenosis, mild impingement on ventral thecal sac, and mild left-sided foraminal stenosis.

On January 25, 2022, Petitioner underwent a second §12 examination at Respondent's request with Dr. Coyle. In contrast to the initial §12 examination, this examination did indicate the October 23, 2019 and the instant November 2, 2019 accidents. Also in contrast to the initial §12 examination, this intake form did indicate neck and radicular pain.

On July 7, 2022, Petitioner presented to Dr. Kevin Rutz with complaints of neck and radicular pain, with tingling in her hand, headaches and difficulty sleeping. Petitioner offered a history of being injured in October 2019 when her arm was yanked by a client, causing shoulder and neck pain. She also completed a pain diagram, indicating pain in the neck, right shoulder, scapula, elbow, and fingers. She indicated these symptoms were the same ones she had shortly after her injury.

Based on the above, the Commission finds that Petitioner had preexisting cervical issues prior to October 23, 2019, but had not treated for this condition since June 9, 2016. Petitioner also credibly testified she had no cervical complaints in the weeks leading up to the October 23, 2019 stipulated accident. On that date, she was working full duty when she suffered an accident and injury to her neck while walking a disruptive youth to their room. Subsequently, Petitioner continued working, believing her condition would improve on its own.

On November 2, 2019, Petitioner suffered the instant accident, which also caused cervical discomfort and pain. Subsequently, Petitioner treated conservatively for her cervical spine, including an injection and medication, and eventually was recommended for cervical spine surgery after being diagnosed with a C5-6 herniation with stenosis. The Commission finds a significant deterioration in Petitioner's condition after the November 2, 2019 work accident. Petitioner had not treated for her cervical spine in over three years leading up to the accident, and suffered an exacerbation of her preexisting condition on October 23, 2019. It was not until after the November 2, 2019 accident that Petitioner required medical care, and there is no indication she had previously been recommended for cervical spine surgery at the C5-6 disc level. We find that a C5-6 herniation was not present on the preceding June 9, 2016 MRI, but a protrusion with stenosis *was* noted on the post-accident March 16, 2020 MRI by Dr. Mohamed, treating physician Dr. Kevin Rutz, and

Respondent's §12 examiner Dr. Coyle.[1] Petitioner's cervical complaints continued, and never returned to pre-accident baseline, leading to surgical recommendations from Dr. Kovalsky, Dr. Phillips, and Dr. Rutz, who opined that the surgery would be causally related to Petitioner's work accident.

The Commission does not find the opinions of Dr. Coyle to be persuasive in the instant case. Although Dr. Coyle agreed that surgery was appropriate for Petitioner, he testified that it was unrelated to the work accident. He opined that Petitioner's lack of cervical complaints during his first §12 examination in October 2020 coupled with the C5-6 herniation not being present on the March 16, 2020 cervical MRI, but being present on the January 29, 2021 cervical MRI suggested that the herniation occurred after the instant accident at some point between March 16, 2020 and January 29, 2021. The Commission finds Petitioner's silence on cervical issues during the October 15, 2020 §12 examination to be reasonable, considering Petitioner's understanding (regardless of accuracy) that the scope of the exam centered around her unrelated October 2018 accident to a different body part. Bolstering this finding is Petitioner's unrebutted testimony that during the exam, Dr. Coyle informed Petitioner of another patient who underwent a *low back fusion surgery* with poor results. A reasonable inference can be drawn that the topic of this examination was not cervical in nature, but lumbar spine related.

Additionally, the Commission finds the evidence contradicts Dr. Coyle's opinion that the protrusion observed on the March 16, 2020 MRI was not a herniation, and that the C5-6 disc was only protruding because it was following the contour of a bone spur. We note that cervical x-rays taken on March 16, 2020 reveal no significant posterior spurring, thus casting doubt on Dr. Coyle's interpretation of the MRI films. The preponderance of evidence conforms with Dr. Rutz's opinion that the March 16, 2020 MRI did in fact reveal a C5-6 herniation.

The Commission also finds that Petitioner's silence on cervical complaints from September 1, 2020[2] through November 30, 2020 was reasonable, considering she was simultaneously dealing with other bodily injuries which were more pressing than her cervical injury. During this time period, Petitioner was treating for her right shoulder and low back, which had increased pain. It was only after an increase in pain on December 1, 2020 that Petitioner highlighted her neck pain again. Shortly thereafter, she underwent surgery on her S.I. joint on December 23, 2020. On January 14, 2021, Dr. Freehill characterized Petitioner's neck pain as "chronic" and referred her to Dr. Kovalsky for treatment. This record further supports a finding Petitioner's neck pain had been ongoing while she dealt with other bodily issues.

On February 22, 2021, Dr. Kovalsky opined that, although Petitioner's neck and arm pain was emanating from C5-6 herniation, her shoulder issue was currently causing more dysfunction than her cervical spine, and that it should be next in line for surgical intervention. Right shoulder surgery was performed May 19, 2021. Moreover, both Dr. Rutz and Dr. Coyle acknowledged that waxing and waning of symptoms was normal. Accordingly, the totality of evidence and circumstances supports a reasonable inference that the temporary silence on cervical symptomatology was due to a combination of waxing and waning symptoms and Petitioner's focus

[1] In Dr. Coyle's opinion, the protrusion was due to bone spurs, not a herniation.
[2] The Arbitrator indicated the silence began August 10, 2020, but there is an August 31, 2020 medical record referencing neck pain. *PX 4,p.32*.

on more symptomatic issues. We do not find it to be an indication that Petitioner did not have a herniation at the time. It is within the province of the Commission to assess the credibility of witnesses, resolve conflicts in the evidence, assign weight to be accorded the evidence, and draw reasonable inferences from the evidence. *City of Springfield v. Industrial Commission*, 291 Ill. App. 3d 734, 740 (4th Dist. 1997) (citing *Kirkwood v. Industrial Commission*, 84 Ill. 2d 14, 20 (1981)).

Lending further support to Petitioner's claim, the Commission notes that Respondent's own Dr. Coyle denied any evidence of symptom magnification and acknowledged that both 2019 accidents are the type that could cause injury to the cervical spine. He also agreed with Dr. Rutz that a C3-4 injury does not cause radicular pain, while a C5-6 injury carries symptoms of neck pain radiating to the arm and down to the thumb and index fingers. These are all symptoms Petitioner exhibited. Thus, it is unlikely that Petitioner's ongoing complaints were related to her C3-4 condition.

Lastly, the Commission finds that the July 2022 event wherein Petitioner presented to St. Mary's Hospital with neck pain after pushing up on the ground with her left arm and hearing a pop does not rise to the level of an intervening accident breaking the causation chain. Intervening accidents are evaluated under a "but-for" standard. Under an independent intervening cause analysis, compensability for an ultimate injury or disability is based upon a finding that the employee's condition was caused by an event that would not have occurred "but for" the original injury. When an employee's condition is weakened by a work-related accident, a subsequent accident, whether work-related or not, that aggravates the condition does not break the causal chain. *Global Products v. Workers' Comp. Commission*, 392 Ill. App. 3d 408, 411-12 (1st Dist. 2009). Here, after the instant accident, Petitioner suffered a C5-6 herniation with symptoms of neck pain and radicular symptoms that were continuous. Petitioner was eventually earmarked for surgery, a recommendation that was still in place in July of 2022. The Commission finds that the relatively benign maneuver of pushing up on the ground would not have caused cervical pain "but for" the herniation that occurred during the instant accident. Therefore, the Commission finds that the July 2022 event does not constitute an intervening accident, and Petitioner's C5-6 condition remains causally related to the instant accident.

Accordingly, the Commission finds that the instant November 2, 2019 work accident aggravated and accelerated Petitioner's preexisting cervical condition, which deteriorated to the point where surgery became necessary. The Commission reverses the Arbitrator's causal connection ruling, and finds Petitioner's current cervical condition is causally related to the instant accident.

II. Medical Expenses

Consistent with the causal connection finding, the Commission also finds that all medical expenses related to Petitioner's cervical condition were reasonable, necessary, and causally related to the instant work accident. As such, the Commission finds Respondent liable for all incurred medical expenses within Petitioner's Exhibit #1 which are related to Petitioner's C5-6 condition.

III. Prospective Medical Care

Also conforming with the causal connection ruling above, the Commission awards Petitioner the prospective surgery recommended by Dr. Rutz. Moreover, although he opined it would be unrelated to the work accident, Dr. Coyle also opined that surgery would be appropriate. While a discectomy and fusion was discussed during Petitioner's treatment, Dr. Rutz recommended a disc replacement instead. He opined that the advantage of an arthroplasty over a fusion is the patient will maintain motion at the surgical level, and they are not creating a stress riser, which could accelerate degeneration at other levels. Further, a couple of days after an arthroplasty, a patient will be sore, but otherwise will not have any restrictions since there is nothing they can do to "screw up the surgery." *Deposition Dr. Rutz, p.6*. Contrastingly, Dr. Rutz noted that after a fusion, a patient could potentially work their hardware loose if they do too much.

Accordingly, we find that surgical intervention recommended by Dr. Rutz is the best course of action to relieve or cure the effects of Petitioner's condition. See *Gallentine v. Industrial Commission*, 201 Ill. App. 3d 880, 888 (2d Dist. 1990). We award the same to Petitioner.

IV. Temporary Total Disability

On February 22, 2021, Dr. Kovalsky kept Petitioner of off work for her cervical condition through March 16, 2021. On August 27, 2021, Petitioner was kept off work by Dr. Kovalsky. On September 30, 2021, Dr. Freehill examined Petitioner's right shoulder post-operatively and found she was doing adequately. She recommended Petitioner return to full duty work.

The parties stipulated at trial that temporary total disability ("TTD") benefits have been paid from April 19, 2021 through May 19, 2021. *Transcript, p.5*. As noted above, Petitioner was taken off work for her cervical condition on February 22, 2021. There is no evidence that she was subsequently released to work by a treating physician with regards to this condition thereafter. The Commission notes that the September 30, 2021 release to return to work encompassed Petitioners right shoulder, and did not speak to her cervical condition. Theoretically, TTD benefits for the cervical spine would continue thereafter. However, Petitioner is bound by stipulation on the Request for Hearing form to terminate TTD benefits as of October 1, 2021. See *Walker v. Industrial Commission*, 345 Ill. App. 3d 1084, 1088 (4th Dist. 2004). The Commission finds accordingly and awards TTD benefits from April 19, 2021 through October 1, 2021 (23 & 5/7ths weeks) in the amount of $423.86/week.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed April 3, 2023, is hereby reversed for the reasons stated above.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $423.86 per week for a period of 23 & 5/7ths weeks, representing April 19, 2021 through October 1, 2021, that being the period of temporary total incapacity for work under §8(b), and that as provided in §19(b), this award in no instance shall be a bar to a further hearing and determination of a further amount of temporary total compensation or of compensation for permanent disability, if any. Respondent shall have credit for TTD benefits already paid.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay all medical expenses incurred in the care and treatment of Petitioner's C5-6 condition as detailed in Petitioner's Exhibit 1, pursuant to §8(a) and subject to §8.2 of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall authorize and pay for the C5-6 disc replacement surgery recommended by Dr. Rutz as provided in §8(a) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner interest under §19(n) of the Act, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall have credit for all amounts paid, if any, to or on behalf of Petitioner on account of said accidental injury.

IT IS FURTHER ORDERED BY THE COMMISSION that this award in no instance shall be a bar to further hearing and determination of any additional benefits with respect to Petitioner's right shoulder after March 4, 2022, as stipulated by the parties.

IT IS FURTHER ORDERED BY THE COMMISSION that this case be remanded to the Arbitrator for further proceedings consistent with this Decision, but only after the latter of the time for filing a written request for Summons to the Circuit Court has expired without the filing of such a written request, or after the time of completion of any judicial proceedings, if such a written request has been filed.

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $50,000. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court

April 29, 2024

/s/ *Raychel A. Wesley*

RAW/wde
O: 3/20/24
43

/s/ *Stephen J. Mathis*

/s/ *Deborah L. Simpson*

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	19WC031426
Case Name	John Abbatiello v. Morton Grove Fire Department
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	24IWCC0191
Number of Pages of Decision	11
Decision Issued By	Deborah Simpson, Commissioner

Petitioner Attorney	Joshua Rudolfi
Respondent Attorney	John Fassola

DATE FILED: 4/30/2024

/s/ Deborah Simpson, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

☐ Affirm and adopt (no changes)	☐ Injured Workers' Benefit Fund (§4(d))
☐ Affirm with changes	☐ Rate Adjustment Fund (§8(g))
☐ Reverse:	☐ Second Injury Fund (§8(e)18)
	☐ PTD/Fatal denied
☒ Modify: Up	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

JOHN ABBATIELLO,

Petitioner,

vs. NO: 19 WC 31426

MORTON GROVE FIRE DEPARTMENT,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petitions for Review having been filed by both the Petitioner and Respondent herein and notice given to all parties, the Commission, after considering the issues of causation, medical expenses, and the nature and extent of Petitioner's permanent partial disability, and being advised of the facts and law, modifies the Decision of the Arbitrator as specified below and otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

The parties stipulated that Petitioner, a firefighter, sustained a work-related accident on October 18, 2019. Petitioner alleged that the accident caused a current condition of ill-being of his left knee and Respondent alleged that it did not. The Arbitrator found that it did, awarded Petitioner medical expenses in the amount of $20,296.72, awarded Respondent credit under §8(j) in the same amount of $20,296.72, noted prior to the hearing that Petitioner was off work for 17&1/7 weeks, was paid during that period, and Petitioner was not seeking temporary total disability benefits ("TTD"). Finally, the Arbitrator denied permanent partial disability benefits ("PPD"). The Commission agrees with the reasoning and analysis of the Arbitrator on the issues of causation, medical expenses, temporary total disability benefits, and credit. Accordingly, the Commission affirms and adopts those aspects of the Decision of the Arbitrator.

An MRI taken on October 28, 2019 showed oblique undersurface tear in the posterior horn of the medical meniscus extending into the body, Grade I MCL sprain or reactive edema from tear, small Baker's cyst suggestive of leak/partial rupture, mild semimembranosus bursitis, and mild bicompartmental chondromalacia. On January 21, 2020, Dr. Bowen performed left knee arthroscopy and partial medical meniscectomy for medial meniscus tear. At the Arbitration hearing, Petitioner testified he had Workers' Compensation claims in the past, including "rotator cuff, biceps on both sides," "a foraminotomy, [cervical] microdiscectomy," "cervical fusion," and "lumbar microdiscectomy." He was earning more currently than he had before the accident "with standard raises." Petitioner also testified that currently his left knee felt "great." He was working full duty and had no issues with it.

The Arbitrator denied Petitioner any PPD benefits. In so doing he gave great weight to his returning to his heavy labor job as firefighter and that he testified his knee felt great. He noted that this factor reflected the lack of permanent disability. He gave "medium" weight to his age, 49, but again noted that Petitioner felt great and therefore would not have any long-term disability from the injury. He also noted that the fact that Petitioner earned more than he did at the time of the accident, which also suggested no permanent loss, though he did not ascribe a specific weight to that factor. Finally, the Arbitrator gave great weight to evidence of disability, or lack thereof, in the medical record. He again noted Petitioner testimony about how good his leg felt, and that he returned to his prior heavy job. The Arbitrator concluded that Petitioner "experienced a recovery without any residual aftereffects."

We agree with the Arbitrator that Petitioner had a great recovery from his surgery. He was released back to work at full duty as a firefighter a month after surgery, testified his knee felt great, and testified that he had no issues working his full duty activities. However, the Arbitrator and the Commission have found that Petitioner sustained a torn meniscus caused by the work-related accident which required surgery. Despite his excellent recovery, we believe that Petitioner is entitled to some permanency award, if for no reason other than the injury, and subsequent surgery, increased the likelihood of his developing arthritis, or worsening of arthritis, in the future. That is relevant to the statutory factor of evidence of disability supported by the medical records to determine PPD.

The Commission notes that at arbitration, Respondent submitted into evidence records of the Commission establishing that between 2005 and 2019, Petitioner had four Workers' Compensation claims against Respondent which were settled for a total of $222,411.10, representing loss of 68.5% of the person-as-a-whole. We obviously cannot give credit for prior person-as-a-whole awards. Nevertheless, we can use the prior awards to assess any additional partial permanent disability Petitioner had from the instant injury. In reviewing the entire record before us, the Commission finds a PPD award of 10.75 weeks representing loss of the use of 5% of the left leg is appropriate.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator dated October 5, 2023 is hereby modified as specified above and otherwise affirmed and adopted, which is attached hereto and made a part hereof.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay Petitioner the sum of $1,026.92 per week for 10.75 weeks as the work-related injuries resulted in the loss of the use of 5% of the left leg pursuant to §8(e) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Petitioner was off work for 17&1/7 weeks, was paid during that period, and Petitioner was not seeking temporary total disability benefits.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent has paid all reasonable and necessary medical expenses.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall have credit in the amount of $20,296.72 for paid medical expenses pursuant to §8(j) of the Act.

The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

April 30, 2024

DLS/dw
O-3/6/24
46

/s/*Deborah L. Simpson*
Deborah L. Simpson

/s/*Stephen J. Mathis*
Stephen J. Mathis

/s/*Raychel A. Wesley*
Raychel A. Wesley

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	19WC031426
Case Name	John Abbatiello v. Morton Grove Fire Department
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	7
Decision Issued By	Francis Brady, Arbitrator

Petitioner Attorney	Joshua Rudolfi
Respondent Attorney	John Fassola

DATE FILED: 10/5/2023

THE INTEREST RATE FOR THE WEEK OF OCTOBER 3, 2023 5.34%

/s/Francis Brady, Arbitrator

Signature

STATE OF ILLINOIS)
)SS.
COUNTY OF **COOK**)

☐ Injured Workers' Benefit Fund (§4(d))
☐ Rate Adjustment Fund (§8(g))
☐ Second Injury Fund (§8(e)18)
☒ None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

John Abbatiello
Employee/Petitioner

Case 19 WC 031426

v.

Morton Grove Fire Department
Employer/Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was served on each party. The matter was heard by the Honorable Francis M Brady, Arbitrator of the Commission, in the city of **Chicago**, on July 10, 2023. 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. X Is Respondent due any credit?
O. ☐ Other _____

FINDINGS

On October10, 2019**,** Respondent ***was*** operating under and subject to the provisions of the Act.

On this date, an employee-employer relationship ***did*** exist between Petitioner and Respondent.

On this date, Petitioner ***did*** sustain an accident that arose out of and in the course of employment.

Timely notice of this accident ***was*** given to Respondent.

Petitioner's current condition of ill-being ***is*** causally related to the accident.

In the year preceding the injury, Petitioner earned $89,000; the average weekly wage was $1,711.53.

On the date of accident, Petitioner was 49 years of age, single with 1 dependent child.

Petitioner ***has*** received all reasonable and necessary medical services.

Respondent ***has*** paid all appropriate charges for all reasonable and necessary medical services.

Respondent is entitled to an 8j credit of $20,296.72.

Petitioner failed to prove permanent disability.

ORDER

RESPONDENT IS LIABLE TO PETITIONER IN THE AMOUNT OF $20, 296.72 FOR THE EXPENSE OF HIS MEDICAL CARE

RESPONDENT HAS PAID THE AMOUNT OF $20,296.72 IN PETITIONER'S BEHALF AND IS ENTITLED TO THAT CREDIT.

RESPONDENT IS NOT LIABLE TO PETITIONER FOR ANY NATURE AND EXTENT.

OCTOBER 5, 2023

Signature of Arbitrator

STATEMENT OF FACTS

Before October 18, 2019, Petitioner, John Abbatiello, Abbatiello, had never had any issues with his left knee even though he had been a fireman for Respondent, Village of Morton Grove, "Morton Grove" since 1998 (Tr 16, 17, 27)

That day he was on duty for Morton Grove, performing the physically demanding duties of fireman without issue (Tr. 16). As he carried equipment in his right hand up some stairs, his left foot, which he had planted to support his right leg swinging up, slipped down, and landed hard on the step below. (RX 2 and 3) He felt discomfort in his left knee which he reported contemporaneously to Lieutenant O'Brien (Tr. 11, 12,13, 17, 20, 21, 22, RX 2., p2; RX $., p 40).

Abbatiello also completed a document entitled "Employee's Statement of Incident on October 18, 2019. (Tr. 21, RX 2)

He sought medical care on October 23, 2019, at Glen Medical Associates, "Associates", his primary care physician where he recounted to Dr Maslo, "Maslo" that he "slipped off a stair and twisting had some knee pain . . . swelling. . . occasional popping . . . "and locking. Maslo diagnosed "(a)cute pain of left knee" and prescribed X Rays and an MRI (Tr.13 PX 2., p. 3, 6)

Abbatiello also had a "visit diagnosis" of (a)cute pain of left knee" when he presented for the x ray on October 23, 2019 (PX 3., p 8) with that test revealing no fracture but suggesting soft tissue swelling. (PX 3., p10)

The left knee MRI, performed October 28, 2019, due to "(a)cute pain of left knee) disclosed a tear of the medical meniscus (Tr. 14, PX 2., p.24)

Abbatiello returned to Associates on November 1, 2019, complaining (to Dr Kulkarni on this visit) he was unable to sleep due to his left knee pain left (PX 2 p 7) Charting shows "he was dx with knee meniscal tear to see ortho next week" (id) In the meantime, Kulkarni prescribed a "short course of pain medication. . . "(PX 2 p 9) and suggested he see an orthopedist (Tr.

On November 4, 2019, Abbatiello presented to Dr Mark Bowen, "Bowen" an orthopedist as Maslo had told him to treat with that specialty back on October 23, 2019. (Tr 14). Bowen ordered x rays which he compared to films from 10/23/19 finding "slight degenerative change in the (left) knee," (PX 4., p 36) Bowen noted that Abbatiello was a firefighter who on 10/18/23 hurt his left knee in a "(w)orkers comp" injury when he "did a wrong step . . . (w)hile walking into a house. . . and twisted wrong." (PX 4., p 40) His entire left knee was painful and swollen and he was having trouble sleeping and navigating stairs. (id) He reported no prior left knee injuries or surgeries (PXD 4., p 41) Bowen examined all films diagnosing chondromalacia and medical meniscus tear. He prescribed, inter alia, physical therapy, "PT" and arthroscopic surgery consisting of partial meniscectomy and debridement which would relieve symptoms of torn meniscus, but further arthritis or articular cartilage damage could not be treated and would be progressive (PX 4., p. 42, 49). In the meantime, Abbatiello could not work (PX 4., p 49, Tr 15).

He returned to Associates on December 3,2019 seeing Dr Meyer, "Meyer", on this occasion, who noted his torn medical meniscus as well as Bowen's prescription for surgery, which had yet to be scheduled" do to workmans comp." (sic) (PX2., p 10). Meyer prescribed Norco for the pain Abbatiello was feeling as he awaited repair of his meniscus (PX 2., p. 13)

Meyer saw Abbatiello again on January 10, 2020, for "preoperative consultation" regarding the left leg meniscectomy scheduled for January 21, 2020, due to "trauma . . . with failed conservative therapy" (PX 2., p15)

Abbatiello' s medial meniscus tear, left knee, was arthroscopically repaired by Bowen on January 21, 2020 (PX 5., p17, Tr., 16)

When Abbatiello returned on January 30, 2020, for a post op, follow up visit, Bowen charted there was "minor swelling" but Abbatiello was "doing well with minimal complaints". "His range of motion was nearly full. He is neurovascularly intact." Abbatiello was "(d)oing well post op." according to Bowen. (PX 4., p 15, 17, 18, 28)

Abbatiello presented to Bowen for the final time on March 2, 2020, doing well and recovering nicely. He had neither complaints nor troubles and was ready to go back to full duty work. Bowen discharged him to same (PX 4., 6-8, Tr 28)

Abbatiello continues to work full duty as a fireman for Morton Grove, making more money than before October 18, 2019. (Tr 18) His left knee currently feels "great", and he makes no complaints (Tr 18, 28). He takes no prescription medication (Tr 29). All his bills connected to care and treatment regarding his left knee, $20, 296.72, were paid by Blue Cross, his group health through Morton Grove (Tr 19,20 PX 1 p 2)

WITH RESPECT TO ISSUE (F), IS THE PETITIONER'S PRESENT CONDITION OF ILL-BEING CAUSALLY RELATED TO THE INJURY, THE ARBITRATOR FINDS AS FOLLOWS:

Within a few days of the injury, Abbatiello made a video recreating it, demonstrating not only the precise mechanics but also narrating them. (Tr. 24, 26, RX 3) There was no objection to the admission of the video (Tr 25, 29, 40). Dr Kevin Walsh, "Walsh" testified for Morton Grove under Section 12 of the Act that this "videotape certainly does not support a twisting injury to the knee." (RX 1 p 5). Consequently Abbatiello "did not" in Walsh's opinion "tear his meniscus with the injury described." (RX 1 p. 5)

Is there evidence contradicting Walsh's conclusion that a torn medial meniscus, which he agrees Abbatiello suffered, requires "twisting or torquing of the knee."? (RX 1. P. 6). The record is devoid of any. Abbatiello offers no basis for deciding the meniscus can rupture without rotation.

To the contrary the treating physicians at Associates. and Bowen as well, all have twisting movements noted in their charts the references were injected into their recitations subjectively by Abbatiello. They don't themselves directly offer opinions on causation, and they certainly don't vouchsafe evaluations on whether the trauma graphically depicted in the video could have caused or aggravated Abbatiello' s meniscal tear. Conversely, Walsh glosses over any consideration of whether the tear could be degenerative in nature. If it wasn't torque, and the joint is not badly enough deteriorated, of what provenance the tear?

There is no direct medical opinion in evidence connecting Abbatiello' s condition of ill-being and resulting care to the trauma which occurred here. Abbatiello simply didn't offer one. But he did prove that he had not had symptoms nor undergone care for his left knee before the trauma. Neither was he disabled. All these reversals took place after it. "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 an employee's injury" International Harvester v. Industrial Comm'n, 93 Ill. 2d 59, 63-64, 442 N.E.2d 908, 66 Ill. Dec. 347 (1982)

While Morton Grove offered a direct medical opinion on the insufficiency of the trauma to cause the tear, that opinion is flawed for its shallow, indeed nonexistent, consideration, of the role of degeneration as an etiology. The inference is that Walsh didn't wish to bring it up; that he was, in fact, unable to opine the tear was degenerative.

Indeed, avoidance is a theme. Abbatiello avoids having his physicians view the video. Morton Grove avoids having its expert give an affirmative opinion on whether the tear is degenerative. And it avoids asking unqualified questions about what is narrated on the video. Instead of inquiring simply whether a twisting injury is described the question is posed whether one is "specifically" described. (Tr. 26) Why the qualifier?

In the end, inferences are the order of the day on the issue of causal connection. In drawing them, mind is paid to the fundamental proposition that the Illinois Workers Compensation Act, 820 ILCS 305/1 et seq. 'the Act" "is a humane law of a remedial nature whose fundamental purposes is to protect employees by providing efficient remedies and prompt and equitable compensation for their injuries" Contreras v Industrial Comm'n (City Foods), 306 Ill App. 3d 1071, 715 N.E. 2d 701, 240 Ill. Dec. 14 (First Dist. 1999). Abbatiello' s left foot slipped off the step abruptly, unrestrainedly, and struck hard, indeed "jamming" it "onto the porch" (RX 1; RX, 2 Tr 21). From the unrestricted downwards flight of Abbatiello left leg an inference can be drawn that the appendage twisted as the foot smacked.

The issue of causal connection is found in Abbatiello' s favor,

WITH RESPECT TO ISSUE (J), WERE THE MEDICAL SERVICES THAT WERE PROVIDED TO PETITIONER REASONABLE AND NECESSARY AND HAS RESPONDENT PAID ALL APPROPRIATE CHARGES FOR ALL REASONABLE AND NECESSARY MEDICAL SERVICES, THE ARBITRATOR FINDS AS FOLLOWS:

Morton Grove is liable to Abbatiello for the costs of all reasonable and necessary medical care and treatment provided to him on account of the accidental injury he sustained herein totaling $$20, 296. 72 as specified at p. 2 of PX 1. To the extent that it has already paid this amount to providers in Abbatiello' s behalf (Tr. 19, 20), credit is awarded.

WITH RESPECT TO ISSUE (L), WHAT IS THE NATURE AND EXTENT OF THE INJURY, THE ARBITRATOR FINDS AS FOLLOWS:

Pursuant to §8.1b of the Act, the following criteria and factors must be weighed in determining the level of permanent partial disability for accidental injuries occurring on or after September 1, 2011:

(a) A physician licensed to practice medicine in all of its branches preparing a permanent partial disability impairment report shall report the level of impairment in writing. The report shall include an evaluation of medically defined and professionally appropriate measurements of impairment that include, but are not limited to: loss of range of motion; loss of strength; measured atrophy of tissue mass consistent with the injury; and any other measurements that establish the nature and extent of the impairment. The most current edition of the American Medical Association's "Guides to the Evaluation of Permanent Impairment" shall be used by the physician in determining the level of impairment.

(b) In determining the level of permanent partial disability, the Commission shall base its determination on the following factors;

(i) the reported level of impairment pursuant to subsection (a);

(ii) the occupation of the injured employee;

(iii) the age of the employee at the time of the injury;
(iv) the employee's future earning capacity; and
(v) evidence of disability corroborated by the treating medical records.

No single enumerated factor shall be the sole determinant of disability. In determining the level of disability, the relevance and weight of any factors used in addition to the level of impairment as reported by the physician must be explained in a written order.

Regarding subsection (i) of §8.1b(b), neither party has submitted a permanent partial disability impairment report and/or opinion evidence. No weight is attributed to this factor.

Regarding subsection (ii) of §8.1b(b), Abbatiello was a fireman for Morton Grove when he got hurt and after recovering from his injuries herein for 17 1/7 weeks (Arb Ex 1 Para. 8, Tr.6) he returned to that job, full duty performing without complaint; to the contrary, his left knee feels "great:" (Tr. 18, 19). This factor reflects he has suffered no disability and great weight is accorded it factor.

Regarding subsection (iii) of §8.1b(b), Abbatiello was 49 years old at the time of the accident. (Arb Ex 1 Para 6) Abbatiello is not feeling any pain nor suffering restrictions so he will not be experiencing discomfort over a long life. This factor reflects he suffered no disability and medium wight is accorded it.

Regarding subsection (iv) of §8.1b(b), Abbatiello is making more now than he was before he got hurt (Tr 18). This factor reflects he suffered no disability. It militates in favor of finding no permanent loss (or any loss for that matter)

Regarding subsection (v) of §8.1b(b), Abbatiello hasn't sought care, let along been seen, by a health care provider since March 2, 2020. At that time, he admitted to his treating surgeon he was slowly improving, he had "(n)o complaints or troubles" and he was "ready to go back to work." The surgeon, Bowen, observed Abbatiello "is doing well and **recovered** nicely . . . "(Emphasis added.) He was "doing well postop" Bowen ordered Abbatiello to "return to work without restrictions" and to "(a)dvance activity as tolerated." There is absolutely no evidence of any activity whatsoever that Abbatiello cannot tolerate. (PX 4. 6,7) Great weight is placed upon this factor.

Abbatiello presents as a subjectively and objectively fit, 49-year-old working a physically demanding job without limitation or complaint. By his own admission he suffered no functional incapacity. He has not sought medical for 3.5 years. He's not limited in any manner. Based on the above factors, and the record taken as a whole, the Arbitrator finds that Petitioner sustained permanent partial disability to the extent of _0__% loss of use of his left leg under the Act. (Cf Stanley v Fresh Express 19 IIWC 395, LEXIS 564 (2019) worker makes excellent recovery from surgery for a torn meniscus, including return to physically demanding job , with lengthy lack of follow up care and Commission pointedly observes his "testimony of experiencing only occasional stiffness and some feeling of tenderness is all that prevents . . . . (a) finding that he experienced a recovery without any residual aftereffects. Abbatiello gave no such testimony here."

WITH RESPECT TO ISSUE (N), IS THE RESPONDENT DUE ANY CREDIT, THE ARBITRATOR FINDS AS FOLLOWS:

Morton Grove is liable to Abbatiello for the costs of all reasonable and necessary medical care and treatment provided to him on account of the accidental injury he sustained herein totaling $$20, 296. 72 as specified at p. 2 of PX 1. To the extent that it has already paid this amount to providers in Abbatiello' s behalf (Tr. 19, 20), credit is awarded.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC005721
Case Name	Anthony Hutcherson v. Aryzta
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	24IWCC0192
Number of Pages of Decision	17
Decision Issued By	Carolyn Doherty, Commissioner

Petitioner Attorney	Michael Casey
Respondent Attorney	Casey Dunn

DATE FILED: 4/30/2024

/s/Carolyn Doherty, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF)
WILL

☒ Affirm and adopt (no changes)	☐ Injured Workers' Benefit Fund (§4(d))
☐ Affirm with changes	☐ Rate Adjustment Fund (§8(g))
☐ Reverse	☐ Second Injury Fund (§8(e)18)
	☐ PTD/Fatal denied
☐ Modify	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

ANTHONY HUTCHERSON,
Petitioner,

vs. NO: 21 WC 5721

ARYZTA, LLC,
Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of all evidentiary and procedural issues, causal connection, temporary total disability, and permanent partial disability, and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed October 31, 2023 is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent pay to Petitioner interest under §19(n) of the Act, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent shall have credit for all amounts paid, if any, to or on behalf of the Petitioner on account of said accidental injury.

Bond for the removal of this cause to the Circuit Court is hereby fixed at the sum of $75,000.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

April 30, 2024

d: 04/25/24
CMD/kcb
045

/s/ *Carolyn M. Doherty*
Carolyn M. Doherty

/s/ *Marc Parker*
Marc Parker

/s/ *Christopher A. Harris*
Christopher A. Harris

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC005721
Case Name	Anthony Hutcherson v. Aryzta
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	14
Decision Issued By	Jessica Hegarty, Arbitrator

Petitioner Attorney	Michael Casey
Respondent Attorney	Christopher Jarchow

DATE FILED: 10/31/2023

THE INTEREST RATE FOR THE WEEK OF OCTOBER 31, 2023 5.32%

/s/ Jessica Hegarty, Arbitrator

Signature

STATE OF ILLINOIS)
)SS.
COUNTY OF **WILL**)

☐ Injured Workers' Benefit Fund (§4(d))
☐ Rate Adjustment Fund (§8(g))
☐ Second Injury Fund (§8(e)18)
☒ None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Anthony Hutcherson
Employee/Petitioner

v.

Aryzta
Employer/Respondent

Case # **21** WC **005721**

Consolidated cases: **None**

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **JESSICA HEGARTY**, Arbitrator of the Commission, in the city of Joliet, on **July 5, 2023**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below and attaches those findings to this document.

DISPUTED ISSUES

A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
B. ☐ Was there an employee-employer relationship?
C. ☐ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
D. ☐ What was the date of the accident?
E. ☐ Was timely notice of the accident given to Respondent?
F. ☒ Is Petitioner's current condition of ill-being causally related to the injury?
G. ☐ What were Petitioner's earnings?
H. ☐ What was Petitioner's age at the time of the accident?
I. ☐ What was Petitioner's marital status at the time of the accident?
J. ☐ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
K. ☒ What temporary benefits are in dispute?
☐ TPD ☐ Maintenance ☒ TTD
L. ☒ What is the nature and extent of the injury?
M. ☐ Should penalties or fees be imposed upon Respondent?
N. ☐ Is Respondent due any credit?
O. ☐ Other _____

FINDINGS

On **10/21/2019**, Respondent ***was*** operating under and subject to the provisions of the Act.

On this date, an employee-employer relationship ***did*** exist between Petitioner and Respondent.

On this date, Petitioner ***did*** sustain an accident that arose out of and in the course of employment.

Timely notice of this accident ***was*** given to Respondent.

Petitioner's current condition of ill-being ***is*** causally related to the accident.

In the year preceding the injury, Petitioner earned $**32,778.04**; the average weekly wage was $**660.35**.

On the date of accident, Petitioner was **37** years of age, ***single*** with **0** dependent children.

Petitioner ***has*** received all reasonable and necessary medical services.

Respondent ***has*** paid all appropriate charges for all reasonable and necessary medical services.

Respondent shall be given a credit of $**1440.79** for TTD, $**0** for TPD, $**0** for maintenance, and $**0** for other benefits, for a total credit of $**1440.79**.

ORDER

- Respondent shall pay Petitioner temporary total disability ("TTD") benefits of $440.23/week for 48 & 2/7 weeks, with a deduction of one month of TTD benefits, commencing 12/7/2020 through 1/15/2021, and for the period commencing 6/10/2021 through 5/1/2022, as provided in §8(b) of the Act.

- Respondent shall be given a credit of $1440.79 for TTD benefits that have been paid.

- Based on the factors contained in §8.1b of the Act, the Arbitrator finds that Petitioner sustained permanent partial disability to the extent of **30% person as a whole**. Respondent shall pay to Petitioner, $396.21 per week for a period of 150 weeks. (See attached Addendum for the Arbitrator's analysis pursuant to § 8.1(b) of the Act)

RULES REGARDING APPEALS Unless a party files a *Petition for Review* within 30 days after receipt of this decision and perfects a review in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

STATEMENT OF INTEREST RATE If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

Jessica A. Wyatt

OCTOBER 31, 2023

Signature of Arbitrator

ADDENDUM TO THE DECISION OF THE ARBITRATOR

On October 21, 2019, Petitioner was employed as a material handler in Respondent's bakery production facility. According to his testimony, when any given product was running low in the production process, Petitioner had to retrieve and deliver the necessary product in a timely manner to avoid shutdown of the assembly line. Petitioner's job duties required him to lift and haul 50-75 lb. boxes, containing bakery products used in the assembly line production of pizza, on a pallet jack from the freezer to the assembly line. He would then lift the boxes off the pallet jack, open the box, unwrap the plastic covering the food product, place the food product on the assembly line, and break down the box. Petitioner further testified that he pushed/pulled 3000-pound containers of pizza sauce on a pallet jack from the freezer to the assembly line.

Petitioner testified that prior to his accident he experienced lower back pain, but it did not radiate to his legs nor did his back pain prohibit him from working his full-duty, full-time job for Respondent for the 3-year period prior to the accident date.

Regarding his October 21, 2019, work accident, Petitioner testified that he was inside a storage freezer while a forklift operator retrieved boxes of pizza crust, weighing 1800 lbs., loading them onto Petitioner's pallet jack. Petitioner then began pulling the loaded pallet when the wheels of the jack became caught on wood debris on the ground, causing a jerking motion in Petitioner's back. Petitioner felt a "sensation" in his back and right leg that caused him to "take a knee" due to pain. Petitioner did not finish his shift that day. He reported the incident to his supervisor and was sent to an occupational health clinic later that day where he received a back brace and some pain medication. Later that evening, Petitioner's back pain worsened.

The following day, October 22, 2019, Petitioner presented to the emergency room at the University of Chicago Hospital with a history of right-sided lower back pain with right leg radicular pain. Petitioner was reportedly pulling a pallet which "got stuck and jarred the lower back" causing the onset of symptoms. (PX 1, p. 108) Petitioner also reported a history of a work injury, one year prior, causing back pain with sciatica. (Id., p. 113) The treating physician diagnosed Petitioner with right-sided sciatica and hematuria, prescribed Cyclobenzaprine and Tylenol #3 with Codeine, and discharged Petitioner with light-duty work restrictions until Petitioner followed up with Dr. Bathala. (Id., 123, 128)

Petitioner testified he continued to work for Respondent who accommodated his light-duty restrictions after he was treated in the emergency room. Petitioner further testified that the pain medicine and muscle relaxers from the emergency room did not relieve his symptoms.

On December 3, 2019, Petitioner returned to the University of Chicago Hospital Emergency Room with complaints of lower back pain radiating to his right leg and down to his posterior knee. (Id., p. 84) Petitioner reportedly had not followed up with Dr. Bathala because he couldn't get off work. (Id.) Petitioner requested an off-work note and that his medications be refilled. (Id.) The attending ER physician noted a diagnosis of lumbago with sciatica on the right and referred Petitioner to neurosurgeon, Dr. Luken, for further evaluation. (Id., p, 84-90, 95)

On January 3, 2020, Petitioner presented at the office of the University of Chicago Medical Group in Harvey for initial consult with neurosurgeon, Dr. Martin Luken, who noted a history of intense lower back pain that radiated into Petitioner's buttock and right posterior thigh while moving a heavy pallet at work 6 weeks ago. (PX 2, p. 23) Petitioner reported a similar episode at work about 6 months prior when he experienced a brief but painful "popping sensation" in his lower back, without radicular pain, while moving a large pallet. (Id.) On examination, tenderness over the right sciatic notch, a positive right straight leg raise that elicited buttock and posterior thigh pain, and an absent right Achilles reflex, was noted. (Id.) Dr. Luken opined that Petitioner's symptoms were consistent with lumbar radiculopathy suggestive of a disc herniation at the lumbosacral junction. (Id.) Dr. Luken noted a diagnosis of chronic midline low back pain with right-sided sciatica and right-sided lumbar radiculopathy. Petitioner was restricted to light-duty work. A lumbar MRI and a course of physical therapy was ordered. (Id., pp. 23-24)

On February 14, 2020, Petitioner underwent a lumbar MRI at Streeterville Open MRI that was interpreted by the radiologist as showing:

> Straightening of the lumbar spine; Posterior annular tear at L5-S1 disc, "which may produce pain"; Mild to moderate paraspinal soft tissue edema in the lumbar region; At L3-L4 level, mild bilateral neural foraminal stenosis due to mild broad-based disc bulge with posterior osteophyte; At L4-L5 level, mild bilateral neural foraminal stenosis due to mild broad-based disc bulge with posterior osteophyte; At L5-S1 level, mild spinal canal stenosis, mild to moderate compression with posterior displacement of the right transiting S1 nerve root, moderate compression of both lateral recesses and mild to moderate bilateral neural foraminal stenosis due to moderate central and right paracentral disc fragment extrusion dissecting caudally with posterior osteophyte. (PX 3, p. 32)

On March 9, 2020, Petitioner returned to Dr. Luken with complaints of persistent low back pain and right-sided sciatica. (PX 2, p. 20) Petitioner continued working for Respondent, observing a 40 lb. lifting restriction, and was undergoing physical therapy and taking anti-inflammatory medications and muscle relaxers.

Regarding the recent lumbar MRI, Dr. Luken noted the findings at L5-S1 were notable for "a moderate central and right paracentral disc fragment extrusion dissecting caudally…which along with posterior osteophyte…causes mild spinal canal stenosis and mild to moderate compression with posterior displacement of the right transiting S1 nerve root". Dr. Luken further noted some modest disc bulging and foraminal narrowing bilaterally at the L3-L4 and L4-L5 levels. (Id.) Dr. Luken noted the MRI demonstrated a disc herniation congruent with Petitioner's complaints, symptoms, and "reflex findings." (Id.) Dr. Luken recommended that Petitioner continue physical therapy and his current work restrictions and undergo EMG and nerve conduction studies along with a trial epidural steroid injection. (Id.)

On March 16, 2020, Petitioner presented to Primary Healthcare Associates Pain Management for initial consult with Dr. Howard Robinson. (PX3, p. 23) Petitioner reported a history of an October 2019 incident while pulling a heavy pallet at work which caused significant back pain that radiated to his right buttock and right posterior thigh, right leg. (Id.) Petitioner currently complained of severe back pain that radiated into his right leg

described as burning, electric shock, shooting, stabbing, and deep aching. (Id.) The doctor reviewed the MRI report and examined Petitioner noting that Petitioner's symptoms and clinical presentation were consistent with a herniated disc at L5-S1 on the right side. (Id., p. 26) The doctor recommended Petitioner undergo a right-sided S1 transforaminal epidural steroid injection. Various medications were prescribed for pain relief and Petitioner was put on light-duty work restrictions. (Id.)

Petitioner followed up with Dr. Luken on May 1, and May 29, 2020, at which time the doctor noted no clear change in Petitioner's neurologic findings. Petitioner continued to work for Respondent full-time, observing a 40 lb. lifting restriction. (PX 2, 16-18) Dr. Luken recommended Petitioner continue his restricted work and physical therapy three times per week. (Id., p. 16)

On June 22, 2020, Petitioner underwent EMG and nerve conduction testing of his legs performed by Dr. Eric Erickson who noted findings consistent with lumbosacral radiculopathy centered around the right S1 nerve root. Dr. Erickson noted the lesion was "chronic appearing (greater than 2 months old)" but there was evidence of mild, active denervation still…" (PX 2, p. 14)

On June 29, 2020, Petitioner underwent a right S1 transforaminal epidural steroid injection, administered by Dr. Robinson. (PX 3, p. 12)

On July 24, 2020, Dr. Robinson noted Petitioner's report of 70% overall improvement in his pain complaints following the injection. (Id., p. 9) Petitioner still experienced some back and right leg pain when standing for an extended time. (Id.)

Petitioner also followed up with Dr. Luken on July 24, 2020, at which time he reported substantial improvement in his right-sided sciatica although his symptoms returned when he attempted some running and light exercising. (Id., 14) On exam, Dr. Luken noted a positive right straight leg test. (Id.) The doctor continued Petitioner's light-duty restrictions. (Id., pp. 14-15)

On August 17, 2020, Petitioner underwent a second right S1 transforaminal epidural steroid injection administered by Dr. Robinson. (PX 1, p. 70; PX 3, p. 4)

On August 24, 2020, Petitioner was examined, pursuant to Respondent's Section 12 request, by Dr. Andrew Zelby. (RX 2, p. 1)

On June 4, 2020, Petitioner was discharged from physical therapy at Athletico after attending 31 appointments. (PX 4, p. 74)

On August 28, 2020, Dr. Luken noted Petitioner's report that his right-sided sciatica symptoms resolved after undergoing a second epidural steroid injection although Petitioner continued to experience mechanical back pain when particularly active. Petitioner's light duty restrictions were continued. (PX 2, p.12)

On September 25, 2020, Petitioner returned to Dr. Luken reporting that he was pain-free most of the time, although he experienced significant lower back and right buttock pain. when leaning to one side to retrieve his cell phone. On exam, Petitioner had no clear

change from the doctor's prior findings. (Id., p. 10) Dr. Luke reviewed the IME report of Dr. Zelby noting agreement with the doctor's recommendation for work conditioning followed by a right L5-S1 microdiscectomy if his right-sided sciatica symptoms persisted. (Id., p. 10)

On September 28, 2020, Dr. Robinson noted Petitioner's report that he was feeling a bit better. Dr. Robinson recommended a third epidural steroid injection. (PX 3, p. 4)

On November 17, 2020, Petitioner began work conditioning at Athletico Physical Therapy. (PX 4)

On January 7, 2021, Petitioner's therapist noted that Petitioner had attended 15 work conditioning appointments. The therapist recommended a Functional Capacity Evaluation due to limitations with standing/walking above an occasional level due to Petitioner's subjective pain complaints. (Id., p. 26)

On January 13, 2021, Petitioner underwent a Functional Capacity Evaluation ("FCE") at Athletico Physical Therapy, deemed valid by the examining therapist, who concluded that Petitioner did not demonstrate the physical capabilities and tolerances to perform all the essential job functions of a Production Material Handler. (PX 6, p. 1) Petitioner demonstrated the capabilities and functional tolerances within the Medium physical demand level with the ability to lift 50 pounds occasionally and 20 pounds frequently. (Id.) Petitioner met 61.11% (11 out of 18) reported job demands required to function as a Production Material Handler. The job demands Petitioner was unable to meet included frequent lifting of 50 lbs., frequent bending, frequent squatting, frequent sustained squatting, repetitive kneeling, constant standing/walking, and frequent push/pull of a pallet loaded with 3,000 lbs. (Id., p. 4) Petitioner demonstrated a limited tolerance for prolonged walking and standing activity, limited to approximately 7 minutes sustained. (Id.) The examiner noted that Petitioner would require a brief sitting period after standing/walking for 7 minutes in order to get through his workday. (Id.)

On January 22, 2021, Dr. Luken noted Petitioner's report that his four-week-long work conditioning program ended before its scheduled completion due to Petitioner's worsening symptoms. (PX 2, pp. 5-6) The doctor noted Petitioner's predominant symptom was mechanical back pain although Petitioner continued to experience some radiating pain in his right leg and numbness in his right foot. On examination, straight leg raising on the right elicited low back and right buttock pain. (Id.) The doctor noted that a production material handler for Respondent must be able to lift up to 50 lbs., per Respondent's description of Petitioner's job at the time of the accident. Petitioner commented that his job for Respondent routinely involved lifting weights in excess of 50 pounds. (Id.)

Dr. Luken, per the January 13, 2021, FCE, noted lifting restrictions of 20 lbs. frequently and 50 lbs. occasionally, and that Petitioner only demonstrated the physical capability to perform 61.11% of the duties required by Respondent to perform all essential job functions of a production material handler. (Id.) Dr. Luken, Petitioner, and case manager Ms. Hoye, had a "frank discussion" of management options. Dr. Luken explained that Petitioner's prominent mechanical back pain suggests, should surgery prove necessary, that lumbosacral stabilization with an instrumented fusion of his L5-S1 motion segment was more reliably effective and appropriate than a "simple discectomy". (Id.) Dr. Luken recommended lumbar radiographs and an updated lumbar MRI. (Id.)

On February 12, 2021, Petitioner underwent a second lumbar spine MRI that showed a broad-based right paracentral disc protrusion, a small superimposed downward extruded segment at the L5-S1 level causing moderate central spinal canal stenosis and mass effect on the descending right-sided nerve root. In addition, moderate to severe bilateral neuroforaminal narrowing at L5-S1 due to a foraminal disc bulge and mild facet degenerative changes at L4-5 and L5-S1 were noted. (PX 1, p 58-59)

On February 26, 2021, Dr. Luken noted that Petitioner had continued to work for Respondent in an accommodated position. (PX 2, p. 3) Dr. Luken noted Petitioner's report of persistent, severe mechanical back pain when he is at all active. Petitioner reported that he continued to experience right-sided sciatica symptoms although his back pain "markedly" overshadowed his radicular complaints. (Id.) On exam, no clear change from the doctor's prior exam findings were noted. The straight leg raise on the right elicited buttock and posterior thigh pain. (Id.) Dr. Luken reviewed the February 12, 2021, lumbar MRI scan and report, noting substantially the same findings of the prior scan from February 14, 2021. (Id.) Dr. Luken recommended surgical discectomy and fusion of the L5-S1 motion segment. (Id.) Petitioner indicated that he wished to proceed when surgery was authorized. The doctor noted a diagnosis of a lumbar disc herniation with right-sided radiculopathy and chronic midline low back pain with right-sided sciatica. (Id.) This was Petitioner's last visit with Dr. Luken.

On March 18, 2021, Petitioner presented to the University of Chicago Medicine at Ingalls Harvey Emergency Room with a history of the onset of lower back pain one year prior at work. Petitioner reportedly was due for a spinal fusion at L5-S1. Petitioner complained of low back pain for the last 2 days on a 10/10 pain scale. An injection was administered to Petitioner's lumbar back and Petitioner was discharged with instructions to follow up with his primary care doctor in 1-2 days. (PX 1, p 14-38)

On June 10, 2021, Respondent advised Petitioner they could no longer accommodate his work restrictions and Petitioner would have to return to work full-duty to remain employed. Petitioner testified he was physically unable to return to full-duty work due to his back condition.

On December 19, 2022, Petitioner underwent a 2nd Section 12 exam with Dr. Zelby.

DR. ANDREW ZELBY SECTION 12 EXAMS
August 24, 2020 & December 19, 2022

On August 24, 2020, Petitioner was examined, pursuant to Respondent's Section 12 request, by Dr. Andrew Zelby. (RX 2, p. 1) Petitioner reported that in October 2019 he was pulling a pallet of sauce weighing 3,000 lbs. with a hand jack when he felt a pinch in his lower back. (Id.) Over the next 3-4 weeks, Petitioner reportedly developed pain going into the right buttock and down the back of the right calf. His pain went away for one month until, November 2019, while performing the same type of work pulling crusts weighing 1800 lbs. when the wheel of the hand jack got caught on a piece of wood from the pallet that jerked Petitioner causing his lower back and right leg pain to return with the same severity he experienced with a similar work accident, one month prior. (Id.) Petitioner had since been treated by a neurosurgeon, had an MRI, and underwent 2 lumbar steroid injections. Petitioner reported daily, intermittent, low back pain that

occurs when standing for more than 10 minutes. (Id.) Petitioner reportedly was working for Respondent with restrictions of no lifting over 25 lbs. and no prolonged standing. (Id., p. 2)

On exam, Dr. Zelby noted a positive lying straight leg raise on the right. (Id., p. 3) Per his review of the February 2020 lumbar MRI, the doctor noted minuscule bulging discs at L3-L4 and L4-L5 with "perhaps" modest lateral foraminal stenosis at L4-L5 and a broad-based paracentral right disc extrusion with compression and posterolateral displacement of the right S1 nerve root. (Id.) The EMG of the right lower extremity was significant for lumbosacral radiculopathy centered around the S1 nerve root, chronic appearing, with mild active nerve denervation. (Id.) Dr. Zelby further noted that Petitioner's radicular right leg symptoms correlated with his MRI findings. Dr. Zelby diagnosed a right L5-S1 disc herniation with radiculopathy.

Regarding causation, Dr. Zelby opined, based on Petitioner's reported work incident, symptoms, findings on exam, and lumbar MRI, that Petitioner's condition was causally related to the work incident. (Id., p. 4)

Dr. Zelby concluded that Petitioner did not require additional spinal injections but recommended that Petitioner undergo a four-week-long work conditioning program. Dr. Zelby further noted that Petitioner was a candidate for an L5-S1 microdiscectomy. Petitioner would be at maximum medical improvement at the completion of his work conditioning program if he proceeded without the recommended surgery. The doctor released Petitioner to work with a 25 lb. lifting restriction. (Id.)

On December 19, 2022, Petitioner underwent a 2nd Section 12 exam with Dr. Zelby at which time the doctor noted Petitioner's report of intermittent lower back pain approximately twice a month. (RX 3) Petitioner's right lower extremity symptoms had been resolved for more than a year and he reportedly had not undergone any back treatment in more than a year. (Id.) Petitioner had been employed as a security guard for about four months. (Id.) Dr. Zelby reviewed additional records from Dr. Robinson and Dr. Luken, the February 12, 2021, MRI report, the FCE from January 13, 2021, and additional physical therapy records. On exam, Dr. Zelby noted the lying straight leg raise was reportedly "very slightly sore on the right, but in the back only". (Id., p. 2) The doctor noted a normal spine and neurologic examination. Dr. Zelby noted "difficulty" corroborating Petitioner's current complaints to the reported work incident, concluding that Petitioner was medically capable of returning to work, even in a heavy physical demand level. Dr. Zelby noted that it had been more than three years since the reported injury and that Petitioner had no objective findings on examination. Dr. Zelby noted Petitioner had attained a state of maximum medical improvement over a year prior and required no further care. (Id.)

Petitioner's Testimony

Petitioner further testified that his examination with Dr. Zelby on December 19, 2022, lasted between 5 and 6 minutes. Dr. Zelby directed him to stand up to see if he could bend his toes and further directed him to walk on his toes, walk on his heels, and stretch side to side. According to Petitioner, he told Dr. Zelby he had persistent back pain radiating down his right leg when he performed certain movements and activities and also

advised Dr. Zelby that he would take medication for his back when needed and was taking Naproxen and Cyclobenzaprine when he saw Dr. Zelby.

Petitioner testified that he changed his mind about having the surgery recommended by Dr. Luken because he feared that the surgery could worsen his condition and cause decreased mobility. He also thought he was too young for the surgery.

Petitioner testified he did not work during the period between his termination by Respondent on June 10, 2021, and May 1, 2022, when he began working at Jackson Park Hospital as a security guard in a position that doesn't require any lifting.

On cross-exam, Petitioner agreed that he secured a paycheck protection loan for $10,000.00. Petitioner later applied for loan forgiveness which was granted.

Petitioner also conceded on cross-exam that during the time period between June 10, 2021, and May 1, 2022, he worked at a car wash and detail service out of his friend's home in Dolton, Illinois. Petitioner testified he vacuumed the interior of the cars and earned approximately $1,000.00 during that time period.

Regarding his current condition, Petitioner testified that turning fast bothers his back. He experiences pain in his back and right leg approximately once or twice a month. During those times, he rests, stays off his feet, and on occasion takes muscle relaxers left over from his old prescriptions if the pain warrants.

Petitioner continues to work at Jackson Park Hospital as a security guard, in a position within his work restrictions, earning $16.50 per hour.

CONCLUSIONS OF LAW

F. Whether Petitioner's current condition of ill-being is causally related to his October 21, 2019, work accident.

Respondent does not dispute that Petitioner was injured at work on October 21, 2019, while pulling a loaded pallet jack. Petitioner's testimony regarding the immediate onset of lumbar pain with right leg radiculopathy is corroborated by the initial ER records from October 22, 2019. Although Petitioner experienced back pain prior to this accident, Petitioner's testimony that his back pain did not radiate to his lower extremities and did not prevent him from performing his full-time, full-duty for Respondent for the 3-year period before his accident is undisputed. Petitioner was discharged from the ER on October 22, 2019, with light-duty restrictions and remained restricted from full-duty work by his treating physicians for the duration of his treatment. A valid FCE performed on January 13, 2021, determined that Petitioner no longer had the physical capacity to perform his heavy, pre-injury job for Respondent.

The Arbitrator found the opinions of Petitioner's treating neurosurgeon, Dr. Luken supported by the diagnostic evidence obtained through Petitioner's MRI on February 14, 2020, which Dr. Luken interpreted as showing a herniated disc at L5-S1 causing mild spinal canal stenosis and mild to moderate compression with posterior displacement of the right transiting S1 nerve root. Dr. Luken further noted modest disc bulging and foraminal

narrowing bilaterally at the L3-L4 and L4-L5 levels. The Arbitrator notes that the findings of the radiologist and Respondent's IME, Dr. Zelby, support Dr. Luken's interpretation regarding the presence of lumbar spine pathology on the MRI scan. Additionally, Respondent's IME agreed with Dr. Luken that Petitioner's history and complaints correlated with the MRI. Petitioner's EMG further confirmed that Petitioner was experiencing lumbosacral radiculopathy at the S1 nerve root.

By the time Dr. Zelby drafted his 2nd IME report, he concluded that Petitioner was capable of returning to work in a heavy job, suggesting that Petitioner had recovered from his L5-S1 herniation:

> *Mr. Hutcherson is medically capable of returning to work even in a heavy physical demand level even in the context of his FCE from two years ago. At this point more than three years on from his reported injury from work and his objective findings, including evidence for a persistent disc abnormality at L5-S1 that is causing no symptoms of radiculopathy, no findings of radiculopathy, no impairments in lumbar movement and no neurologic deficits. This type of return to work would also be typical for a patient who has recovered following a herniated disc. (RX 3, p. 4)*

The Arbitrator finds the opinions expressed in Dr. Zelby's 2nd IME report unsubstantiated and inconsistent with the preponderance of credible evidence contained in the record, including the valid, job-specific FCE, the treating records and diagnostic testing, the opinions of Dr. Luken, and the prior opinions of Dr. Zelby expressed in his 1st IME report.

The Arbitrator finds Dr. Zelby's assertion in his 2nd IME report, that Petitioner's right lower extremity symptoms were non-existent for more than a year, inconsistent with the treatment records in evidence that document Petitioner's complaints of lumbar back pain with right-sided pain throughout his treatment. Although his radicular complaints improved after undergoing injections on June 29 and August 17, 2020, Petitioner's radicular complaints were noted by Dr. Luken on September 25, 2020, January 22, 2021, and at his last exam on February 26, 2021. The Arbitrator found no credible evidence of malingering or symptom magnification in Petitioner's treatment records. The Arbitrator finds Petitioner's testimony regarding his complaints of radicular symptoms to Dr. Zelby at his 2nd IME and his testimony regarding his current condition, that he experiences lumbar back pain and radicular right leg symptoms,1-2 times per month, credible and supported by the greater weight of evidence.

The Arbitrator finds that Petitioner's current condition of ill-being is causally related to his October 21, 2019, work accident.

K. Petitioner's Entitlement to TTD benefits

Regarding the claimed period of TTD from December 7, 2020, through January 15, 2021, the records from Athletico Physical Therapy confirm that Petitioner was not working for Respondent during this period of time and was undergoing a 4-week-long intensive work conditioning program recommended by Respondent's IME, Dr. Zelby and authorized by Respondent's carrier. Petitioner began the work conditioning program on November 17, 2020, and the program terminated on January 7, 2021, at which time Petitioner's physical therapist recommended that Petitioner undergo an FCE which was authorized by

Respondent's carrier and completed on January 13, 2021. The Arbitrator finds, based upon the weight of credible evidence contained in the record, that Petitioner was off work from June 10, 2021, through May 1, 2022. The Arbitrator finds that Petitioner has established entitlement to TTD benefits from December 7, 2020, through January 15, 2021.

Regarding the period from June 10, 2021, through May 1, 2022, Petitioner testified that on June 10, 2021, Respondent notified him that his work restrictions would no longer be accommodated. There is no evidence in the record that Petitioner had been released to return to his full-duty job by any of his treating physicians or Respondent's IME prior to June 10, 2021, or at any time before May 1, 2022. Petitioner last saw Dr. Luken on February 26, 2021, at which time, Petitioner indicated he wished to proceed with the previously recommended lumbar surgery. Petitioner's restrictions, which Respondent had accommodated since the accident, were continued pending authorization of the surgery. The Arbitrator finds no evidence in support of Respondent's refusal to accommodate Petitioner's restrictions. The January 13, 2021, FCE found Petitioner physically incapable of his full-duty job, and, at this point, Dr. Zelby's 25 lb. lifting restriction from his initial report had yet to be renounced. Respondent did not offer Petitioner a position during this period of time that was within the restrictions imposed by Dr. Luken, by the FCE, or by Dr. Zelby.

Petitioner later decided to forgo the surgery recommended by Dr. Luken. Although he found a job within his restrictions on May 1, 2022, Petitioner was unemployed for the majority of that period except for a brief stint in which he earned $1000 working at a startup car detailing business.

The Arbitrator finds, based upon the weight of credible evidence contained in the record, that Petitioner was off work from June 10, 2021, through May 1, 2022, but that Petitioner worked one month for a different employer in an accommodated job during this time period.

Accordingly, the Arbitrator finds that Petitioner is entitled to TTD benefits for 48 & 2/7 weeks, commencing December 7, 2020, through January 15, 2021, and from June 10, 2021, through May 1, 2022, with a deduction of one month of TTD benefits, representing 48 and 2/7 weeks, as provided in section 8(b) of the Act.

Respondent shall be credited $1440.79 for previous TTD benefits paid to Petitioner.

L. The Nature and Extent of Petitioner's Injury

The Arbitrator has taken into consideration the following five factors contained in §8.1b of the Act to determine the permanent partial disability of the Petitioner in this case:

(1) The reported level of impairment pursuant to subsection (a);
(2) The occupation of the injured worker;
(3) The age of the employee at the time of the injury;
(4) The employee's future earning capacity; and
(5) Evidence of disability corroborated by the treating medical records.

With regard to subsection (i) of Section 8.1 b(b), the Arbitrator notes that no permanent partial disability impairment report and/or opinion was submitted into evidence. The Arbitrator gives *no weight* to this factor.

With regard to subsection (ii) of Section 8.1 b(b), the occupation of the employee, the Arbitrator notes that Petitioner was employed as a Production Material Handler, classified as a Heavy physical demand level job, in Respondent's bakery production facility at the time of the accident and that he *is* not able to return to work in his prior capacity as a result of his injuries from his accident, per the valid, job-specific, FCE. The Arbitrator finds this factor particularly relevant in determining permanent partial disability as the FCE reflects that the injury has adversely affected Petitioner's ability to perform the essential duties of his pre-accident job or any Heavy physical demand job. Accordingly, the Arbitrator assigns *greater weight* to this factor.

With regard to subsection (iii) of Section 8.1 b(b), the Petitioner was 37 years old at the time of his accident. Because of Petitioner's relatively young age, remaining work life, and reduced physical capacity due to the accident, the Arbitrator finds this factor relevant to this analysis and gives *greater weight* to this factor.

With regard to subsection (iv) of Section 8.1 b(b), future earnings capacity, the Arbitrator notes that there is no evidence supporting a diminution or impairment in future earning capacity impairment. The Arbitrator therefore gives *no weight* to this factor.

With regard to subsection (v) of §8.1b(b), evidence of disability corroborated by the treating medical records, the Arbitrator notes the MRI of Petitioner's lumbar spine on February 14, 2020, confirmed that Petitioner had a disc herniation at L5-S1, per Dr. Luken, who diagnosed Petitioner with right-sided lumbar radiculopathy, chronic midline low back pain with right-sided sciatica, and a lumbar disc herniation at L5-S1. Petitioner underwent a series of 2 epidural steroid injections which provided relief but did not resolve Petitioner's lower back and radicular right leg pain. Dr. Luken recommended surgery consisting of an L5-S1 discectomy and fusion. A valid, job-specific, FCE concluded that Petitioner no longer had the physical capacity to perform all the essential job functions of a material handler, or any Heavy physical demand job. Petitioner only met 61.11% of the material handler job demands required by Respondent. The FCE concluded that Petitioner's physical demand level was at the Medium physical capacity level, noting that Petitioner had the physical capacity to lift 50 lbs. occasionally, 20 lbs. frequently.

Regarding his current condition, Petitioner testified that about twice per month he will experience pain in his back, accompanied by a burning sensation in his right leg when he makes certain movements such as turning too fast or reaching for something. During these times, Petitioner tries to rest and stay off his feet. When his symptoms are particularly bad, he takes muscle relaxers that are left over from his post-accident treatment. Petitioner testified he is conscious of his movements and tries not to move in ways or perform activities that aggravate his condition.

The Arbitrator finds the medical evidence in the record corroborative of Petitioner's testimony regarding his current condition of ill-being. The Arbitrator finds this factor relevant in determining Petitioner's level of permanent partial disability. Accordingly, the Arbitrator attributes *greater weight* to this factor.

Based on the factors contained in §8.1b(b), the Arbitrator finds that Petitioner sustained permanent partial disability to the extent of **30% person as a whole**.

Accordingly, Respondent shall pay to Petitioner, $396.21 per week for a period of 150 weeks.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	17WC005109
Case Name	Barbara Harris v. General Mills
Consolidated Cases	17WC026788;
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	24IWCC0193
Number of Pages of Decision	28
Decision Issued By	Marc Parker, Commissioner

Petitioner Attorney	David Feuer
Respondent Attorney	Marcy Bennett

DATE FILED: 4/30/2024

/s/Marc Parker, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF DU PAGE)

☒ Affirm and adopt (no changes)	☐ Injured Workers' Benefit Fund (§4(d))
☐ Affirm with changes	☐ Rate Adjustment Fund (§8(g))
☐ Reverse	☐ Second Injury Fund (§8(e)18)
	☐ PTD/Fatal denied
☐ Modify	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Barbara Harris,

Petitioner,

vs. NO: 17 WC 5109

General Mills,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Petitioner herein and notice given to all parties, the Commission, after considering the issues of temporary total disability, causal connection, permanent partial disability, and medical expenses, and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed August 4, 2023, is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent pay to Petitioner interest under §19(n) of the Act, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent shall have credit for all amounts paid, if any, to or on behalf of the Petitioner on account of said accidental injury.

Bond for removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $18,300.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

April 30, 2024

MP:yl
o 4/29/24
68

/s/ *Marc Parker*
Marc Parker

/s/ *Carolyn M. Doherty*
Carolyn M. Doherty

/s/ *Christopher A. Harris*
Christopher A. Harris

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	17WC005109
Case Name	Barbara Harris v. General Mills
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	25
Decision Issued By	Michael Glaub, Arbitrator

Petitioner Attorney	David Feuer
Respondent Attorney	Marcy Bennett

DATE FILED: 8/4/2023

THE INTEREST RATE FOR THE WEEK OF AUGUST 1, 2023 5.27%

/s/Michael Glaub, Arbitrator

Signature

STATE OF ILLINOIS)
)SS.
COUNTY OF **DuPage**)

☐ Injured Workers' Benefit Fund (§4(d))
☐ Rate Adjustment Fund (§8(g))
☐ Second Injury Fund (§8(e)18)
☒ None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Barbara Harris
Employee/Petitioner

v.

General Mills
Employer/Respondent

Case # **17** WC **005109**

Consolidated cases:

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Michael Glaub**, Arbitrator of the Commission, in the city of **Wheaton**, on **05/25/23**. 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 **01/09/17**, Respondent ***was*** operating under and subject to the provisions of the Act.

On this date, an employee-employer relationship ***did*** exist between Petitioner and Respondent.

On this date, Petitioner ***did*** sustain an accident that arose out of and in the course of employment.

Timely notice of this accident ***was*** given to Respondent.

Petitioner's current condition of ill-being ***is*** causally related to the accident.

In the year preceding the injury, Petitioner earned $**60,569.60**; the average weekly wage was $**1,164.80**.

On the date of accident, Petitioner was **65** years of age, ***single*** with **0** dependent children.

Petitioner ***has*** received all reasonable and necessary medical services.

Respondent ***has not*** paid all appropriate charges for all reasonable and necessary medical services.

Respondent shall be given a credit of $**0** for TTD, $**0** for TPD, $**0** for maintenance, and $**0** for other benefits, for a total credit of $**0**.

Respondent is entitled to a credit of $**3,250.91** under Section 8(j) of the Act.

ORDER

Petitioner proved by a preponderance of the evidence that she sustained a compensable accident to her low back which arose out of and in the course of her employment on 01/09/17, and that her low back condition is causally related to the alleged 01/09/17 work accident.

Compensation for Temporary Total Disability Benefits is denied.

Respondent shall pay pursuant to the Illinois Medical Fee Schedule, $100.00 to Dr. Dawis, $156.02 to Illinois Orthopedic Institute, $360.20 to Tyler Medical Services & 6,811.99 to Dr. Metcalf/Aurora Family Health Clinic.

Petitioner is entitled to Permanent Partial Disability for a 4% Loss of Use of the person as a Whole or 20 weeks pursuant to Section 8(d)2 to be paid at a permanency rate of $698.88 for a Total of $13,977.60.

RULES REGARDING APPEALS Unless a party files a *Petition for Review* within 30 days after receipt of this decision, and perfects a review in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

STATEMENT OF INTEREST RATE If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

Michael Glaub
Signature of Arbitrator

AUGUST 4, 2023

State of Illinois)
)
County of DuPage)

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Barbara Harris,	)		
	)		
v.	)	Case:	17 WC 026788
	)	(consolidated)	17 WC 005109
General Mills.	)		

STATEMENT OF FACTS

Petitioner's Testimony:

Petitioner, Barbara Harris, testified that on 03/07/16 she worked for General Mills as a technician/operator. In her job, she physically loaded flats weighing between 5-6 pounds per bunch. (Tx. Pg. 9). Petitioner testified she was lifting on 03/07/16 when she felt a pull in her left shoulder. Petitioner noted a burning sensation. (Tx. Pg. 13-14). Prior to 03/07/16, Petitioner never had complaints of left shoulder pain. Petitioner continued working and finished her shift for that day. (Tx. Pg. 14-15).

The next morning Petitioner noticed her left shoulder felt stiff and sore. Petitioner testified she notified her supervisor that her left shoulder was hurting and completed an accident report. (Tx. Pg. 15). Petitioner testified she went to see Dr. Imelda Dawis, who gave her a couple shots and medication and was taken off work 'for a little while'. (Tx. Pg. 18).

Petitioner could not testify what time periods she was off work, however petitioner testified she was paid for the time she was off work. Specifically, Petitioner testified she received "medical" weekly payments while she was off work based on how many hours she worked. Petitioner returned to the same job and continued to work at General Mills until 01/09/17. (Tx. Pg. 19-21).

Petitioner testified that on 01/09/17 she was working as a tech operator. Petitioner testified that nothing happened to her on 01/09/17 at work. (Tx. Pg. 23). Petitioner testified that prior to 01/09/17, she had low back pain. Petitioner testified the pain in her low back changed on 01/09/17. (Tx. Pg. 26). Petitioner noted that she was moving hot melt across the floor on 01/09/17 when she felt pain in her back. (Tx. Pg. 27-28).

Petitioner testified that she had a conversation with someone in HR about this incident and reported it to the team leader in the office the next day and was sent to Tyler Medical Clinic. (Tx. Pg. 30). Petitioner testified she saw Dr. Dawis and Dr. Handel Metcalf, who is a chiropractor in Aurora. Petitioner testified Dr. Metcalf gave her massages and worked on her lower back. Petitioner testified she had therapy at ATI Physical Therapy, although she went there on her own. (Tx. Pg. 31-32). Petitioner testified she saw Dr. Rebecca Kuo who is an orthopedic surgeon in Joliet. Petitioner testified she had been seeing Dr. Kuo for years and that no one referred her to see Dr. Kuo. Petitioner testified Dr. Kuo sent her to physical therapy at Amita Healthcare. (Tx. Pg. 33-34).

Petitioner testified she was working currently as a part time crossing guard in Oswego. (Tx. Pg. 34). Petitioner did not return to work for General Mills, although she testified, she was able to return to work before the plant closed. (Tx. Pg. 35). Petitioner testified the plant closed in 2017 and General Mills did not offer her a job elsewhere. (Tx. Pg. 35). Petitioner testified she was in a car accident on 06/03/17, but that she suffered no injury from that car accident. (Tx. Pg. 36-38). Petitioner testified that with day-to-day activities she continues to be in pain. Petitioner testified she can clean and wash her house and clean dishes, but she has difficulty trying to lift or move something that's too heavy. (Tx. Pg. 39).

Petitioner testified regarding her left shoulder that she cannot lay on the left side for very long before it starts to hurt and that she just has to "watch what she picks up or lifts" and that she can't pick up anything too heavy. Petitioner testified when she raises her left shoulder, she feels pain sometimes. Petitioner testified she currently takes medication however did not confirm what type of medication she takes but that it is prescribed by Dr. Anna Morgan. Petitioner testified that she continues to see Dr. Dawis but she is not the doctor prescribing medication because Dr. Dawis is no longer licensed to prescribed medication. (Tx. Pg. 42-43). Petitioner testified she would like to get her shoulder fixed as well as her back fixed but she is too old.

On cross examination Petitioner testified that she worked for 41 years for General Mills and that at the time of her first accident she was 65 years old. (Tx. Pg. 44-45). Petitioner testified she filled out numerous pages of paperwork requesting her pension. Petitioner testified that she reviewed all paperwork and even had a Union Vice President review the documents she was signing and made sure she understood her options. Petitioner signed Respondent's exhibit #6 titled Pension Plan Election Authorization Form dated 02/26/17. Petitioner testified she received before taxes approximately $2,960.00 a month for her pension and that the pension was to commence 04/01/17. Petitioner further testified she voluntarily retired in March of 2017. (Tx. Pg. 46-49).

Petitioner testified she signed documentation indicating that she would like to separate from the company with severance benefits when the plant closed on 03/31/17. Petitioner confirmed she reviewed all of the documents and was made well aware of the terminology in the paperwork. Petitioner also confirmed she reviewed the document and spoke with her union representative before signing it. Petitioner was made aware of her options from the union representative and that she chose to separate from the company and receive the severance package on 03/29/17. Petitioner confirmed she received the severance package from General Mills. (Tx. Pg. 50-53).

When asked about her conversations with someone in HR on 03/07/16 Petitioner could not remember a specific time. (Tx. Pg. 54). Petitioner claimed she signed a piece of paper or an accident report on 03/07/16 but did not have a copy of that report. (Tx. Pg. 55-59). Petitioner testified she did have numerous pages and paperwork in the folder in front of her but did not have the accident report. Petitioner further confirmed an accident report was created on 01/09/17 that she signed but did not have a copy of that report either. Petitioner testified since 03/31/17 other than a crossing guard job, she has not looked for work elsewhere.

Petitioner confirmed via testimony that after her 03/07/16 injury she sought treatment for her left shoulder. Petitioner confirmed she saw Dr. Verma, and by Dr. Lami at the request of her employer. Petitioner confirmed she had no communication issues with either IME physician. Petitioner testified she was truthful in all of her statements to her physicians. Petitioner would not testify as to whether she liked treating with Dr. Metcalf, a chiropractor. Petitioner testified that prior to 01/09/17 she had been treating with Dr. Kuo. (Tx. Pg. 55-60).

Medical:

On 03/15/16, Petitioner was seen by Dr. Dawis. (Px1). Petitioner noted she was back to working regular duty. Petitioner underwent an x-ray of the **right shoulder**. It was noted no fracture or dislocation.

On 03/15/16, Petitioner was seen by Dr. Rebecca Kuo (Px4) for a one month recheck of a left carpal tunnel release. Petitioner noted she had pain from her left carpal tunnel region to the mid volar forearm and particularly when she used her hands but not the shooting pain she had before. Petitioner told Dr. Kuo that she was work 3 weeks ago when she hurt her **right shoulder**. Petitioner was diagnosed with a right shoulder injury and some left pillar pain status post carpal tunnel. Physical therapy was initiated on the right shoulder and Petitioner was told to follow up afterwards. Dr. Kuo considered getting a MRI of the right shoulder. (Px4).

On 04/11/16, Petitioner was seen by Dr. Dawis who noted an injury to her right shoulder at work on 03/07/16 while doing repetitive lifting with boxes. Petitioner was unable to lift her right shoulder. With throbbing pain and restricted range of motion, Petitioner was off work on 04/11/16 and 04/12/16. Petitioner was diagnosed with a strain of the right shoulder. (Px1).

On 05/02/16, Petitioner was seen by ATI Physical Therapy for initial evaluation of right shoulder pain and decreased range of motion. Petitioner's diagnosis was right shoulder sprain/strain. On 05/03/16, Petitioner was seen at ATI Physical Therapy for right shoulder physical therapy. (Px2).

On 05/09/16, Petitioner was seen by Dr. Dawis and reported painful right shoulder. Petitioner was diagnosed with impingement of the right shoulder. (Px1).

On 05/09/16, Petitioner was seen at ATI Physical Therapy and they noted increased right shoulder pain and pain was extending down her arm due to increased work shift on the 6th. Petitioner was seen at ATI Physical Therapy for right shoulder treatment on 05/12/16, right shoulder treatment on 05/17/16, right shoulder treatment on 05/23/16, and right shoulder treatment on 05/25/16. (Px2).

On 06/06/16, Petitioner was seen by Dr. Dawis who noted she was still in therapy 2 times a week for her right shoulder with some improvement, but she still had pain. Petitioner was diagnosed with right shoulder pain and right shoulder impingement. (Px1).

Petitioner was seen at ATI Physical Therapy for physical therapy of the right shoulder on 06/06/16, 06/07/16 and 06/13/16. (Px2).

On 06/15/16, Petitioner was discharged from ATI Physical Therapy with continued shoulder pain with a primary diagnosis of right shoulder sprain/strain. Petitioner had continued right shoulder pain and decreased range of motion with complaints of shooting pain extending down the arm when attempting to lift objects above shoulder height. (Px2).

On 06/28/16, Petitioner was seen in follow up by Dr. Dawis for right shoulder pain with stiffness and restriction of range of motion. Therapy and medication were continued. It was noted Petitioner was unable to function with her right shoulder. Petitioner was diagnosed with right shoulder pain with impingement syndrome. (Px1).

On 07/01/16, Petitioner was seen again seen by Dr. Dawis, noting still painful right shoulder and no improvement with therapy. Petitioner was on vacation for two weeks until

07/11/16. Petitioner noted a painful right shoulder. Assessment was acute pharyngitis and bronchitis. Dr. Dawis refilled Norco for lumbar spondylosis and multiple arthritis. (Px1).

On 08/31/16, Petitioner was seen by Dr. Dawis for chronic sinusitis, multiple arthritis, bursitis of the right shoulder, lumbar spondylosis, right hand pain, status right carpal tunnel syndrome and chronic bronchitis. (Px1).

On 10/04/16, Petitioner was seen again by Dr. Dawis complaining of cough, right wrist pain, lumbar sciatica, muscle spasms. Pain meds were continued. (Px1).

On 10/31/16, Petitioner was seen by Dr. Dawis for painful right wrist from repetitive use of both hands and lower back. (Px1).

On 10/31/16, Petitioner was seen by Dr. Rebecca Kuo for right shoulder pain. Petitioner noted she was feeling better however had a twinge every now and then and does not wish to proceed with further therapy. Petitioner noted she was going to lose her insurance in 2017 and wanted to address her other medical issues before that time to obtain treatment before the new year. Petitioner had carpal tunnel on the left wrist again, and numbness down the right leg from her lower back. Petitioner noted tingling down her right leg to her foot mostly to the first couple of toes. Dr. Kuo noted she wanted to get Petitioner off any type of narcotics. An MRI of the right hand was recommended, and an MRI of the lumbar spine was recommended to see if she had any significant stenosis causing tingling in her right leg. Medication was provided and follow up scheduled. (Px4).

On 11/18/16, Petitioner was seen by Dr. Dawis complaining of severe low back pain 3-4/10 with stiffness and pain in the right leg. Petitioner had a history of lumbar spondylosis, facet arthropathy L4-5, L5-S1 with foraminal stenosis. Medication and low back MRI were recommended. (Px1).

On 12/27/16, Petitioner was seen by Dr. Dawis with some increased pain and neuropathy of the right hand. On 01/04/17, Petitioner was seen by Dr. Dawis for right carpal tunnel symptomolgy. (Px1).

On 01/12/17, Petitioner was seen by Dr. George Pappas at Tyler Medical Services. Petitioner presented for initial evaluation of back pain and radiating pain and burning down her right leg. She stated that on 01/09/17 she was lifting boxes of glue weighing approximately 30 lbs. when she felt pain in her low back mainly right sided. Her back pain had subsided but she was having radiating pain and burning down the back of her right gluteal region, thigh, and into her right calf. She admitted to chronic recurrent back pain for years, most recently on 10/31/16

when saw Dr. Kuo who ordered an MRI due to lumbar radiculopathy. The MRI was not performed. Currently she was taking medication. X-rays of the lumbar spine showed degenerative changes multilevel with mild spondylolisthesis at L4-5 and narrowing of the disc space. Petitioner was diagnosed with chronic, recurrent low back pain with intermittent right leg pain and burning radiculopathy/sciatica, possible discogenic back pain. Dr. Pappas recommended, as did Dr. Kuo on 10/31/16, a diagnostic MRI of the lumbar spine. Petitioner was released to work without limitations. She was told to follow up with either Dr. Dawis or Dr. Kuo and return to Tyler Medical Services as needed. (Px7).

On 01/24/17, Petitioner was seen by Dr. Rebecca Kuo for recheck of the left wrist. Petitioner was awaiting approval of an MRI of her low back and noted no other changes. An MRI of the cervical spine was recommended to make sure there is nothing else going on in her neck. No further discussion or mention of Petitioner's lumbar spine or low back pain/injury was noted in this office visit. Petitioner did not see Dr. Kuo again until 09/01/20. (Px4).

On 02/07/17, Petitioner was seen by Dr. Dawis with complaints of lumbar sciatica, left carpal tunnel, low back pain, stiffness, decreased range of motion. She was referred to Copley for lower back pain. Petitioner was diagnosis with lumbar spondylosis, lumbar radiculopathy and was referred to physical therapy for evaluation and therapy of the lower back/spine. (Px1).

On 02/16/17, Petitioner underwent an electrodiagnostic report of the upper extremity and the lower extremity. Petitioner was seen by Dr. Metcalf for a myriad of treatment including low back, bilateral legs, extreme tenderness, sprain and cramps in the lower extremities, neck and midback on the following dates: 02/18/17, 02/27/17, 02/28/17, 03/01/17, 03/02/17, 03/06/17, 03/09/17, 03/11/17, 03/13/17, 03/16/17, 03/20/17, 03/25/17, 03/27/17, 03/30/17, 04/01/17, 04/03/17, 04/06/17, 04/10/17, 04/20/17, 04/22/17, 04/24/17, 04/29/17, 05/01/17, 05/20/17, 05/22/17, 05/31/17, 06/01/17, 06/05/17, 06/06/17, 06/07/17, 06/10/17, 06/12/17, 06/15/17, 06/19/17, 06/22/17, 06/29/17, 07/05/17, 07/08/17, 07/10/17, 07/12/17, 07/15/17, 07/17/17, 07/20/17, 07/22/17, 07/24/17, 07/26/17, 07/29/17, 07/31/17, 08/02/17, 08/03/17, 08/05/17, 08/16/17, 08/19/17, 08/23/17, 08/30/17, 08/31/17, 09/06/17, 09/09/17, 09/13/17, 09/14/17, 09/16/17, 09/18/17, 09/20/17, 09/27/17, 10/03/17, 10/10/17, 10/17/17, 10/24/17, 10/31/17, 11/07/17, 11/21/17, 11/28/17. (Px6).

Petitioner underwent an x-ray of the cervical spine, performed and read by Dr. Metcalf on 06/26/17. Petitioner underwent a thoracic x-ray performed and read by Dr. Metcalf on 06/26/17. Petitioner underwent an x-ray for the lumbar spine performed and read by Dr. Metcalf on 06/26/17. Petitioner underwent a bilateral upper extremity electrodiagnostic study performed and read by

Dr. Metcalf on 02/16/17. Petitioner underwent a lower extremity electrodiagnostic study to the bilateral legs performed and read by Dr. Metcalf on 02/16/17. (Px6).

On 02/17/17, Petitioner was seen by Dr. Metcalf for an initial evaluation. She reported severe neck and back pain that radiated down into the legs. Petitioner indicated she was at work while lifting heavy objects when she felt pain immediately in her back. She reported additional pain in the right hip and leg with numbness and tingling. She was diagnosed with post-traumatic thoraco-lumbo spasm, post lumbar sacral sprain, lumbar right radiculitis. Therapy, massage therapy, and manual therapy were recommended. Treatment with Dr. Metcalf, chiropractor, was extensive and covered nearly every body part. (Pet. Ex. #6).

On 03/20/17, Petitioner was seen by Dr. Dawis with improvement but claims pain came back after therapy. She was diagnosed with lumbar radiculitis, lumbar spondylosis, cervical sprain, shoulder sprain and knee issues. (Px1).

On 04/13/17, Dr. Dawis diagnosed Petitioner with lumbar sciatica, left shoulder. Petitioner was undergoing acupuncture from Dr. Metcalf. (Px1).

On 05/01/17, Petitioner was seen by Dr. Dawis. She noted Petitioner was still under physical therapy with Dr. Metcalf for low back and shoulder. A lidocaine patch was recommended. Petitioner noted multiple aches and pain in the left shoulder, low back, right hip. (Px1).

On 05/22/17, Petitioner was seen by Dr. Dawis who noted recurrent left shoulder pain. Chronic cough with nausea and chronic sinusitis. (Px1).

On 06/03/17, Petitioner was seen by Dr. Dawis complaining of a recent MVA where she was rear-ended. Petitioner complained of low back pain 3-4/10 with stiffness, decreased range of motion. Dr. Dawis diagnosed Petitioner with aggravation of lumbar disc disease/muscle spasm. (Px1).

On 06/15/17, Petitioner was seen by Dr. Dawis for left shoulder pain and decreased range of motion. An MRI of the left shoulder was ordered. On 07/19/17, Petitioner was seen by Dr. Dawis for recurrent left shoulder pain. On 08/02/17, Petitioner was seen by Dr. Dawis who noted Petitioner went to the Edwards Hospital ER for severe pain in the left shoulder. (Px1).

On 09/12/17, Petitioner was seen by Dr. Dawis who noted recurrent left shoulder and low back pain. (Px1).

Petitioner was seen for her cervical spine, bilateral shoulders, low back and midback by Dr. Metcalf. Petitioner was diagnosed on 10/24/17 with radiculopathy of the cervical region and sprain of the left shoulder. (Px6).

On 12/08/17, Petitioner was seen by Dr. Dawis for sinusitis and headache, left shoulder pain and rotator cuff tendinopathy. Petitioner was diagnosed with recurrent low back pain, spondylolisthesis at L4-5. (Px1).

On 12/14/17, Dr. Metcalf drafted a final evaluation report of Petitioner. Dr. Metcalf noted Petitioner initially presented to his office on 02/16/17 for injuries sustained in January 2017. Petitioner noted while at work she was lifting heavy objects and immediately felt sharp pain in her neck, back and shoulder. Petitioner was diagnosed with post-traumatic radiculopathy of the cervical region, post-traumatic sprain of the left shoulder girdle, post-traumatic thoraco-lumbar spasm, post traumatic lumbosacral sprain, post traumatic spondylolisthesis. Petitioner underwent multiple x-rays including cervical x-rays, thoracic x-rays and lumbar x-rays, as well as upper and lower extremity neurodiagnostic exams with Dr. Metcalf. Petitioner underwent outpatient therapy, home exercise and acupuncture to help with pain management and progressive rehabilitation. Dr. Metcalf indicated Ms. Harris could benefit from pain management and continued treatment. (Px6).

On 01/02/18, Petitioner was seen by Dr. Dawis for left shoulder osteoarthritis and lumbar sciatica. On 03/05/18, Petitioner was seen by Dr. Dawis for medium to severe pain on the right shoulder. With a history of rotator cuff in the past, bilateral pain was noted on the shoulders. (Px1).

On 05/02/18, Petitioner was seen by Dr. Dawis for recurrent pain of the left shoulder and low back. She was diagnosed with lumbar degenerative bulging disc at L5-S1, spondylolisthesis at L4-5 and left shoulder severe rotator cuff hypertrophic tendinopathy with large effusion tearing of labrum. On 06/18/18, Petitioner was seen for low back and shoulder pain with Dr. Dawis. (Px1).

On 07/18/19, Petitioner was seen by Dr. Dawis for multiple arthritis especially in the neck and left shoulder. Was given a referral to a pain clinic. (Px1).

On 09/01/20, Petitioner was seen by Dr. Kuo who noted a new patient visit for low back pain. Dr. Kuo had not seen Petitioner in a few years. Petitioner noted left shoulder pain at this time and increasing low back pain. Petitioner was diagnosed with left shoulder rotator cuff injury, possibly requiring surgery and back pain secondary to degeneration. Physical therapy was recommended. Lumbar spine and shoulder x-rays were ordered. (Px4).

On 09/09/20, an MRI of the lumbar spine was performed showing multilevel lumbar spondylosis most pronounced at L3-L4, where there is mild-to-moderate spinal canal stenosis,

moderate left foraminal stenosis and mild right foraminal stenosis with mild anterolisthesis of L4 over L5. (Px4).

On 09/11/20, Petitioner was seen for a recheck with Dr. Kuo who noted the back pain remained the same as the last visit. She had some right leg pain and tingling and numbness to her right toes. The MRI demonstrated moderate stenosis at L3-L4 and mild-to-moderate stenosis at L4-L5. Spondylolisthesis in the x-ray completely resolved in the MRI demonstrating how mobile this spondylolisthesis was. Dr. Kuo believed this was actually the source of her issue, however in discussing her pain, it was worse with sitting, lifting, bending and better with activity. Dr. Kuo believed her pain was primarily arthritic in nature and degenerative in nature. Physical therapy was recommended. (Px4).

On 03/01/21, Petitioner was seen by Dr. Dawis for left shoulder pain noting she was able to cross kids on the street. On 04/07/21, Petitioner was seen by Dr. Dawis noting multiple joint aches and pains. (Px1).

On 05/05/21, Petitioner was seen by nurse practitioner Pizinger for recheck of the left shoulder. Petitioner claims injury in 2017 at General Mills. Petitioner stated she was doing heavy lifting in 2016 when she worked at General Mills. Updated MRI was recommended. (Px4).

On 05/10/21, Petitioner was seen by Dr. Dawis with left shoulder pain. (Px1).

On 05/26/21, Petitioner underwent an MRI of the left shoulder. Stable moderate to severe insertional supraspinatus, tearing of the superior labrum is again seen. (Px4).

On 07/14/21, Petitioner was seen by nurse practitioner Pizinger to discuss the MRI of the left shoulder. An injection was performed. (Px4).

On 08/03/21, Petitioner was seen by Dr. Kuo for a recheck of the low back. Petitioner asked for stronger medication and noted the injection helped temporarily but had since worn off. Petitioner was told to continue with home exercise program. Petitioner was going to consider surgery. She was told to follow up in 2 months. (Px4).

On 08/12/21, Petitioner was seen by nurse practitioner Pizinger for left shoulder pain. (Px4).

Dr. Nikhil Verma Deposition and IME (Resp. Ex. #2)

Dr. Nikhil Verma testified via deposition on 10/02/19. Dr. Verma testified that he saw Barbara Harris at the request of Respondent General Mills on 10/05/18. Dr. Verma reviewed and summarized medical records and noted Petitioner underwent treatment for the right shoulder in

March 2016, during which time there were no left shoulder complaints and normal left shoulder exams.

Dr. Verma testified that Petitioner told him she injured her left shoulder in March 2016 at work, however he noted no treatment to the left shoulder until approximately June 2017.

At the time of his 2018 exam, Dr. Verma diagnosed Petitioner with left shoulder impingement, rotator cuff tendinopathy and AC joint pain, but Dr. Verma testified that the left shoulder condition was not a result of her alleged work accident in March 2016 due to the significant gap in treatment and normal exams on the left shoulder, as well as lack of evidence to suggest any traumatic or work related injury to Petitioner's left shoulder in March 2016.

On cross examination, Dr. Verma was asked about repetitive work activities including overhead lifting. Dr. Verma provided no opinion as to Petitioner's right shoulder condition. (Resp. Ex. #2).

Dr. Babak Lami Deposition and IME (Resp. Ex. #1)

Dr. Babak Lami testified via deposition on 09/09/19. Dr. Lami testified that he saw Petitioner, Barbara Harris, for an independent medical examination at the request of the employer, General Mills, on 09/24/18. In anticipation of the IME report, Dr. Lami reviewed medical records including those from Tyler Medical Center, Dr. Metcalf, Dr. Dawis and Dr. Rebecca Kuo.

Dr. Lami testified that prior to the alleged work accident, Petitioner was under the care of Dr. Kuo and was taking Norco for pain. Dr. Lami testified that Petitioner indicated that she was working on 01/09/17 when she moved a box and felt pain the next day.

Petitioner, at the time of the exam, denied any prior back issues. Dr. Lami testified that he specifically asked about previous back pain and treatment, but that Petitioner denied any. Dr. Lami testified that the time of his exam he could not support her condition to be related to the alleged work accident on 01/09/17. Dr. Lami noted that although Petitioner never reported having back problems, the medical records suggested that she had a history of chronic back issues. The condition pre-existed the alleged injury in question. Dr. Lami further testified it was possible she had a back sprain or possibly increased a pre-existing condition, however, given the maximum injury that she reported, Dr. Lami could not support her current symptoms to still be related to the incident in question.

Dr. Lami further noted the subsequent car accident aggravated Petitioner's lumbar disc disease. Dr. Lami noted the patient had more pain after the car accident and that it irritated her

lumbar spine condition. Dr. Lami determined Petitioner should have been at baseline, anything from 1-4 weeks after the alleged accident.

Dr. Lami specifically addressed chiropractic treatment of Dr. Metcalf. Dr. Lami testified that he felt chiropractic treatment with Dr. Metcalf was excessive. Dr. Lami reviewed chiropractic notes including electric stimulation, therapeutic exercise and traction. Dr. Lami testified Petitioner did not require x-rays of her neck and upper mid-back because the alleged injury was to her lower back and that physical therapy or chiropractic treatment 2-3 times a week for a period of 3 weeks would have been reasonable. Dr. Lami opined that treatment beyond that time period was unreasonable.

Petitioner was released by Dr. Lami to return to work full duty without restrictions.

Dr. Lami testified that nerve studies done by chiropractor Dr. Metcalf were not necessary. Lami believed that nerve studies should be done by a neurologist not a chiropractor and, further, these exams were for the upper and lower extremities which were not related to this case. Dr. Lami confirmed he is not an expert in chiropractic care.

Dr. Lami testified Petitioner's diagnostic studies showed degenerative changes which pre-existed the incident in question, and that her baseline condition as it relates to her spinal condition and the objective medical evidence shows her the same on 09/24/18 as it would have been on 01/08/17.

Dr. Imelda Dawis Deposition (Pet. Ex. #3)

The deposition of Dr. Imelda Dawis was taken 06/30/21. Dr. Dawis testified that she was in family medicine with emergency room experience.

Dr. Dawis saw Barbara Harris one week after 03/07/16 and the doctor claimed Petitioner reported a left shoulder injury after jamming her shoulder. Dr. Dawis testified that she examined Petitioner and she noted limited range of motion and that she had already been referred to physical therapy to stabilize and strengthen her left shoulder. Dr. Dawis indicated this referral for physical therapy was by Dr. Rebecca Kuo, the orthopedic physician.

Dr. Dawis testified Petitioner had a strain of the left shoulder from 'probably' when she went back to her line operator work. Dr. Dawis testified that this left shoulder condition was 'probably' related to the same kind of work Petitioner had been doing for more than 30 years. Dr.

Dawis testified based on the condition of the left shoulder with degenerative changes from the MRI and possible rotator cuff problem, Petitioner's job contributed to the stress and weakness of the left shoulder joint. Dr. Dawis testified Petitioner was already in physical therapy and was given a steroid injection, pain medication and told not to work for some weeks. Dr. Dawis did not provide specific dates of treatment.

Dr. Dawis testified Petitioner had not had surgery, but that Petitioner was referred to a few orthopedic doctors and some orthopedics suggested non-evasive procedures like physical therapy and injections. Dr. Dawis testified that Petitioner has not reached maximum medical improvement for this condition and that she had never really been out of pain and discomfort. Dr. Dawis again did not provide specific dates of treatment or dates for clarification.

Dr. Dawis testified that she believed the present condition as described in the MRI is related to her long term rotatory motion on the upper extremities, the same job Petitioner had been doing for more than 30 years.

Dr. Dawis was questioned to the right versus left shoulder.

> Q: "Now, Dr. Dawis, there are notes in your chart involving both the right shoulder and the left shoulder. Were there any mistakes made in recording the notes as to whether they applied to the right shoulder or the left shoulder?"
>
> A: "No, there was no mistake at all, sir. When she comes to complain of the left shoulder, she claims she put – she was still working at that time. She puts more emphasis on the good shoulder and less work on the bad shoulder. That's why she also complains – every time she came, she complains of bilateral pain, shoulder pain, both left and right, but mostly on the left side." (Pet. Ex. #3, Pg. 13).

Dr. Dawis was asked whether she saw Petitioner after 01/09/17. Dr. Dawis did not provide a date of exam, but noted Petitioner was seeing Dr. Kuo for treatment. Dr. Dawis stated Petitioner indicated she was lifting some boxes and suddenly felt sharp pain in the lower back.

Dr. Dawis testified that Petitioner's work activities contributed to the injury in her low back at that time, however no "time" or specific job description was indicated. Dr. Dawis testified she was aware of Petitioner's prior low back pain, but Petitioner's job contributed more to a progressive injury in her lower back.

Dr. Dawis testified Petitioner was not at MMI for the low back. Dr. Dawis confirmed she is not an orthopedic specialist nor a neurosurgeon but that she sees progressive worsening in the

lumbar spine MRI. Dr. Dawis recommended treatment including rest and medication because there is nothing Petitioner can do for the low back.

Regarding Petitioner's work capabilities, Dr. Dawis stated:

"Well, with all the injuries that she had over the years, I don't think she could really go back to work because there is really no treatment for the lower back. With the left shoulder, maybe she could go later for rotator cuff surgery, but with the lower back, I don't think she will modify the pain at all. She will be in constant pain for the rest of her life." (Pet. Ex. #3, Pg. 16).

Dr. Dawis indicated Petitioner's medical insurance was never charged for her treatment.

On cross-examination, Dr. Dawis confirmed she is a general practitioner with no orthopedic specialty. Dr. Dawis testified that she did not review the MRI films. Dr. Dawis testified that Petitioner reported an injury to her pulling cardboard at work and she felt a sudden left shoulder sharp pain on 03/07/16. Dr. Dawis testified Petitioner's left shoulder condition could be related to both a specific injury or repetitive trauma of working as a line technician for 30+ years. Dr. Dawis testified she did not review a job description and did not know the number of times Petitioner performed her daily work activities.

Dr. Dawis was asked regarding maximum medical improvement. Dr. Dawis testified that Petitioner's left shoulder condition had worsened since the initial accident however was unable to articulate any work activities since the date of accident which may have contributed or accelerated and cause her worsening. Dr. Dawis testified that many years ago back to 2007, Petitioner had every day complaints radiating pain down to her right leg and in her low back. Dr. Dawis was unable to specifically provide dates for the MRI she was referencing.

Dr. Dawis further testified that Petitioner's accident exacerbated the lower back pain that the old condition of the lumbar spine contributed over the years to progressively change to her lumbar spine. Dr. Dawis testified that Petitioner had "better pain now" with prior pain complaints of 7/10 and currently complaints at 2-3/10.

PRIOR WC CLAIMS:

Petitioner has had several previous Illinois Workers' Compensation filings. (Resp. Ex. #3).

1. 99 WC 016868 Barbara Harris v. General Mills
    a. 6% loss of use of the right arm.
2. 99 WC 030365 Barbara Harris v. General Mills
    a. 16.27% loss of use of the right hand.

3. 99 WC 056432 Barbara Harris v. General Mills, Inc.
    a. 7 weeks disfigurement.
4. 08 WC 021093 Barbara Harris v. General Mills, Inc.
    a. 5.6% "man as whole". Low back injury.
    b. Medical Expenses.
5. 10 WC 048456 Barbara Harris v. General Mills, Inc.
    a. Adjudicated with companion case.
6. 15 WC 015792 Barbara Harris v. General Mills
    a. 9.63% left hand.
    b. 1% right hand.
    c. Medicare Set Aside.

Respondent paid medical charges totaling $1,820.38 for treatment at Illinois Spine Institute, and Tyler Medical Services (Resp. Ex. #4). BCBS paid medical charges totaling $3,250.91 for which Respondent is entitled an 8(j) credit as confirmed on the stipulation sheet.

CONCLUSIONS OF LAW
17 WC 26788

C. DID AN ACCIDENT OCCUR THAT AROSE OUT OF AND IN THE COURSE OF PETITIONER'S EMPLOYEMNT BY THE RESPONDENT?

Petitioner testified that she was lifting and pulling cardboard boxes on March 7, 2016, at work when she noticed a burning sensation in her shoulder. Petitioner also testified that she notified her supervisor of the incident the next day. Petitioner did seek medical care from Dr. Dawis on March 15, 2016, and these medical records do contain a reference to lifting at work. Petitioner's subsequent treatment with Dr. Dawis on April 11, 2016 also contain a reference to injuring her shoulder at work while doing repetitive lifting of boxes.

Respondent did not offer any testimony to rebut petitioner's claims regarding the accident. Respondent did not rebut the petitioner's testimony or claim with any medical records disputing the actual alleged incident at work.

Based on the above the, the Arbitrator finds that the petitioner proved she sustained accidental injuries arising out of and in the course of her employment on March 7, 2016.

E. WAS TIMELY NOTICE OF THE ACCIDENT GIVEN TO THE RESPONDENT?

Petitioner testified that on March 8, 2016, the day after the alleged accident that she told her supervisor of the incident the previous day and completed an accident report. This testimony is unrebutted by the respondent.

Based on the above the Arbitrator finds petitioner proved she tendered timely notice of the alleged accident to the respondent.

F. IS PETITIONER'S CURRENT LEFT SHOULDER CONDITION OF ILL-BEING CAUSALLY RELATED TO THE WORK ACCIDENT?

Petitioner filed an Application for Adjustment of Claim on September 13, 2017 alleging that she injured her left shoulder in the course of her employment. That Application was never Amended. The petitioner's sworn testimony is that she injured her left shoulder at work as described above. However, all of the petitioner's medical care throughout 2016 was for this incident was for her right shoulder.

a. Petitioner was seen by Dr. Dawis on 03/15/16 and underwent an x-ray of her right shoulder. A diagnosis was tendered of Right shoulder Impingement Syndrome. (Pet. Ex. #1).
b. Petitioner was seen by Dr. Kuo on 03/15/16 and reported she injured her right shoulder at work 3 weeks prior. Dr. Kuo diagnosed her with right shoulder injury and ordered physical therapy for the right shoulder, and an MRI of the right shoulder was considered. (Pet. Ex. #4).
c. Petitioner was seen by Dr. Dawis on 04/11/16 noting injury to her right shoulder at work on 03/07/16. Petitioner was diagnosed with strain of the right shoulder. (Px1).
d. Petitioner underwent physical therapy at ATI Physical Therapy for the right shoulder in May and June 2016. All treatment with ATI Physical Therapy was for the right shoulder. (Px2).
e. Petitioner was seen by Dr. Dawis on 06/06/16 and complained of right shoulder pain and was diagnosed with right shoulder impingement. (Px1).

f. On 06/28/16 Petitioner was diagnosed with right shoulder impingement syndrome by Dr. Dawis. (Px1).
g. On 07/01/16 Petitioner was seen by Dr. Dawis for painful right shoulder. (Px1).
h. On 08/31/16 Petitioner was seen by Dr. Dawis and diagnosed with multiple arthritis and bursitis of the right shoulder. (Px 1).
i. On 10/31/16 Petitioner followed up with Dr. Kuo for right shoulder pain. (P4).
j. The first treatment to the petitioner's left shoulder with Dr. Dawis occurs on July 19, 2017, more than 16 months after the accident. (Px1)

Dr. Dawis testified via Deposition that the petitioner reported to her that she injured her left shoulder at work on March 7, 2016, that she injured her left shoulder at work. Dr. Dawis further testified that she examined and treated the petitioner's left shoulder. However, as noted above, the medical records of Dr. Dawis throughout 2016 only reference the right shoulder. Dr. Dawis was directly asked if any mistakes made in recording her progress notes. Dr. Dawis stated there were no mistakes made in her notes. The Arbitrator finds that the testimony of Dr. Dawis is contradicted by her own treatment notes. The Arbitrator also notes the referral form from Dr. Dawis to ATI Physical Therapy (Px2) in which there are two separate references to the right shoulder and no reference to the left shoulder. This referral form bears the signature of Dr. Dawis and is dated April 26, 2106.

The Arbitrator notes that the petitioner was treated at NW Delnor hospital on August 2, 2017 for complaints of left rotator cuff pain. They note petitioner recently had an MRI of the left shoulder performed. Petitioner denied any new trauma at this time. (Px5)

Respondent's examining physician, Dr. Verma testified opined that he did not believe that petitioner's left shoulder condition is causally related to her accidental injuries of March 7, 2016 because there was no evidence of any medical treatment to the left arm for over one year after the accident. The Arbitrator adopts the medical opinion of Dr. Verma.

Based on all of the above, the Arbitrator finds that the petitioner failed to prove that her left shoulder condition is causally related to her accidental injuries of March 7, 2016. The Arbitrator makes no ruling on whether the petitioner's right shoulder condition is related to the accident as there is no claim for a right shoulder injury before the Illinois Workers' Compensation Commission.

J. WERE THE MEDICAL SERVICES PROVIDED TO PETITIONER REASONABLE AND NECESSARY? HAS THE RESPONDENT PAID ALL APPROPRIATE CHARGES FOR ALL REASONABLE AND NECESSARY MEDICAL SERVICES?

Based on the Arbitrator's finding that the Petitioner failed to prove that her left shoulder injuries were causally related to her accidental injuries of March 7, 2016, all claims for medical benefits under Section 8(a) of the Act are denied.

K. WHAT TEMPORARY BENEFITS ARE IN DISPUTE?

Based on the Arbitrator's finding that the petitioner failed to prove that her left shoulder condition is not causally related to the accident of March 7, 2016, the Arbitrator finds that the petitioner is not entitled to any Temporary Total Disability benefits under Section 8(b) of the Act.

L. WHAT IS THE NATURE AND EXTENT OF THE INJURY?

Based on the Arbitrator's finding that Petitioner failed to prove that her left shoulder condition is causally related to her accidental injuries of March 7, 2016, the Arbitrator finds is not entitled to any permanency.

CONCLUSIONS OF LAW
17 WC 5109

C. DID AN ACCIDENT OCCUR THAT AROSE OUT OF AND IN THE COURSE OF PETITIONER'S EMPLOYMENT BY THE RESPONDENT?

Petitioner testified that on January 9, 2017, she was moving hot melt across the floor when she felt pain in her back. Petitioner further stated that she advised the respondent of this incident the following day and was referred to the Tyler medical Clinic. The medical records of Tyler Clinic indicate petitioner was seen there on January 12, 2017, at which time she tendered a history that she was lifting boxes of glue weighing 30 lbs. when she felt pain in her low back, more severe on the right side. The medical records also indicate that petitioner honestly acknowledged her history of prior low back pain and treatment.

Respondent offered no testimony to rebut the petitioner's testimony regarding the issue of accident. The respondent offered no documentary evidence to rebut the petitioner's testimony regarding the issue of accident.

Based on the above, the Arbitrator finds that the petitioner proved she sustained accidental injuries arising out of and in the course of her employment on January 9, 2017.

E. WAS TIMELY NOTICE OF THE ACCIDENT GIVEN TO RESPONDENT.

Petitioner testified she reported her injury to her team leader and had discussion with the Human Resources Department the day after the injury. Petitioner further testified that she was referred to the Tyler Medical Clinic. The respondent failed to offer any rebuttal testimony on this issue.

Based on the petitioner's unrebutted testimony, the Arbitrator finds that the petitioner provided timely notice of this injury to the respondent.

F. IS PETITIONER'S CURRENT CONDITION OF ILL-BEING CAUSALLY RELATED TO THE WORK ACCIDENT.

Petitioner offered evidence of a low back injury occurring on 01/09/17 including her testimony, medical records of Dr. Dawis, Dr. Kuo, Dr. Metcalf and Dr. Pappas (Tyler Medical

Services). Respondent offered medical testimony of Dr. Lami who reviewed the above-mentioned records.

Petitioner did have low back pain and medical care to the low back prior to January 9, 2017, injury. It is the Arbitrator's opinion that the incident on that day aggravated her degenerative changes in her spine. Petitioner did commence receiving treatment to her low back shortly after the incident.

Dr. Dawis testified as to Petitioner's treatment after 01/09/17. Dr. Dawis testified that Petitioner's work activities contributed to her previous pre-existing low back pain.

Following her treatment with Tyler Medical Center for low back pain, Petitioner was seen by Dr. Kuo on 01/24/17 for left wrist pain. It was noted that she was waiting on the previously (10/31/16) recommended lumbar spine MRI. No further mention is included in this note regarding Petitioner's low back pain or work injury. Petitioner did not see Dr. Kuo again until 09/01/20, almost 3 years later.

Petitioner was treated by Dr. Handel Metcalf, chiropractor. Petitioner underwent treatment with Dr. Metcalf including treatment to the bilateral legs, neck, midback, bilateral arms. Dr. Metcalf further performed electrodiagnostic tests.

Petitioner was examined by Dr. Lami on 9/24/18, who asked Petitioner about her prior treatment for her low back. Dr. Lami opined in his deposition that Petitioner's preexisting condition was possibly increased by the accident 01/09/17.

The Arbitrator relies on the medical opinions of Dr. Dawis and Dr. Lami (listed in the paragraph above) as well as his review of the petitioner's medical records following the accident to conclude that the petitioner proved her low back condition is causally related to the accident of January 9, 2017 in the form of a soft tissue exacerbation of her pre-existing degenerative changes.

J. WERE MEDICAL SERVICES PROVIDED THAT WERE PROVIDED TO PETITIONER REASONABLE OR NECESSARY? HAS RESPONDENT PAID ALL APPROPRIATE CHARGES FOR ALL REASOANBLE AND NECESSARY MEDICAL CHARGES?

Petitioner has failed to offer sufficient credible evidence that she is entitled to medical costs or fees beyond 4 weeks of physical therapy and 4 weeks of post-injury treatment to her lumbar spine only. Medical bills for lumbar spine treatment are awarded pursuant to Dr. Lami's medical opinions, as outlined below.

Medical bills from Dr. Imelda Dawis for dates of service 02/07/17 ($50.00) and 03/20/17 ($50.00) are awarded directly to Dr. Imelda Dawis. All other bills for Dr. Dawis are denied as unrelated. (Pet. Ex. #1).

Medical bills from ATI physical from ATI Physical therapy for treatment from 05/02/16-06/15/16 for right shoulder physical therapy are denied as unrelated. (Pet. Ex. #2).

Medical bills from Illinois Orthopedic Institute, LLC for date of service 01/24/17 charges $156.02 are awarded, all other medical charges for Illinois Orthopedic Institute are hereby denied as unrelated. (Pet. Ex. #4).

Dr. Metcalf's medical treatment was excessive and included unrelated body parts. Treatment to Petitioner's upper extremities, neck, midback and left leg are denied as unrelated.

Dr. Metcalf's bills are awarded from 02/16/17-03/16/17 with the following stipulations:

- Bills for 02/16/17 for charges as listed in **Proposed Decision Exhibit A** (bills from Pet. Ex. #6), show upper extremity diagnostic testing and duplicative bills. These charges are denied as duplicative and unrelated to Petitioner's lumbar spine.
- Bills for 02/16/17 for charges as listed in **Proposed Decision Exhibit B** (bills from Pet. Ex. #6), show lower extremity diagnostic testing charges and duplicative billing entries. The charges of $2,840.48 are awarded once, not for each duplicate bill included.
- The remainder of the bills for charges as listed in **Proposed Decision Exhibit C** (bills from Pet. Ex. #6), show charges from 02/16/17-03/16/17 and total $3,971.51.

Medical bills from Tyler Medical Service for date of service 01/12/17 for charges totaling $360.20 are awarded. (Pet. Ex. #7).

All charges are awarded pursuant to the fee schedule and shall be paid directly to the respective providers. All other medical bills or charges are denied. Respondent shall receive a credit for medical bills paid.

K. WHAT TEMPORARY BENEFITS ARE IN DISPUTE?

Petitioner was released to return to work with no restrictions by Dr. Pappas on 01/12/17. Petitioner was seen by Dr. Kuo on 01/24/17 and was not provided with work restrictions. Petitioner was seen by Dr. Dawis on 02/07/17, 03/20/17, 04/13/17, 05/01/17, 05/22/17, 06/03/17, 07/19/17, 08/02/17, 09/12/17, 12/08/17 and was not provided with work restrictions for her lumbar spine. Petitioner treated with Dr. Metcalf from 02/16/17 through 12/14/17 and was not provided with permanent or daily work restrictions for her lumbar spine.

Further, Petitioner confirmed she resigned her employment with General Mills to take her pension and to receive a severance package when the General Mills plant closed in March of 2017. Petitioner testified that she was made aware of her options through discussion with her union representative. She further stated she was able to return to work before the plant closed, but that she did not return to work, and has not looked for additional work since.

Dr. Lami determine Petitioner was capable of returning to work with no limitations, although no work restrictions were provided by Petitioner's treating physicians.

Based upon all of the above, the Arbitrator finds that the petitioner failed to prove she entitled to any Temporary Total Disability Benefits under section 8(b) of the Act.

L. WHAT IS THE NATURE AND EXTENT OF THE INJURY?

Section 8.1b of the Act requires consideration of 5 factors in determining permanent partial disability:

i. Reported level of impairment;
ii. Occupation;
iii. Age at the time of injury;
iv. Future earning capacity;
v. Evidence of disability corroborated by treating medical records.

Reported level of impairment:

Neither party entered an AMA impairment rating into evidence. Therefore, the Arbitrator finds that this factor has no effect on permanency.

Occupation of Employee:

Petitioner was a general laborer at the General Mills factory. Based on the evidence, it appears that the petitioner had worked in this position for respondent for almost 30 years. Petitioner's duties required repetitious manual labor. The relatively heavy physical demands of the petitioner's job duties to which she likely would have returned (but for the upcoming closure of the plant), causes the Arbitrator to find that this factor weighs in favor of greater permanence.

Age:

Petitioner was 65 years old at the time of the accident. The Arbitrator notes that this was near to the end of petitioner's normal work life expectancy. The Arbitrator finds that this factor weighs in favor of lower permanence.

Future Earning Capacity:

There was no evidence introduced that the petitioner sustained any loss of earnings capacity as a result of any medical restrictions that resulted from her injury. The Arbitrator finds that this factor weighs in favor of lower permanence.

Evidence of disability corroborated by treating medical records:

Petitioner had received medical care for complaints of low back pain prior to the injury. An MRI performed after the January 9, 2017, injury reveals evidence of degenerative changes including stenosis at the L3-5 levels. The Arbitrator believes that the petitioner sustained a soft tissue aggravation superimposed on her pre-exiting degenerative changes. The petitioner received conservative medical care as a result of this injury. Dr. Lami opined that petitioner could return to full duty at the time of his examination of the petitioner's lumbar spine on September 24, 2018. Petitioner's last office visit for her low back was on 08/03/21 with Dr. Kuo. At that time, Dr. Kuo noted Petitioner had 5/5 strength. Surgery was discussed but no work restrictions were provided. Dr. Dawis attempted to provide a blanket statement of disability and inability to return to work. The Arbitrator adopts the medical findings of Dr. Kuo and Dr. Lami. The Arbitrator finds that this factor weighs in favor of lower permanence.

Based upon all of the above, the Arbitrator finds Petitioner sustained a 4% loss of use of the person as whole under section 8(d)2 of the Act.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	17WC026788
Case Name	Barbara Harris v. General Mills
Consolidated Cases	17WC005109;
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	24IWCC0194
Number of Pages of Decision	28
Decision Issued By	Marc Parker, Commissioner

Petitioner Attorney	David Feuer
Respondent Attorney	Marcy Bennett

DATE FILED: 4/30/2024

/s/Marc Parker, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF DU PAGE)

☒ Affirm and adopt (no changes)	☐ Injured Workers' Benefit Fund (§4(d))
☐ Affirm with changes	☐ Rate Adjustment Fund (§8(g))
☐ Reverse	☐ Second Injury Fund (§8(e)18)
	☐ PTD/Fatal denied
☐ Modify	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Barbara Harris,

Petitioner,

vs. NO: 17 WC 26788

General Mills,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Petitioner herein and notice given to all parties, the Commission, after considering the issues of temporary total disability, causal connection, permanent partial disability, and medical expenses, and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed August 4, 2023, is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent pay to Petitioner interest under §19(n) of the Act, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent shall have credit for all amounts paid, if any, to or on behalf of the Petitioner on account of said accidental injury.

The bond requirement in Section 19(f)(2) of the Act is only applicable when the Commission has entered an award for the payment of money. Therefore, no bond is set by the Commission. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

April 30, 2024

MP:yl
o 4/29/24
68

/s/ *Marc Parker*
Marc Parker

/s/ *Carolyn M. Doherty*
Carolyn M. Doherty

/s/ *Christopher A. Harris*
Christopher A. Harris

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	17WC026788
Case Name	Barbara Harris v. General Mills
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	25
Decision Issued By	Michael Glaub, Arbitrator

Petitioner Attorney	David Feuer
Respondent Attorney	Marcy Bennett

DATE FILED: 8/4/2023

THE INTEREST RATE FOR THE WEEK OF AUGUST 1, 2023 5.27%

/s/Michael Glaub, Arbitrator

Signature

STATE OF ILLINOIS)
)SS.
COUNTY OF **DuPage**)

☐ Injured Workers' Benefit Fund (§4(d))
☐ Rate Adjustment Fund (§8(g))
☐ Second Injury Fund (§8(e)18)
☒ None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Barbara Harris
Employee/Petitioner

v.

General Mills
Employer/Respondent

Case # **17** WC **026788**

Consolidated cases:

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Michael Glaub**, Arbitrator of the Commission, in the city of **Wheaton**, on **05/25/23**. 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 **03/07/16**, Respondent ***was*** operating under and subject to the provisions of the Act.

On this date, an employee-employer relationship ***did*** exist between Petitioner and Respondent.

On this date, Petitioner ***did*** sustain an accident that arose out of and in the course of employment.

Timely notice of this accident ***was*** given to Respondent.

Petitioner's current left arm condition of ill-being ***is not*** causally related to the accident.

In the year preceding the injury, Petitioner earned $**62,400.00**; the average weekly wage was $**1,200.00**.

On the date of accident, Petitioner was **65** years of age, ***single*** with **0** dependent children.

Petitioner ***has*** received all reasonable and necessary medical services.

Respondent ***has*** paid all appropriate charges for all reasonable and necessary medical services.

Respondent shall be given a credit of $**0** for TTD, $**0** for TPD, $**0** for maintenance, and $**0** for other benefits, for a total credit of $**0**.

Respondent is entitled to a credit of $0 under Section 8(j) of the Act.

ORDER

Petitioner failed to prove by a preponderance of the evidence that her left arm condition is causally related to her accidental injuries of 3/07/16. Accordingly all claims for benefits are denied.

RULES REGARDING APPEALS Unless a party files a *Petition for Review* within 30 days after receipt of this decision, and perfects a review in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

STATEMENT OF INTEREST RATE If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

Michael Glaub **AUGUST 4, 2023**
Signature of Arbitrator

State of Illinois)
)
County of DuPage)

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Barbara Harris,	)		
	)		
v.	)	Case:	17 WC 026788
	)	(consolidated)	17 WC 005109
General Mills.	)		

STATEMENT OF FACTS

Petitioner's Testimony:

Petitioner, Barbara Harris, testified that on 03/07/16 she worked for General Mills as a technician/operator. In her job, she physically loaded flats weighing between 5-6 pounds per bunch. (Tx. Pg. 9). Petitioner testified she was lifting on 03/07/16 when she felt a pull in her left shoulder. Petitioner noted a burning sensation. (Tx. Pg. 13-14). Prior to 03/07/16, Petitioner never had complaints of left shoulder pain. Petitioner continued working and finished her shift for that day. (Tx. Pg. 14-15).

The next morning Petitioner noticed her left shoulder felt stiff and sore. Petitioner testified she notified her supervisor that her left shoulder was hurting and completed an accident report. (Tx. Pg. 15). Petitioner testified she went to see Dr. Imelda Dawis, who gave her a couple shots and medication and was taken off work 'for a little while'. (Tx. Pg. 18).

Petitioner could not testify what time periods she was off work, however petitioner testified she was paid for the time she was off work. Specifically, Petitioner testified she received "medical" weekly payments while she was off work based on how many hours she worked. Petitioner returned to the same job and continued to work at General Mills until 01/09/17. (Tx. Pg. 19-21).

Petitioner testified that on 01/09/17 she was working as a tech operator. Petitioner testified that nothing happened to her on 01/09/17 at work. (Tx. Pg. 23). Petitioner testified that prior to 01/09/17, she had low back pain. Petitioner testified the pain in her low back changed on 01/09/17. (Tx. Pg. 26). Petitioner noted that she was moving hot melt across the floor on 01/09/17 when she felt pain in her back. (Tx. Pg. 27-28).

Petitioner testified that she had a conversation with someone in HR about this incident and reported it to the team leader in the office the next day and was sent to Tyler Medical Clinic. (Tx. Pg. 30). Petitioner testified she saw Dr. Dawis and Dr. Handel Metcalf, who is a chiropractor in Aurora. Petitioner testified Dr. Metcalf gave her massages and worked on her lower back. Petitioner testified she had therapy at ATI Physical Therapy, although she went there on her own. (Tx. Pg. 31-32). Petitioner testified she saw Dr. Rebecca Kuo who is an orthopedic surgeon in Joliet. Petitioner testified she had been seeing Dr. Kuo for years and that no one referred her to see Dr. Kuo. Petitioner testified Dr. Kuo sent her to physical therapy at Amita Healthcare. (Tx. Pg. 33-34).

Petitioner testified she was working currently as a part time crossing guard in Oswego. (Tx. Pg. 34). Petitioner did not return to work for General Mills, although she testified, she was able to return to work before the plant closed. (Tx. Pg. 35). Petitioner testified the plant closed in 2017 and General Mills did not offer her a job elsewhere. (Tx. Pg. 35). Petitioner testified she was in a car accident on 06/03/17, but that she suffered no injury from that car accident. (Tx. Pg. 36-38). Petitioner testified that with day-to-day activities she continues to be in pain. Petitioner testified she can clean and wash her house and clean dishes, but she has difficulty trying to lift or move something that's too heavy. (Tx. Pg. 39).

Petitioner testified regarding her left shoulder that she cannot lay on the left side for very long before it starts to hurt and that she just has to "watch what she picks up or lifts" and that she can't pick up anything too heavy. Petitioner testified when she raises her left shoulder, she feels pain sometimes. Petitioner testified she currently takes medication however did not confirm what type of medication she takes but that it is prescribed by Dr. Anna Morgan. Petitioner testified that she continues to see Dr. Dawis but she is not the doctor prescribing medication because Dr. Dawis is no longer licensed to prescribed medication. (Tx. Pg. 42-43). Petitioner testified she would like to get her shoulder fixed as well as her back fixed but she is too old.

On cross examination Petitioner testified that she worked for 41 years for General Mills and that at the time of her first accident she was 65 years old. (Tx. Pg. 44-45). Petitioner testified she filled out numerous pages of paperwork requesting her pension. Petitioner testified that she reviewed all paperwork and even had a Union Vice President review the documents she was signing and made sure she understood her options. Petitioner signed Respondent's exhibit #6 titled Pension Plan Election Authorization Form dated 02/26/17. Petitioner testified she received before taxes approximately $2,960.00 a month for her pension and that the pension was to commence 04/01/17. Petitioner further testified she voluntarily retired in March of 2017. (Tx. Pg. 46-49).

Petitioner testified she signed documentation indicating that she would like to separate from the company with severance benefits when the plant closed on 03/31/17. Petitioner confirmed she reviewed all of the documents and was made well aware of the terminology in the paperwork. Petitioner also confirmed she reviewed the document and spoke with her union representative before signing it. Petitioner was made aware of her options from the union representative and that she chose to separate from the company and receive the severance package on 03/29/17. Petitioner confirmed she received the severance package from General Mills. (Tx. Pg. 50-53).

When asked about her conversations with someone in HR on 03/07/16 Petitioner could not remember a specific time. (Tx. Pg. 54). Petitioner claimed she signed a piece of paper or an accident report on 03/07/16 but did not have a copy of that report. (Tx. Pg. 55-59). Petitioner testified she did have numerous pages and paperwork in the folder in front of her but did not have the accident report. Petitioner further confirmed an accident report was created on 01/09/17 that she signed but did not have a copy of that report either. Petitioner testified since 03/31/17 other than a crossing guard job, she has not looked for work elsewhere.

Petitioner confirmed via testimony that after her 03/07/16 injury she sought treatment for her left shoulder. Petitioner confirmed she saw Dr. Verma, and by Dr. Lami at the request of her employer. Petitioner confirmed she had no communication issues with either IME physician. Petitioner testified she was truthful in all of her statements to her physicians. Petitioner would not testify as to whether she liked treating with Dr. Metcalf, a chiropractor. Petitioner testified that prior to 01/09/17 she had been treating with Dr. Kuo. (Tx. Pg. 55-60).

Medical:

On 03/15/16, Petitioner was seen by Dr. Dawis. (Px1). Petitioner noted she was back to working regular duty. Petitioner underwent an x-ray of the **right shoulder**. It was noted no fracture or dislocation.

On 03/15/16, Petitioner was seen by Dr. Rebecca Kuo (Px4) for a one month recheck of a left carpal tunnel release. Petitioner noted she had pain from her left carpal tunnel region to the mid volar forearm and particularly when she used her hands but not the shooting pain she had before. Petitioner told Dr. Kuo that she was work 3 weeks ago when she hurt her **right shoulder**. Petitioner was diagnosed with a right shoulder injury and some left pillar pain status post carpal tunnel. Physical therapy was initiated on the right shoulder and Petitioner was told to follow up afterwards. Dr. Kuo considered getting a MRI of the right shoulder. (Px4).

On 04/11/16, Petitioner was seen by Dr. Dawis who noted an injury to her right shoulder at work on 03/07/16 while doing repetitive lifting with boxes. Petitioner was unable to lift her right shoulder. With throbbing pain and restricted range of motion, Petitioner was off work on 04/11/16 and 04/12/16. Petitioner was diagnosed with a strain of the right shoulder. (Px1).

On 05/02/16, Petitioner was seen by ATI Physical Therapy for initial evaluation of right shoulder pain and decreased range of motion. Petitioner's diagnosis was right shoulder sprain/strain. On 05/03/16, Petitioner was seen at ATI Physical Therapy for right shoulder physical therapy. (Px2).

On 05/09/16, Petitioner was seen by Dr. Dawis and reported painful right shoulder. Petitioner was diagnosed with impingement of the right shoulder. (Px1).

On 05/09/16, Petitioner was seen at ATI Physical Therapy and they noted increased right shoulder pain and pain was extending down her arm due to increased work shift on the 6th. Petitioner was seen at ATI Physical Therapy for right shoulder treatment on 05/12/16, right shoulder treatment on 05/17/16, right shoulder treatment on 05/23/16, and right shoulder treatment on 05/25/16. (Px2).

On 06/06/16, Petitioner was seen by Dr. Dawis who noted she was still in therapy 2 times a week for her right shoulder with some improvement, but she still had pain. Petitioner was diagnosed with right shoulder pain and right shoulder impingement. (Px1).

Petitioner was seen at ATI Physical Therapy for physical therapy of the right shoulder on 06/06/16, 06/07/16 and 06/13/16. (Px2).

On 06/15/16, Petitioner was discharged from ATI Physical Therapy with continued shoulder pain with a primary diagnosis of right shoulder sprain/strain. Petitioner had continued right shoulder pain and decreased range of motion with complaints of shooting pain extending down the arm when attempting to lift objects above shoulder height. (Px2).

On 06/28/16, Petitioner was seen in follow up by Dr. Dawis for right shoulder pain with stiffness and restriction of range of motion. Therapy and medication were continued. It was noted Petitioner was unable to function with her right shoulder. Petitioner was diagnosed with right shoulder pain with impingement syndrome. (Px1).

On 07/01/16, Petitioner was seen again seen by Dr. Dawis, noting still painful right shoulder and no improvement with therapy. Petitioner was on vacation for two weeks until

07/11/16. Petitioner noted a painful right shoulder. Assessment was acute pharyngitis and bronchitis. Dr. Dawis refilled Norco for lumbar spondylosis and multiple arthritis. (Px1).

On 08/31/16, Petitioner was seen by Dr. Dawis for chronic sinusitis, multiple arthritis, bursitis of the right shoulder, lumbar spondylosis, right hand pain, status right carpal tunnel syndrome and chronic bronchitis. (Px1).

On 10/04/16, Petitioner was seen again by Dr. Dawis complaining of cough, right wrist pain, lumbar sciatica, muscle spasms. Pain meds were continued. (Px1).

On 10/31/16, Petitioner was seen by Dr. Dawis for painful right wrist from repetitive use of both hands and lower back. (Px1).

On 10/31/16, Petitioner was seen by Dr. Rebecca Kuo for right shoulder pain. Petitioner noted she was feeling better however had a twinge every now and then and does not wish to proceed with further therapy. Petitioner noted she was going to lose her insurance in 2017 and wanted to address her other medical issues before that time to obtain treatment before the new year. Petitioner had carpal tunnel on the left wrist again, and numbness down the right leg from her lower back. Petitioner noted tingling down her right leg to her foot mostly to the first couple of toes. Dr. Kuo noted she wanted to get Petitioner off any type of narcotics. An MRI of the right hand was recommended, and an MRI of the lumbar spine was recommended to see if she had any significant stenosis causing tingling in her right leg. Medication was provided and follow up scheduled. (Px4).

On 11/18/16, Petitioner was seen by Dr. Dawis complaining of severe low back pain 3-4/10 with stiffness and pain in the right leg. Petitioner had a history of lumbar spondylosis, facet arthropathy L4-5, L5-S1 with foraminal stenosis. Medication and low back MRI were recommended. (Px1).

On 12/27/16, Petitioner was seen by Dr. Dawis with some increased pain and neuropathy of the right hand. On 01/04/17, Petitioner was seen by Dr. Dawis for right carpal tunnel symptomolgy. (Px1).

On 01/12/17, Petitioner was seen by Dr. George Pappas at Tyler Medical Services. Petitioner presented for initial evaluation of back pain and radiating pain and burning down her right leg. She stated that on 01/09/17 she was lifting boxes of glue weighing approximately 30 lbs. when she felt pain in her low back mainly right sided. Her back pain had subsided but she was having radiating pain and burning down the back of her right gluteal region, thigh, and into her right calf. She admitted to chronic recurrent back pain for years, most recently on 10/31/16

when saw Dr. Kuo who ordered an MRI due to lumbar radiculopathy. The MRI was not performed. Currently she was taking medication. X-rays of the lumbar spine showed degenerative changes multilevel with mild spondylolisthesis at L4-5 and narrowing of the disc space. Petitioner was diagnosed with chronic, recurrent low back pain with intermittent right leg pain and burning radiculopathy/sciatica, possible discogenic back pain. Dr. Pappas recommended, as did Dr. Kuo on 10/31/16, a diagnostic MRI of the lumbar spine. Petitioner was released to work without limitations. She was told to follow up with either Dr. Dawis or Dr. Kuo and return to Tyler Medical Services as needed. (Px7).

On 01/24/17, Petitioner was seen by Dr. Rebecca Kuo for recheck of the left wrist. Petitioner was awaiting approval of an MRI of her low back and noted no other changes. An MRI of the cervical spine was recommended to make sure there is nothing else going on in her neck. No further discussion or mention of Petitioner's lumbar spine or low back pain/injury was noted in this office visit. Petitioner did not see Dr. Kuo again until 09/01/20. (Px4).

On 02/07/17, Petitioner was seen by Dr. Dawis with complaints of lumbar sciatica, left carpal tunnel, low back pain, stiffness, decreased range of motion. She was referred to Copley for lower back pain. Petitioner was diagnosis with lumbar spondylosis, lumbar radiculopathy and was referred to physical therapy for evaluation and therapy of the lower back/spine. (Px1).

On 02/16/17, Petitioner underwent an electrodiagnostic report of the upper extremity and the lower extremity. Petitioner was seen by Dr. Metcalf for a myriad of treatment including low back, bilateral legs, extreme tenderness, sprain and cramps in the lower extremities, neck and midback on the following dates: 02/18/17, 02/27/17, 02/28/17, 03/01/17, 03/02/17, 03/06/17, 03/09/17, 03/11/17, 03/13/17, 03/16/17, 03/20/17, 03/25/17, 03/27/17, 03/30/17, 04/01/17, 04/03/17, 04/06/17, 04/10/17, 04/20/17, 04/22/17, 04/24/17, 04/29/17, 05/01/17, 05/20/17, 05/22/17, 05/31/17, 06/01/17, 06/05/17, 06/06/17, 06/07/17, 06/10/17, 06/12/17, 06/15/17, 06/19/17, 06/22/17, 06/29/17, 07/05/17, 07/08/17, 07/10/17, 07/12/17, 07/15/17, 07/17/17, 07/20/17, 07/22/17, 07/24/17, 07/26/17, 07/29/17, 07/31/17, 08/02/17, 08/03/17, 08/05/17, 08/16/17, 08/19/17, 08/23/17, 08/30/17, 08/31/17, 09/06/17, 09/09/17, 09/13/17, 09/14/17, 09/16/17, 09/18/17, 09/20/17, 09/27/17, 10/03/17, 10/10/17, 10/17/17, 10/24/17, 10/31/17, 11/07/17, 11/21/17, 11/28/17. (Px6).

Petitioner underwent an x-ray of the cervical spine, performed and read by Dr. Metcalf on 06/26/17. Petitioner underwent a thoracic x-ray performed and read by Dr. Metcalf on 06/26/17. Petitioner underwent an x-ray for the lumbar spine performed and read by Dr. Metcalf on 06/26/17. Petitioner underwent a bilateral upper extremity electrodiagnostic study performed and read by

Dr. Metcalf on 02/16/17. Petitioner underwent a lower extremity electrodiagnostic study to the bilateral legs performed and read by Dr. Metcalf on 02/16/17. (Px6).

On 02/17/17, Petitioner was seen by Dr. Metcalf for an initial evaluation. She reported severe neck and back pain that radiated down into the legs. Petitioner indicated she was at work while lifting heavy objects when she felt pain immediately in her back. She reported additional pain in the right hip and leg with numbness and tingling. She was diagnosed with post-traumatic thoraco-lumbo spasm, post lumbar sacral sprain, lumbar right radiculitis. Therapy, massage therapy, and manual therapy were recommended. Treatment with Dr. Metcalf, chiropractor, was extensive and covered nearly every body part. (Pet. Ex. #6).

On 03/20/17, Petitioner was seen by Dr. Dawis with improvement but claims pain came back after therapy. She was diagnosed with lumbar radiculitis, lumbar spondylosis, cervical sprain, shoulder sprain and knee issues. (Px1).

On 04/13/17, Dr. Dawis diagnosed Petitioner with lumbar sciatica, left shoulder. Petitioner was undergoing acupuncture from Dr. Metcalf. (Px1).

On 05/01/17, Petitioner was seen by Dr. Dawis. She noted Petitioner was still under physical therapy with Dr. Metcalf for low back and shoulder. A lidocaine patch was recommended. Petitioner noted multiple aches and pain in the left shoulder, low back, right hip. (Px1).

On 05/22/17, Petitioner was seen by Dr. Dawis who noted recurrent left shoulder pain. Chronic cough with nausea and chronic sinusitis. (Px1).

On 06/03/17, Petitioner was seen by Dr. Dawis complaining of a recent MVA where she was rear-ended. Petitioner complained of low back pain 3-4/10 with stiffness, decreased range of motion. Dr. Dawis diagnosed Petitioner with aggravation of lumbar disc disease/muscle spasm. (Px1).

On 06/15/17, Petitioner was seen by Dr. Dawis for left shoulder pain and decreased range of motion. An MRI of the left shoulder was ordered. On 07/19/17, Petitioner was seen by Dr. Dawis for recurrent left shoulder pain. On 08/02/17, Petitioner was seen by Dr. Dawis who noted Petitioner went to the Edwards Hospital ER for severe pain in the left shoulder. (Px1).

On 09/12/17, Petitioner was seen by Dr. Dawis who noted recurrent left shoulder and low back pain. (Px1).

Petitioner was seen for her cervical spine, bilateral shoulders, low back and midback by Dr. Metcalf. Petitioner was diagnosed on 10/24/17 with radiculopathy of the cervical region and sprain of the left shoulder. (Px6).

On 12/08/17, Petitioner was seen by Dr. Dawis for sinusitis and headache, left shoulder pain and rotator cuff tendinopathy. Petitioner was diagnosed with recurrent low back pain, spondylolisthesis at L4-5. (Px1).

On 12/14/17, Dr. Metcalf drafted a final evaluation report of Petitioner. Dr. Metcalf noted Petitioner initially presented to his office on 02/16/17 for injuries sustained in January 2017. Petitioner noted while at work she was lifting heavy objects and immediately felt sharp pain in her neck, back and shoulder. Petitioner was diagnosed with post-traumatic radiculopathy of the cervical region, post-traumatic sprain of the left shoulder girdle, post-traumatic thoraco-lumbar spasm, post traumatic lumbosacral sprain, post traumatic spondylolisthesis. Petitioner underwent multiple x-rays including cervical x-rays, thoracic x-rays and lumbar x-rays, as well as upper and lower extremity neurodiagnostic exams with Dr. Metcalf. Petitioner underwent outpatient therapy, home exercise and acupuncture to help with pain management and progressive rehabilitation. Dr. Metcalf indicated Ms. Harris could benefit from pain management and continued treatment. (Px6).

On 01/02/18, Petitioner was seen by Dr. Dawis for left shoulder osteoarthritis and lumbar sciatica. On 03/05/18, Petitioner was seen by Dr. Dawis for medium to severe pain on the right shoulder. With a history of rotator cuff in the past, bilateral pain was noted on the shoulders. (Px1).

On 05/02/18, Petitioner was seen by Dr. Dawis for recurrent pain of the left shoulder and low back. She was diagnosed with lumbar degenerative bulging disc at L5-S1, spondylolisthesis at L4-5 and left shoulder severe rotator cuff hypertrophic tendinopathy with large effusion tearing of labrum. On 06/18/18, Petitioner was seen for low back and shoulder pain with Dr. Dawis. (Px1).

On 07/18/19, Petitioner was seen by Dr. Dawis for multiple arthritis especially in the neck and left shoulder. Was given a referral to a pain clinic. (Px1).

On 09/01/20, Petitioner was seen by Dr. Kuo who noted a new patient visit for low back pain. Dr. Kuo had not seen Petitioner in a few years. Petitioner noted left shoulder pain at this time and increasing low back pain. Petitioner was diagnosed with left shoulder rotator cuff injury, possibly requiring surgery and back pain secondary to degeneration. Physical therapy was recommended. Lumbar spine and shoulder x-rays were ordered. (Px4).

On 09/09/20, an MRI of the lumbar spine was performed showing multilevel lumbar spondylosis most pronounced at L3-L4, where there is mild-to-moderate spinal canal stenosis,

moderate left foraminal stenosis and mild right foraminal stenosis with mild anterolisthesis of L4 over L5. (Px4).

On 09/11/20, Petitioner was seen for a recheck with Dr. Kuo who noted the back pain remained the same as the last visit. She had some right leg pain and tingling and numbness to her right toes. The MRI demonstrated moderate stenosis at L3-L4 and mild-to-moderate stenosis at L4-L5. Spondylolisthesis in the x-ray completely resolved in the MRI demonstrating how mobile this spondylolisthesis was. Dr. Kuo believed this was actually the source of her issue, however in discussing her pain, it was worse with sitting, lifting, bending and better with activity. Dr. Kuo believed her pain was primarily arthritic in nature and degenerative in nature. Physical therapy was recommended. (Px4).

On 03/01/21, Petitioner was seen by Dr. Dawis for left shoulder pain noting she was able to cross kids on the street. On 04/07/21, Petitioner was seen by Dr. Dawis noting multiple joint aches and pains. (Px1).

On 05/05/21, Petitioner was seen by nurse practitioner Pizinger for recheck of the left shoulder. Petitioner claims injury in 2017 at General Mills. Petitioner stated she was doing heavy lifting in 2016 when she worked at General Mills. Updated MRI was recommended. (Px4).

On 05/10/21, Petitioner was seen by Dr. Dawis with left shoulder pain. (Px1).

On 05/26/21, Petitioner underwent an MRI of the left shoulder. Stable moderate to severe insertional supraspinatus, tearing of the superior labrum is again seen. (Px4).

On 07/14/21, Petitioner was seen by nurse practitioner Pizinger to discuss the MRI of the left shoulder. An injection was performed. (Px4).

On 08/03/21, Petitioner was seen by Dr. Kuo for a recheck of the low back. Petitioner asked for stronger medication and noted the injection helped temporarily but had since worn off. Petitioner was told to continue with home exercise program. Petitioner was going to consider surgery. She was told to follow up in 2 months. (Px4).

On 08/12/21, Petitioner was seen by nurse practitioner Pizinger for left shoulder pain. (Px4).

Dr. Nikhil Verma Deposition and IME (Resp. Ex. #2)

Dr. Nikhil Verma testified via deposition on 10/02/19. Dr. Verma testified that he saw Barbara Harris at the request of Respondent General Mills on 10/05/18. Dr. Verma reviewed and summarized medical records and noted Petitioner underwent treatment for the right shoulder in

March 2016, during which time there were no left shoulder complaints and normal left shoulder exams.

Dr. Verma testified that Petitioner told him she injured her left shoulder in March 2016 at work, however he noted no treatment to the left shoulder until approximately June 2017.

At the time of his 2018 exam, Dr. Verma diagnosed Petitioner with left shoulder impingement, rotator cuff tendinopathy and AC joint pain, but Dr. Verma testified that the left shoulder condition was not a result of her alleged work accident in March 2016 due to the significant gap in treatment and normal exams on the left shoulder, as well as lack of evidence to suggest any traumatic or work related injury to Petitioner's left shoulder in March 2016.

On cross examination, Dr. Verma was asked about repetitive work activities including overhead lifting. Dr. Verma provided no opinion as to Petitioner's right shoulder condition. (Resp. Ex. #2).

Dr. Babak Lami Deposition and IME (Resp. Ex. #1)

Dr. Babak Lami testified via deposition on 09/09/19. Dr. Lami testified that he saw Petitioner, Barbara Harris, for an independent medical examination at the request of the employer, General Mills, on 09/24/18. In anticipation of the IME report, Dr. Lami reviewed medical records including those from Tyler Medical Center, Dr. Metcalf, Dr. Dawis and Dr. Rebecca Kuo.

Dr. Lami testified that prior to the alleged work accident, Petitioner was under the care of Dr. Kuo and was taking Norco for pain. Dr. Lami testified that Petitioner indicated that she was working on 01/09/17 when she moved a box and felt pain the next day.

Petitioner, at the time of the exam, denied any prior back issues. Dr. Lami testified that he specifically asked about previous back pain and treatment, but that Petitioner denied any. Dr. Lami testified that the time of his exam he could not support her condition to be related to the alleged work accident on 01/09/17. Dr. Lami noted that although Petitioner never reported having back problems, the medical records suggested that she had a history of chronic back issues. The condition pre-existed the alleged injury in question. Dr. Lami further testified it was possible she had a back sprain or possibly increased a pre-existing condition, however, given the maximum injury that she reported, Dr. Lami could not support her current symptoms to still be related to the incident in question.

Dr. Lami further noted the subsequent car accident aggravated Petitioner's lumbar disc disease. Dr. Lami noted the patient had more pain after the car accident and that it irritated her

lumbar spine condition. Dr. Lami determined Petitioner should have been at baseline, anything from 1-4 weeks after the alleged accident.

Dr. Lami specifically addressed chiropractic treatment of Dr. Metcalf. Dr. Lami testified that he felt chiropractic treatment with Dr. Metcalf was excessive. Dr. Lami reviewed chiropractic notes including electric stimulation, therapeutic exercise and traction. Dr. Lami testified Petitioner did not require x-rays of her neck and upper mid-back because the alleged injury was to her lower back and that physical therapy or chiropractic treatment 2-3 times a week for a period of 3 weeks would have been reasonable. Dr. Lami opined that treatment beyond that time period was unreasonable.

Petitioner was released by Dr. Lami to return to work full duty without restrictions.

Dr. Lami testified that nerve studies done by chiropractor Dr. Metcalf were not necessary. Lami believed that nerve studies should be done by a neurologist not a chiropractor and, further, these exams were for the upper and lower extremities which were not related to this case. Dr. Lami confirmed he is not an expert in chiropractic care.

Dr. Lami testified Petitioner's diagnostic studies showed degenerative changes which pre-existed the incident in question, and that her baseline condition as it relates to her spinal condition and the objective medical evidence shows her the same on 09/24/18 as it would have been on 01/08/17.

Dr. Imelda Dawis Deposition (Pet. Ex. #3)

The deposition of Dr. Imelda Dawis was taken 06/30/21. Dr. Dawis testified that she was in family medicine with emergency room experience.

Dr. Dawis saw Barbara Harris one week after 03/07/16 and the doctor claimed Petitioner reported a left shoulder injury after jamming her shoulder. Dr. Dawis testified that she examined Petitioner and she noted limited range of motion and that she had already been referred to physical therapy to stabilize and strengthen her left shoulder. Dr. Dawis indicated this referral for physical therapy was by Dr. Rebecca Kuo, the orthopedic physician.

Dr. Dawis testified Petitioner had a strain of the left shoulder from 'probably' when she went back to her line operator work. Dr. Dawis testified that this left shoulder condition was 'probably' related to the same kind of work Petitioner had been doing for more than 30 years. Dr.

Dawis testified based on the condition of the left shoulder with degenerative changes from the MRI and possible rotator cuff problem, Petitioner's job contributed to the stress and weakness of the left shoulder joint. Dr. Dawis testified Petitioner was already in physical therapy and was given a steroid injection, pain medication and told not to work for some weeks. Dr. Dawis did not provide specific dates of treatment.

Dr. Dawis testified Petitioner had not had surgery, but that Petitioner was referred to a few orthopedic doctors and some orthopedics suggested non-evasive procedures like physical therapy and injections. Dr. Dawis testified that Petitioner has not reached maximum medical improvement for this condition and that she had never really been out of pain and discomfort. Dr. Dawis again did not provide specific dates of treatment or dates for clarification.

Dr. Dawis testified that she believed the present condition as described in the MRI is related to her long term rotatory motion on the upper extremities, the same job Petitioner had been doing for more than 30 years.

Dr. Dawis was questioned to the right versus left shoulder.

> Q: "Now, Dr. Dawis, there are notes in your chart involving both the right shoulder and the left shoulder. Were there any mistakes made in recording the notes as to whether they applied to the right shoulder or the left shoulder?"
>
> A: "No, there was no mistake at all, sir. When she comes to complain of the left shoulder, she claims she put – she was still working at that time. She puts more emphasis on the good shoulder and less work on the bad shoulder. That's why she also complains – every time she came, she complains of bilateral pain, shoulder pain, both left and right, but mostly on the left side." (Pet. Ex. #3, Pg. 13).

Dr. Dawis was asked whether she saw Petitioner after 01/09/17. Dr. Dawis did not provide a date of exam, but noted Petitioner was seeing Dr. Kuo for treatment. Dr. Dawis stated Petitioner indicated she was lifting some boxes and suddenly felt sharp pain in the lower back.

Dr. Dawis testified that Petitioner's work activities contributed to the injury in her low back at that time, however no "time" or specific job description was indicated. Dr. Dawis testified she was aware of Petitioner's prior low back pain, but Petitioner's job contributed more to a progressive injury in her lower back.

Dr. Dawis testified Petitioner was not at MMI for the low back. Dr. Dawis confirmed she is not an orthopedic specialist nor a neurosurgeon but that she sees progressive worsening in the

lumbar spine MRI. Dr. Dawis recommended treatment including rest and medication because there is nothing Petitioner can do for the low back.

Regarding Petitioner's work capabilities, Dr. Dawis stated:

> "Well, with all the injuries that she had over the years, I don't think she could really go back to work because there is really no treatment for the lower back. With the left shoulder, maybe she could go later for rotator cuff surgery, but with the lower back, I don't think she will modify the pain at all. She will be in constant pain for the rest of her life." (Pet. Ex. #3, Pg. 16).

Dr. Dawis indicated Petitioner's medical insurance was never charged for her treatment.

On cross-examination, Dr. Dawis confirmed she is a general practitioner with no orthopedic specialty. Dr. Dawis testified that she did not review the MRI films. Dr. Dawis testified that Petitioner reported an injury to her pulling cardboard at work and she felt a sudden left shoulder sharp pain on 03/07/16. Dr. Dawis testified Petitioner's left shoulder condition could be related to both a specific injury or repetitive trauma of working as a line technician for 30+ years. Dr. Dawis testified she did not review a job description and did not know the number of times Petitioner performed her daily work activities.

Dr. Dawis was asked regarding maximum medical improvement. Dr. Dawis testified that Petitioner's left shoulder condition had worsened since the initial accident however was unable to articulate any work activities since the date of accident which may have contributed or accelerated and cause her worsening. Dr. Dawis testified that many years ago back to 2007, Petitioner had every day complaints radiating pain down to her right leg and in her low back. Dr. Dawis was unable to specifically provide dates for the MRI she was referencing.

Dr. Dawis further testified that Petitioner's accident exacerbated the lower back pain that the old condition of the lumbar spine contributed over the years to progressively change to her lumbar spine. Dr. Dawis testified that Petitioner had "better pain now" with prior pain complaints of 7/10 and currently complaints at 2-3/10.

PRIOR WC CLAIMS:

Petitioner has had several previous Illinois Workers' Compensation filings. (Resp. Ex. #3).

1. 99 WC 016868 Barbara Harris v. General Mills
    a. 6% loss of use of the right arm.
2. 99 WC 030365 Barbara Harris v. General Mills
    a. 16.27% loss of use of the right hand.

3. 99 WC 056432 Barbara Harris v. General Mills, Inc.
    a. 7 weeks disfigurement.
4. 08 WC 021093 Barbara Harris v. General Mills, Inc.
    a. 5.6% "man as whole". Low back injury.
    b. Medical Expenses.
5. 10 WC 048456 Barbara Harris v. General Mills, Inc.
    a. Adjudicated with companion case.
6. 15 WC 015792 Barbara Harris v. General Mills
    a. 9.63% left hand.
    b. 1% right hand.
    c. Medicare Set Aside.

Respondent paid medical charges totaling $1,820.38 for treatment at Illinois Spine Institute, and Tyler Medical Services (Resp. Ex. #4). BCBS paid medical charges totaling $3,250.91 for which Respondent is entitled an 8(j) credit as confirmed on the stipulation sheet.

CONCLUSIONS OF LAW
17 WC 26788

C. DID AN ACCIDENT OCCUR THAT AROSE OUT OF AND IN THE COURSE OF PETITIONER'S EMPLOYEMNT BY THE RESPONDENT?

Petitioner testified that she was lifting and pulling cardboard boxes on March 7, 2016, at work when she noticed a burning sensation in her shoulder. Petitioner also testified that she notified her supervisor of the incident the next day. Petitioner did seek medical care from Dr. Dawis on March 15, 2016, and these medical records do contain a reference to lifting at work. Petitioner's subsequent treatment with Dr. Dawis on April 11, 2016 also contain a reference to injuring her shoulder at work while doing repetitive lifting of boxes.

Respondent did not offer any testimony to rebut petitioner's claims regarding the accident. Respondent did not rebut the petitioner's testimony or claim with any medical records disputing the actual alleged incident at work.

Based on the above the, the Arbitrator finds that the petitioner proved she sustained accidental injuries arising out of and in the course of her employment on March 7, 2016.

E. WAS TIMELY NOTICE OF THE ACCIDENT GIVEN TO THE RESPONDENT?

Petitioner testified that on March 8, 2016, the day after the alleged accident that she told her supervisor of the incident the previous day and completed an accident report. This testimony is unrebutted by the respondent.

Based on the above the Arbitrator finds petitioner proved she tendered timely notice of the alleged accident to the respondent.

F. IS PETITIONER'S CURRENT LEFT SHOULDER CONDITION OF ILL-BEING CAUSALLY RELATED TO THE WORK ACCIDENT?

Petitioner filed an Application for Adjustment of Claim on September 13, 2017 alleging that she injured her left shoulder in the course of her employment. That Application was never Amended. The petitioner's sworn testimony is that she injured her left shoulder at work as described above. However, all of the petitioner's medical care throughout 2016 was for this incident was for her right shoulder.

a. Petitioner was seen by Dr. Dawis on 03/15/16 and underwent an x-ray of her right shoulder. A diagnosis was tendered of Right shoulder Impingement Syndrome. (Pet. Ex. #1).
b. Petitioner was seen by Dr. Kuo on 03/15/16 and reported she injured her right shoulder at work 3 weeks prior. Dr. Kuo diagnosed her with right shoulder injury and ordered physical therapy for the right shoulder, and an MRI of the right shoulder was considered. (Pet. Ex. #4).
c. Petitioner was seen by Dr. Dawis on 04/11/16 noting injury to her right shoulder at work on 03/07/16. Petitioner was diagnosed with strain of the right shoulder. (Px1).
d. Petitioner underwent physical therapy at ATI Physical Therapy for the right shoulder in May and June 2016. All treatment with ATI Physical Therapy was for the right shoulder. (Px2).
e. Petitioner was seen by Dr. Dawis on 06/06/16 and complained of right shoulder pain and was diagnosed with right shoulder impingement. (Px1).

f. On 06/28/16 Petitioner was diagnosed with right shoulder impingement syndrome by Dr. Dawis. (Px1).
g. On 07/01/16 Petitioner was seen by Dr. Dawis for painful right shoulder. (Px1).
h. On 08/31/16 Petitioner was seen by Dr. Dawis and diagnosed with multiple arthritis and bursitis of the right shoulder. (Px 1).
i. On 10/31/16 Petitioner followed up with Dr. Kuo for right shoulder pain. (P4).
j. The first treatment to the petitioner's left shoulder with Dr. Dawis occurs on July 19, 2017, more than 16 months after the accident. (Px1)

Dr. Dawis testified via Deposition that the petitioner reported to her that she injured her left shoulder at work on March 7, 2016, that she injured her left shoulder at work. Dr. Dawis further testified that she examined and treated the petitioner's left shoulder. However, as noted above, the medical records of Dr. Dawis throughout 2016 only reference the right shoulder. Dr. Dawis was directly asked if any mistakes made in recording her progress notes. Dr. Dawis stated there were no mistakes made in her notes. The Arbitrator finds that the testimony of Dr. Dawis is contradicted by her own treatment notes. The Arbitrator also notes the referral form from Dr. Dawis to ATI Physical Therapy (Px2) in which there are two separate references to the right shoulder and no reference to the left shoulder. This referral form bears the signature of Dr. Dawis and is dated April 26, 2106.

The Arbitrator notes that the petitioner was treated at NW Delnor hospital on August 2, 2017 for complaints of left rotator cuff pain. They note petitioner recently had an MRI of the left shoulder performed. Petitioner denied any new trauma at this time. (Px5)

Respondent's examining physician, Dr. Verma testified opined that he did not believe that petitioner's left shoulder condition is causally related to her accidental injuries of March 7, 2016 because there was no evidence of any medical treatment to the left arm for over one year after the accident. The Arbitrator adopts the medical opinion of Dr. Verma.

Based on all of the above, the Arbitrator finds that the petitioner failed to prove that her left shoulder condition is causally related to her accidental injuries of March 7, 2016. The Arbitrator makes no ruling on whether the petitioner's right shoulder condition is related to the accident as there is no claim for a right shoulder injury before the Illinois Workers' Compensation Commission.

J. WERE THE MEDICAL SERVICES PROVIDED TO PETITIONER REASONABLE AND NECESSARY? HAS THE RESPONDENT PAID ALL APPROPRIATE CHARGES FOR ALL REASONABLE AND NECESSARY MEDICAL SERVICES?

Based on the Arbitrator's finding that the Petitioner failed to prove that her left shoulder injuries were causally related to her accidental injuries of March 7, 2016, all claims for medical benefits under Section 8(a) of the Act are denied.

K. WHAT TEMPORARY BENEFITS ARE IN DISPUTE?

Based on the Arbitrator's finding that the petitioner failed to prove that her left shoulder condition is not causally related to the accident of March 7, 2016, the Arbitrator finds that the petitioner is not entitled to any Temporary Total Disability benefits under Section 8(b) of the Act.

L. WHAT IS THE NATURE AND EXTENT OF THE INJURY?

Based on the Arbitrator's finding that Petitioner failed to prove that her left shoulder condition is causally related to her accidental injuries of March 7, 2016, the Arbitrator finds is not entitled to any permanency.

CONCLUSIONS OF LAW
17 WC 5109

C. DID AN ACCIDENT OCCUR THAT AROSE OUT OF AND IN THE COURSE OF PETITIONER'S EMPLOYMENT BY THE RESPONDENT?

Petitioner testified that on January 9, 2017, she was moving hot melt across the floor when she felt pain in her back. Petitioner further stated that she advised the respondent of this incident the following day and was referred to the Tyler medical Clinic. The medical records of Tyler Clinic indicate petitioner was seen there on January 12, 2017, at which time she tendered a history that she was lifting boxes of glue weighing 30 lbs. when she felt pain in her low back, more severe on the right side. The medical records also indicate that petitioner honestly acknowledged her history of prior low back pain and treatment.

Respondent offered no testimony to rebut the petitioner's testimony regarding the issue of accident. The respondent offered no documentary evidence to rebut the petitioner's testimony regarding the issue of accident.

Based on the above, the Arbitrator finds that the petitioner proved she sustained accidental injuries arising out of and in the course of her employment on January 9, 2017.

E. WAS TIMELY NOTICE OF THE ACCIDENT GIVEN TO RESPONDENT.

Petitioner testified she reported her injury to her team leader and had discussion with the Human Resources Department the day after the injury. Petitioner further testified that she was referred to the Tyler Medical Clinic. The respondent failed to offer any rebuttal testimony on this issue.

Based on the petitioner's unrebutted testimony, the Arbitrator finds that the petitioner provided timely notice of this injury to the respondent.

F. IS PETITIONER'S CURRENT CONDITION OF ILL-BEING CAUSALLY RELATED TO THE WORK ACCIDENT.

Petitioner offered evidence of a low back injury occurring on 01/09/17 including her testimony, medical records of Dr. Dawis, Dr. Kuo, Dr. Metcalf and Dr. Pappas (Tyler Medical

Services). Respondent offered medical testimony of Dr. Lami who reviewed the above-mentioned records.

Petitioner did have low back pain and medical care to the low back prior to January 9, 2017, injury. It is the Arbitrator's opinion that the incident on that day aggravated her degenerative changes in her spine. Petitioner did commence receiving treatment to her low back shortly after the incident.

Dr. Dawis testified as to Petitioner's treatment after 01/09/17. Dr. Dawis testified that Petitioner's work activities contributed to her previous pre-existing low back pain.

Following her treatment with Tyler Medical Center for low back pain, Petitioner was seen by Dr. Kuo on 01/24/17 for left wrist pain. It was noted that she was waiting on the previously (10/31/16) recommended lumbar spine MRI. No further mention is included in this note regarding Petitioner's low back pain or work injury. Petitioner did not see Dr. Kuo again until 09/01/20, almost 3 years later.

Petitioner was treated by Dr. Handel Metcalf, chiropractor. Petitioner underwent treatment with Dr. Metcalf including treatment to the bilateral legs, neck, midback, bilateral arms. Dr. Metcalf further performed electrodiagnostic tests.

Petitioner was examined by Dr. Lami on 9/24/18, who asked Petitioner about her prior treatment for her low back. Dr. Lami opined in his deposition that Petitioner's preexisting condition was possibly increased by the accident 01/09/17.

The Arbitrator relies on the medical opinions of Dr. Dawis and Dr. Lami (listed in the paragraph above) as well as his review of the petitioner's medical records following the accident to conclude that the petitioner proved her low back condition is causally related to the accident of January 9, 2017 in the form of a soft tissue exacerbation of her pre-existing degenerative changes.

J. WERE MEDICAL SERVICES PROVIDED THAT WERE PROVIDED TO PETITIONER REASONABLE OR NECESSARY? HAS RESPONDENT PAID ALL APPROPRIATE CHARGES FOR ALL REASOANBLE AND NECESSARY MEDICAL CHARGES?

Petitioner has failed to offer sufficient credible evidence that she is entitled to medical costs or fees beyond 4 weeks of physical therapy and 4 weeks of post-injury treatment to her lumbar spine only. Medical bills for lumbar spine treatment are awarded pursuant to Dr. Lami's medical opinions, as outlined below.

Medical bills from Dr. Imelda Dawis for dates of service 02/07/17 ($50.00) and 03/20/17 ($50.00) are awarded directly to Dr. Imelda Dawis. All other bills for Dr. Dawis are denied as unrelated. (Pet. Ex. #1).

Medical bills from ATI physical from ATI Physical therapy for treatment from 05/02/16-06/15/16 for right shoulder physical therapy are denied as unrelated. (Pet. Ex. #2).

Medical bills from Illinois Orthopedic Institute, LLC for date of service 01/24/17 charges $156.02 are awarded, all other medical charges for Illinois Orthopedic Institute are hereby denied as unrelated. (Pet. Ex. #4).

Dr. Metcalf's medical treatment was excessive and included unrelated body parts. Treatment to Petitioner's upper extremities, neck, midback and left leg are denied as unrelated.

Dr. Metcalf's bills are awarded from 02/16/17-03/16/17 with the following stipulations:

- Bills for 02/16/17 for charges as listed in **Proposed Decision Exhibit A** (bills from Pet. Ex. #6), show upper extremity diagnostic testing and duplicative bills. These charges are denied as duplicative and unrelated to Petitioner's lumbar spine.
- Bills for 02/16/17 for charges as listed in **Proposed Decision Exhibit B** (bills from Pet. Ex. #6), show lower extremity diagnostic testing charges and duplicative billing entries. The charges of $2,840.48 are awarded once, not for each duplicate bill included.
- The remainder of the bills for charges as listed in **Proposed Decision Exhibit C** (bills from Pet. Ex. #6), show charges from 02/16/17-03/16/17 and total $3,971.51.

Medical bills from Tyler Medical Service for date of service 01/12/17 for charges totaling $360.20 are awarded. (Pet. Ex. #7).

All charges are awarded pursuant to the fee schedule and shall be paid directly to the respective providers. All other medical bills or charges are denied. Respondent shall receive a credit for medical bills paid.

K. WHAT TEMPORARY BENEFITS ARE IN DISPUTE?

Petitioner was released to return to work with no restrictions by Dr. Pappas on 01/12/17. Petitioner was seen by Dr. Kuo on 01/24/17 and was not provided with work restrictions. Petitioner was seen by Dr. Dawis on 02/07/17, 03/20/17, 04/13/17, 05/01/17, 05/22/17, 06/03/17, 07/19/17, 08/02/17, 09/12/17, 12/08/17 and was not provided with work restrictions for her lumbar spine. Petitioner treated with Dr. Metcalf from 02/16/17 through 12/14/17 and was not provided with permanent or daily work restrictions for her lumbar spine.

Further, Petitioner confirmed she resigned her employment with General Mills to take her pension and to receive a severance package when the General Mills plant closed in March of 2017. Petitioner testified that she was made aware of her options through discussion with her union representative. She further stated she was able to return to work before the plant closed, but that she did not return to work, and has not looked for additional work since.

Dr. Lami determine Petitioner was capable of returning to work with no limitations, although no work restrictions were provided by Petitioner's treating physicians.

Based upon all of the above, the Arbitrator finds that the petitioner failed to prove she entitled to any Temporary Total Disability Benefits under section 8(b) of the Act.

L. WHAT IS THE NATURE AND EXTENT OF THE INJURY?

Section 8.1b of the Act requires consideration of 5 factors in determining permanent partial disability:

i. Reported level of impairment;
ii. Occupation;
iii. Age at the time of injury;
iv. Future earning capacity;
v. Evidence of disability corroborated by treating medical records.

Reported level of impairment:

Neither party entered an AMA impairment rating into evidence. Therefore, the Arbitrator finds that this factor has no effect on permanency.

Occupation of Employee:

Petitioner was a general laborer at the General Mills factory. Based on the evidence, it appears that the petitioner had worked in this position for respondent for almost 30 years. Petitioner's duties required repetitious manual labor. The relatively heavy physical demands of the petitioner's job duties to which she likely would have returned (but for the upcoming closure of the plant), causes the Arbitrator to find that this factor weighs in favor of greater permanence.

Age:

Petitioner was 65 years old at the time of the accident. The Arbitrator notes that this was near to the end of petitioner's normal work life expectancy. The Arbitrator finds that this factor weighs in favor of lower permanence.

Future Earning Capacity:

There was no evidence introduced that the petitioner sustained any loss of earnings capacity as a result of any medical restrictions that resulted from her injury. The Arbitrator finds that this factor weighs in favor of lower permanence.

Evidence of disability corroborated by treating medical records:

Petitioner had received medical care for complaints of low back pain prior to the injury. An MRI performed after the January 9, 2017, injury reveals evidence of degenerative changes including stenosis at the L3-5 levels. The Arbitrator believes that the petitioner sustained a soft tissue aggravation superimposed on her pre-exiting degenerative changes. The petitioner received conservative medical care as a result of this injury. Dr. Lami opined that petitioner could return to full duty at the time of his examination of the petitioner's lumbar spine on September 24, 2018. Petitioner's last office visit for her low back was on 08/03/21 with Dr. Kuo. At that time, Dr. Kuo noted Petitioner had 5/5 strength. Surgery was discussed but no work restrictions were provided. Dr. Dawis attempted to provide a blanket statement of disability and inability to return to work. The Arbitrator adopts the medical findings of Dr. Kuo and Dr. Lami. The Arbitrator finds that this factor weighs in favor of lower permanence.

Based upon all of the above, the Arbitrator finds Petitioner sustained a 4% loss of use of the person as whole under section 8(d)2 of the Act.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	17WC002351
Case Name	Amy Reuter v. Bureau County Sheriff's Dept.
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	24IWCC0195
Number of Pages of Decision	22
Decision Issued By	Raychel Wesley, Commissioner

Petitioner Attorney	Damon Young
Respondent Attorney	Daniel Arkin

DATE FILED: 4/30/2024

/s/ Raychel Wesley, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF LASALLE)

☐ Affirm and adopt (no changes)	☐ Injured Workers' Benefit Fund (§4(d))
☐ Affirm with changes	☐ Rate Adjustment Fund (§8(g))
☒ Reverse Causation	☐ Second Injury Fund (§8(e)18)
	☐ PTD/Fatal denied
☐ Modify	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

AMY REUTER,

Petitioner,

vs. NO: 17 WC 02351

BUREAU COUNTY SHERIFF'S DEPARTMENT,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petitions for Review having been filed by the Petitioner and Respondent herein and notice given to all parties, the Commission, after considering the issues of whether Petitioner's low back condition is causally related to her December 5, 2016 accident, entitlement to Temporary Total Disability benefits, entitlement to medical expenses, the nature and extent of any permanent disability, and Respondent's credit, and being advised of the facts and law, reverses the Decision of the Arbitrator, which is attached hereto. The Commission finds Petitioner's current condition of ill-being is causally related to the work injury.

PROLOGUE

The Commission observes Petitioner's personal identity information was unredacted from Petitioner's Exhibits 2 and 8. The Commission cautions Counsel to adhere to Supreme Court Rule 138. *Ill. S. Ct. R. 138* (eff. Jan. 1, 2018).

CONCLUSIONS OF LAW

I. Causal Connection

In concluding Petitioner's current low back condition is not causally related to her work activities, the Arbitrator found the December 5, 2016 work accident represented "just another blip" in her longstanding pre-existing lumbar spine condition. The Commission views the evidence differently.

Our analysis begins with a clarification of the applicable legal standard. It is well established that an accident need not be the sole or primary cause—as long as employment is a cause—of a claimant's condition. *Sisbro, Inc. v. Industrial Commission*, 207 Ill. 2d 193, 205 (2003). Furthermore, an employer takes its employees as it finds them (*St. Elizabeth's Hospital v. Illinois Workers' Compensation Commission*, 371 Ill. App. 3d 882, 888 (5th Dist. 2007)), and a claimant with a pre-existing condition may recover where employment aggravates or accelerates that condition. *Caterpillar Tractor Co. v. Industrial Commission*, 92 Ill. 2d 30, 36 (1982). We emphasize there is no requirement that a claimant have a "true resolution" of her/his symptoms prior to an aggravation, only that s/he return to her/his baseline; nor must there be changes in the pre- and post-accident objective testing. As the Appellate Court held in *Schroeder v. Illinois Workers' Compensation Commission*, 2017 IL App (4th) 160192WC, the inquiry focuses on whether there has been a deterioration in the claimant's condition:

> That is, if a claimant is in a certain condition, an accident occurs, and following the accident, the claimant's condition has deteriorated, it is plainly inferable that the intervening accident caused the deterioration. The salient factor is not the precise previous condition; it is the resulting deterioration from whatever the previous condition had been. *Schroeder* at ¶ 26 (Emphasis added).

It is with this standard in mind that we analyze Petitioner's December 5, 2016 work accident. Our review of the evidence reveals that while there is no question Petitioner had a long history of low back problems, it is equally clear that after the December 5, 2016 accident, there was a deterioration in Petitioner's functionality as well as her symptomatic response to conservative measures, which dictated a change in treatment recommendations.

Regarding Petitioner's functional status, it is undisputed that before her work accident, Petitioner was able to work full duty despite her baseline symptoms; moreover, the record reflects Petitioner remained capable of unrestricted work even during her episodic symptom flares. That changed on December 5, 2016, when Petitioner presented to Dr. Jarred Farrell with a visibly "quivering" right leg she could not move without assistance and complaining of burning pain radiating into the right buttock, posterior leg, and calf that she rated at 7/10 (increased from 3/10 on November 29, 2016); after noting decreased and painful range of motion, tenderness, as well as positive provocative testing on examination, Dr. Farrell authorized Petitioner off work. PX7. The record reflects Petitioner presented to Dr. Rick Cernovich the day after the accident and he, too, concluded Petitioner was incapable of working; in addition to authorizing Petitioner off work, Dr. Cernovich prescribed pain medication as well as Medrol Dosepak (RX9). Significantly, this is the first time Petitioner's low back symptoms had ever necessitated work/activity restrictions. T. 33. As Petitioner underwent chiropractic care over the next six weeks, at no point did Dr. Farrell release Petitioner to return to work in any capacity; rather, Dr. Farrell kept Petitioner off work until he ultimately referred her for a consultation with Dr. Richard Kube, who likewise authorized Petitioner off work. PX7. Dr. Kube continued to restrict Petitioner from all work while she underwent an ultimately failed course of conservative care until the doctor concluded surgical intervention was necessary. PX9. The Commission finds the record establishes the December 5, 2016 accident resulted in a distinct deterioration in Petitioner's physical capabilities. The Commission further finds the record does not support the Decision's assertion that Petitioner was only off work because of the failed POWER test. To be clear, there is no evidence of an administrative work restriction; to the

contrary, the record establishes that Petitioner's treating physicians authorized her off work because of her low back.

In addition to Petitioner's work status, Petitioner's symptom complex and associated treatment recommendations changed after the December 5, 2016 accident. Petitioner had an extensive history of intermittent chiropractic care, and our review of the pre-accident records reveals Petitioner's episodic symptom flares responded well to Dr. Farrell's intervention, typically returning to her baseline of 3-4/10 within approximately a month. RX5. In early 2015, Petitioner experienced a more prolonged exacerbation and ultimately underwent an epidural steroid injection ("ESI") on March 5, 2015. PX11. The record reflects Petitioner did "very well" for four months then underwent a second ESI on July 8, 2015. PX11. Petitioner's elevated pain (6-7/10) persisted and Dr. Cernovich referred her to Dr. Patrick O'Leary, who on December 22, 2015 concluded "no surgery is necessary" and instead Petitioner's mild findings could be addressed with physical therapy or ESIs. In 2016, Petitioner experienced two lumbar symptom flares: for the first, she underwent six chiropractic sessions from April 6 to May 16; the second started on October 18, when Petitioner reported pain at 6/10 associated with a tactical training class ("gets thrown around on mats and has to try to throw other people"). RX5. This is the treatment Petitioner had immediately prior to the December 5, 2016 accident, and the Commission observes Dr. Farrell was treating Petitioner with chiropractic care and her symptoms were following her normal trajectory of improvement; by November 29, 2016, her pain was down to 3/10 and her sharp pain had resolved. RX5. Following the December 5, 2016 accident, however, chiropractic care did not relieve Petitioner's worsened symptoms. When Petitioner's exacerbation persisted, Dr. Farrell referred her to Dr. Kube, who initially tried a course of conservative care including ESIs. PX9. Unlike in 2015, though, the ESIs "did not help her significantly," and at that point Dr. Kube concluded Petitioner needed surgery. PX9. Notably, Dr. Kube's April 18, 2017 surgical recommendation is the first time any physician concluded Petitioner's symptoms warranted surgical intervention. While the Decision notes Dr. Kube "very well could have" recommended surgery pre-accident had he been treating Petitioner at that time, the Commission finds this is conjecture based on a false premise: prior to the accident, Dr. Farrell was managing Petitioner's symptoms with chiropractic care and her symptoms did not warrant a referral to Dr. Kube; Dr. Farrell only referred Petitioner to Dr. Kube after her increased symptoms were no longer responsive to chiropractic care, which did not occur until after the accident. In the Commission's view, the record demonstrates Petitioner's symptoms changed following the accident such that she no longer obtained relief via previously successful interventions and for the first time, surgery was recommended.

Our analysis next turns to the competing causation opinions of Dr. Mir Ali and Dr. Jesse Butler. In opining Petitioner's condition is causally related to the work accident, Dr. Ali concluded the December 5, 2016 incident was the "straw that broke the camel's back" and it permanently aggravated Petitioner's pre-existing condition. PX6, DepX2. Dr. Ali acknowledged Petitioner was symptomatic prior to the injury and required occasional chiropractic care, but noted temporary aggravations typically resolve within 90 days; Dr. Ali highlighted that after the December 5, 2016 injury, Petitioner's symptoms persisted for six months until surgery was finally performed. PX6, DepX2. During his deposition, Dr. Ali clarified what he meant when describing Petitioner's pre-accident symptoms as mild: "…in that she is able to work without restrictions, not taking any narcotics on a regular basis, and able to do all of her activities of daily living." PX6, p. 42-43. Dr. Butler, in turn, opined there is no causal connection between Petitioner's condition and the December 5, 2016 incident. Dr. Butler noted her December 5, 2016 pain report of 7/10 is only "three points more than her baseline discomfort of 4/10," and there was "no objective change on her imaging study." RX9. During his deposition, Dr. Butler explained Petitioner's "back and leg issues were ongoing and

consistent with her current and active treatment she had immediately before this fitness test." RX10, p. 12. Dr. Butler confirmed that Petitioner's symptoms were valid and the surgery was reasonable, but stated the pathology he observed on the MRI was non-compressive and would not explain her symptoms. RX10, p. 33. While Dr. Butler agreed Petitioner's "symptoms were elevated," her response to conservative care changed, and Petitioner's function declined after the accident (RX10, p. 47, 49, 52), he nonetheless denied a causal connection.

The Commission finds Dr. Ali's opinions are persuasive and we adopt same. The Commission emphasizes Dr. Ali's causal connection opinions are most consistent with the chain of events, as the evidence demonstrates Petitioner never returned to her pre-accident baseline of being able to work full duty and requiring only conservative intervention for her symptoms. The Commission further finds Dr. Butler's reading of the MRIs is unpersuasive, as it is contradicted by Dr. Kube's operative report as well as Petitioner's post-operative improvement. See *Sunny Hill of Will County v. Illinois Workers' Compensation Commission*, 2014 IL App (3d) 130028WC, ¶ 36 (Expert opinions must be supported by facts and are only as valid as the facts underlying them.)

In the Commission's view, if the December 5, 2016 incident was merely a minor transient flare of Petitioner's pre-existing condition, then Petitioner would have been able to continue working full duty while undergoing a brief course of chiropractic care. That did not happen, and the Commission concludes there was a clear deterioration in Petitioner's condition after the POWER test. The Commission finds Petitioner's current low back condition is causally connected to her December 5, 2016 accident. We further find Petitioner's low back condition reached maximum medical improvement as of Dr. Kube's October 17, 2017 release to full duty.

II. Temporary Disability

On the Request for Hearing, Petitioner alleged entitlement to Temporary Total Disability ("TTD") benefits from December 7, 2016 through October 17, 2017. ArbX1. The Commission observes that as of December 6, 2016, Petitioner was authorized off work by both Dr. Farrell (PX7) and Dr. Cernovich (RX9), and Dr. Kube thereafter maintained her restricted status through the October 17, 2017 release to full duty (PX9). While there was testimony that Petitioner had sporadic income from performing odd jobs in August 2017 (T. 51), we note earning occasional wages does not defeat her TTD claim. *See Freeman United Coal Mining Co. v. Industrial Commission*, 318 Ill. App. 3d 170, 179 (5th Dist. 2000). As such, we find Petitioner proved entitlement to the disputed period of TTD benefits.

Petitioner's stipulated average weekly wage of $824.80 yields a TTD rate of $549.87. Therefore, the Commission finds Petitioner entitled to TTD benefits of $549.87 per week for 45 weeks, representing December 7, 2016 through October 17, 2017. Noting the parties' stipulation that Respondent paid "$29,208.75 as full pay pursuant to PEDA and TTD for which credit may be allowed under §8(j)" (ArbX1), the Commission further finds Respondent entitled to the stipulated credit.

III. Medical Expenses

Petitioner's Exhibit 12 contains the medical bills incurred for treatment of Petitioner's low back. The Commission notes the record contains no opinion challenging the reasonableness or necessity of Petitioner's treatment. The Commission finds the charges detailed in Petitioner's Exhibit

12 are reasonable, necessary, and causally related to the work accident, and Respondent is liable for same.

IV. Permanent Disability

Petitioner's work accident occurred after September 1, 2011; therefore, §8.1b is applicable. Pursuant to §8.1b(b), the Commission is to determine permanent partial disability based upon five factors: (i) the reported level of impairment pursuant to subsection (a); (ii) the occupation of the injured employee; (iii) the age of the employee at the time of the injury; (iv) the employee's future earning capacity; and (v) evidence of disability corroborated by the treating medical records. No single enumerated factor shall be the sole determinant of disability. *820 ILCS 305/8.1b(b)*.

§8.1b(b)(i) – impairment rating – Neither party submitted an impairment rating. As such, the Commission assigns no weight to this factor and will assess Petitioner's permanent disability based upon the remaining enumerated factors.

§8.1b(b)(ii) – occupation of the injured employee – Petitioner was a patrol deputy and was able to return to her physically demanding pre-accident occupation. The Commission finds this factor weighs heavily in favor of decreased permanent disability.

§8.1b(b)(iii) – age at the time of the injury – Petitioner was 36 on her date of accident and has an extensive work life expectancy remaining. The Commission finds this factor weighs in favor of increased permanent disability.

§8.1b(b)(iv) – future earning capacity – No evidence was provided suggesting an adverse impact on Petitioner's future earning capacity. The Commission finds this factor weighs in favor of decreased permanent disability.

§8.1b(b)(v) – evidence of disability corroborated by treating medical records – Petitioner's work accident resulted in surgical intervention to her lumbar spine. Following post-operative rehabilitation, Dr. Kube released Petitioner from care with no permanent restrictions. Petitioner testified to occasional residual symptoms which do not appreciably impact her daily life. The Commission finds this factor is indicative of decreased permanent disability.

Based on the above, the Commission finds Petitioner sustained 17.5% loss of use of the person as a whole.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed October 19, 2022 is hereby reversed.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $549.87 per week for a period of 45 weeks, representing December 7, 2016 through October 17, 2017, that being the period of temporary total incapacity for work under §8(b) of the Act. Pursuant to the parties' stipulation, Respondent shall be given a credit of $29,208.75, as provided in §8(j) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay the medical expenses detailed in Petitioner's Exhibit 12, as provided in §8(a), subject to §8.2. Pursuant to the parties' stipulation, Respondent shall be given a credit of $14,316.60 for medical benefits already paid, and Respondent shall hold Petitioner harmless from any claims by any providers of the services for which Respondent is receiving this credit, as provided in §8(j) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $494.88 per week for a period of 87.5 weeks, as provided in §8(d)2 of the Act, for the reason that the injuries sustained caused the 17.5% loss of use of the person as a whole.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner interest under §19(n) of the Act, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall have credit for all amounts paid, if any, to or on behalf of the Petitioner on account of said accidental injury.

Under §19(f)(2), no "county, city, town, township, incorporated village, school district, body politic, or municipal corporation" shall be required to file a bond. As such, Respondent is exempt from the bonding requirement. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

April 30, 2024

RAW/mck

O: 3/20/24

43

/s/ *Raychel A. Wesley*

/s/ *Stephen J. Mathis*

/s/ *Deborah L. Simpson*

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	17WC002351
Case Name	Amy Reuter v. Bureau County Sheriff's Dept.
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	15
Decision Issued By	Paul Cellini, Arbitrator

Petitioner Attorney	Damon Young
Respondent Attorney	Daniel Arkin

DATE FILED: 10/19/2022

THE INTEREST RATE FOR THE WEEK OF OCTOBER 18, 2022 4.24%

/s/ Paul Cellini, Arbitrator

Signature

STATE OF ILLINOIS)
)SS.
COUNTY OF **LASALLE**)

☐ Injured Workers' Benefit Fund (§4(d))
☐ Rate Adjustment Fund (§8(g))
☐ Second Injury Fund (§8(e)18)
☒ None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

AMY REUTER
Employee/Petitioner

v.

BUREAU COUNTY SHERIFF'S DEPT.
Employer/Respondent

Case # **17** WC **02351**

Consolidated cases: _____

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Paul Cellini**, Arbitrator of the Commission, in the city of **Ottawa**, on **July 28, 2022**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below and attaches those findings to this document.

DISPUTED ISSUES

A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
B. ☐ Was there an employee-employer relationship?
C. ☒ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
D. ☐ What was the date of the accident?
E. ☒ Was timely notice of the accident given to Respondent?
F. ☒ Is Petitioner's current condition of ill-being causally related to the injury?
G. ☐ What were Petitioner's earnings?
H. ☐ What was Petitioner's age at the time of the accident?
I. ☐ What was Petitioner's marital status at the time of the accident?
J. ☒ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
K. ☒ What temporary benefits are in dispute?
☐ TPD ☐ Maintenance ☒ TTD
L. ☒ What is the nature and extent of the injury?
M. ☐ Should penalties or fees be imposed upon Respondent?
N. ☐ Is Respondent due any credit?
O. ☐ Other _____

FINDINGS

On **December 5, 2016**, Respondent ***was*** operating under and subject to the provisions of the Act.

On this date, an employee-employer relationship ***did*** exist between Petitioner and Respondent.

On this date, Petitioner ***did*** sustain an accident that arose out of and in the course of employment.

Timely notice of this accident ***was*** given to Respondent.

Petitioner's current condition of ill-being ***is not*** causally related to the accident.

In the year preceding the injury, Petitioner earned $**42,889.60**; the average weekly wage was $**824.80**.

On the date of accident, Petitioner was **36** years of age, ***single*** with **3** dependent children.

Petitioner ***has*** received all reasonable and necessary medical services.

Respondent ***has not*** paid all appropriate charges for all reasonable and necessary medical services.

Respondent shall be given a credit of $**0** for TTD, $**0** for TPD, $**0** for maintenance, and $**29,208.75** for other benefits (P.E.D.A.).

Respondent is entitled to a credit of $**3,458.21** under Section 8(j) of the Act.

ORDER

The Arbitrator finds that the Petitioner sustained accidental injury arising out of and in the course of her employment on December 5, 2016, but has failed to prove that her lumbar condition of ill-being is causally related to her employment with Respondent.

No benefits are awarded.

RULES REGARDING APPEALS: Unless a party files a *Petition for Review* within 30 days after receipt of this decision and perfects a review in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

STATEMENT OF INTEREST RATE: If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

OCTOBER 19, 2022

Signature of Arbitrator

STATEMENT OF FACTS

Petitioner worked for Respondent as a full time patrol deputy since July 2012 and worked part-time in various capacities for approximately two years before that. On 12/5/16, Petitioner was required to take a mandatory yearly physical fitness test, noting she had completed this test multiple times before with no problems. The test involved sit and reach, bench pressing 50% of weight, 24 sit ups per minute, and a mile and a half run at a certain pace based on age. An inability to complete the physical test results in termination.

On 12/5/16, Petitioner did the sit and reach, sit ups, bench press and the mile and a half run on an indoor track. After completing the first three activities, during the run, maybe 5 or 6 laps in, she testified she developed severe low back pain. She stopped running and walked a lap. When she tried to run again, the pain increased and she was unable to finish the test, completing 23 of 24 laps. Petitioner contacted her immediate supervisor, Sgt. Chad Winner. When he did not respond, Petitioner contacted Respondent's Human Resources' Rebecca Gosch and explained what happened, and Gosch told her to come in and fill out paperwork, which is when she completed an accident report (Px2). While the document is dated 12/5/16, Petitioner testified she actually completed it on 12/6/16. The accident report states: "During the run, about 5 or 6 laps in, I started to have severe low back pain that caused me to have to stop running and alternate between running and walking each lap. As I continued, the pain in my low back worsened, and I started to have sharp pains radiating down my right leg, causing my leg to burn and tingle uncontrollably." Petitioner indicated she was unable to complete the last lap in time and she sat down on the ground. She further stated: "The instructor, Lt. Kellen from Mendota Police Department, helped me to my feet and told me to walk a lap to try and cool down. About halfway around, Lt. Kellen met me, and asked me what was wrong. I told him that I was having severe low back pain and my leg was burning and numb. He told me he was really surprised to see that I could not complete the test, as he has been my testing instructor for many years, and I have never not been able to complete it before." The report also references two witnesses, co-workers Jennifer Miller and Cody Broadus, and goes on to note that Petitioner attempted to perform some errands after testing on 12/5/16 but had severe pain that led her to see her chiropractor that day. (Px2).

Instructor Lt. Kellen drafted a letter indicating that 5 of 7 Bureau County officers failed the test on 12/5/16. As to Petitioner specifically, the report states: "Amy, who I have tested numerous times has always excelled during her testing. I noticed for the first time that while Amy was conducting her testing, she was moving much slower and more deliberate in her movements than in years past. During the sit-up portion of the testing, Amy successfully completed her sit ups, but it was the slowest I have ever seen Amy conduct the testing. Amy through the sit and reach test as well as the bench press with no issues. Amy's final test was to complete the 1.5 mile run in 16:52. Amy failed to complete the run in the allotted time and during the last 4 laps I verbally encouraged Amy to push herself to complete the test within the time constraint. Amy walked a great portion of the run which was unlike her. Once Amy had failed to complete the test, I spoke with her on the track and advised her I had never seen her struggle in this matter before. Amy advised me she had herniated and/or bulging discs in her back and was seeing a chiropractor for pain management. Amy stated to me that her one leg was virtually numb from the waist down but I am not certain as to whether she informed me it was her left or right leg." (Px4).

Petitioner testified she initially had sharp low back pain on 12/5/16 which then started radiating down her right leg with burning like it was on fire. Petitioner acknowledged she had undergone substantial treatment with her chiropractor previously (see Rx5), last seeing Dr. Farrell on 11/23/16, where she had reported 4/10 pain. Asked how her pain was different after 12/5/16, Petitioner testified the pain during the run was "a sharp severe pain that caused a burning sensation that would not go away." She testified this was new and she had never had that type of pain before "to that extent." As noted, she had been working full unrestricted duties prior to 12/5/16.

Dr. Farrell's 12/5/16 report notes a one hour history of pain and/or paresthesia in the middle of her low back: "Had to do a run and do sit ups for a work test. Started having pain after that." The pain/paresthesia was moderate and constant at a 7/10 level, radiating into the right buttock and posterior leg with burning, throbbing and numbness. Her right leg was quivering, and she couldn't sit or stand long. Dr. Farrell determined that Petitioner "had an exacerbation. This is an episodic marked deterioration of the patient's condition due to an acute flare up." She was advised to follow up 3 times a week. (Px7).

The 12/14/16 lumbar MRI was compared to 12/21/15 films, with the new report noting degenerative disc disease mainly at L4 to S1 "once again." An unchanged L5/S1 disc protrusion was also noted with no definitive nerve root impingement. (Px9; Rx3).

The 12/21/15 films reportedly showed a mild, slightly right L5/S1 disc protrusion unchanged from a prior 4/2/13 study and a diffuse bulge at L4/5, again unchanged. (Px11; Rx3). The impression indicated in the report from the 4/2/13 films was mild diffuse L4/5 disc bulge and mild focal central L5/S1 disc protrusion without evident compression. (Px11; Rx3).

Following the 12/5/16 incident, Petitioner thereafter treated with Dr. Farrell consistently through 2/4/17. She generally indicated no improvement in her symptoms, though her pain scores did show some pain relief. A 12/21/16 report indicates she began taking Gabapentin. Dr. Farrell's 1/27/17 report notes Petitioner went to see a specialist and was having more tests done. Petitioner also was reporting pain in the right cervical/dorsal region. (Px7). Various off work notes of Dr. Farrell were also a part of the record. (Px9).

Dr. Farrell referred Petitioner to Dr. Kube, whom she first saw on 1/24/17. Dr. Kube's initial 1/24/17 report states: "She is here with complaints of pain going on, really much worse since doing a mandatory physical agility test in December, last month. Prior to that test she was sore from trying to do some training for the physical agility test. She notes that she has a history of back pain. She does have a history of some intermittent leg pain." He reviewed records of Dr. Farrell reflecting longstanding treatment with records referencing pain level complaints between 3/10 and 6/10 and prior epidural injections with Dr. Orteza. He went on: "It seems like the increased activity or, certainly if she is wearing a full uniform and carrying the gear, that seems to exacerbate it. Running seems to aggravate it a little bit. She states that the leg pain that used to be more intermittent is now essentially constant. She states that any time she had the more vigorous activities such as when she was in academy and they did multiple different physical agility exams, that that amplified things as well." Petitioner reported numbness and pain in the right thigh and calf as well as low back pain. Dr. Kube indicated his exam reflected significant pain in the right sacroiliac (SI) joint rather than the mid low back. His review of films reflected a slightly longer right leg (1.5"), some loss of L5/S1 disc height with a central disc protrusion with mild to moderate degenerative change at L4 to S1 and very mild foraminal stenosis. Dr. Kube believed Petitioner's symptoms could be consistent with the right S1 joint, though this didn't really explain the right thigh symptoms. Noting it could show why prior epidurals were not very effective, a diagnostic right SI joint injection was prescribed. EMG was prescribed to evaluate the leg numbness. (Px9). On 2/6/17, Dr. Kube issued a note holding Petitioner off work. (Px9).

The EMG/NCV was performed on 2/14/17 with Dr. Trudeau. The impression was severe right S1 radiculopathy with no evidence of other spinal or peripheral neuropathy. (Px10).

Dr. Kube tried physical therapy, two epidural steroid injections (2/16/17 and 4/3/17) in 2 different locations (right sacroiliac (SI) joint, right L5/S1, as well as an injection to the right greater trochanter bursa). (Px8). On 2/28/17, Petitioner reported about 50% relief with the SI injection, indicating to Dr. Kube this was a contributor to her current condition. However, Petitioner reported she began having tremors in her hands 4 days after the 2/16/17 injection, which Dr. Kube noted on exam. As he didn't know the cause of this, Dr. Kube referred

Petitioner to a neurologist and changed her medications before considering an epidural. Referencing the EMG, Dr. Kube opined that a significant right S1 radiculopathy was contributing to the right leg symptoms. On 3/7/17, Petitioner called reporting that the change in medications resolved her tremors, so the neurology consult was canceled. On 3/28/17, Dr. Kube prescribed a right lumbar epidural and a greater trochanteric bursa injection. He also prescribed physical therapy, Norco, a left 3/8" heel wedge and held Petitioner off work for a week. (Px8). On 4/18/17, Petitioner reported a good result from the trochanteric injection ("that problem is basically gone"), but the epidural didn't help significantly, and her right radicular pain was still a problem. Dr. Kube recommended L5/S1 microdiscectomy. Petitioner was continued off work. (Px9). Petitioner testified the injections did not help.

Petitioner returned to Dr. Farrell twice in March 2017 with no change in her complaints. (Px7).

Petitioner was examined by orthopedic surgeon Dr. Butler on 5/5/17 at the request of Respondent pursuant to Section 12 of the Act. The doctor reviewed and summarized Petitioner's medical records between October 2011 and April 2017. Petitioner reported being injured on 12/5/16 performing an exercise test for Respondent and had run 3 or 4 laps when she noted an increase in low back and sharp right buttock pain radiating to the right thigh and foot. Following his examination, Dr. Butler diagnosed a noncompressive L/S1 disc herniation, opining that this diagnosis was unrelated to the 12/5/16 work activities. He noted her complaints of 7/10 pain was only 3 points above her 4/10 baseline pain level, and that the MRI showed no objective change when compared to prior MRIs over the last three years. He agreed that the surgery recommended by Dr. Kube would be reasonable for her condition, but that this would not be work related. Dr. Butler further opined that there was no objective basis for Petitioner to remain off work or on light duty, noting the need for any restrictions would not be work-related. (Rx9).

On 5/16/17, Petitioner was continued off work pending surgery. (Px9). Dr. Kube performed surgery on 6/5/17 involving a right L5/S1 hemilaminotomy with microdiscectomy. Significant venous engorgement was noted consistent with stenosis. A small disc protrusion was noted and Dr. Kube incised the disc and removed a small amount of material. (Px8).

On 6/23/17, Petitioner reported about 50% improvement and significant reduction of right buttocks pain. However, she had ongoing right low back pain and symptoms into the right leg to the toes. Physical therapy evaluation was performed and therapy records through 7/18/17 indicate Petitioner generally reporting good but temporary relief with therapy. On 7/12/17, Petitioner indicated her employer wanted her to be able to return to work and complete the physical test by August 4th. The therapist strongly recommended against this as much too early after surgery for things like a mile and a half run, noting her right leg remained much weaker than the left. (Px9).

On 7/18/17, Dr. Kube noted improved mobility and strength. There were reduced radicular symptoms and signs, but Petitioner had ongoing pain radiating to the thigh, but not going down to the foot like before surgery. He concurred that Petitioner would not be ready for the physical testing required for her to return to work by August. He released Petitioner to light duty with no force beyond 25 pounds for 6 weeks. Therapy was continued and medications were prescribed at lower doses. Therapy then continued through 8/31/17 with Petitioner making significant progress. On 8/7/17 she reported developing neck pain after the last session she felt was related to "crutches" they had been performing (this appears to have been "crunches"). Petitioner reported ongoing problems with prolonged sitting and standing. She wanted to begin running so she could perform the required physical test. The therapist noted Petitioner had provided exceptional effort. Work conditioning was recommended to prepare for the testing. (Px9). Petitioner again returned to Dr. Farrell on 7/25 and 7/31/17 with a two week history of neck pain that came on gradually. (Px7).

On 9/5/17, Dr. Kube referred Petitioner for work conditioning. Despite her preexisting symptoms, Dr. Kube noted Petitioner's back pain intensified and leg pain became constant after the incident during physical testing. He stated: "based upon that history and based upon the contemporaneous onset of symptoms, I believe that her protrusion may have potentially been increased or intensified, or at least aggravated. I think certainly that incident caused an increase in her radiculopathy, which led to the need for surgical intervention, which she has now had and is now improving from at this time." (Px9).

Petitioner had remained off work starting with Dr. Farrell and ongoing with Dr. Kube until being released to full duty work. When she had a 25 pound weight restriction, she testified the Respondent did not accommodate this. She brought the work slip to Respondent in summer 2017 and was advised she couldn't return to work until she was full duty. Following work conditioning (which ended on 10/4/17), on 10/17/17 Petitioner was released by Dr. Kube to full duty work. (Px9). As she went through therapy, Petitioner testified she had gradual improvement post-surgery, and with work conditioning she was able to return back to full duty work. When she returned to work, Petitioner stated that she was not having any low back pain or radicular symptoms and felt confident she could perform her job.

Petitioner reiterated that her prior low back issues never prevented her from working full duty between 2012 and 12/5/16. Currently, the Petitioner testified she still has days where she has low back pain, and days with nerve pain in the right leg. Some days she has to drive home with her right boot off. She had similar problems prior to the accident – low back and right leg pain – but not to the same extent. She testified the surgery was an amazing help, along with the therapy, and it was about two years after surgery before she had any real post-surgical problems.

On cross-examination, Petitioner acknowledged that she spoke with Lt. Kellen on 12/5/16 after testing but could not recall what they specifically discussed or if it involved her medical condition: "I know that he asked me if I was okay, but I have taken multiple tests with him over the years with no issues." Petitioner had previously discussed back issues and that she had herniated and/or bulging discs in her back with Lt. Kellen before 12/5/16. She agreed she was able to complete three of the four test batteries and completed 23 of 24 laps of the run, as it was during the run when she started having problems. As to Lt. Kellen's documentation (Px4), Petitioner testified she received it in response to a FOIA request she submitted shortly after 12/5/16. She reviewed it "vaguely" and did not recall reading it in any detail prior to giving it to her attorney. Asked if she had any reason to say that Px4 was inaccurate, Petitioner testified she explained she was having the radiating pain down her leg after the test, not before. Lt. Kellen was aware she had low back problems prior to the test because she told him. She did tell him she had herniated and bulging discs in her back and that she had been seeing a chiropractor for pain management prior to 12/5/16. As to what she did to prepare for the December 2016 testing, Petitioner testified she spent approximately 2 months practicing these activities to prepare to pass the testing. Petitioner testified she informed Dr. Kube about having back problems the day prior to the testing while preparing for the testing.

Petitioner testified she returned work full duty for Respondent on 10/18/17 and continued to do so until 11/18/19, at which point she voluntarily left and went to work full time in a security position for a Wal Mart distribution facility. In March 2021 she started working for a security company out of Chicago, P4, where her job involves monthly security details at various locations. Petitioner also agreed she works for the Village of Cherry as a part-time police chief, which she started in July 2018. This job involves mostly administrative work and patrolling the village as a police officer. Petitioner also acknowledged she worked for R&R Recovery, where she assisted with recovering repossessed vehicles, for less than a month in August 2017. She was paid for this work by the number of cars repossessed but could not recall how many cares she was involved with or how much she earned. She did not inform Respondent she was working this job. She testified she would ride along

with the owner and did not physical activity herself. She also agreed she worked security at a couple of Bureau County fairs for a day or two. She is claiming entitlement to TTD from 12/7/16 to 10/17/17.

On further cross, Petitioner acknowledged she started practicing kickboxing once in a while in 2015 with her husband when her schedule allowed but was never in competition, and she has not done this since 12/5/16. It is possible she did some of this in their garage in 11/2016 or 12/2016. The Sheriff had sent her a letter indicating that, per contract, if she was unable to pass the physical testing she would be terminated. She didn't know if the testing could have been repeated. She does know others who haven't passed the test but was not aware whether they were terminated or not.

Dr. Farrell is the only chiropractor Petitioner saw prior to 12/5/16, treating with him "on and off" going back to 2011/2012. She testified she saw him if she needed an adjustment. She didn't know when she last saw him prior to 12/5/16. She did not dispute seeing him on 11/29/16 if his records reflect this. Dr. Farrell treated her for her low back "among other things", noting at some point she had arm and shoulder pain from working on bench pressing. Petitioner acknowledged she had right leg pain that had been going on "moderately" for a couple of years prior to 12/5/16, but that she complained of an increased pain level after 12/5/16. However, she also agreed that the right leg pain would vary, including complaints of 8/10 pain to Dr. Farrell prior to 12/5/16, including when she would run. She agreed she told Dr. Kube on 1/24/17 that she was sore prior to 12/5/16 due to training in preparation for the testing. Petitioner agreed she was not terminated or reprimanded as a result of not finishing the power test on 12/5/16. She did undergo a "fit for duty" exam when she returned to work on 10/18/17, agreeing that while she had been originally advised she would need to take the power test before returning, she was then told she just needed the fit for duty exam.

On redirect examination, Petitioner reiterated that the Respondent indicated they had no light duty available when she had been released to return to light duty work. In June 2017, Dr. Butler's exam indicated the injury wasn't work related so the Respondent's administrator stopped paying PEDA benefits and Petitioner was advised she would have to be able to return to work in August and would need to pass the power test, which at that time she knew she would not be able to do. Because she therefore believed she was going to be terminated, she took the job repossessing cars. When she ran out of time, she filed for FMLA and she received a 60 day extension. She then asked Dr. Kube for a therapy program that would allow her to be able to pass the power test in 60 days, and work conditioning was instituted. When she did return to work, she asked to take the power test and was advised that the testing was done for the year and she was instead sent for the fit for duty testing, which involved lifting a couple loaded milk crates onto shelves. She then was cleared to RTW. She would always have a month or two of training/practice in preparation for the yearly power test, and she would always need a couple adjustments during that time due to low back and right leg symptoms due to the running. Once she wasn't running on a regular basis, this would ease up. Thus, she agreed she was having low back and right leg pain while doing this training. However, the pain during the test was more significant than she ever had before, and was not something that a couple of adjustments could make better. The only time she ran on a consistent basis was prior to a power test. She did not recall taking another power test prior to her termination, though she agreed she should have undergone such testing in 2018 and may have taken it if required, she just did not specifically recall. She agreed she had been able to work full duty in all jobs she had after returning to work in 10/2017. On recross, as to Dr. Farrell indicating she was running in 2014 and 2015.

Petitioner's prior medical treatment

On 10/21/11, Petitioner appeared at Perry Memorial Hospital with a several month history of right buttock pain. She had been treated by her primary provider with cortisone injections for a possible tendon tear. The initial injection helped, but the second one lasted only a week followed by even worse pain that was now going down

her right leg with numbness and tingling. She was given a Toradol injection and prescribed Celebrex and Tramadol. (Rx4).

A 4/1/13 note from Perry Memorial Hospital notes lumbar radiculopathy, positive right straight leg raise and prescribes an MRI with a L4/5 differential diagnosis. The 4/2/13 MRI results are noted above. (Px11; Rx3).

On 2/24/15, Perry Hospital referred Petitioner to a pain clinic. A 3/2/15 pain management note from Bureau Valley Interventional Pain Management indicates Petitioner had a four year history of right low back pain with right leg numbness to the heel. As to what increased her pain, the report notes carrying a gun, sitting too long and something else which is illegible due to handwriting. Petitioner saw pain physician Dr. Orteza on 3/5/15. Petitioner reported an approximate four year history of low back pain with associated radicular pain along a right S1 distribution. She reported the pain as "having a sharp to dull and aching pain and associated feeling of right leg numbness at times, and she reiterated that carrying a gun and prolonged sitting aggravated the pain. She had been treating over the last four years conservatively with over the counter medications, and in the last two years with chiropractic treatment. She reported being active and exercising daily due to her job. Petitioner "also has had intramuscular steroid injection for almost a year. Initially, it had helped significantly with the pain. However, recently it has not been able to help relieve the pain." Dr. Orteza wanted to attempt another epidural, and this was performed on 3/5/15 at right L5/S1. (Px11; Rx6).

On 7/8/15, Petitioner underwent a lumbar epidural at L5/S1 with Dr. Orteza. The report notes a "significant recurrence of her right low back pain with radicular pain to the right posterior thigh, leg and heel secondary to L5/S1 disc protrusion impinging on the right S1 nerve root." Dr. Orteza notes Petitioner had relief from the 3/5/15 epidural until she started having worsening symptoms again a week prior into the right leg to the heel, with pain varying from 5/10 to 8/10, depending on activity. Medications had not been helpful. (Px11).

On 12/15/15, Petitioner saw spine surgeon Dr. O'Leary reporting she had low back pain essentially since 2012 that has gradually become more intense and bothersome. She also complained of right buttocks and leg. An intake form for the doctor notes Petitioner reported injuring her back working out in 2012. Petitioner reported an epidural several years ago gave her temporary relief. She was continuing to treat with a chiropractor three times a week. The report states: "Back in March, she started noticing that the pain was worse. The pain was going down into her right leg all the way to her ankle. She stated that any kind of physical activity, running, even walking can be very painful. She does have to do some training as a police officer and states that that seems to aggravate it causing her to have significant pain after she does any kind of activity." Injections at Perry Memorial in July gave her absolutely no relief. Petitioner indicated she was there to see if her back had worsened and what could be done for her pain. Dr. O'Leary prescribed Lyrica for the leg symptoms and ordered an updated MRI, noting therapy and/or epidurals could be considered. The 12/21/15 MRI report notes a clinical history of low back pain into the right leg. (Px11; Rx3). On 12/22/15, spine surgeon Dr. O'Leary noted the MRI was stable with mild disc bulges at L4/5 and L5/S1: "No surgery is necessary. If she wants further treatment, we can consider physical therapy and/or epidural steroid injections at the L5/S1 level. I do not see any significant changes from her MRI in 2013, and the findings are mild." (Rx7).

The pre-12/5/16 records of Dr. Farrell begin on 12/19/12. However, the initial report which references low back pain is dated 3/16/13 and notes a two week history ("insidious onset") of 6/10 right low back pain with pain/paresthesia into the right buttocks and thigh. After some initial improvement, the pain went up to 8/10 after sitting in a hard chair for class for two days. The Arbitrator notes that on 5/8/13, Dr. Farrell stated, similarly to 12/5/16, that Petitioner had an episodic marked deterioration of her condition due to an acute flareup, with no reference to any specific occurrence. The 5/20/13 report specifically references right SI region pain. There is a gap in treatment after this until 6/29/13, when she returned with complaints of cervicothoracic pain, which on 7/13/13 Petitioner noted was injured while working out. The reports again focused on the lumbar spine (5/10

pain) on 9/4/13, but it was not radiating. There is another gap in treatment between 9/25/13 and 12/10/13, when Petitioner reported a two week history of low back pain down the right leg to the calf with 5/10 level pain. The Arbitrator notes that, during Dr. Butler's deposition, he was questioned about various power test dates, and the reference to 2013 testing involved a 10/29/13 date, which is a month and a half prior to this onset. Petitioner then improved, including relief of pain into the leg, but on 1/3/14 noted she had been feeling pretty well until two days prior. The Petitioner continued to see Dr. Farrell throughout 2014 (with a gap from 2/7/14 to 5/23/14). After one visit between 6/18/14 and 9/10/14, on the latter date the Petitioner reported ongoing low back pain with an onset of thoracic pain while lifting free weights. Following another increase in this pain when lifting up a safe, Dr. Farrell again uses the exact same "episodic marked deterioration" language as to the thoracic spine. The focus is again on low back pain starting on 10/1/14 at an 8/10 level. On 10/18/14, Petitioner continued to report 6/10 level pain, but then sought no further chiropractic treatment until returning on 1/5/15 for her neck. (Rx5).

Petitioner again treated with Dr. Farrell in 2015 for significant lumbar pain complaints into the right leg from 1/31/15 to 3/31/15. Again, despite complaints of 6/10 pain on 3/31/15, there is no further treatment until 6/9/15, noting "had to do some shooting and felt pain after that. She had no treatment after 8/5/15 until 10/13/15, when she returned for cervical/thoracic pain, noting lumbar pain as a secondary complaint. Lumbar pain again became the primary focus from 10//30/15 to 11/20/15, noting initially 6/10 pain in the low back into the right foot. This report also states: "Hurts to run", with the 11/6/15 report also stating: "tried to run yesterday and got really bad after that." Noting 6/10 pain on 11/20/15 and that Petitioner was not able to sleep because the pain was so bad, she did not seek further chiropractic treatment until 4/6/16. On 4/20/16, Petitioner noted she kickboxed for 2 hours the day before and her symptoms got worse, with Dr. Farrell again noting an episodic marked deterioration due to an acute flare up. Petitioner then treated through 5/16/16, again still complaining of 6/10 pain at that point. Petitioner returned on 8/24/16 with 8/10 cervicothoracic pain, noting she also had low back and right leg pain. On 10/18/16, Petitioner reported 6/10 low back pain after a tactical training class ("Gets thrown around on mats and has to try to throw other people. Got worse after that."). Petitioner thereafter continued to complain of 4/10 to 8/10 low back pain into the right leg. On 11/1/16, Petitioner reported her pain was worse after running. The Arbitrator specifically notes the various complaints and findings during the month prior to the claimed accident date of 12/15/16. This includes a pain rating of 8/10 in the low back with radiation into the right buttock and right leg on 11/4/16, constant and severe low back pain of 8/10 radiating into the right leg on 11/9/16, continued pain and paresthesia radiating into the right buttock and leg at 4/10 on 11/16/16, complaints of pain radiating to the right leg and a rating of 4/10 on 11/18 and 11/23/16, and complaints of pain radiating into the right leg with a rating of 3/10 on 11/29/16. (Rx5). When next seen on 12/5/16, Petitioner described her pain as 7/10, again with pain in the right leg.

Orthopedic surgeon Dr. Ali testified on behalf of Petitioner on 5/21/19. He evaluated Petitioner on 3/18/19 at her attorney's request. He reviewed Petitioner's pre-accident medical, noting he was aware Petitioner had a chronic preexisting lumbar condition. She indicated she was able to work full duty with no significant use of medication, was able to complete her previous power tests, and she was able to manage her pain with stability via chiropractic case since 2012. Dr. Ali considered it "very well managed prior to that injury." He had no knowledge of anyone prior to 12/5/16 recommending surgery or Petitioner ever failing her power testing. He opined that sit-ups and running are mechanisms that could cause a herniated disc. The EMG showed radicular symptoms consistent with L5/S1 disc pathology. Dr. Ali understood why the EMG was obtained given the classic radicular symptoms and relatively mild MRI findings. From his review of the three MRI reports between 2013 and 2016, Dr. Ali noted they indicated no significant interval changes. He had not reviewed the films themselves prior to the deposition. Petitioner advised that conservative treatment after 12/5/19 did not bring her back to her pre-power test baseline condition. He disagreed that any surgeon would be sanctioned for operating on Petitioner given her MRI findings, noting MRI is not 100% accurate. He opined that if a person like Petitioner does not have resolution of symptoms after three months of conservative treatment, as 90% of

patients do, its time to consider surgery, regardless of the size of the herniation. The surgery in this case was reasonable. The risks were low, and the odds of improvement were high, though not as high as if a herniation had been seen with impingement on films. Petitioner felt she had a good result from surgery. Dr. Ali's diagnosis was right S1 radiculitis from an L5/S1 disc bulge/protrusion. Considering Petitioner's history of chiropractic treatment and injections, Dr. Ali opined that her symptoms, particularly in her leg, became much more severe after the 12/5/16 power testing. He noted that the literature doesn't support chiropractic or physical therapy as being helpful with radicular leg symptoms. In Dr. Ali's opinion, when three months went by without returning to baseline, Petitioner went from an exacerbation to an aggravation. He further opined that this aggravation is a factor in her need for surgery with Dr. Kube. He agreed she was capable of returning to regular duty work after surgery. (Px6).

On cross examination, Dr. Ali agreed that the worsened symptoms after 12/5/16 did not involve any new symptoms, and that the symptoms being worse was a subjective determination by Petitioner. He agreed complaints of low back pain into the leg were longstanding, "largely the same", and were the reason for the prior MRIs being obtained, and that he didn't review the MRI films, but the reports indicated no interval change between 2013 and 12/2016. He knows Dr. Butler and agrees he has no reason to quarrel with his opinions in comparing the MRI films. Dr. Ali agreed that patients with chronic low back and radicular pain can be surgical candidates. He agreed that some surgeons would not have performed surgery on Petitioner given the MRI findings, though he reiterated that the relationship between patient and doctor is more important than just the MRI findings. He agreed Dr. O'Leary didn't recommend surgery earlier in 2015, but that he didn't think Petitioner was as symptomatic at that time as after the 12/5/16 incident and that this factored into O'Leary's decision. Dr. Ali agreed that Dr. Orteza had diagnosed low back pain with radicular pain along the right S1 nerve earlier in 2015, and this was the same as the operative diagnosis. Again, his causation opinion is based on Petitioner's subjective complaints and that an exaggeration of those symptoms could change his opinions. Any causation opinion of Dr. Kube would not really be relevant to Dr. Ali's own opinions, which are based on Petitioner's indication of worsening pain with the 12/2016 power testing. Again, his understanding based on a review of the records is Petitioner had "relatively stable" pain levels prior to 12/2016. Dr. Ali agreed that the records indicate Petitioner had insidious onset of pain into the right leg since 2013, and that an insidious onset of such pain is a very common occurrence in his practice. Asked if the low back pain into the right leg had never subsided prior to 12/5/16, Dr. Ali testified: "I think she had a stable baseline level of right buttock and gluteal pain." He agreed she had no three month period between 2013 and 12/5/16 where she had no symptoms, but she had a stable level of symptoms in that period. She was able to work unrestricted duty, was not taking narcotics on a regular basis and was able to do her activities of daily living, which was her baseline. Chronic versus acute low back pain changes at about three months of persistent symptoms. (Px6).

Dr. Butler also testified via deposition on 8/21/18. On direct exam, he testified consistent with his report. He noted Petitioner's exam showed only an increase in pain with straight leg testing, which was not reproducible on repeat testing, and a non-focal finding of absent reflexes in both lower extremities. The three MRIs reviewed showed mild disc desiccation at L4/5 and L5/S1, which still had normal disc height, and a small midline L5/S1 herniation with no significant stenosis. He opined the 2013 and 2016 MRIs looked exactly the same. He disagreed with the radiologist's indication of a bulging desiccated L4/5 disc. Dr. Butler reiterated his causation opinion, noting no change in the MRI films and that Petitioner had been in therapy in the months prior to 12/5/16 with 8/10 low back and right leg pain (on 8/24/16 with Dr. Farrell), and she had just finished therapy by 11/29/16: "her back and leg issues were ongoing and consistent with her current and active treatment she had immediately before this fitness test. Dr. Farrell's notes on 11/29/16 showed her pain was, at best, 3/10. Dr. Butler opined that surgery was reasonable given the long history of symptoms and treatment with no relief, given the absence of any significant nerve compression, though "I didn't believe there was, in my opinion, an indication for surgery", as he didn't believe there was enough nerve compression to warrant it and in his

experience this would involve a poor outcome. In this regard, he agreed with Dr. O'Leary, who saw Petitioner with the same presentation of low back and right leg pain. (Rx10).

Cross-examined, Dr. Butler agreed Petitioner had been able to work full duty until 12/5/16 despite her ongoing chronic symptoms., and that she'd had no surgical recommendations until she saw Dr. Kube after 12/5/16. He agreed that running and sit-ups can impact the lumbar spine. Whether he would restrict someone with back pain and sciatica from running "depends on the severity. . . there's a huge range of potential." Asked if running can aggravate someone's back pain, Dr. Butler agreed it could but testified that in most cases he finds just the opposite, that running actually helps people with back pain. He testified that medical literature doesn't support that running can cause progression of a small non-compressive disc protrusion. He did not review any documentation regarding the power testing but did understand that the running test was timed and that there was a minimum number of sit-ups that had to be performed. He was not aware of Petitioner having her work duties modified due to her back problems prior to 12/5/16. He was not aware of Petitioner passing the power test yearly between 2012 and 2015 between October and December. Dr. Butler testified that most police officers wear about 30 pounds of gear in his experience. He agreed Petitioner had undergone epidurals in 2015 and had improvement, but that this was temporary and would reduce her pain to 3/10 or 4/10 level. As to her getting relief with the epidural for several months and this indicating at least some type of disc involvement, Dr. Butler testified that it could be the disk or it could be related to stenosis not caused by a disc ("She had no stenosis"), and that it could be the steroid effect reducing epidural inflammation. Relief from steroid injection could go anywhere from a week to months. He could not say exactly what the level of accuracy an MRI provides and agreed that some machines are more sensitive than others. He agreed that subtle changes in anatomy may not be visible based on the sensitivity level. However, he testified that in this case "all three MRIs are of virtually identical quality." (Rx10).

Dr. Butler saw no abutment in the films of a disc protrusion on the right S1 nerve root. He had not reviewed Dr. Kube's operative report, and doesn't know what the outcome was, but agreed that actual visualization would be more accurate than MRI as to a disc protrusion abutting the S1 nerve root. Again, while he himself would not have recommended surgery, he opined Dr. Kube's surgery was reasonable given the symptoms and EMG impression. Dr. Butler testified that the nerve abuts the discs at every spinal level. As to what causes S1 radiculopathy, "that is difficult to determine." Where MRI doesn't show a compressive disc herniation with a positive S1 finding on EMG, "all the EMG tells you is that the nerve is irritated." He agreed that a full duty release 3 months post-surgery would constitute a good recovery. He had no anatomic explanation as to why Petitioner would have an immediate improvement with decompressive surgery where no nerve compression was seen on films. Dr. Butler denied that he was indicating Petitioner was not credible or making up symptoms. He acknowledged Petitioner's description of the 12/5/16 incident in her 12/6/16 accident report. Dr. Butler agreed that when Petitioner last saw Dr. Farrell on 11/29/16 she was reporting 3/10 pain, and then on 12/6/16 reported 8/10 pain for several days. He also agreed she didn't report leg spasms or pain with prolonged sitting or standing on 11/29/16: "Her symptoms were elevated." He agreed that Dr. Farrell had more experience with Petitioner and new her better than he did. He agreed there was a difference in Petitioner's response to epidurals prior to and after 12/5/16. On redirect, Dr. Butler testified that nothing about his cross-examination changed his opinions in this case. (Rx10).

CONCLUSIONS OF LAW

WITH RESPECT TO ISSUE (C), DID AN ACCIDENT OCCUR THAT AROSE OUT OF AND IN THE COURSE OF THE PETITIONER'S EMPLOYMENT BY THE RESPONDENT, and WITH RESPECT TO ISSUE (F), IS THE PETITIONER'S PRESENT CONDITION OF ILL-BEING CAUSALLY RELATED TO THE INJURY, THE ARBITRATOR FINDS AS FOLLOWS:

The Arbitrator has carefully reviewed, evaluated, and weighed all of the evidence that was admitted at trial, including medical records, reports, deposition testimony, other documentary evidence and testimony of the Petitioner. The Arbitrator has further considered the timeline and chronology of the Petitioner's long history of low back pain radiating into the right leg with numbness and tingling. The Arbitrator gives significant weight to the fact that the claimant had an approximate three year history of similar waxing and waning complaints of virtually identical symptoms as what she complained of on 12/5/16, and the fact that her treatment records prior to that date never reflect a resolution of symptoms. In particular, the Arbitrator notes with great interest specifically notes the Petitioner's complaints, pain ratings, and frequency of her chiropractic visits and treatments during the month prior to the claimed 12/5/16 accident date, as well as the lack of any significant objective changes noted in her 2013, 2015 and 2016 lumbar MRIs. While the Arbitrator believes the Petitioner did sustain accidental injury arising out of and in the course of her employment when she participated in the power testing exercises on 12/5/16, this incident appears to be just another blip in her longstanding condition and nothing more than one of many increases in pain she has had over the three years preceding the accident. The greater weight of the evidence supports the fact that the Petitioner's medical condition was unchanged by the events of 12/5/16.

The Arbitrator finds that an accident occurred based on the Petitioner having increased pain during exercise testing which involved sit ups and a mile and a half run. This is a risk that clearly arose out of the employment. The Petitioner was in the course of her employment as the activity was required by the Respondent and the union contract. The injury, however, which arose out of and in the course of the employment was a relatively minor increase in pain given the Petitioner's history of lumbar problems between 2014 and 11/29/16, particularly in October and November 2016.

The Petitioner was obviously symptomatic prior to 12/5/16 and continued to have ongoing and underlying degenerative disc disease, which is noted to be a personal condition of the Petitioner, and not causally related or aggravated by the events of 12/5/16. The Arbitrator also notes that the problems and complaints the Petitioner had during the physical fitness testing on 12/5/16 are not significantly different than those which existed previously, including Petitioner's statements and history to Dr. Kube about having problems on December 4, 2016, and to Dr. Farrell about having problems and pain while running on other dates and occasions. As noted, the records of Dr. Farrell in October and November 2015 make it clear that the Petitioner had already had a significant increase in her symptoms prior to 12/5/16.

It has long been recognized that, in pre-existing condition cases, recovery will depend on the employee's ability to show that a work related accidental injury aggravated or accelerated the pre-existing condition or disease such that the employee's current condition of ill-being can be said to have been causally connected to the work related injury and not simply the result of a normal degenerative process of the pre-existing condition. *Sisbro, Inc. v. Industrial Commission*, 207 Ill. 2d 193, 204-206, 797 N.E. 2d 665 (2003); citing *Caterpillar Tractor Company v. Industrial Commission*, 92 Ill. 2d 30, 36-37, 440 N.E. 2d 861 (1982); *Caradco Window and Door v. Industrial Commission*, 86 Ill. 2d 92, 99, 427 N.E. 2d 81 (1981); *Azzarelli Construction v. Industrial Commission*, 84 ll. 2d 262, 266, 418 N.E. 2d 722 (1981).

The Arbitrator has had a large number of cases presented over the years with arguments similar to the Petitioner's in this case and often has found such cases compensable based on a symptomatic increase. However, in such cases the evidence tends to support an ongoing condition of well-being despite a preexisting condition, an accident which causes an obvious increase in symptoms and a lack of resolution of the symptoms. There is a reasonable demarcation point where things changed. In this case, the weighty facts do not support such conclusion. Instead, the evidence presented reflects a claimant with a longstanding history of central low back pain into the right leg to the foot with multiple "aggravations", and no evidence indicating the Petitioner ever had a true resolution of her symptoms. There are multiple gaps in the treatment of Dr. Farrell between

2013 and December 2016 where the last visit prior to the gap indicates ongoing pain between 3/10 and 6/10 level, if not more. Additionally, here, the Petitioner had a significant pain increase at least two months prior to the accident date that never resolved, with the Petitioner visiting Dr. Farrell on 11/29/16, less than a week prior to 12/5/16. In that two month period, at one point despite significant pain complaints the Petitioner participated in two hours of kickboxing. This supports that she was able to function despite her pain complaints. Additionally, in this case the accident wasn't really a point where she was unable to work, but rather one where she was not allowed to return to work due to the failure to complete the physical exercise "power" testing. The evidence does not support an inability of the Petitioner to continue working her regular job with pain as she had since 2014. The increase in pain is based on subjective complaints, and in the Arbitrator's view, the Petitioner's testimony that there was a significant increase in pain, at least after the initial symptoms of tingling in the leg, is not supported by the prior medical records, which reflect that Petitioner does not appear to have been pain free in years with numerous instances of waxing and waning symptoms very similar to what she experiences after the 12/5/16 run.

The Arbitrator also notes that the opinions of Drs. Kube and Farrell would have been stronger than that of Dr. Ali given they had actually treated the Petitioner. While Dr. Farrell notes Petitioner had an exacerbation and "This is an episodic marked deterioration of the patient's condition due to an acute flare up", these exact same words are used at various times prior to the accident date. Not only does this therefore appear to be a boilerplate statement he used often, without his testimony it is not explained how the 12/5/16 episode actually changed the Petitioner's condition versus what she had been experiencing in October and November 2016 or prior to that time. The Respondent submitted a number of documents referencing an attempt to obtain the deposition of Dr. Kube. While the Arbitrator does not presume this means that Dr. Kube would have provided Petitioner with an unfavorable opinion, his testimony would have been highly relevant here given the fact he treated and operated on the Petitioner. He did state that "based upon *that history* and based upon the contemporaneous onset of symptoms, I believe that her protrusion may have potentially been increased or intensified, or at least aggravated" and increased her radiculopathy leading to the surgery. However, as to "that history", he stated that Petitioner's back pain intensified and leg pain became constant after the incident. The records of Dr. Farrell do not support such subjective statement as Petitioner's pain and symptoms prior to 12/5/16 certainly appear to be very similar if not identical to what she indicated after that date. She did note leg pain that was significant and that she had to move her leg using her hands, but this did not last for a long period of time after 12/5/16. Again, the MRI does not reflect any real anatomic change. Dr. Butler's opinion that the condition was not work related is supported by an MRI with a noncompressive L/S1 disc, no change in the three MRIs and similar pain complaints both before and after 12/5/16. He also opined that the surgery recommended by Dr. Kube would be reasonable for her condition, but that this would not be work related, and this supports the idea that Dr. Kube very well could have prescribed this surgery prior to 12/5/16 had he treated the Petitioner at that time. The Arbitrator does not agree with Dr. Ali that the Petitioner had stable and consistent symptoms between 2013 and December 2016. The records reflect multiple exacerbations of pain, some leading to complaints of 8/10 level pain.

Based upon the above, and considering the record taken as a whole, the Arbitrator finds that the Petitioner failed to prove, by a preponderance of the evidence, that her lumbar condition of ill-being is causally related to the accident of 12/5/16 involving running during the fitness test. Benefits are denied.

WITH RESPECT TO ISSUE (E), WAS TIMELY NOTICE OF THE ACCIDENT GIVEN TO THE RESPONDENT, THE ARBITRATOR FINDS AS FOLLOWS:

Based on the Arbitrator's findings with regard to causation, this issue is moot.

WITH RESPECT TO ISSUE (J), WERE THE MEDICAL SERVICES THAT WERE PROVIDED TO PETITIONER REASONABLE AND NECESSARY AND HAS RESPONDENT PAID ALL APPROPRIATE CHARGES FOR ALL REASONABLE AND NECESSARY MEDICAL SERVICES, THE ARBITRATOR FINDS AS FOLLOWS:

Based on the Arbitrator's findings with regard to causation, this issue is moot.

WITH RESPECT TO ISSUE (K), WHAT AMOUNT OF COMPENSATION IS DUE FOR TEMPORARY TOTAL DISABILITY, TEMPORARY PARTIAL DISABILITY AND/OR MAINTENANCE, THE ARBITRATOR FINDS AS FOLLOWS:

Based on the Arbitrator's findings with regard to causation, this issue is moot.

WITH RESPECT TO ISSUE (L), WHAT IS THE NATURE AND EXTENT OF THE INJURY, THE ARBITRATOR FINDS AS FOLLOWS:

Based on the Arbitrator's findings with regard to causation, this issue is moot.