

**ILLINOIS WORKERS' COMPENSATION COMMISSION**  
**DECISION SIGNATURE PAGE**

Case Number	17WC010143
Case Name	Diane Ziegenhorn v. Barrington Rehabilitation
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	<b><i>Corrected Decision</i></b>
Commission Decision Number	<b><i>24IWCC0145</i></b>
Number of Pages of Decision	26
Decision Issued By	Maria Portela, Commissioner

Petitioner Attorney	Adam Scholl
Respondent Attorney	Robert Harrington

DATE FILED: 4/11/2024

*1s/Maria Portela, Commissioner*

Signature

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

DIANE ZIEGENHORN,

Petitioner,

vs.

NO: 17 WC 10143  
24IWCC0145

BARRINGTON REHABILITATION,

Respondent.

CORRECTED DECISION AND OPINION ON REVIEW

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

The Commission affirms the Arbitrator's Decision as to all issues, but modifies the weights assigned to §8.1b(b)(iv) and (v) to read as follows:

With regard to criterion (iv)... The Arbitrator gives this factor *no weight*.

With regard to criterion (v) ... The Arbitrator gives this factor *significant weight*.

Additionally, the Commission corrects the following scrivener's error:

In line 16 on page 3 of the Arbitrator's Decision, the Commission inserts the word "injury" after the word "crush".

All else is affirmed.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed September 6, 2022, is hereby affirmed and adopted, incorporating the modifications as set forth above.

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

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

Bond for 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 11, 2024**

MEP/dmm  
O: 22024  
49

/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	17WC010143
Case Name	Diane Ziegenhorn v. Barrington Rehabilitation
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	23
Decision Issued By	Ana Vazquez, Arbitrator

Petitioner Attorney	Adam Scholl
Respondent Attorney	Robert Harrington

DATE FILED: 9/6/2022

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

*/s/ Ana Vazquez, Arbitrator*

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Signature

STATE OF ILLINOIS )  
 )SS.  
COUNTY OF COOK )

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

ILLINOIS WORKERS' COMPENSATION COMMISSION  
ARBITRATION DECISION

**Diane Ziegenhorn**  
Employee/Petitioner

Case # **17** WC **10143**

v.

Consolidated cases: \_\_\_\_\_

**Barrington Rehabilitation**  
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 **Ana Vazquez**, Arbitrator of the Commission, in the city of **Chicago**, 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 **September 13, 2016**, Respondent *was* operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned **\$98,132.84**; the average weekly wage was **\$1,887.17**.

On the date of accident, Petitioner was **32** years of age, *single* with **0** dependent children.

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

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

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

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

## ORDER

Respondent shall pay to Petitioner the reasonable and necessary medical services, as provided in Px8 and Px9, pursuant to Sections 8(a) and 8.2 of the Act.

Respondent shall pay Petitioner permanent partial disability benefits of **\$775.18/week** for **150 weeks**, because the injuries sustained caused **30% 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.



**SEPTEMBER 6, 2022**

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Signature of Arbitrator

## FINDINGS OF FACT

On September 13, 2016, Petitioner was employed by Respondent as a staff physical therapist. Transcript of Evidence on Arbitration (“Tr.”) at 7-8, 52. Petitioner had been employed with Respondent in that position for two years. Tr. at 8, 52. Prior to her employment with Respondent, Petitioner worked as a physical therapist at three other facilities from 2009 to 2016. Tr. at 8. Petitioner testified that her background is that of a manual therapist, and she addresses patients’ needs with a hands-on approach. Tr. at 12. Petitioner is right-hand dominant. Tr. at 13, 52.

Petitioner testified that as a physical therapist, she was responsible for evaluating and treating patients. Tr. at 8. She worked in an outpatient setting, and the patients she worked with were postoperative, had musculoskeletal injuries, or had balance issues. Tr. at 9. Petitioner explained that performing an evaluation involved assessing mobility and impairment, which required manual muscle testing wherein she would provide resistance to a patient to assess their strength. Tr. at 9. She also performed passive range of motion, wherein she would support the weight of a patient’s extremity through a given range of motion. Tr. at 9. Petitioner also performed joint mobilizations and manipulations, which are parallel to what a chiropractor would perform and included high-velocity thrusts. Tr. at 10. Petitioner also performed soft tissue mobilization or massage techniques. Tr. at 10. Petitioner also worked with balance patients, which included her use of a gait belt, righting the patient, or assisting the patient to the ground if unable to right them. Tr. at 11. Petitioner also performed exercise demonstrations and used her upper extremities to adjust equipment. Tr. at 11. Petitioner testified that many of the manual therapy techniques that she performed required the use of both of her hands. Tr. at 12-13.

On September 13, 2016, Petitioner also worked as a teaching assistant for the advanced orthopedic content at Rosalind Franklin University of Medicine and Science, in its Doctor of Physical Therapy program. Tr. at 16. As a teaching assistant, Petitioner would attend the lecture and lab sessions for the course and assisted with the demonstration and instruction. Tr. at 16. Petitioner taught body mechanics and manual therapy techniques to students of smaller stature. Tr. at 16. On September 13, 2016, Petitioner also worked at an outpatient physical therapy clinic that had a Pilates emphasis. Tr. at 17. In that position, Petitioner worked with Pilates principles and equipment to treat patients with musculoskeletal issues. Tr. at 17. Petitioner testified that prior to September 13, 2016, she did not have any type of physical issues concerning her left hand or left arm. Tr. at 17.

### *Petitioner’s preexisting conditions*

Petitioner testified that in January 2007, she was diagnosed with Sjogren’s Syndrome, which she explained is an autoimmune disease where her body is attacking her glands and connective tissue. Tr. at 23. Petitioner testified that her presentation of this syndrome is bilateral inflammatory arthritis. Tr. at 23. Petitioner testified that the symptoms present on both sides of her body at the same time, and that it has affected her feet, ankles, knees, and shoulders. Tr. at 24. Petitioner was also diagnosed with leukocytoclastic vasculitis in January 2007. Tr. at 24. Petitioner explained that this type of vasculitis affects small and medium-sized blood vessels,

and it is an inflammatory condition that can cause pain and swelling. Tr. at 24. Petitioner has been under the care of Dr. Erin Arnold for her autoimmune conditions. Tr. at 35, 56. Petitioner testified that she is medicated and both conditions are managed and well-controlled. Tr. at 24.

### Accident

On September 13, 2016, Petitioner was performing an evaluation. Tr. at 18. The patient was performing a pull assessment that required the use of a force gauge. Tr. at 18. Petitioner described the setup as there being a large metal chain around a metal post. Tr. at 18. Petitioner testified that for the assessment, she was to lift the chain up to the patient's waist-level, attach the force gauge, and then support the metal post so that it did not pull out from the wall while the patient provided a quick thrust. Tr. at 18. Petitioner instructed the patient on how to perform the assessment. Tr. at 18. She had her hand positioned on the post and was leaning into the post to support it. Tr. at 18. The patient was trying to complete the assessment, but he would let the chain go slack and it would move. Tr. at 19. After several attempts, Petitioner noticed that as the chain was moving, it slid over her hand. Tr. at 19. The patient pulled the chain, crushing Petitioner's left hand between the chain and the metal post with 126 pounds of force. Tr. at 19. Petitioner had immediate, significant pain. Tr. at 19. Petitioner excused herself, went to the staff office to compose herself, and then went back out. Tr. at 19-20. She completed the remaining portion of the assessment and dismissed the patient. Tr. at 20. After dismissing the patient, Petitioner grabbed an ice pack and sat for a bit. Tr. at 20.

Petitioner did not seek immediate medical treatment. Tr. at 20. She used ice and performed hand movements; however, those interventions did not alleviate the symptoms that she was experiencing. Tr. at 21.

### Medical treatment summary<sup>1</sup>

On September 18, 2016, Petitioner presented at Northwest Community Hospital Immediate Care. Tr. at 21, Px3 at 9. Petitioner presented with complaints of left-hand pain status post crush injury at work on September 13, 2016. Px3 at 30. Petitioner initially complained of pain to the left first through third digits. Px3 at 12. Petitioner reported that the second and third digits were improving, but that the thumb was still painful with some swelling. Px3 at 20. X-rays were obtained and demonstrated no fracture, dislocation, or foreign body. Px3 at 21. Petitioner was assessed with a crush injury and no compartment syndrome. Px3 at 21. Petitioner was instructed to rest, ice, compress, and elevate and to take ibuprofen for the pain and swelling. Px3 at 13. Work restrictions were discussed. Px3 at 13. A thumb spica velcro splint was applied. Px3 at 22. Petitioner returned to work at Respondent with the restrictions given to her at Northwest Community Hospital Immediate Care. Tr. at 22.

On September 27, 2016, Petitioner presented to Dr. Taizoon Baxamusa at Illinois Bone and Joint Institute. Px2 at 11. Dr. Baxamusa noted that Petitioner presented with complaints of pain and discomfort in her left thumb. Px2 at 11. Petitioner reported a consistent accident history.

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<sup>1</sup> Respondent's Exhibit ("Rx") 6, pre-accident treatment records from Orthopedics of the Northshore, document Petitioner's treatment of Sjogren's Syndrome, rheumatoid arthritis, and leukocytoclastic vasculitis, and reflect that these conditions affected multiple joints, including Petitioner's elbows, hands, and shoulders.



Px2 at 11. Dr. Baxamusa noted that Petitioner had a history of Sjogren's Syndrome, leukocytoclastic vasculitis, and autoimmune enteropathy. Px2 at 11. He further noted that Petitioner was on multiple medications, including Plaquenil, Imuran, Celebrex, and methylprednisolone. Px2 at 11. Petitioner complained of pain over her left thumb radiating to the dorsum of the thumb IP joint over the radial sensory nerve distribution. Px2 at 11. Petitioner also reported some swelling, but no discoloration. Px2 at 11. Petitioner was using an over-the-counter thumb spica splint and was on some limited duty. Px2 at 11. On examination of Petitioner's left upper extremity, Dr. Baxamusa noted no bruising, swelling, ecchymosis, or break on the skin. Px2 at 12. No Tinel's was elicited over the radial sensory nerve. Px2 at 12. Dr. Baxamusa noted that Petitioner had discomfort at the thumb or MCP or IP joint, but had no tenderness at the A1 pulley. Px2 at 12. Dr. Baxamusa also noted that there appeared to be some hypermobility and laxity within the thumb and wrist, but there was no gross instability. Px2 at 12. Dr. Baxamusa further noted that Petitioner was grossly neurovascularly intact in the median, radial, and ulnar nerve distributions. Px2 at 12. X-rays of Petitioner's left hand were obtained and demonstrated no fracture, abnormality, or soft tissue calcifications, and the thumb was shown to be reduced with no acute fracture. Px2 at 12. Dr. Baxamusa's impressions were crush left hand with pain and possible radial sensory neuritis. Px2 at 12. Dr. Baxamusa noted that he did not see any obvious ligamentous disruption or instability. Px2 at 12. He noted that it was possible that Petitioner had a crush injury with sensory nerve irritation. Px2 at 12. Dr. Baxamusa agreed with Petitioner's use of the thumb spica splint and with some light duty restrictions. Px2 at 12, 58. He also recommended an MRI to rule out any internal derangement or occult fractures, and he noted that it was possible Petitioner may require some occupational therapy. Px2 at 12. Petitioner underwent an MRI of the left hand on October 1, 2016. Px2 at 13. The MRI was unremarkable. Px2 at 13.

Petitioner returned to Dr. Baxamusa on October 4, 2016. Px2 at 9. Dr. Baxamusa noted that the MRI was essentially normal with no abnormalities noted. Px2 at 9. Dr. Baxamusa's impressions were left wrist and hand contusions with possible radial sensory neuritis. Px2 at 9. Dr. Baxamusa noted that he could not find an identifiable neuroma or lesion in Petitioner's nerve. Px2 at 9. He noted that he thought the contusion would gradually subside. Px2 at 9-10. Dr. Baxamusa referred Petitioner to occupational therapy and placed her on a medium duty 25-pound weight restriction. Px2 at 10, 57.

Petitioner participated in occupational therapy at Barrington Rehabilitation with Paul J. Sullivan, PT, MHS, CHT, Cert. MDT. Px2 at 18-53, Px4. Petitioner participated in approximately 29 sessions from October 14, 2016 through March 29, 2017. Px2 at 18-53, Px4. Petitioner was discharged from therapy on March 29, 2017, at which time it was noted that Petitioner had reached a plateau in her documented progress for strength in her left hand and arm. Px2 at 20, Px4 at 74, 76. It was also noted that muscle weakness was still present and was significant in the left hand and arm. Px2 at 20, Px4 at 76. It was further noted that Petitioner had an increase in her symptoms of coldness, burning, and pain with daily tasks, and that Petitioner continued to present with hyperalgesia and allodynia in the left upper extremity. Px2 at 20, Px4 at 76.

On November 8, 2016, Petitioner returned to Dr. Baxamusa. Px2 at 7. Dr. Baxamusa noted that Petitioner's MRI was unremarkable with no sign of ligamentous disruption or fracture.

Px2 at 7. Petitioner reported that she felt 60% better, but still complained of pain on the radial side of the wrist, over the radial sensory nerve distribution going to the dorsum of the radial sensory nerve distribution with burning paresthesias and a pins and needles feeling. Px2 at 7. Petitioner also reported discomfort radiating into the tip of the thumb IP joint and weakness with grip and pinch. Px2 at 7. Dr. Baxamusa noted that Petitioner had a history of inflammatory arthropathy. Px2 at 7. Dr. Baxamusa's impressions were left wrist contusion and radial sensory neuritis. Px2 at 7. Dr. Baxamusa noted that Petitioner continued to complain more of parasthesias, dyesthesias, pins and needles, and burning pain in the radial sensory nerve, which was generally more a radial sensory neuritis. Px2 at 7. Dr. Baxamusa recommended Petitioner continue therapy, noting that if Petitioner did not make gains with therapy in a rapid enough condition, then a pain management consultation would be considered for additional medication such as Gabapentin and Lyrica. Px2 at 7. The 25-pound weight restriction was maintained. Px2 at 8, 56.

On November 22, 2016, Petitioner presented to Dr. Henry Kurzydowski at Pain Care Consultants. Px5 at 13. Petitioner presented with left hand pain, which she described as sharp, throbbing, numb, and chronic. Px5 at 13. Petitioner reported that she experienced daily episodes, that her symptoms moderately limited her activities, and that her symptoms were exacerbated by hand motion. Px5 at 13. On exam, Dr. Kurzydowski noted 5/5 strength throughout the extremity, except that Petitioner's left hand was limited by pain. Px5 at 14. Dr. Kurzydowski also noted an atrophic left hand, allodynia in the left hand, and pain in the left hand and arm. Px5 at 15. Dr. Kurzydowski's diagnosis was pain in the left hand and arm. Px5 at 15. Dr. Kurzydowski prescribed Neurontin, one 100mg capsule per day, for seven days. Px5 at 15. Dr. Kurzydowski noted that Petitioner's symptoms were secondary to a work-related injury on September 13, 2016. Px5 at 15.

Petitioner returned to Dr. Kurzydowski on November 29, 2016. Px5 at 21. Dr. Kurzydowski noted that Petitioner was tolerating Neurontin and that the pain persisted. Px5 at 21. Dr. Kurzydowski's exam findings were unchanged, and he also noted a normal right radial pulse exam. Px5 at 22. Dr. Kurzydowski's diagnosis was unchanged. Px5 at 23. Dr. Kurzydowski increased Petitioner's Neurontin dosage to 200mg per day for 30 days. Px5 at 23. He also prescribed MetroTopicals N1 cream for daytime use. Px5 at 23.

Petitioner returned to Dr. Baxamusa on December 13, 2016. Px2 at 6. Petitioner reported that she felt discomfort and weakness and she described color changes and discolorations. Px2 at 6. Petitioner also reported that she had a history of Raynaud's, which is attributed to a cold trigger. Px2 at 6. Petitioner could not recall any trigger for her left wrist, but noticed some discoloration. Px2 at 6. Dr. Baxamusa's impressions were left wrist pain, radial sensory neuritis, and contusion. Px2 at 6. Dr. Baxamusa noted that Petitioner was on a medium duty work restriction with a 25-pound restriction that was reasonable while she participated in therapy once a week for desensitization. Px2 at 6, 55. Petitioner next saw Dr. Kurzydowski on December 20, 2016. Px5 at 27. In addition to her left-hand pain, Petitioner presented with lower back and leg pain. Px5 at 27. His diagnosis was unchanged. Px5 at 27.

Petitioner next saw Dr. Baxamusa on February 7, 2017. Px2 at 4. Petitioner reported that her third-year student had left, which was requiring more responsibilities of Petitioner, and she

complained of pain and discomfort and of her arm going “cold.” Px2 at 4. Petitioner also reported feeling loss of strength. Px2 at 4. Petitioner reported having discomfort lifting her six-pound puppy. Px2 at 4. Dr. Baxamusa’s impressions were left wrist pain with radial sensory neuritis, contusion, and possible Complex Regional Pain Syndrome (“CRPS”). Px2 at 4. Dr. Baxamusa deferred a CRPS diagnosis to Petitioner’s pain management physician. Px2 at 4-5. He noted that he did not find any surgically identifiable lesion on Petitioner’s wrist or hand. Px2 at 4-5. Dr. Baxamusa left the 25-pound restriction in place, unless it was altered by Petitioner’s pain management physician. Px2 at 4-5. He also recommended Petitioner continue with physical therapy once a week while she underwent pain management. Px2 at 5, 54. Dr. Baxamusa deferred “a little more” of Petitioner’s treatment to her pain management physician. Px2 at 5.

Petitioner was also seen by Dr. Kurzydowski on February 7, 2017. Px5 at 33. Dr. Kurzydowski noted that a pharmacy mix-up had forced Petitioner to be off Neurontin for a few days, causing a marked increase in pain. Px5 at 33. Petitioner followed up with Dr. Kurzydowski on March 28, 2017 and May 2, 2017, with increased pain noted with longer work hours. Px5 at 44, 51.

On May 16, 2017, Petitioner underwent an EMG/NCV with Dr. Igor Rechitsky. Px5 at 57. Petitioner had a normal electrodiagnostic study of the left upper extremity and cervical paraspinal muscles. Px5 at 59. There was no evidence of cervical radiculopathy, brachial plexopathy, or radial sensory neuropathy. Px5 at 59. Mononeuropathy multiplex could be seen. Px5 at 59. On May 23, 2017, Petitioner participated in an initial evaluation with Mary Beth Geiser, PT, at Aurora Sinai Medical Center. Px8.

Petitioner followed up with Dr. Kurzydowski on May 25, 2017, June 27, 2017, July 25, 2017, August 29, 2017, September 20, 2017, October 8, 2017, November 29, 2017, February 28, 2018, May 9, 2018, September 13, 2018, February 21, 2019, March 19, 2019, April 23, 2019, and July 30, 2019. Px5 at 63-139. Dr. Kurzydowski’s diagnosis of left arm and hand pain continued. Px5 at 63-139. On September 20, 2017, Dr. Kurzydowski noted that Petitioner had presented for an IME on September 19, 2017, which included manipulation of Petitioner’s left upper extremity, and that Petitioner experienced an intense exacerbation of symptoms a few hours later and she could not sleep. Px5 at 83. On this date, Dr. Kurzydowski also noted that Petitioner was planning to work at Elmhurst Hospital and required a 25-pound weight restriction. Px5 at 85, 88. On October 18, 2017, Dr. Kurzydowski noted that Petitioner’s pain was exacerbated after working with patients. Px5 at 92. On November 27, 2017, Petitioner reported worsening pain in the left upper extremity as she was working full-time as a physical therapist at Elmhurst Hospital and was having difficulty sleeping due to the pain. Px5 at 96.

On February 28, 2018, Dr. Kurzydowski noted that Petitioner was working at Elmhurst Hospital, and that Petitioner had difficulty carrying weights greater than five to eight pounds with her left upper extremity. Px5 at 102. On May 9, 2018, Dr. Kurzydowski noted that Petitioner’s pain limited her ability to work as a physical therapist and that it was difficult for Petitioner to lift and hold a gallon of milk with her left upper extremity. Px5 at 108. On September 13, 2018, Petitioner reported that she continued to have pain and burning in the left upper extremity and had difficulty carrying objects greater than seven to eight pounds. Px5 at 113. Dr. Kurzydowski noted that Petitioner would probably not be able to continue as a physical

therapist and would require a change in occupation. Px5 at 113. On this date, Dr. Kurzydowski referred Petitioner to Dr. K. Dineen, a pain psychologist. Px5 at 115. On February 21, 2019, Dr. Kurzydowski noted that Petitioner had not been able to work in her profession as a physical therapist due to severe pain while lifting anything greater than seven pounds or with any prolonged use of the left upper extremity in general. Px5 at 120. Dr. Kurzydowski further noted that Petitioner's continuing severe pain with the use of her left upper extremity precluded her from continuing to work as a physical therapist. Px5 at 122. Petitioner was prescribed Elavil on this date. Px5 at 122. On July 30, 2019, Dr. Kurzydowski noted that Petitioner's left-hand weakness continued with signs of muscle wasting, and that Petitioner was unable to lift and hold objects greater than seven to eight pounds. Px5 at 139. Petitioner has not seen any doctors specifically for her left hand since July 30, 2019. Tr. at 56.

After July 30, 2019, Petitioner began seeing her rheumatologist, Dr. Erin Arnold, for medication management. Tr. at 34-35; Px7. Petitioner testified that none of the medications prescribed for her injury overlapped with the medications prescribed for her autoimmune diseases. Tr. at 35; Px7. Dr. Arnold prescribes Petitioner Gabapentin 300mg. Tr. at 35; Px7 at 135, 141, 172, 273, 339.

### **Petitioner's post-injury employment**

Petitioner did not lose any time from work following the September 13, 2016 injury. Tr. at 35, 52. Petitioner worked with the 25-pound lifting restriction given to her by Dr. Baxamusa and Dr. Kurzydowski. Tr. at 36. Respondent accommodated Petitioner's restriction. Tr. at 53. Petitioner testified that she was able to perform the essential duties as a physical therapist, with some modifications. Tr. at 36. Petitioner explained that for lifting and passive range of motion exercises, she would use her right hand to primarily hold the weight. Tr. at 36. If a patient required an intervention or guarding that exceeded the 25-pound restriction or was something that Petitioner did not feel she could perform safely, she would ask a colleague to assist her. Tr. at 36. Petitioner testified that she could not perform certain manipulations at the hip and spine, including high velocity thrust mobilizations, and that she would ask a colleague to perform mobilizations that exceeded her weight restriction. Tr. at 38.

Petitioner testified that the more she used her left hand, the worse it felt. Tr. at 38. Her symptoms would worsen with light soft tissue work and with assisted range of motion. Tr. at 38. Her symptoms worsened over the course of the workday. Tr. at 38. Petitioner testified that her arm burned constantly, that she felt a "pins and needles" sensation, and that she had numbness. Tr. at 38. Petitioner further explained that with increased use of her left arm, her left arm felt heavy, and that she noticed stiffness in the hand. Tr. at 38. These symptoms would increase until she discontinued the use of her arm and it had time to calm down. Tr. at 39.

Petitioner worked at Respondent until September 2017, at which time she voluntarily resigned, and began working at Elmhurst Health. Tr. at 39, 53. Petitioner testified that she sought other employment at that time because she was looking to reduce her patient care time. Tr. at 40. Petitioner explained that Elmhurst Health was creating a new position of manager of rehab, and it was an opportunity for her to move into a leadership role. Tr. at 40. The new position would reduce her patient care time. Tr. at 40. Petitioner testified that shortly after her onboarding at

Elmhurst Health, the facility reorganized, and she did not receive the position. Tr. at 41. She continued her work at Elmhurst Health as a staff physical therapist with accommodations provided for her 25-pound lifting restriction. Tr. at 41, 53. Petitioner did not see patients with balance or gait deficits. Tr. at 41. Petitioner testified that she was seen by Elmhurst Occupational Health, and the 25-pound lifting restriction was imposed by Elmhurst Occupational Health. Tr. at 41-42. Petitioner testified that during her employment at Elmhurst Health, her symptoms did not improve and increased during the workday. Tr. at 42. Petitioner left Elmhurst Health in January 2019, after having a discussion with Dr. Kurzydowski wherein he recommended that she transition to a nonclinical role. Tr. at 42-43.

Petitioner began work at The American Academy of Orthopaedic Surgeons as a senior registry analyst in January 2019. Tr. at 43, 54. The position of senior registry analyst did not require any physical work. Tr. at 43. It was essentially a desk job which required typing. Tr. at 44. Petitioner modified how she typed. Tr. at 44. At the time of arbitration, Petitioner was working in a new role at The American Academy of Orthopaedic Surgeons, overseeing program management for registries and data science. Tr. at 45, 54. In this position, Petitioner earns at least as much as she did at the time of the September 13, 2016 accident. Tr. at 54.

### **Current condition**

After Respondent's independent medical examination ("IME"), Petitioner's medical benefits were terminated. Tr. at 33. Petitioner used her health insurance to continue treating. Tr. at 46-47. The bills and receipts contained within Px9 represent the amounts that Petitioner outlaid to cover treatment related to the injury. Tr. at 46-47.

Petitioner testified that her symptoms improved with the medications prescribed by Dr. Kurzydowski. Tr. at 31. At the time of arbitration, Petitioner was still treating with Dr. Arnold for medication management and was taking 300mg of Gabapentin three times daily. Tr. at 31, 45. Petitioner sees Dr. Arnold every three months for a medication refill. Tr. at 46.

Petitioner testified that she has pain in her arm every day. Tr. at 48. The pain starts in her hand and travels up her arm with increased use. Tr. at 50. Petitioner explained that the more she uses her hand, the worse it feels. Tr. at 50, 51. Petitioner described experiencing numbness, tingling, and burning into her forearm below her elbow as she testified. Tr. at 50. Petitioner testified that the symptoms have reached her shoulder. Tr. at 50. The symptoms were daily when she was a clinician, but had decreased since not having to use her arm as much. Tr. at 50. Petitioner testified that if she were to vacuum at home, the symptoms would increase. Tr. at 50.

Petitioner has challenges with fine motor tasks, including turning a key, buttons, and Ziploc bags. Tr. at 48. She also experiences challenges with parenting and childcare, as she does not trust her ability to hold her child on her left side. Tr. at 48. She opts to wear her child as opposed to carry her. Tr. at 49. Petitioner has sleep disturbances related to the pain in her hand and sometimes prefers to not wear a sleeve because it irritates her left upper extremity. Tr. at 49. Petitioner testified that she was into fitness and would attend a lot of fitness classes, but she no longer does because it increases the symptoms in her hand. Tr. at 50. Petitioner testified that she

is comfortable with holding four or five pounds with her left hand. Tr. at 51. She has dropped a lot of items, including glasses, makeup palettes, and a container of Costco oatmeal. Tr. at 51.

**IME by Dr. Robert Wysocki**

Dr. Wysocki examined Petitioner in relation to her left arm and hand on July 26, 2017. Rx1 at 1. Dr. Wysocki reviewed medical records, as well as a job description in preparation of his report. Rx1 at 1. Petitioner reported a consistent accident history. Rx1 at 3.

Petitioner reported that her symptoms were pain primarily in the left thumb, including the tip of the thumb, both at the pulp and over the fingernail radiating back towards the IP joint. Rx1 at 3. Petitioner reported that the index and long fingers did not hurt as much as they had previously. Rx1 at 3. Petitioner reported experiencing sensations of the arm getting cold and developing a burning pain on the dorsoradial hand that radiated up the dorsoradial forearm towards the elbow. Rx1 at 3. Petitioner further reported that this pain had recently started to radiate up to the arm and behind the triceps and to the shoulder blade when it was particularly bad. Rx1 at 3. Petitioner reported that she felt like the skin was sensitive and she also experienced a pins and needles sensation in the thumb, index, and long fingers primarily dorsally. Rx1 at 3. Petitioner further reported that she did not note any substantial color change and denied previous trauma to the extremity. Rx1 at 3. Petitioner reported a history of Raynaud's Syndrome, and also reported that her symptoms felt different than that. Rx1 at 3.

On examination, Dr. Wysocki noted that he did not see any clear changes in sweat, temperature, or color pattern that would lead him to definitively conclude that a CRPS was present. Rx1 at 4. He further noted that Petitioner had a negative Tinel's, Phalen's, and median nerve compression at the carpal tunnel, aside from causing some local pain and occasional radiating up the forearm with a median nerve compression in a nonspecific distribution. Rx1 at 4. Dr. Wysocki also noted that Petitioner had more pronounced tenderness at the hand and wrist, especially at the thumb. Rx1 at 4. Radiographs were obtained and demonstrated normal bony and articular relationships without any fracture, dislocation, or significant arthritis, as well as no other additional pertinent bony pathology. Rx1 at 4. Dr. Wysocki noted that Petitioner demonstrated a 2mm ulnar-positive radiance. Rx1 at 4.

Based on his examination, Dr. Wysocki opined that Petitioner's current condition was left hand and wrist contusion. Rx1 at 4. He noted that he did not have the expertise to formulate an official diagnosis of CRPS and that he could not comment on whether Petitioner had CRPS. Rx1 at 4. Dr. Wysocki further opined that the only diagnosis he was confident in providing was that of left hand and wrist contusion, which were directly related to the September 13, 2016 accident and did not have any association with her underlying medical conditions. Rx1 at 4-5. Dr. Wysocki deferred to a pain medicine specialist for opinions concerning or related to a CRPS diagnosis. Rx1 at 4-5. Regarding the normal EMG/NCV study results, Dr. Wysocki opined that he believed that it confirmed that Petitioner did not have a compressive neuropathy of the radial nerve, median nerve, ulnar nerve, or any compression neuropathy of the spine to explain her symptoms and thus, no peripheral nerve surgical decompression was indicated. Rx1 at 5. Dr. Wysocki also opined that no further orthopedic treatment was needed for Petitioner's diagnosis of left hand and wrist contusion. Rx1 at 5. Dr. Wysocki further opined that Petitioner's treatment

to date had been reasonable and necessary and was causally related to the work injury. Rx1 at 5. He also believed that it was appropriate that Petitioner had been referred to a pain medicine specialist. Rx1 at 5.

Regarding work restrictions, Dr. Wysocki opined that from the standpoint of Petitioner's left hand and wrist contusion, he did not believe that any formal work restrictions were necessarily required to treat organic pathology of the hand. Rx1 at 5-6. Dr. Wysocki opined that Petitioner had reached maximum medical improvement ("MMI") regarding her left hand and wrist contusion. Rx1 at 6.

**IME by Dr. Kenneth Candido**

Dr. Candido examined Petitioner on September 19, 2017. Rx2 at 1. Dr. Candido reviewed a job description and medical records in preparation of his report. Rx2 at 2-3.

Petitioner reported a consistent accident history. Rx2 at 4. Petitioner denied having sustained any injuries to the left upper extremity prior to September 13, 2016. Rx2 at 4. Petitioner reported that the pain worsened with use of her left upper extremity. Rx2 at 6. Petitioner also reported that she felt as if her condition had worsened and that her symptoms had progressed in severity and surface area. Rx2 at 6. On examination, Dr. Candido noted no objective signs of CRPS type I or type II. Rx2 at 16. He noted mild left thumb limitation of flexion. Rx2 at 6.

Based on his examination, Dr. Candido opined that Petitioner sustained a crush injury and that there were zero signs of CRPS. Rx2 at 26. He opined that Petitioner likely had a resolving neuropathic pain condition of some of the smaller sensory nerves of the hand without residual dysfunction as, aside from some limited thumb flexion, which was a preexisting condition according to multiple physical therapy notes. Rx6 at 26-27. Petitioner's clinical examination was normal. Rx6 at 27. Dr. Candido agreed that Petitioner was healing, and the expectation was for a complete and unencumbered recovery, over time, from what was most probably a neurapraxia of some digital branches of the left hand and palm of the hand. Rx6 at 27. Dr. Candido agreed with Dr. Rechitsky, who also found that no criteria were met for a CRPS condition. Rx6 at 27.

Dr. Candido opined that Petitioner's preexisting autoimmune conditions could potentially affect Petitioner's healing from injury. Rx2 at 27. He noted that Petitioner had made progress as far as not having any residual features of the injury, aside from the left thumb limitation for complete flexion. Rx2 at 27. Dr. Candido further opined that Petitioner's condition was mild in terms of objective findings. Rx2 at 27. He also opined that Petitioner did not have CRPS, and that she did not require nerve blocks, pain medications, or pain management. Rx2 at 28. Dr. Candido found Petitioner to be at MMI for the crush injury, as there were no residual findings of sensory or motor dysfunction. Rx2 at 28. Dr. Candido further opined that Petitioner could work in her regular work capacity as it related to the work injury. Rx2 at 28. He noted that Petitioner was clearly motivated to work and that she did not have permanent or temporary restrictions to consider at that point. Rx2 at 28.

**Evidence deposition testimony of Dr. Henry S. Kurzydowski**

Dr. Henry S. Kurzydowski testified by way of evidence deposition on January 16, 2020. Px6. Dr. Kurzydowski testified as to his education and credentials. Px6 at 5-7. Dr. Kurzydowski testified that at the time of his deposition, the nature of his practice was solely pain management. Px6 at 6, 7.

Dr. Kurzydowski testified that Petitioner was referred to him by Dr. Baxamusa for hand pain. Px6 at 8. Dr. Kurzydowski first saw Petitioner on November 22, 2016. Px6 at 8. At that time, his diagnosis was pain in the left hand and pain in the left arm with a concern for CRPS. Px6 at 10. Dr. Kurzydowski explained that the diagnosis of CRPS is one of exclusion, meaning that one has to make sure that there is no other treatable cause for the symptoms. Px6 at 11. His treatment recommendations at that time consisted of medication and physical therapy. Px6 at 11. Dr. Kurzydowski prescribed Gabapentin and Neurontin. Px6 at 12. Neurontin is useful for chronic nerve pain. Px6 at 12.

Petitioner followed up with Dr. Kurzydowski on November 29, 2016 and December 20, 2016. Px6 at 12-13. Dr. Kurzydowski testified that at Petitioner's February 7, 2017 visit, there had been a "pharmacy mix up" and Petitioner was unable to fill the Neurontin prescription for a few days, and she had an increase in pain. Px6 at 14. Dr. Kurzydowski testified that the marked increase in pain confirmed that the Neurontin was probably helping Petitioner. Px6 at 14. On this date, Dr. Kurzydowski prescribed a course of physical therapy. Px6 at 14-16. On March 28, 2017, Dr. Kurzydowski referred Petitioner to Mary Beth Geiser, a therapist specialized in CRPS. Px6 at 16-17. On May 2, 2017, Dr. Kurzydowski added Cymbalta to Petitioner's medications. Px6 at 18.

Dr. Kurzydowski testified that he reviewed the EMG results of Dr. Rechitsky on May 25, 2017. Px6 at 19. The EMG did not find anything, and it ruled out the possibilities of carpal tunnel, ulnar entrapment at the elbow, brachial plexopathy, and disc herniation with radiculopathy. Px6 at 19.

Dr. Kurzydowski testified that he thought that Petitioner had rheumatoid arthritis for years. Px6 at 19. Dr. Kurzydowski also testified that Petitioner's rheumatoid arthritis did not have a relationship to the symptoms that Petitioner was reporting to him because rheumatoid arthritis patients usually do not have CRPS. Px6 at 20. Dr. Kurzydowski did not think that Petitioner's leukocytoclastic vasculitis would have any relationship to her hand-related symptoms. Px6 at 20. Regarding whether Petitioner's leukocytoclastic vasculitis had any relationship to the healing of her condition, Dr. Kurzydowski testified that "I don't think you could prove that. I don't think there's that many people in the world that have had these two things together." Px6 at 20.

Petitioner's visits with Dr. Kurzydowski on June 27, 2017, July 25, 2017, and August 29, 2017 involved medication management. Px6 at 20. Dr. Kurzydowski testified that on September 20, 2017, Petitioner presented with hand pain. Px6 at 21. Petitioner had undergone manipulation of her left upper extremity while at an IME on September 19, 2017. Px6 at 21. Petitioner experienced intense exacerbation of her symptoms a few hours after the IME and



could not sleep. Px6 at 21. Dr. Kurzydowski testified that people that have nerve injuries guard their extremity because they do not want to be touched and that “it doesn’t take a lot to set them off.” Px6 at 21. Dr. Kurzydowski explained that the extremity has to be approached gingerly because if the person is forced to put their extremity in a position that they are not used to, it will flare up and the person will be miserable for several weeks or days. Px6 at 22.

Regarding the 25-pound weight restriction, Dr. Kurzydowski testified that “we tried to figure out a range where she could function.” Px6 at 22. Dr. Kurzydowski together with Petitioner “figured that 25 would probably be a safe range.” Px6 at 23. Dr. Kurzydowski testified that Petitioner returned on October 18, 2017, and that Petitioner made mention of pain exacerbation after working with a patient, and that she continued with the weight restriction of 25 pounds. Px6 at 23. Dr. Kurzydowski agreed that Petitioner continued to report symptoms while working with the 25-pound restriction. Px6 at 23. Petitioner’s visits with Dr. Kurzydowski on November 29, 2017, February 28, 2018, and May 9, 2018 involved medication management. Px6 at 23.

Dr. Kurzydowski agreed that at this time, Petitioner’s visits had extended to a two-to-three-month period versus a one-month period. Px6 at 24. He explained “that’s the goal, to find some level where we can maintain her.” Px6 at 24. During this time, Petitioner’s Neurontin increased to 800mg a day. Px6 at 24.

At Petitioner’s visit of September 13, 2018, Dr. Kurzydowski testified that Petitioner presented with continued “pain and burning in the left upper extremity and hand carrying objects greater than seven to eight pounds and will probably not be able to continue in physical therapy and require a change in occupation.” Px6 at 25. Dr. Kurzydowski testified that Petitioner could not do her previous duties of a physical therapist. Px6 at 25. Dr. Kurzydowski concluded that Petitioner required a change in occupation. Px6 at 25-26. On this date, Dr. Kurzydowski referred Petitioner to a pain psychologist because patients with chronic pain experience anger, frustration, or depression. Px6 at 26-27.

Regarding Petitioner’s visit on February 21, 2019, Dr. Kurzydowski’s note indicated that Petitioner had not been able to work as a physical therapist due to severe pain while lifting anything greater than seven pounds or with any prolonged use of the left upper extremity in general. Px6 at 27-28. On March 19, 2019, Dr. Kurzydowski prescribed Elavil for Petitioner’s complaints of not being able to sleep due to pain issues and increased the Neurontin to 900mg daily. Px6 at 28-30. On April 23, 2019, Petitioner reported that the Elavil was helping with her sleep issues. Px6 at 30.

Petitioner’s last visit with Dr. Kurzydowski was on July 30, 2019. Px6 at 31. Dr. Kurzydowski’s note indicated that Petitioner’s left-hand weakness continued with signs of some muscle wasting, and that Petitioner was unable to lift and hold objects greater than seven to eight pounds. Px6 at 31. Dr. Kurzydowski agreed that this was the same clinical presentation Petitioner had for “quite a period of time.” Px6 at 31. Dr. Kurzydowski testified that at the time of his deposition, he had not released Petitioner from his care. Px6 at 32.

Dr. Kurzydowski was shown Exhibit Number 2, which he identified as a narrative report that he prepared. Px6 at 32. Dr. Kurzydowski agreed that the opinions contained within his narrative report were based on a reasonable degree of medical and surgical certainty. Px6 at 32. Dr. Kurzydowski agreed that Petitioner's condition stemmed from some sort of crush injury. Px6 at 38. Dr. Kurzydowski testified that prior to the September 13, 2016 event, Petitioner did not have any problems and she had no difficulty functioning in her job as a physical therapist for years, and afterwards it became a slow downward spiral in terms of Petitioner's activities. Px6 at 33. Dr. Kurzydowski testified that he thinks that Petitioner has a neuropathy, but that it is not full-blown CRPS. Px6 at 33, 47. Petitioner did not meet the criteria for CRPS. Px6 at 33-34. Petitioner never developed a full-blown CRPS. Px6 at 34. Dr. Kurzydowski testified that Petitioner's neuropathy was "probably parts of the radial and medial nerve as I recall." Px6 at 34. Dr. Kurzydowski further testified that "[w]ith nerves as a rule if it doesn't subside or literally get back to baseline after about two years it's probably what you have left is what you're going to have left." Px6 at 34. Dr. Kurzydowski agreed that Petitioner's condition is essentially chronic. Px6 at 34-35. Dr. Kurzydowski explained that nerves can last up to two years to heal, but "[o]nce you reach the two-year milestone, there's not a lot of recovery that will come back into play." Px6 at 35.

Dr. Kurzydowski testified that he reviewed Dr. Candido's report. Px6 at 35, 46. Dr. Kurzydowski explained that neurapraxia was more like an injured nerve. Px6 at 35. He testified that a classic example of neurapraxia is when you are sitting and your leg falls asleep, and that changing positions takes the pressure off the nerve and circulation comes back and it heals. Px6 at 35. Dr. Kurzydowski explained that "[a]fter two years, you know, it's probably more than just a neurapraxia." Px6 at 35. He further explained that neurapraxia is essentially a transient phenomenon, and that the nerve is intact, and it should come back, but that he does not think that Petitioner's nerve ever did. Px6 at 36.

Regarding permanent restrictions as to Petitioner's left hand, Dr. Kurzydowski testified that he encourages patients to move as much as possible and that he does not want them to baby it, but the breakout is what Petitioner can tolerate. Px6 at 36. When asked if there had been a threshold point that he noted that Petitioner could lift, Dr. Kurzydowski testified that Petitioner "seems to be hovering around seven to eight pounds, which is a gallon a milk." Px6 at 37. Dr. Kurzydowski testified that he does not believe that Petitioner is capable of working the job duties of a physical therapist because of the pain she would set off by using her hands. Px6 at 37.

On cross-examination, Dr. Kurzydowski testified that Petitioner working with a chain, the chain being held by the patient, and the chain becoming loose in her hand and compressing across three of her fingers did not sound familiar to him. Px6 at 38. Dr. Kurzydowski testified that whether the force was only to three fingers rather than the whole hand may or may not matter, and that the angle, velocity, and point of contact might matter. Px6 at 38. Dr. Kurzydowski testified that he may have investigated the extent of force in Petitioner's case, but that he did not remember. Px6 at 39. He testified that at the time of his deposition, he could not comment on the velocity of the impact, or the surface area affected. Px6 at 39. He did not remember seeing any fractures involved. Px6 at 39. He did not remember whether there was any broken skin or bleeding caused by the crush injury. Px6 at 39. He did not recall any injury to the nails on the fingers that were impacted. Px6 at 39. Dr. Kurzydowski did not know if Petitioner

had been seen at an emergency room. Px6 at 39-40. Dr. Kurzydowski agreed that there was concern about a possible radial nerve injury at her initial exam. Px6 at 40. Dr. Kurzydowski testified that a radial nerve injury was not a concern because it was after two years, and the radial nerve injury would have healed. Px6 at 40.

Dr. Kurzydowski explained that neuropathy means nerve pain and Petitioner's neuropathy was probably caused by a trauma. Px6 at 40. Dr. Kurzydowski further explained that radial nerve means it could be injured from trauma, surgery, or compression, and that there are a variety of different causes. Px6 at 40. There is a spectrum of nerve injuries. Px6 at 41. Dr. Kurzydowski testified that Petitioner's nerve was not transected, so her condition was a little more than neurapraxia, and that Petitioner did not have total nerve destruction, so her nerve injury lies somewhere in between. Px6 at 41. Dr. Kurzydowski testified that there was not any evidence that Petitioner had a torn or lacerated nerve. Px6 at 42. He further testified that crush injuries can produce inflammation and swelling especially in the initial phase because there is an inflammatory response. Px6 at 42. Dr. Kurzydowski did not remember whether Petitioner had a large degree of inflammation or swelling after the injury. Px6 at 42.

Dr. Kurzydowski agreed that crush injuries on the hand could be followed by compartment syndrome, "but if that's the case then you often end up having to do surgery, a fasciectomy." Px6 at 42. Dr. Kurzydowski testified that Petitioner did not have compartment syndrome issues, "because then it's a danger of having gangrene in the extremity." Px6 at 43. Dr. Kurzydowski agreed that the diagnostics, x-rays, MRIs, and EMGs were normal and testified that they did not find anything that would suggest a fracture or dislocation. Px6 at 43. Dr. Kurzydowski testified that there is not a test to confirm the existence of neuropathy. Px6 at 43. He explained that neuropathy is a diagnosis of exclusion. Px6 at 43, 46. Dr. Kurzydowski testified that he would need a history, physical exam, and previous studies to diagnose neuropathy. Px6 at 43. Dr. Kurzydowski testified that he had done physical exams of Petitioner's left hand, and that the initial physical exam showed atrophy, sensory loss, and allodynia. Px6 at 44. Dr. Kurzydowski explained that sensory loss is confirmed by touch and watching the patient's response to stimulus. Px6 at 44. Dr. Kurzydowski agreed that pain cannot be objectively confirmed. Px6 at 44. A physical exam corroborates what the patient tells you in their history. Px6 at 44. Dr. Kurzydowski testified that Petitioner could not fake atrophy, and that there was some muscle wasting on initial exam, which was two months after Petitioner's trauma. Px6 at 45. Regarding the purpose of a treatment plan, Dr. Kurzydowski testified that at the time of his deposition, Petitioner's treatment plan was more of a maintenance phase. Px6 at 46.

Dr. Kurzydowski testified that he did not know who Dr. Robert Wysocki is. Px6 at 47. Dr. Kurzydowski testified that there was nothing to orthopedically fix. Px6 at 47. Dr. Kurzydowski testified that Petitioner's primary problems are pain and lack of function. Px6 at 48.

Dr. Kurzydowski testified that permanent physical restrictions varied in cases of patients with neuropathy conditions. Px6 at 50. Dr. Kurzydowski testified that someone with a case similar to Petitioner's, "from a realistic point of view, she'll reach a limit where she can't do things because then she just accentuates the discomfort, so that's going to be the limiting effect."

Px6 at 51. Dr. Kurzydowski testified that his opinion is that Petitioner cannot do more regular activities at work, and his opinion is based on how Petitioner presents to him, on how he has treated Petitioner, on what Petitioner can and cannot do, and on what Dr. Kurzydowski has observed over the last months. Px6 at 51.

On redirect examination, Dr. Kurzydowski testified that he did not think that Petitioner is a liar or that she is faking her condition. Px6 at 52. He did not detect any malingering on Petitioner's part. Px6 at 52. Dr. Kurzydowski testified that at that time, he was not able to isolate the specific nerve that is being affected because Petitioner has such a non-dermatomal distribution that is most of the hand. Px6 at 52. On recross examination, Dr. Kurzydowski explained that non-dermatomal means it affects the whole hand, and not a specific pattern or a particular pathway. Px6 at 53.

**Evidence deposition testimony of Respondent's Section 12 Examiner, Dr. Kenneth D. Candido**

Dr. Kenneth D. Candido testified by way of evidence deposition on February 18, 2020. Rx3. Dr. Candido's areas of expertise are anesthesiology and pain management, and he is board certified in pain management. Rx3 at 4-5.

Dr. Candido evaluated Petitioner on September 19, 2017 at Respondent's request. Rx3 at 5. Dr. Candido testified that Petitioner provided him with a history, wherein she reported that she had not sustained injuries to her left upper extremity before September 13, 2016, and that she sustained a crush injury to her left thumb, index, and middle fingers on September 13, 2016. Rx3 at 7. Petitioner reported a consistent accident history. Rx3 at 7. Petitioner reported that she was in pain and applied ice over the hand, which was sore, red, and throbbing. Rx3 at 7. Petitioner waited a week before seeking medical treatment. Rx3 at 7. Petitioner sought treatment at Northwest Community Healthcare Urgent Care, then saw Dr. Baxamusa, saw a physical therapist for six months, then saw Dr. Kurzydowski, and was seeing a hand physical therapist of her choice. Rx3 at 7-8. Dr. Candido testified that at the time of his examination, Petitioner was working as a physical therapist, as a Pilates instructor, and as a teacher's assistant at Rosalind Franklin University. Rx3 at 8-9. Dr. Candido testified that at the time of his examination, Petitioner did not feel that she had improved since the incident, and that Petitioner felt that her condition had worsened and progressed in terms of severity and in the surface area that she described as painful. Rx3 at 9.

Dr. Candido testified that he found significant Petitioner's reporting that she was unable to straighten her left arm in the "Symptomology" portion of his exam. Rx3 at 9. The straightening of Petitioner's arm was triggering neuro-type symptoms of searing-type pain from the left hand to the left armpit. Rx3 at 9. Petitioner described the left arm getting cold with movement and burning pain in the left index finger and thumb, traveling through the forearm up to the biceps beneath the shoulder blade. Rx3 at 10. Petitioner described the pain as spreading, and she also described having sleep disturbances. Rx3 at 10.

Dr. Candido obtained a past medical history from Petitioner. Rx3 at 10. Dr. Candido explained that the purpose of obtaining a past medical history is to be comprehensive and to evaluate any potential factors or concomitant factors for somebody who might develop a pain

condition. Rx3 at 10. Dr. Candido testified that he believes that Petitioner's autoimmune conditions of leukocytoclastic vasculitis, autoimmune enteropathy, and Sjogren's Syndrome contributed to individuals having painful processes. Rx3 at 10-11. Dr. Candido reviewed Petitioner's diagnostic tests, including an x-ray of the left hand, an MRI of the left hand, and an EMG of the left upper extremity, which were all normal and did not identify any objective pathology that could cause or contribute to someone's description of pain or dysfunction. Rx3 at 11. Dr. Candido also obtained an active medication list and he explained that the purpose of obtaining it was to determine whether an individual has risk factors for ongoing pain and to see if they are being treated with reliable medications. Rx3 at 11. Dr. Candido testified that it was significant that Petitioner was taking Imuran, Entocort EC3, Celecoxib, Duloxetine, a steroid nasal spray, Gabapentin, turmeric, and other medications for unrelated conditions. Rx3 at 12. Dr. Candido also obtained a social history, and there was nothing of pertinence to her pain syndrome. Rx3 at 12.

Dr. Candido performed a physical examination and he testified that the significant findings were that Petitioner's vital signs were all within normal ranges. Rx3 at 13. Dr. Candido testified that the values of Petitioner's right-hand grip pressure were between 52 and 58 pounds of force, and that the values of her left-hand pressure were between 34 and 35 pounds of force, which was significant. Rx3 at 13. Dr. Candido explained that he always expects the dominant side to be up to 15% stronger than the non-dominant side, and that in Petitioner's case it was 20% to 25% stronger, which was a minor drop-off. Rx3 at 13. His upper extremity examination showed no scars, no lesions, no color changes, no deformities, no temperature changes, no sweating abnormalities, no trophic signs, no tactile allodynia, no hyperalgesia, and no objective signs of Type 1 or Type 2 CRPS. Rx3 at 13. Dr. Candido noticed a mild left thumb limitation of flexion. Rx3 at 13-14. Dr. Candido testified that otherwise, Petitioner's range of motion of her upper extremity and the sensory and motor examinations were unremarkable. Rx3 at 14.

Dr. Candido testified that his opinion was that Petitioner sustained a crush injury to the left hand, and that he noted zero signs of a CRPS. Rx3 at 14. Dr. Candido testified that his working diagnosis was that Petitioner likely had a resolving neuropathic pain condition of some of the smaller sensory nerves of the hand without residual dysfunction. Rx3 at 14-15. Dr. Candido testified that he acknowledged that a crush injury could be painful, and that he "agreed that healing, and the expectation is for complete and unencumbered recovery over time in what was most probably a neurapraxia of ... some digital branches of the left hand and palm of the hand." Rx3 at 15. Dr. Candido testified that he agreed with Dr. Rechitsky, who did not find any signs of CRPS. Rx3 at 15.

Dr. Candido also testified that he expressed that leukocytoclastic vasculitis is a small vessel disorder which is characterized by inflammation of post-capillary venules in the dermis that is associated with purpura formation. Rx3 at 16. He testified that he opined that Petitioner likely had a mild form of leukocytoclastic vasculitis, as he did not see any cutaneous manifestation of it at the time of his examination, and he indicated that it could be caused by certain medications. Rx3 at 16. Dr. Candido testified that leukocytoclastic vasculitis symptoms can mimic those of neurapraxia, because leukocytoclastic vasculitis "can lead to an inflammatory condition of the small vessels and also, by proxy, because the vessels innervate, or feed neural structures, being nerve tissue, that can cause an inflammatory condition of nerves." Rx3 at 16.

Dr. Candido testified that at the time of his examination, his opinion was that Petitioner should be at MMI once her therapy was completed and no later than three months following the completion of his report and examination. Rx3 at 16. Dr. Candido did not anticipate anything preventing Petitioner from reaching full function of her left hand at the time that he evaluated her. Rx3 at 17. Dr. Candido testified that Petitioner was working three separate and distinct jobs at the time that he examined her, that he suggested that the use of physical therapy might be beneficial to restore full function of the left thumb, and that he did not expect or see any permanency of temporary restrictions, use of analgesic medication, nerve blocks, or interventional pain management treatments to consider at that time. Rx3 at 17. Dr. Candido testified that at the time of his examination, he did not believe that Petitioner required any formal or informal work restrictions. Rx3 at 17.

Dr. Candido testified that Petitioner allowed a full examination of her left upper extremity, which in conjunction with the lack of color, edema, and trophic signs rule out the possibility of CRPS. Rx3 at 18. Dr. Candido testified that at the time of his examination, he believed that Petitioner did not require any ongoing medication. Rx3 at 20. He did not identify any reason for a prescription for any medication in Petitioner's condition. Rx3 at 20. Dr. Candido did not see any reason for a lifting restriction at the time of his examination, and that based on the dynamometer and Jamar results, Petitioner was capable of using her left hand to perform a handgrip of 34 to 35 pounds, which was within reasonable expectations. Rx3 at 21. Dr. Candido further testified that he would not have expected Petitioner's condition to progress to the point that she would require an eight-pound lifting restriction or ongoing medication. Rx3 at 21.

Dr. Candido explained that there are only three things that can happen to a nerve when a nerve is injured. Rx3 at 21. First, a nerve can sustain a neurapraxia, which is a compression or stretch injury, and is a self-limiting process which is known to resolve in the vast majority of individuals within two years. Rx3 at 21. The second possible injury is an axonotmesis, which is a partial nerve injury where there has been some disrupting or tearing of nerve fibers, which is expected to heal in the vast majority of individuals over time without sequela. Rx3 at 21-22. The third possible injury is a neurotmesis, where the nerve is completely severed. Rx3 at 22. In the case of a neurotmesis, there is no movement and no feeling. Rx3 at 22. Petitioner did not have a severed nerve, because she had feeling and movement. Rx3 at 22. Dr. Candido testified that of the possibilities of what could have happened to Petitioner, more probably than not, Petitioner sustained a neurapraxia type of insult, which is the best of all possible outcomes and is a condition that improves over time. Rx3 at 22. Dr. Candido explained that if there is damage from a crush injury to a nerve, if the nerve continues to maintain the integrity of the Schwann cell membrane, the nerve will recover. Rx3 at 22-23. Recovery can be somewhat prolonged for an individual with an autoimmune disease. Rx3 at 23. Dr. Candido testified that there possibly are cases of neurapraxia that do not recover and could be a permanent condition. Rx3 at 23, 32. Dr. Candido also testified that a spinal cord stimulator is not an appropriate modality for neurapraxia, because the condition improves and resolves over time. Rx3 at 23.

On cross-examination, Dr. Candido testified that he relied on physical therapy records that predated the accident regarding Petitioner's preexisting left thumb limitation. Rx3 at 24-25. Dr. Candido agreed that overall, his conclusion was that Petitioner has a resolving condition. Rx3 at 25. Dr. Candido testified that the lack or absence of a sensory neuropathy on his

examination led him to believe, clinically, that Petitioner was in a resolution phase. Rx3 at 26. Dr. Candido testified that he saw a 10-pound improvement in Petitioner's lifting restriction. Rx3 at 26-27. Dr. Candido testified that otherwise, he did not see any other marked improvements of Petitioner's condition in his medical records review. Rx3 at 26-27.

Dr. Candido explained that the use of the term "neuropathy" is a generic term for anything that is related to dysfunction of the nerve system, and that a neurapraxia is a defined condition that occurs when a nerve is stretched or compressed. Rx3 at 28. A neurapraxia can lead to neuropathy. Rx3 at 28.

Dr. Candido testified that Petitioner was on Neurontin, or Gabapentin, and Cymbalta at the time of his examination. Rx3 at 28. He explained that Neurontin is an anti-seizure medication that was created for individuals that suffer from epilepsy. Rx3 at 28. It could be useful to slow conduction in nerves to allow nerves to heal, in the short term. Rx3 at 29. Gabapentin is not prescribed for long-term use for neurapraxia because neurapraxia is a self-limiting condition. Rx3 at 35. Gabapentin could be used long term, but not in perpetuity because the expectation is that the neurapraxia will resolve. Rx3 at 35. Dr. Candido also explained that Cymbalta blocks the uptake or re-uptake of norepinephrine and serotonin, and is useful, at the central nervous system, to effectively manage the subjective reporting of certain pain conditions. Rx3 at 29. He further explained that Cymbalta was approved in 2010 for osteoarthritis, low back pain, diabetic peripheral neuropathy, and postherpetic neuralgia. Rx3 at 29. Dr. Candido testified that he has found that Neurontin is a medication that can be beneficial to a patient with neuropathy or neurapraxia. Rx3 at 29. Dr. Candido testified that if Petitioner experienced an increase of pain without Neurontin on February 7, 2017, that would signify to him that Neurontin was providing some benefit to Petitioner at least as of February 7, 2017. Rx3 at 30.

Dr. Candido testified that the only true test to prove the existence of a neurapraxia or a neuropathy would be to conduct a microscopic analysis of a nerve. Rx3 at 30. An MRI and EMG can be useful. Rx3 at 31. Dr. Candido testified that the EMG and nerve conduction velocity study demonstrated that there was no neuropathy, according to the electromyographer's interpretation. Rx3 at 32. An EMG can provide a definitive answer as to whether a neuropathy exists. Rx3 at 32.

Dr. Candido testified that it was not his understanding that Petitioner's autoimmune conditions could cause a crush injury to worsen. Rx3 at 33. Dr. Candido explained that "autoimmune" means that the body creates an imbalance in antibodies and attacks its own tissue, and that he is not aware of a crush injury contributing to, or worsening, or being a causative factor in the term of an autoimmune disease. Rx3 at 33. When asked to what extent autoimmune diseases can hinder the healing of a nerve injury, Dr. Candido testified that they have been hypothesized to slow down the healing, but he did not know how that can be quantified or qualified. Rx3 at 33.

Dr. Candido testified that he had not seen Petitioner since his examination and agreed that he did not know how Petitioner was doing at the time of his deposition. Rx3 at 31. Dr. Candido testified that he thought Petitioner was credible and he did not think that she was malingering. Rx3 at 34. Dr. Candido testified that it was his understanding that Petitioner had

returned to work a physical therapist, and so it was not his understanding that she did not want to return to work as a physical therapist. Rx3 at 34. Dr. Candido did not note any type of atrophy or muscle wasting during his exam. Rx3 at 34. When asked if during subsequent examinations atrophy and muscle wasting were noted by a physician, Dr. Candido testified that said conditions would tell him that possibly Petitioner's autoimmune condition had worsened in the interval since he had examined her. Rx3 at 35.

### **CONCLUSIONS OF LAW**

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

Decisions of an arbitrator shall be based exclusively on the evidence in the record of the proceeding and material that has been officially noticed. 820 ILCS 305/1.1(e). The burden of proof is on a claimant to establish the elements of her right to compensation, and unless the evidence considered in its entirety supports a finding that the injury resulted from a cause connected with the employment, there is no right to recover. *Board of Trustees v. Industrial Commission*, 44 Ill. 2d 214 (1969).

Credibility is the quality of a witness which renders her evidence worthy of belief. It is the function of the Commission to judge the credibility of the witnesses and to resolve conflicts in the medical evidence and assign weight to witness testimony. *O'Dette v. Industrial Commission*, 79 Ill. 2d 249, 253 (1980); *Hosteny v. Workers' Compensation Commission*, 397 Ill. App. 3d 665, 674 (2009). Where a claimant's testimony is inconsistent with her actual behavior and conduct, the Commission has held that an award cannot stand. *McDonald v. Industrial Commission*, 39 Ill. 2d 396 (1968); *Swift v. Industrial Commission*, 52 Ill. 2d 490 (1972).

In the case at hand, the Arbitrator observed Petitioner during the hearing and finds her to be a credible witness. The Arbitrator compared Petitioner's testimony with the totality of the evidence submitted and did not find any material contradictions that would deem the witness unreliable.

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

To obtain compensation under the Act, a claimant must prove that some act or phase of her employment was a causative factor in her ensuing injuries. A work-related injury need not be the sole or principal causative factor, as long as it was a causative factor in the resulting condition of ill-being. *Sisbro, Inc. v. Industrial Comm'n*, 207 Ill. 2d 193, 205 (2003). An employer takes its employees as it finds them. *St. Elizabeth's Hospital v. Illinois Workers' Compensation Comm'n*, 371 Ill. App. 3d 882, 888 (2007). "A chain of events which demonstrates a previous condition of good health, an accident, and a subsequent injury resulting in disability may be sufficient circumstantial evidence to prove a causal nexus between the accident and the employee's injury." *International Harvester v. Industrial Com.*, 93 Ill. 2d 59 (1982).



The Arbitrator finds that Petitioner established a causal connection between the accident of September 13, 2016 and her current left hand and left arm conditions of ill-being. In so finding, the Arbitrator relies on the following: (1) treatment records of Northwest Community Hospital Immediate Care, (2) treatment records of Illinois Bone and Joint, (3) treatment records of Barrington Rehabilitation, (4) treatment records and testimony of Dr. Kurzydowski, (5) records of Advocate Health Care, and (6) Petitioner's credible denial of any pre-accident physical issues with her left hand or left arm. The Arbitrator notes that the evidence demonstrates that Petitioner was able to work full duty and without restrictions immediately prior to the work accident. The Arbitrator further notes that Petitioner provided a consistent accident history and that the evidence also demonstrates consistent complaints and continuous symptomology of the left hand and left arm following the work accident.

The Arbitrator has considered the opinions of Dr. Wysocki and Dr. Candido and finds that they do not outweigh the opinions of Dr. Baxamusa and Dr. Kurzydowski. The Arbitrator further finds that the record supports Dr. Kurzydowski's opinion that Petitioner has a chronic neuropathy and notes that Dr. Candido conceded that (1) a neurapraxia can lead to neuropathy and (2) that there are possibly cases of neurapraxia that do not recover and that could become a permanent condition.

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

Consistent with the Arbitrator's prior finding regarding the issue of causal connection, the Arbitrator finds that the medical services that were provided to Petitioner, including the medical services provided to Petitioner after Dr. Candido's September 19, 2017 IME, were reasonable and necessary and that Respondent has not yet paid all appropriate charges. At arbitration, Petitioner presented the following unpaid medical bills: Out-of-pocket prescriptions (\$2,615.49), Pain Care Consultants (\$341.66), and Aurora Health (\$743.00). As the Arbitrator has found that Petitioner's treatment was reasonable and necessary, the Arbitrator further finds that all bills, as provided in Px8 and Px9, are awarded and that Respondent is liable for payment of these bills, pursuant to the medical fee schedule and Sections 8(a) and 8.2 of the Act.

Respondent is entitled to a credit for any payments made towards the awarded outstanding expenses and shall hold Petitioner harmless from any claims by any providers of the services for which Respondent is receiving this credit.

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

The Arbitrator notes that pursuant to Section 8.1(b) of the Act, permanent partial disability shall be established using five enumerated criteria, with no single factor being the sole determinant of disability. Per 820 ILCS 305/8.1b(b), the criteria to be considered includes: (i) the reported level of impairment pursuant to AMA; (ii) the occupation of the injured employee; (iii) the age of the employee at the time of the injury; (iv) the employee's future earning capacity; and (v) evidence of disability corroborated by the treating medical records.

With regard to criterion (i), the Arbitrator notes that an AMA Impairment Rating was not offered, and therefore the Arbitrator gives no weight to this factor.

With regard to criterion (ii) and criterion (iii), the Arbitrator notes that at the time of the accident, Petitioner was 32 years of age and was employed at Respondent as a physical therapist. Following the September 13, 2016 accident, Respondent accommodated Petitioner's 25-pound restriction. Petitioner testified that she voluntarily resigned from Respondent in September 2017 and began work at Elmhurst Health. Tr. at 39, 53. Petitioner testified that she sought other employment at that time because she wanted to reduce her patient care time. Tr. at 40. Petitioner explained that a new position had been created at Elmhurst Hospital, manager of rehab, and this position would reduce Petitioner's patient care time. Elmhurst Health, however, reorganized and Petitioner did not receive the position of manager of rehab. Petitioner, instead, worked as a staff physical therapist at Elmhurst Hospital with a 25-pound restriction and she did not see patients with balance or gait deficits. On May 9, 2018, Dr. Kurzydowski noted that Petitioner's pain limited her ability to work as a physical therapist and on September 13, 2018, Dr. Kurzydowski noted that Petitioner would probably not be able to continue as a physical therapist and would require a change in occupation. Petitioner testified that in January 2019, after having a discussion with Dr. Kurzydowski, she left her employment as a physical therapist at Elmhurst Hospital and began working at The American Academy of Orthopedic Surgeons as a senior registry analyst, which did not require any physical work. At the time of arbitration, Petitioner was employed in a new role at the American Academy of Orthopedic Surgeons overseeing program management for registries and data science. Tr. at 54. The Arbitrator gives these factors more weight.

With regard to criterion (iv), Petitioner testified that she earns at least as much as she did on September 13, 2016 in her current position with The American Academy of Orthopedic Surgeons. Thus, Petitioner has not demonstrated that her future earning capacity has been affected by the accident. The Arbitrator gives less weight to this factor.

With regard to criterion (v), the medical records reflect that following the September 13, 2016 accident, Petitioner's left hand and left arm symptoms have been consistent and persistent, and that Petitioner could not continue working in her profession as a physical therapist. Petitioner testified that she experiences pain in her arm every day. She testified that the pain worsens with increased use of her left hand. She has challenges with fine motor tasks, such as turning a key and with buttons and Ziploc bags. She also experiences challenges with parenting and childcare. Prior to the work accident, Petitioner participated in fitness classes, however, Petitioner no longer participates in fitness classes because doing so causes an increase in Petitioner's symptoms. The Arbitrator gives this factor its appropriate weight.

Upon consideration of the foregoing evidence and factors, the Arbitrator finds the nature and extent to be on a loss of trade award, pursuant to Section 8(d)2. Accordingly, the Arbitrator finds that Petitioner sustained permanent partial disability to the extent of 30% loss of the person as a whole, or 150 weeks, pursuant to Section 8(d)2 of the Act.

*Ana Vazquez*

ANA VAZQUEZ, ARBITRATOR

**ILLINOIS WORKERS' COMPENSATION COMMISSION**  
**DECISION SIGNATURE PAGE**

Case Number	22WC009470
Case Name	Rebecca Bradley v. Allied Power
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b) Remand Arbitration
Decision Type	<b><i>Corrected Decision</i></b>
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: 4/26/2024

*/s/ Stephen Mathis, Commissioner*  

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Signature

STATE OF ILLINOIS )  
 ) SS.  
COUNTY OF PEORIA )

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Rebecca Bradley,

Petitioner,

vs.

No. 22 WC 09470

Allied Power,

Respondent.

CORRECTED 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, 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 October 5, 2022, is hereby affirmed and adopted.

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

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

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

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of \$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 26, 2024**

SJM/sj

o-3/20/2024

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/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	Rebecca 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 )

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

ILLINOIS WORKERS' COMPENSATION COMMISSION  
ARBITRATION DECISION  
19(b)

**Rebecca Bradley**

Employee/Petitioner

Case # **22 WC 009470**

v.

Consolidated cases: \_\_\_\_\_

**Allied Power**

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 **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 Nieu Kirk**

Since 2019, Terry Nieu Kirk 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. Nieu Kirk testified that he had Petitioner write a statement. (T. 104).

Mr. Nieu Kirk 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. Nieu Kirk told her that according to the rock he was shown it was much smaller. (T. 105). Mr. Nieu Kirk 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. Nieu Kirk testified he looked for the rock in the afternoon of the incident where Petitioner directed him but could not find anything. (*Id.*). Mr. Nieu Kirk 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. Nieu Kirk 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. Nieu Kirk 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. Nieu Kirk 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. Nieu Kirk testified that this area gets wear and tear right in front of the garage door. (T.112).

Mr. Nieu Kirk 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. Nieu Kirk 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 un rebutted 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:

<u>Provider</u>	<u>Provider’s Charges</u>	<u>Petitioner’s Out of Pocket</u>
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	<u>\$1,955.00</u>	<u>\$355.42</u>
<b><u>TOTALS</u></b>	<b><u>\$98,242.02</u></b>	<b><u>\$754.80</u></b>

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.