ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	20WC011755
Case Name	Sherrie Taylor v. Dollar General
Consolidated Cases	
Proceeding Type	***Remand from Appellate Court***
Decision Type	Commission Decision Remand Arbitration
Commission Decision Number	24IWCC0361
Number of Pages of Decision	3
Decision Issued By	Stephen Mathis, Commissioner

Petitioner Attorney	Jennifer Wagner
Respondent Attorney	Peter Sink

DATE FILED: 8/1/2024

/s/Stephen Mathis, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF MONTGOMERY)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

SHERRIE TAYLOR,

Petitioner,

vs. NO: 20WC11755

DOLLAR GENERAL,

Respondent.

DECISION AND OPINION ON REMAND

This matter comes before the Commission on remand from the appellate court. The sole issue on remand is the issue of prospective medical treatment. The appellate court ruled as follows: "[W]e vacate the portion of the circuit court's order confirming the Commission's award of prospective medical treatment, vacate the portion of the Commission's decision awarding prospective medical treatment and remand for further proceedings, where the Commission failed to provide any basis for its award and failed to make any factual finding in support of its award. We affirm the circuit court's order confirming the Commission's decision in all other respects. The appellate court explained: This court is unable to provide meaningful review of the Commission's decision on the issue of prospective medical treatment because the Commission failed to adequately address its own question of whether claimant's condition remained connected to the work accident due to the finding of the lipoma or fat necrosis. The Commission failed to make a specific finding that claimant's development of the lipoma or fat necrosis was causally tied to her work accident. Accordingly, the Commission failed to provide a basis for its award on the prospective medical treatment or make any finding to support such award. See *Reinhart v. Board of Education of Alton School District No.11,*61 Ill. 2d 101,103 (1975) ("It is clear that a decision by an administrative agency must contain findings to make possible a judicial review of the agency's decision.") The Commission hereby complies with the Order of the appellate court.

The Commission further remands this case to the Arbitrator for further proceedings for a determination of causal connection, prospective medical care, further amount of temporary total compensation, medical benefits or of benefits for permanent disability, if any, pursuant to *Thomas*.

IT IS FURTHER ORDERED BY THE COMMISSION that a ruling on TTD and PPD, if any, is reserved pending further proceedings before the Commission to provide a specific finding as to whether Petitioner's development of lipoma or fat necrosis was causally connected to her work accident, and diagnosis and prognosis from prospective medical care, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner all reasonable and necessary medical care rendered through February 25, 2021, pursuant to Sections 8(a) and 8.2 of the Act, subject to the medical fee schedule.

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

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

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

Bond for removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $10,000.00. The party commencing the proceedings for review in the Circuit Court shall file with eh Commission a Notice of Intent to File for Review in the Circuit Court.

August 1, 2024
d: 7/10/24
SM/msb
44

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

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	22WC010942
Case Name	Joseph Zagone v. City of Chicago, Dept. of Water
Consolidated Cases	22WC019203;
Proceeding Type	Petition for Review under 19(b) Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	24IWCC0362
Number of Pages of Decision	14
Decision Issued By	Deborah Simpson, Commissioner

Petitioner Attorney	Michael Youkhana
Respondent Attorney	Frank Barber

DATE FILED: 8/2/2024

/s/ Deborah Simpson, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

JOSEPH ZAGONE,

Petitioner,

vs. NO: 22 WC 10942
22 WC 19203

CITY OF CHICAGO, DEPT. OF WATER,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by Respondent and notice given to all parties, the Commission, after considering all issues and being advised of the facts and law, affirms and adopts the Decisions of the Arbitrator, which are attached hereto and made a part hereof, with the following changes made as stated by the Commission herein. The Commission further remands this case to the Arbitrator for further proceedings for a determination of a further amount of temporary total compensation or of compensation for permanent disability, if any, pursuant to *Thomas v. Industrial Commission*, 78 Ill.2d 327, 399 N.E.2d 1322, 35 Ill.Dec. 794 (1980).

The Decisions of the Arbitrator awarded temporary total disability benefits from April 6, 2022 through June 26, 2022 and from June 30, 2022 through June 6, 2023. However, the treatment records show that following the first work accident on April 5, 2022, Petitioner did not present for medical care until April 10, 2022, at which time Dr. Serena Baqai of Resurrection Medical Center ER provided Petitioner with a work status note placing him off work. Petitioner was thereafter kept on off-work restrictions by Dr. Mark Sokolowski all the way leading up to his second work accident on June 29, 2022. However, due to Dr. Harel Deutsch's §12 report of June 3, 2022 that found Petitioner was at MMI and required no work restrictions, Petitioner's benefits were cut off and he returned back to work in his usual job as a sewer bricklayer. The Commission, in reliance on Dr. Sokolowski's opinion, finds that Petitioner was entitled to temporary total disability benefits from April 10, 2022, the date in which Petitioner first sought medical treatment and was placed on off-work restrictions, through June 26, 2022, the date in which Petitioner returned back to work secondary to his benefits being cut off. The Commission thus modifies the start date of Petitioner's temporary total disability benefits from April 6, 2022 to April 10, 2022 to properly reflect the first date in which Petitioner was taken off work by a medical provider.

Petitioner's treating doctors otherwise provided off-work restrictions covering the entire second period of awarded temporary total disability benefits from June 30, 2022 through June 6, 2023. Petitioner was not returned back to work by any of his treating doctors. As such, the record

otherwise supports the Arbitrator's award of temporary total disability benefits for this second time period leading up to the hearing date.

The Commission incorporates the changes as started herein into the Decisions of the Arbitrator, specifically modifying the start date of Petitioner's temporary total disability benefits from April 6, 2022 to April 10, 2022. In all other respects, the Commission affirms and adopts the Decisions of the Arbitrator.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decisions of the Arbitrator are modified to reflect that Petitioner's entitlement to temporary total disability benefits began on April 10, 2022. Upon incorporation of this change, the Commission awards temporary total disability benefits to Petitioner from April 10, 2022 through June 26, 2022 and June 30, 2022 through June 6, 2023, for a period of 60 weeks, as provided in §8(b) of the Illinois Workers' Compensation Act.

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

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

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

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

August 2, 2024

DLS/mek
O- 6/5/24
46

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

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	22WC010942
Case Name	Joseph Zagone v. City of Chicago, Dept. of Water
Consolidated Cases	
Proceeding Type	19(b) Petition
Decision Type	Corrected Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	11
Decision Issued By	Raychel Wesley, Arbitrator

Petitioner Attorney	Michael Youkhana
Respondent Attorney	Frank Barber

DATE FILED: 9/26/2023

THE INTEREST RATE FOR THE WEEK OF SEPTEMBER 26, 2023 5.31%

/s/ Raychel Wesley, Arbitrator

Signature

STATE OF ILLINOIS)
)SS.
COUNTY OF Cook)

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

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

JOSEPH ZAGONE
Employee/Petitioner

Case # **22** WC **10942**

v.

Consolidated cases:

CITY OF CHICAGO, DEPT. OF WATER
Employer/Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Raychel Wesley**, Arbitrator of the Commission, in the city of **Chicago, Illinois**, on **June 6, 2023**. After reviewing the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below and attaches those findings to this document.

DISPUTED ISSUES

A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?

B. ☐ Was there an employee-employer relationship?

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

D. ☐ What was the date of the accident?

E. ☐ Was timely notice of the accident given to Respondent?

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

G. ☐ What were Petitioner's earnings?

H. ☐ What was Petitioner's age at the time of the accident?

I. ☐ What was Petitioner's marital status at the time of the accident?

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

K. ☒ Is Petitioner entitled to any prospective medical care?

L. ☒ What temporary benefits are in dispute? ☐ TPD ☐ Maintenance ☒ TTD

M. ☐ Should penalties or fees be imposed upon Respondent?

N. ☐ Is Respondent due any credit?

O. ☐ Other

FINDINGS

On the date of accident, **April 5, 2022, and June 29, 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 $**115,142.04 and $112,745.88**; the average weekly wage was $**2,214.27 and** $**2,168.19**

On the date of accident, Petitioner was **58** years of age, ***single*** with **0** dependent children.

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

For Case No. 20WC010942:

Respondent shall be given a credit of $15,401.17 for TTD, $0 for TPD, $0 for maintenance, and $0 for other benefits, for a total credit of $15,410.17.

Respondent shall be given a credit of $4,110.38 for medical benefits that have been paid, and Respondent shall hold petitioner harmless from any claims by any providers of the services for which Respondent is receiving this credit, as provided in Section 8(j) of the Act.

Respondent is entitled to a credit of $3,697.29 for medical benefits paid under Section 8(j) of the Act.

For Case No.: 20WC019203:

Respondent shall be given a credit of $31,815.96 for TTD, $0 for TPD, $0 for maintenance, and $0 for other benefits, for a total credit of $31,815.96.

Respondent shall be given a credit of $22,238.82 for medical benefits that have been paid, and Respondent shall hold petitioner harmless from any claims by any providers of the services for which Respondent is receiving this credit, as provided in Section 8(j) of the Act.

Respondent is entitled to a credit of $3,697.29 for medical benefits paid under Section 8(j) of the Act.

ORDER

Temporary Total Disability

Respondent shall pay Petitioner temporary total disability benefits from April 6, 2022, through June 26, 2022, and June 30, 2022, through June 6, 2023, for 58 6/7 weeks, as provided in Section 8(b) of the Act.

Medical benefits
Respondent shall pay reasonable and necessary medical services, pursuant to the medical fee schedule to the providers contained in Exhibit 4, Exhibit 5, Exhibit 6, and Exhibit 8.

Prospective Medical
Respondent shall authorize continued care of the left shoulder recommended by Dr. Yang.

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

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

/s/ Raychel A. Wesley **SEPTEMBER 26, 2023**
Signature of Arbitrator

It is undisputed that on April 5, 2022, and June 29, 2022, Joseph Zagone, (hereinafter Petitioner) suffered a neck and lower back injury that arose out of and in the course of his employment with the Respondent. Petitioner testified that on April 5, 2022, he was injured when a vehicle struck him. (Transcript 18-22, hereinafter, "T 18-22"). He testified that he attempted to avoid the vehicle, but the fender made contact with him, scraping his knee, which caused his hand to collide with the driver's side view mirror. *Id.* At that moment he tried pulling, but his body turned instead, which caused him to roll on the back window. *Id.* He testified that he was never injured prior to the accident and that he was working full duty and without restrictions on the day of the accident. *Id.* at 10-11. Petitioner testified that he attempted to finish work and went to the emergency room the next day. *Id.* at 23-24.

On April 10, 2022, Petitioner presented to Dr. Benson Yang at the Ascension Resurrection Emergency room complaining of lower back and neck pain. Petitioner's Exhibit 1, hereinafter, "PE 1". Petitioner underwent a lumbar MRI that day which reflected a mispositioned disc spacer at L4-5, encroachment upon the thecal sac, and neural foraminal narrowing at the same level. *Id.* at 18-17. Dr. Yang diagnosed Petitioner with bilateral lower back pain with sciatica and recommended pain medication along with physical therapy. *Id.* at 6-10.

Petitioner testified that the next day, April 11, 2022, he presented to Dr. Mark Sokolowski to evaluate his lower back and neck. T 24. During the examination Petitioner complained of lower back, neck, left shoulder, and bilateral leg pain. PE 2, p. 37. The straight leg raise test revealed bilateral pain and radicular symptoms. *Id.* Dr. Sokolowski's review of the MRI revealed an extruded interbody device at L4-5 with resultant lateral recess and foraminal stenosis. *Id.* Dr. Sokolowski diagnosed Petitioner with lower back pain, neck pain, left rotator cuff tendinitis, and lumbar radiculopathy. *Id.* Dr. Sokolowski recommended physical therapy and placed Petitioner off work. On May 24, 2022, Petitioner followed up with Dr. Sokolowski complaining of neck and lower back pain radiating down his legs. *Id.* at 31. Dr. Sokolowski recommended that he continue physical therapy and pain medication, to remain off work, and an L4-5 epidural injection if progress remained unsatisfactory. *Id.*

On June 3, 2022, Petitioner presented to Dr. Harel Deutsch for a Section 12 Examination. Respondent's Exhibit 2, hereinafter, "RE 2". Dr. Deutsch's physical examination revealed a negative straight leg raise and

spurling's test. *Id.* Additionally, Dr. Deutsch opined that Petitioner was positive for Waddell Signs and failed the distraction and non-anatomic sensory changes tests. *Id.* Dr. Deutsch did not review the images of the lumbar MRI. *Id.* Dr. Deutsch opined that there was not a mechanism of a spine injury and that Petitioner had at most a lumbar sprain. *Id.* He opined that Petitioner was at MMI. Petitioner testified that Dr. Deutsch examined him for five minutes. T 27. He testified that Dr. Deutsch was asking him questions while raising his legs, but he never voiced his pain while his legs were being raised because he was not asked. *Id.* at 27-28.

Petitioner testified that he returned to work after the examination because his workers' compensation benefits were cut off. *Id.* at 28-29. He testified that he sustained another injury on June 29, 2022. *Id.* at 29. On that date he was injured when the saw he was using to cut pipe jammed. *Id.* at 30. He testified that the accident caused his neck and lower back pain to feel worse. *Id.* at 30-31. He testified that he immediately went to the city clinic. 31-32.

On July 11, 2022, Petitioner followed up with Dr. Sokolowski and complained of worsened neck pain with radiation down both shoulders and lower back pain with radiation down to both legs. PE 2, p. 26-28. Petitioner testified that he waited to see the doctor 12 days later because that was when his scheduled follow up was. T 28. Dr. Sokolowski's physical examination revealed a positive straight leg raise test bilaterally reproducing radicular symptoms and positive Spurling's test reproducing bilateral periscapular and radicular symptoms in a C6-7 distribution. PE 2, p. 26-27. Dr. Sokolowski recommended MRIs of the neck, lower back, and left shoulder, to continue physical therapy and the pain medication, and to go back off work. *Id.* Petitioner testified that he eventually had the MRIs on October 6, 2022, because the MRI authorization was delayed. T 33. He testified that he followed up with Dr. Sokolowski who recommended that he continue the previous treatment plan and remain off work. *Id.*

The lumbar MRI revealed a right herniation at L5-S1 with an underlying bulge causing foraminal stenosis and an L4-5 fusion device migration protruding into the right lateral recess. *Id.* at 16. The cervical MRI revealed C5-7 foraminal stenosis with the left worse than right, C3-5 right foraminal stenosis, C2-3 left foraminal stenosis, and a disc bulge at C4-5. *Id.* at 20.

On October 11, 2022, Petitioner followed up with Dr. Sokolowski. *Id.* at 12-13. Dr. Sokolowski's

review of the MRI reflects that there's a new herniation at L5-S1 and that the cervical MRI reflected multi-level foraminal stenosis. *Id.* Dr. Sokolowski recommended a cervical and lumbar epidural injection, to continue physical therapy and pain medication, and to remain off work. *Id.* On October 13, 2022, Petitioner presented to Dr. Henry Kurzydlowski for a pain management evaluation. PE 3. Dr. Kurzydlowski agreed with the need for the cervical and lumbar epidural injections. *Id.* at 1-5. On November 9, 2022, Petitioner followed up with Dr. Sokolowski who continued to recommend the injections and opined that Petitioner required an L4-5 lumbar interbody fusion and L5-S1 posterior decompression.

On November 14, 2022, Petitioner again presented to Dr. Deutsch for a Section 12 Examination. RE 3. The report does not reflect that Dr. Deutsch reviewed the MRI images. *Id.* Dr. Deutsch opined that Petitioner did not experience a new work injury, did not require additional treatment, and that MMI is not applicable because there was no new work accident. *Id.* at 7. Petitioner testified that he remained off work, despite the Dr. Deutsch opinion that he could return to work without restrictions. T 34-35. He testified that Dr. Deutsch's examination was like the previous examination. *Id.*

On November 22, 2022, Petitioner presented to Dr. Kurzydlowski to undergo the cervical and lumbar injections. *Id.* at 36-37. Petitioner testified that the injection didn't help his lower back but that his neck felt good for one to one and a half weeks. *Id.* Petitioner followed up with Dr. Sokolowski from December 20, 2022, through February 28, 2023. Pet Ex. 2. Throughout that period Dr. Sokolowski continued recommending the lower back surgery and kept Petitioner off work. *Id.* Petitioner testified that he decided to undergo treatment through his personal health insurance due to the Respondent denying his claims. T 38-39. He testified that he switched to Dr. Benson Yang because Dr. Sokolowski's surgical facility was not in his network. *Id.*

On March 24, 2023, Petitioner presented to Dr. Yang complaining of lower back pain going down his legs, neck pain with numbness and tingling going down to his hands, and headaches. PE 7, p. 6-7. Dr. Yang's review of the lumbar MRI revealed an L4-5 transforaminal lumbar interbody fusion with the interbody spacer retro pulsed resulting in right lateral recess stenosis. *Id.* His review of the cervical MRI revealed left foraminal stenosis at C5-6, bilateral foraminal stenosis at C6-7, and a bulge at C4-5. Dr. Yang recommended a C4-7 anterior cervical discectomy and fusion and opined that Petitioner should follow up if he develops right

radicular pain in the L5 distribution to remove the L4-5 nonsegmental instrumentation, complete facetectomy, and drilling down the interbody spacer. *Id.*

On April 6, 2023, Petitioner underwent a C4-7 anterior cervical discectomy and decompression, interbody arthrodesis, insertion of structural allograft, and C4-7 anterior spinal plating. *Id.* at 3-4. Petitioner testified that after the surgery, the pain, numbness, and tingling going down his arms subsided. T 40-41. On April 19, 2023, Petitioner followed up with Dr. Yang who recommended a bone growth stimulator for his neck and a lumbar medial branch block followed up with a radiofrequency ablation. PE 7, p-2-23. Dr. Yang kept Petitioner off work. *Id.*

At trial, Petitioner testified that he underwent two medial branch blocks, and that the radiofrequency ablation was scheduled for June 14, 2023. T 42-43. He testified that his next appointment with Dr. Yang was on July 12, 2023. *Id.* at 43. He testified that at the time of trial he was still experiencing lower back pain with numbness and tingling going down his legs, but that it waxes and wanes. *Id.* at 44. He testified that his neck feels better and he's going through the healing process. *Id.* at 44-45. He testified that at the time of trial he was still off work, per the doctor's order. *Id.* at 45. Petitioner testified that he previously injured his lower back around 2001-2002 in a motorcycle collision. *Id.* He testified that the accident caused him to undergo lower back surgery. *Id.* 45-46. Petitioner testified that he completed treatment related to that injury around 2008. *Id.* at 46. He testified that he never underwent any lower back treatment after the treatment related to the motorcycle collision. *Id.* 46-48. Petitioner testified that he never injured his neck nor received neck treatment prior to the April 5, 2022, work accident. *Id.* He testified that after he completed treatment related to the motorcycle collision he worked without restrictions and without any medical problems. *Id.*

Conclusions of Law:

In support of the Arbitrator's decision relating to (F), whether the petitioner's present condition of ill-being is causally related to the injury, the Arbitrator finds as follows:

The Arbitrator finds Petitioner's current condition of ill-being is causally related to his April 5, 2022, and June 29, 2022, accidents. Accordingly, based on the credible testimony of the Petitioner as well as the medical records and opinions of Dr. Sokolowski and Dr. Yang the Arbitrator finds that the Petitioner has affirmatively demonstrated a causal relationship between his work-related injuries and his current condition of

ill-being.

The Petitioner credibly testified that he was working full duty and without any restrictions on the day of the work-related injury and that he never underwent neck treatment prior to the first accident and did not require treatment for his lower back after completing treatment related to the motorcycle collision. The mechanism of injury described is a competent cause to sustain the neck and lower back issues the Petitioner experienced. Petitioner consistently complained of cervical pain with numbness and tingling and lower back pain with numbness and tingling. Those complaints continued at the time of trial other than his neck which improved because he underwent neck surgery. Further, the Arbitrator notes that the Petitioner had exhausted conservative care, including medication, physical therapy, and epidural injections which only provided limited temporary relief of symptoms.

The Arbitrator notes that Dr. Sokolowski's and Dr. Yang's records reflected consistent positive Spurlings, and straight legs raise tests. Additionally, the Arbitrator notes that both Dr. Sokolowski's and Yang's review of the cervical MRI revealed C5-7 foraminal stenosis with the left worse than right, C3-5 right foraminal stenosis, C2-3 left foraminal stenosis, and a disc bulge at C4-5. Their review of the lumbar MRI revealed the interbody device protruding the right lateral recess at L4-5 and a new herniated disc at L5-S1 that was not visualized prior to the June 29, 2022, accident. Finally, the Arbitrator agrees with Dr. Sokolowski and Dr. Yang that the Petitioner's current condition of ill-being is causally related to the work injury.

The Arbitrator does not find Dr. Deutsch's opinion that Petitioner reached MMI and that neither accident was related to Petitioner's condition credible. The Petitioner testified that he was in his office for five minutes. His testimony correlates with the report as the physical examination section does not reflect review of the MRI images. The Arbitrator notes that Dr. Deutsch does not provide an explanation related to the new L5-S1 herniation that was not present in the first lumbar MRI. Additionally, the Arbitrator notes that Dr. Deutsch's opinion that Petitioner's symptoms were related to a pre-existing condition not credible because Petitioner never underwent neck treatment and completed lower back treatment around 2008. In the Arbitrator's opinion, Dr. Deutsch did not conduct a thorough examination, did not provide reasoning related to his opinions, and he did not review the images of the MRI. All the foregoing impacts the credibility of his findings, and the Arbitrator

does not rely on them.

Therefore, based on the foregoing, the Arbitrator concludes that the Petitioner's current condition of ill-being is causally related to the work injuries.

In support of the Arbitrator's decision relating to (J), Respondent paid all appropriate charges for all reasonable and necessary medical services, the Arbitrator finds as follows:

Based on the above, the Arbitrator finds that the treatment rendered by the medical providers in Exhibits 4, 5, 6, and 8 were reasonable and necessary to treat Petitioner for the work-related injuries he sustained. The Arbitrator also finds that since the Petitioner's condition of ill-being was causally related to his injuries, Respondent is responsible for the medical charges, and that such charges were generated as a result of treatment that was reasonable and necessary. The Arbitrator finds that the bills are to be paid by Respondent according to the medical fee schedule.

In support of the Arbitrator's decision relating to (K), is the Petitioner entitled to any prospective medical treatment, the Arbitrator finds as follows:

The Arbitrator finds that the Petitioner requires additional medical treatment and is entitled to prospective medical treatment. The Arbitrator finds that Respondent is responsible for prospective medical treatment recommended by Dr. Yang consisting of continued care of the lower back and neck. The Arbitrator finds that the records from Dr. Sokolowski and Dr. Yang reflect that the Petitioner has exhausted conservative treatment of medication therapy, physical therapy, and injections with no improvement. The Arbitrator also notes that the Section 12 examiner, Dr. Deutsch's opinions are not credible for the reasons stated above, and the Arbitrator has not relied on them. Clearly the Petitioner has expressed cervical and lower back pain along with radiculopathy consistently through his treatment and there are no pre-existing records that reflect those symptoms. The Petitioner did testify that he had back surgery, but that he completed medical care for that issue in 2008 and was issue free since that date. The Arbitrator orders authorization and payment for prospective medical treatment recommended by Dr. Yang.

In support of the Arbitrator's decision relating to (L), is the Petitioner entitled to TTD benefits, the Arbitrator finds as follows:

Having found an accident that arose out of and in the course of Petitioner's employment, and that Petitioner's current condition of ill-being is causally related to the injury, the Arbitrator awards temporary total

disability benefits to Petitioner.

The medical records show that Petitioner had been off work up from April 6, 2022, through June 26, 2022, and June 30, 2022, through June 6, 2023. The Arbitrator finds that Petitioner was consistently kept off work by his doctors and only returned to work when his workers' compensation benefits were terminated.

The Arbitrator finds that Petitioner is owed temporary total disability benefits from April 6, 2022, through June 26, 2022, and June 30, 2022, through June 6, 2023, for 58 6/7 weeks.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	22WC019203
Case Name	Joseph Zagone v. City of Chicago, Dept. of Water
Consolidated Cases	22WC010942;
Proceeding Type	Petition for Review under 19(b) Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	24IWCC0363
Number of Pages of Decision	14
Decision Issued By	Deborah Simpson, Commissioner

Petitioner Attorney	Michael Youkhana
Respondent Attorney	Frank Barber

DATE FILED: 8/2/2024

/s/ Deborah Simpson, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

JOSEPH ZAGONE,

Petitioner,

vs. NO: 22 WC 19203
22 WC 10942

CITY OF CHICAGO, DEPT. OF WATER,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by Respondent and notice given to all parties, the Commission, after considering all issues and being advised of the facts and law, affirms and adopts the Decisions of the Arbitrator, which are attached hereto and made a part hereof, with the following changes made as stated by the Commission herein. The Commission further remands this case to the Arbitrator for further proceedings for a determination of a further amount of temporary total compensation or of compensation for permanent disability, if any, pursuant to *Thomas v. Industrial Commission*, 78 Ill.2d 327, 399 N.E.2d 1322, 35 Ill.Dec. 794 (1980).

The Decisions of the Arbitrator awarded temporary total disability benefits from April 6, 2022 through June 26, 2022 and from June 30, 2022 through June 6, 2023. However, the treatment records show that following the first work accident on April 5, 2022, Petitioner did not present for medical care until April 10, 2022, at which time Dr. Serena Baqai of Resurrection Medical Center ER provided Petitioner with a work status note placing him off work. Petitioner was thereafter kept on off-work restrictions by Dr. Mark Sokolowski all the way leading up to his second work accident on June 29, 2022. However, due to Dr. Harel Deutsch's §12 report of June 3, 2022 that found Petitioner was at MMI and required no work restrictions, Petitioner's benefits were cut off and he returned back to work in his usual job as a sewer bricklayer. The Commission, in reliance on Dr. Sokolowski's opinion, finds that Petitioner was entitled to temporary total disability benefits from April 10, 2022, the date in which Petitioner first sought medical treatment and was placed on off-work restrictions, through June 26, 2022, the date in which Petitioner returned back to work secondary to his benefits being cut off. The Commission thus modifies the start date of Petitioner's temporary total disability benefits from April 6, 2022 to April 10, 2022 to properly reflect the first date in which Petitioner was taken off work by a medical provider.

Petitioner's treating doctors otherwise provided off-work restrictions covering the entire second period of awarded temporary total disability benefits from June 30, 2022 through June 6, 2023. Petitioner was not returned back to work by any of his treating doctors. As such, the record

otherwise supports the Arbitrator's award of temporary total disability benefits for this second time period leading up to the hearing date.

The Commission incorporates the changes as started herein into the Decisions of the Arbitrator, specifically modifying the start date of Petitioner's temporary total disability benefits from April 6, 2022 to April 10, 2022. In all other respects, the Commission affirms and adopts the Decisions of the Arbitrator.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decisions of the Arbitrator are modified to reflect that Petitioner's entitlement to temporary total disability benefits began on April 10, 2022. Upon incorporation of this change, the Commission awards temporary total disability benefits to Petitioner from April 10, 2022 through June 26, 2022 and June 30, 2022 through June 6, 2023, for a period of 60 weeks, as provided in §8(b) of the Illinois Workers' Compensation Act.

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

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

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

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

August 2, 2024

DLS/mek
O- 6/5/24
46

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

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	22WC019203
Case Name	Joseph Zagone v. City of Chicago, Dept. of Water
Consolidated Cases	
Proceeding Type	19(b) Petition
Decision Type	Corrected Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	11
Decision Issued By	Raychel Wesley, Arbitrator

Petitioner Attorney	Michael Youkhana
Respondent Attorney	Frank Barber

DATE FILED: 9/26/2023

THE INTEREST RATE FOR THE WEEK OF SEPTEMBER 26, 2023 5.31%

/s/ Raychel Wesley, Arbitrator

Signature

STATE OF ILLINOIS)
)SS.
COUNTY OF Cook)

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

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

JOSEPH ZAGONE
Employee/Petitioner

Case # **22** WC **19203**

v.

Consolidated cases:

CITY OF CHICAGO, DEPT. OF WATER
Employer/Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Raychel Wesley**, Arbitrator of the Commission, in the city of **Chicago, Illinois**, on **June 6, 2023**. After reviewing the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below and attaches those findings to this document.

DISPUTED ISSUES

A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?

B. ☐ Was there an employee-employer relationship?

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

D. ☐ What was the date of the accident?

E. ☐ Was timely notice of the accident given to Respondent?

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

G. ☐ What were Petitioner's earnings?

H. ☐ What was Petitioner's age at the time of the accident?

I. ☐ What was Petitioner's marital status at the time of the accident?

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

K. ☒ Is Petitioner entitled to any prospective medical care?

L. ☒ What temporary benefits are in dispute? ☐ TPD ☐ Maintenance ☒ TTD

M. ☐ Should penalties or fees be imposed upon Respondent?

N. ☐ Is Respondent due any credit?

O. ☐ Other

FINDINGS

On the date of accident, **April 5, 2022, and June 29, 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 $**115,142.04 and $112,745.88**; the average weekly wage was $**2,214.27 and** $**2,168.19**

On the date of accident, Petitioner was **58** years of age, ***single*** with **0** dependent children.

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

For Case No. 20WC010942:

Respondent shall be given a credit of $15,401.17 for TTD, $0 for TPD, $0 for maintenance, and $0 for other benefits, for a total credit of $15,410.17.

Respondent shall be given a credit of $4,110.38 for medical benefits that have been paid, and Respondent shall hold petitioner harmless from any claims by any providers of the services for which Respondent is receiving this credit, as provided in Section 8(j) of the Act.

Respondent is entitled to a credit of $3,697.29 for medical benefits paid under Section 8(j) of the Act.

For Case No.: 20WC019203:

Respondent shall be given a credit of $31,815.96 for TTD, $0 for TPD, $0 for maintenance, and $0 for other benefits, for a total credit of $31,815.96.

Respondent shall be given a credit of $22,238.82 for medical benefits that have been paid, and Respondent shall hold petitioner harmless from any claims by any providers of the services for which Respondent is receiving this credit, as provided in Section 8(j) of the Act.

Respondent is entitled to a credit of $3,697.29 for medical benefits paid under Section 8(j) of the Act.

ORDER

Temporary Total Disability

Respondent shall pay Petitioner temporary total disability benefits from April 6, 2022, through June 26, 2022, and June 30, 2022, through June 6, 2023, for 58 6/7 weeks, as provided in Section 8(b) of the Act.

Medical benefits
Respondent shall pay reasonable and necessary medical services, pursuant to the medical fee schedule to the providers contained in Exhibit 4, Exhibit 5, Exhibit 6, and Exhibit 8.

Prospective Medical
Respondent shall authorize continued care of the left shoulder recommended by Dr. Yang.

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

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

/s/ Raychel A. Wesley **SEPTEMBER 26, 2023**
Signature of Arbitrator

It is undisputed that on April 5, 2022, and June 29, 2022, Joseph Zagone, (hereinafter Petitioner) suffered a neck and lower back injury that arose out of and in the course of his employment with the Respondent. Petitioner testified that on April 5, 2022, he was injured when a vehicle struck him. (Transcript 18-22, hereinafter, "T 18-22"). He testified that he attempted to avoid the vehicle, but the fender made contact with him, scraping his knee, which caused his hand to collide with the driver's side view mirror. *Id.* At that moment he tried pulling, but his body turned instead, which caused him to roll on the back window. *Id.* He testified that he was never injured prior to the accident and that he was working full duty and without restrictions on the day of the accident. *Id.* at 10-11. Petitioner testified that he attempted to finish work and went to the emergency room the next day. *Id.* at 23-24.

On April 10, 2022, Petitioner presented to Dr. Benson Yang at the Ascension Resurrection Emergency room complaining of lower back and neck pain. Petitioner's Exhibit 1, hereinafter, "PE 1". Petitioner underwent a lumbar MRI that day which reflected a mispositioned disc spacer at L4-5, encroachment upon the thecal sac, and neural foraminal narrowing at the same level. *Id.* at 18-17. Dr. Yang diagnosed Petitioner with bilateral lower back pain with sciatica and recommended pain medication along with physical therapy. *Id.* at 6-10.

Petitioner testified that the next day, April 11, 2022, he presented to Dr. Mark Sokolowski to evaluate his lower back and neck. T 24. During the examination Petitioner complained of lower back, neck, left shoulder, and bilateral leg pain. PE 2, p. 37. The straight leg raise test revealed bilateral pain and radicular symptoms. *Id.* Dr. Sokolowski's review of the MRI revealed an extruded interbody device at L4-5 with resultant lateral recess and foraminal stenosis. *Id.* Dr. Sokolowski diagnosed Petitioner with lower back pain, neck pain, left rotator cuff tendinitis, and lumbar radiculopathy. *Id.* Dr. Sokolowski recommended physical therapy and placed Petitioner off work. On May 24, 2022, Petitioner followed up with Dr. Sokolowski complaining of neck and lower back pain radiating down his legs. *Id.* at 31. Dr. Sokolowski recommended that he continue physical therapy and pain medication, to remain off work, and an L4-5 epidural injection if progress remained unsatisfactory. *Id.*

On June 3, 2022, Petitioner presented to Dr. Harel Deutsch for a Section 12 Examination. Respondent's Exhibit 2, hereinafter, "RE 2". Dr. Deutsch's physical examination revealed a negative straight leg raise and

spurling's test. *Id.* Additionally, Dr. Deutsch opined that Petitioner was positive for Waddell Signs and failed the distraction and non-anatomic sensory changes tests. *Id.* Dr. Deutsch did not review the images of the lumbar MRI. *Id.* Dr. Deutsch opined that there was not a mechanism of a spine injury and that Petitioner had at most a lumbar sprain. *Id.* He opined that Petitioner was at MMI. Petitioner testified that Dr. Deutsch examined him for five minutes. T 27. He testified that Dr. Deutsch was asking him questions while raising his legs, but he never voiced his pain while his legs were being raised because he was not asked. *Id.* at 27-28.

Petitioner testified that he returned to work after the examination because his workers' compensation benefits were cut off. *Id.* at 28-29. He testified that he sustained another injury on June 29, 2022. *Id.* at 29. On that date he was injured when the saw he was using to cut pipe jammed. *Id.* at 30. He testified that the accident caused his neck and lower back pain to feel worse. *Id.* at 30-31. He testified that he immediately went to the city clinic. 31-32.

On July 11, 2022, Petitioner followed up with Dr. Sokolowski and complained of worsened neck pain with radiation down both shoulders and lower back pain with radiation down to both legs. PE 2, p. 26-28. Petitioner testified that he waited to see the doctor 12 days later because that was when his scheduled follow up was. T 28. Dr. Sokolowski's physical examination revealed a positive straight leg raise test bilaterally reproducing radicular symptoms and positive Spurling's test reproducing bilateral periscapular and radicular symptoms in a C6-7 distribution. PE 2, p. 26-27. Dr. Sokolowski recommended MRIs of the neck, lower back, and left shoulder, to continue physical therapy and the pain medication, and to go back off work. *Id.* Petitioner testified that he eventually had the MRIs on October 6, 2022, because the MRI authorization was delayed. T 33. He testified that he followed up with Dr. Sokolowski who recommended that he continue the previous treatment plan and remain off work. *Id.*

The lumbar MRI revealed a right herniation at L5-S1 with an underlying bulge causing foraminal stenosis and an L4-5 fusion device migration protruding into the right lateral recess. *Id.* at 16. The cervical MRI revealed C5-7 foraminal stenosis with the left worse than right, C3-5 right foraminal stenosis, C2-3 left foraminal stenosis, and a disc bulge at C4-5. *Id.* at 20.

On October 11, 2022, Petitioner followed up with Dr. Sokolowski. *Id.* at 12-13. Dr. Sokolowski's

review of the MRI reflects that there's a new herniation at L5-S1 and that the cervical MRI reflected multi-level foraminal stenosis. *Id.* Dr. Sokolowski recommended a cervical and lumbar epidural injection, to continue physical therapy and pain medication, and to remain off work. *Id.* On October 13, 2022, Petitioner presented to Dr. Henry Kurzydlowski for a pain management evaluation. PE 3. Dr. Kurzydlowski agreed with the need for the cervical and lumbar epidural injections. *Id.* at 1-5. On November 9, 2022, Petitioner followed up with Dr. Sokolowski who continued to recommend the injections and opined that Petitioner required an L4-5 lumbar interbody fusion and L5-S1 posterior decompression.

On November 14, 2022, Petitioner again presented to Dr. Deutsch for a Section 12 Examination. RE 3. The report does not reflect that Dr. Deutsch reviewed the MRI images. *Id.* Dr. Deutsch opined that Petitioner did not experience a new work injury, did not require additional treatment, and that MMI is not applicable because there was no new work accident. *Id.* at 7. Petitioner testified that he remained off work, despite the Dr. Deutsch opinion that he could return to work without restrictions. T 34-35. He testified that Dr. Deutsch's examination was like the previous examination. *Id.*

On November 22, 2022, Petitioner presented to Dr. Kurzydlowski to undergo the cervical and lumbar injections. *Id.* at 36-37. Petitioner testified that the injection didn't help his lower back but that his neck felt good for one to one and a half weeks. *Id.* Petitioner followed up with Dr. Sokolowski from December 20, 2022, through February 28, 2023. Pet Ex. 2. Throughout that period Dr. Sokolowski continued recommending the lower back surgery and kept Petitioner off work. *Id.* Petitioner testified that he decided to undergo treatment through his personal health insurance due to the Respondent denying his claims. T 38-39. He testified that he switched to Dr. Benson Yang because Dr. Sokolowski's surgical facility was not in his network. *Id.*

On March 24, 2023, Petitioner presented to Dr. Yang complaining of lower back pain going down his legs, neck pain with numbness and tingling going down to his hands, and headaches. PE 7, p. 6-7. Dr. Yang's review of the lumbar MRI revealed an L4-5 transforaminal lumbar interbody fusion with the interbody spacer retro pulsed resulting in right lateral recess stenosis. *Id.* His review of the cervical MRI revealed left foraminal stenosis at C5-6, bilateral foraminal stenosis at C6-7, and a bulge at C4-5. Dr. Yang recommended a C4-7 anterior cervical discectomy and fusion and opined that Petitioner should follow up if he develops right

radicular pain in the L5 distribution to remove the L4-5 nonsegmental instrumentation, complete facetectomy, and drilling down the interbody spacer. *Id.*

On April 6, 2023, Petitioner underwent a C4-7 anterior cervical discectomy and decompression, interbody arthrodesis, insertion of structural allograft, and C4-7 anterior spinal plating. *Id.* at 3-4. Petitioner testified that after the surgery, the pain, numbness, and tingling going down his arms subsided. T 40-41. On April 19, 2023, Petitioner followed up with Dr. Yang who recommended a bone growth stimulator for his neck and a lumbar medial branch block followed up with a radiofrequency ablation. PE 7, p-2-23. Dr. Yang kept Petitioner off work. *Id.*

At trial, Petitioner testified that he underwent two medial branch blocks, and that the radiofrequency ablation was scheduled for June 14, 2023. T 42-43. He testified that his next appointment with Dr. Yang was on July 12, 2023. *Id.* at 43. He testified that at the time of trial he was still experiencing lower back pain with numbness and tingling going down his legs, but that it waxes and wanes. *Id.* at 44. He testified that his neck feels better and he's going through the healing process. *Id.* at 44-45. He testified that at the time of trial he was still off work, per the doctor's order. *Id.* at 45. Petitioner testified that he previously injured his lower back around 2001-2002 in a motorcycle collision. *Id.* He testified that the accident caused him to undergo lower back surgery. *Id.* 45-46. Petitioner testified that he completed treatment related to that injury around 2008. *Id.* at 46. He testified that he never underwent any lower back treatment after the treatment related to the motorcycle collision. *Id.* 46-48. Petitioner testified that he never injured his neck nor received neck treatment prior to the April 5, 2022, work accident. *Id.* He testified that after he completed treatment related to the motorcycle collision he worked without restrictions and without any medical problems. *Id.*

Conclusions of Law:

In support of the Arbitrator's decision relating to (F), whether the petitioner's present condition of ill-being is causally related to the injury, the Arbitrator finds as follows:

The Arbitrator finds Petitioner's current condition of ill-being is causally related to his April 5, 2022, and June 29, 2022, accidents. Accordingly, based on the credible testimony of the Petitioner as well as the medical records and opinions of Dr. Sokolowski and Dr. Yang the Arbitrator finds that the Petitioner has affirmatively demonstrated a causal relationship between his work-related injuries and his current condition of

ill-being.

The Petitioner credibly testified that he was working full duty and without any restrictions on the day of the work-related injury and that he never underwent neck treatment prior to the first accident and did not require treatment for his lower back after completing treatment related to the motorcycle collision. The mechanism of injury described is a competent cause to sustain the neck and lower back issues the Petitioner experienced. Petitioner consistently complained of cervical pain with numbness and tingling and lower back pain with numbness and tingling. Those complaints continued at the time of trial other than his neck which improved because he underwent neck surgery. Further, the Arbitrator notes that the Petitioner had exhausted conservative care, including medication, physical therapy, and epidural injections which only provided limited temporary relief of symptoms.

The Arbitrator notes that Dr. Sokolowski's and Dr. Yang's records reflected consistent positive Spurlings, and straight legs raise tests. Additionally, the Arbitrator notes that both Dr. Sokolowski's and Yang's review of the cervical MRI revealed C5-7 foraminal stenosis with the left worse than right, C3-5 right foraminal stenosis, C2-3 left foraminal stenosis, and a disc bulge at C4-5. Their review of the lumbar MRI revealed the interbody device protruding the right lateral recess at L4-5 and a new herniated disc at L5-S1 that was not visualized prior to the June 29, 2022, accident. Finally, the Arbitrator agrees with Dr. Sokolowski and Dr. Yang that the Petitioner's current condition of ill-being is causally related to the work injury.

The Arbitrator does not find Dr. Deutsch's opinion that Petitioner reached MMI and that neither accident was related to Petitioner's condition credible. The Petitioner testified that he was in his office for five minutes. His testimony correlates with the report as the physical examination section does not reflect review of the MRI images. The Arbitrator notes that Dr. Deutsch does not provide an explanation related to the new L5-S1 herniation that was not present in the first lumbar MRI. Additionally, the Arbitrator notes that Dr. Deutsch's opinion that Petitioner's symptoms were related to a pre-existing condition not credible because Petitioner never underwent neck treatment and completed lower back treatment around 2008. In the Arbitrator's opinion, Dr. Deutsch did not conduct a thorough examination, did not provide reasoning related to his opinions, and he did not review the images of the MRI. All the foregoing impacts the credibility of his findings, and the Arbitrator

does not rely on them.

Therefore, based on the foregoing, the Arbitrator concludes that the Petitioner's current condition of ill-being is causally related to the work injuries.

In support of the Arbitrator's decision relating to (J), Respondent paid all appropriate charges for all reasonable and necessary medical services, the Arbitrator finds as follows:

Based on the above, the Arbitrator finds that the treatment rendered by the medical providers in Exhibits 4, 5, 6, and 8 were reasonable and necessary to treat Petitioner for the work-related injuries he sustained. The Arbitrator also finds that since the Petitioner's condition of ill-being was causally related to his injuries, Respondent is responsible for the medical charges, and that such charges were generated as a result of treatment that was reasonable and necessary. The Arbitrator finds that the bills are to be paid by Respondent according to the medical fee schedule.

In support of the Arbitrator's decision relating to (K), is the Petitioner entitled to any prospective medical treatment, the Arbitrator finds as follows:

The Arbitrator finds that the Petitioner requires additional medical treatment and is entitled to prospective medical treatment. The Arbitrator finds that Respondent is responsible for prospective medical treatment recommended by Dr. Yang consisting of continued care of the lower back and neck. The Arbitrator finds that the records from Dr. Sokolowski and Dr. Yang reflect that the Petitioner has exhausted conservative treatment of medication therapy, physical therapy, and injections with no improvement. The Arbitrator also notes that the Section 12 examiner, Dr. Deutsch's opinions are not credible for the reasons stated above, and the Arbitrator has not relied on them. Clearly the Petitioner has expressed cervical and lower back pain along with radiculopathy consistently through his treatment and there are no pre-existing records that reflect those symptoms. The Petitioner did testify that he had back surgery, but that he completed medical care for that issue in 2008 and was issue free since that date. The Arbitrator orders authorization and payment for prospective medical treatment recommended by Dr. Yang.

In support of the Arbitrator's decision relating to (L), is the Petitioner entitled to TTD benefits, the Arbitrator finds as follows:

Having found an accident that arose out of and in the course of Petitioner's employment, and that Petitioner's current condition of ill-being is causally related to the injury, the Arbitrator awards temporary total

disability benefits to Petitioner.

The medical records show that Petitioner had been off work up from April 6, 2022, through June 26, 2022, and June 30, 2022, through June 6, 2023. The Arbitrator finds that Petitioner was consistently kept off work by his doctors and only returned to work when his workers' compensation benefits were terminated.

The Arbitrator finds that Petitioner is owed temporary total disability benefits from April 6, 2022, through June 26, 2022, and June 30, 2022, through June 6, 2023, for 58 6/7 weeks.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	16WC032157
Case Name	Jesus Aleman v. City of Chicago
Consolidated Cases	18WC018111; 21WC010216;
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	24IWCC0364
Number of Pages of Decision	16
Decision Issued By	Raychel Wesley, Commissioner

Petitioner Attorney	Kevin Veugeler
Respondent Attorney	Michael Manseau

DATE FILED: 8/2/2024

/s/ Raychel Wesley, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

JESUS ALEMAN,

Petitioner,

vs. NO: 16 WC 32157

CITY OF CHICAGO,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of causal connection, medical expenses, prospective medical care, and the nature and extent of Petitioner's injury, and being advised of the facts and law, changes the Decision of the Arbitrator by providing additional clarification as stated below, but otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

FINDINGS OF FACT

The Commission adopts the Findings of Fact in the Decision of the Arbitrator and incorporates such facts herein, but writes additionally to further clarify the nature and extent of Petitioner's injury.

CONCLUSIONS OF LAW

The Arbitrator awarded Petitioner a 40% loss of use of his person as a whole for his right shoulder and cervical conditions. To the contrary, Respondent requests that an §8(d)(1) wage differential be awarded instead, as Petitioner's inability to return to his position as a foreman after the February 15, 2021 accident (consolidated case No. 21 WC 10216) actually relates back to the instant March 31, 2016 accident. Respondent argues that the medical experts erred in allowing Petitioner to work as a foreman because, due to the March 31, 2016 accident causing his cervical

strain, Petitioner was unable to tolerate the driving on uneven surfaces. Driving on such surfaces was a part of Petitioner's duties. Respondent notes that Petitioner's August 6, 2019 physical therapy record acknowledges that the October 2, 2017 Functional Capacity Evaluation ("FCE") did not simulate uneven ground driving. Respondent views this as an indication that the foreman position was not a viable long term option for Petitioner. In short, Respondent believes Petitioner's current inability to work as either a plumber or a foreman plumber stems from the March 31, 2016 accident. Accordingly, Respondent argues a wage differential award is appropriate for the instant accident, using Petitioner's foreman wages of $55.95/hr. ($2,238.00 per week) noted by Ms. Charleston, and his current weekly wage with the security company of $600.00.

To qualify for a wage differential under §8(d)(1) of the Act, a claimant must prove (1) a partial incapacity which prevents him from pursuing his usual and customary line of employment; and (2) an impairment of earnings. *Crittenden v. Illinois Workers' Compensation Commission*, 2017 IL App (1st) 160002WC ¶20. To prove an impairment of earnings, a claimant must prove his actual earnings for a substantial period before the accident and after he returns to work, or in the event that he has not returned to work, he must prove what he is able to earn in some suitable employment. *Id*.

In the instant case, the second prong of the wage differential test has not been met, as there is no evidence Petitioner suffered an impairment of his earnings after he returned to work following the March 31, 2016 accident. In fact, the evidence suggests Petitioner's earnings actually ***increased*** upon returning to work in a new position as a foreman plumber on March 30, 2018. The stipulated average weekly wage ("AWW") indicated on the Request for Hearing for the instant case is $1,890.00, while the stipulated AWW for the April 18, 2018 accident (consolidated case No. 18 WC 18111-the first accident after Petitioner began working as foreman) is $2,088.00. Petitioner does not satisfy the requirements for a wage differential award.

Moreover, the Commission finds that a wage differential award is not appropriate in the case at bar, as the impairment in earnings Petitioner suffered after the February 15, 2021 accident has no causal relationship to the instant March 31, 2016 accident. We so find because Petitioner's inability to continue working as a foreman plumber has no causal relationship to the March 31, 2016 accident. Respondent argues that none of the injuries subsequent to March 31, 2016 structurally changed Petitioner's spine, thus his ultimate inability to work as a foreman, which necessitated a change to his current $15.00/hr. position, should be causally related to the March 31, 2016 accident.

In disagreeing with Respondent, we find that this argument is repeatedly contradicted by the evidence in the record. After the March 31, 2016 accident, Petitioner embarked on exhaustive conservative care, which failed. On November 7, 2016 shoulder surgery was performed. However, Petitioner's cervical symptoms recurred, and by March 20, 2017, treating physician Dr. Wellington Hsu opined Petitioner was unable to return to work as a plumber. On May 30, 2017, cervical spine surgery was performed, followed by additional conservative care. During the October 2, 2017 valid FCE, it was opined Petitioner did not have the functional capability to return to work as a plumber. Petitioner was then hired and began working for Respondent as foreman on March 30, 2018. Subsequently, treating physician Dr. Hsu allowed Petitioner to return to work several times after examining him, with no mention of restricting his duties as a foreman. Petitioner also treated with Dr. Tyler Koski and Dr. Alexander Sheng, neither of whom restricted Petitioner from his duties as

a foreman. In fact, Respondent's own §12 physician Dr. Edward Goldberg agreed on July 30, 2018, that Petitioner was not capable of working as a plumber, but *was* capable of working as a foreman. Respondent argues that these opinions did not contemplate the difficulty Petitioner was having with driving on uneven land, however, even after the June 10, 2019 accident (which caused neck pain after driving over potholes)[1], Dr. Hsu still did not restrict Petitioner from operating as a foreman.

Moreover, there is no requirement that an accident cause a structural change in a claimant's condition in order to be an intervening accident. All that is required is that there be a deterioration in the condition after the intervening accident. See *Schroeder v. Illinois Workers' Compensation Commission*, 2017 IL App (4th) 160192WC ("…[I]f a claimant is in a certain condition, an accident occurs, and following the accident, the claimant's condition has deteriorated, it is plainly inferable that the intervening accident caused the deterioration. The salient factor is not the precise previous condition; it is the resulting deterioration from whatever the previous condition had been."). Here, after the March 31, 2016 accident, Petitioner underwent cervical spine and shoulder surgeries, and was eventually released form care for both on September 30, 2017 and December 12, 2017, respectively. However, after the April 18, 2018 accident, Petitioner was again prescribed physical therapy, was referred to a physiatrist, and had new radicular symptoms. These symptoms remained for over a year, with no indication his condition ever returned to baseline before the subsequent June 10, 2019 accident. Accordingly, the Commission finds Petitioner's condition did deteriorate after the April 18, 2018 accident.

Likewise, there was a clear deterioration in Petitioner's condition after the February 15, 2021 accident, as evidenced by a new FCE on March 29, 2021, which indicated diminished functional capabilities for Petitioner, and his permanent restriction from continuing as a foreman. The April 18, 2018 and February 15, 2021 accidents were intervening, and broke the causal chain between the March 31, 2016 accident and the permanent restriction against Petitioner working as a foreman. Based on the above, we find that Petitioner's inability to continue working as a foreman has no causal relationship to the March 31, 2016 accident.

Respondent likens the case at bar to *Chlada v. Illinois Workers' Compensation Commission*, 2016 IL App (1st) 150122WC. However, we find no correlation. In *Chlada*, the claimant suffered an initial lumbar injury in 1999 which afforded him wage differential benefits, as he subsequently returned to work in a new position at a *reduced* hourly rate of pay. In 2002, the claimant in *Chlada* suffered a second injury, this time to his cervical spine, which was more disabling than his first injury. *Id*. The court found that the second injury did not alter the fact that the claimant suffered a reduced earning capacity and was entitled to a wage differential after his first injury, thus the claimant was entitled to collect these benefits for the duration of the first injury. *Id.* at ¶ 35. The claimant in *Chlada* was then awarded separate benefits for his second injury in the form of permanent and total disability benefits. The case at bar is distinguishable from *Chlada*, as Petitioner herein *did not* suffer a reduced earning capacity after his initial injury, and thus was not entitled to wage differential at the time. Accordingly, there were no wage differential benefits to continue because Petitioner was not entitled to such benefits to begin with. The Petitioner herein <u>*did*</u> suffer an injury necessitating a §8(d)(2) award, the benefits of which he is entitled to collect (for 200 weeks). The second injury on April 18, 2018 also necessitated an award

[1]No appeal was filed on this consolidated case No. 19 WC 19947.

for the additional disability it caused to Petitioner's cervical spine (for 25 more weeks)—an award Respondent did not dispute. See *Respondent's Statement of Exceptions*. Since Petitioner herein suffered a third injury on February 15, 2021 which *did* cause a reduction in his earning capacity, we find that the wage differential should apply to this third injury only (case No. 21 WC 10216). The only similarity between *Chlada* and the case at bar is that each separate injury shall receive its own disability award to be determined by the relevant facts.

Based on the foregoing, the Commission affirms the Arbitrator's finding that an §8(d)(2) award is more appropriate than a wage differential award in the instant case.

All else is affirmed.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed April 25, 2023, as clarified above, is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent is liable for all medical expenses incurred in the treatment of Petitioner's right shoulder, neck, and thoracic conditions sustained during the March 31, 2016 accident through December 12, 2017, the date she was released from care by Dr. Guido Marra. Respondent has paid all medical bills for this claim.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $755.22 per week for a period of 200 weeks, as provided in section §8(d)(2) of the Act, for the reason that the injuries sustained caused a 40% loss of use of Petitioner's person as a whole.

IT IS FURTHER ORDERED BY THE COMMISSION that Petitioner's claim for §19(k) penalties is denied.

IT IS FURTHER ORDERED BY THE COMMISSION that Petitioner's claim for §19(l) penalties is denied.

IT IS FURTHER ORDERED BY THE COMMISSION that Petitioner's claim for §16 attorney fees is denied.

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

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

No bond is required for removal of this cause to the Circuit Court. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

August 2, 2024

/s/ *Raychel A. Wesley*

RAW/wde

O: 6/5/24

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/s/ *Stephen Mathis*

/s/ *Deborah L. Simpson*

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	16WC032157
Case Name	Jesus Aleman v. City of Chicago
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	10
Decision Issued By	Elaine Llerena, Arbitrator

Petitioner Attorney	Kevin Veugeler
Respondent Attorney	Michael Manseau

DATE FILED: 4/25/2023

THE INTEREST RATE FOR THE WEEK OF APRIL 25, 2023 4.84%

/s/Elaine Llerena, Arbitrator

Signature

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Jesus Aleman
Employee/Petitioner
v.
City of Chicago
Employer/Respondent

Case # **16** WC **032157**

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

DISPUTED ISSUES

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

FINDINGS

On **March 31, 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 $**98,280.00**; the average weekly wage was $**1,890.00**.

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

Respondent shall be given a credit of $**130,559.52** for TTD, $**0** for TPD, $**0** for maintenance, and $**0** for other benefits, for a total credit of $**130,559.52**.

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

ORDER

Respondent shall pay Petitioner permanent partial disability benefits of $755.22 per week for 200 weeks, because the injuries sustained caused the 40% loss of the person as a whole, as provided in Section 8(d)2 of the Act.

Petitioner's claim for penalties and attorney's fees is denied.

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

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

Elaine Llerena **APRIL 25, 2023**

Signature of Arbitrator

STATEMENT OF FACTS

Petitioner testified that he has been a journeyman plumber with Local 130 since 1994. (Tr., pp. 13-14) He testified that in 2016, he was employed as a plumber with Respondent. (Tr., p. 13)

Petitioner testified that his job duties included installing all the water main construction, installing pipefittings, fire hydrants that are excavated, and putting pipe in the ground. (Tr., p. 14) He testified a plumber is considered a heavy-duty position. (Tr., p. 26)

As to the materials used, this included duck tire iron, cast iron, and nuts and bolts. (Tr., pp. 14-15) Petitioner testified that one length of eight-inch pipe weighs about 700 pounds and has to be cut with a partner saw. Pipefittings can be in excess of 40 to 50 pounds, depending on the size. In addition to the saw, Petitioner testified he uses chain snaps and pipe wrenches. He testified his job as a plumber also involved drilling and wrenching. (Tr., p. 15)

Petitioner testified that in February 2005, he had a cervical fusion at C4-C5, but was able to return to work as a plumber. (Tr., p. 17) He testified he had no issues with his neck from 2005 through 2016 that prevented him from doing his job. (Tr., p. 18)

Petitioner testified he was working on March 31, 2016, with a crew of laborers and operators installing a water main. (Tr., pp. 15-16) On that date, he had no issues with his neck or right shoulder that prevented him from doing his job duties, nor was he under the care of any doctor or engaged in any physical therapy. (Tr., pp. 16-17) He testified he was installing taps on a water main with a drill. In the process of using a wrench and bracing the pipe, he felt a pop and some burning in his shoulder blade. (Tr., p. 18)

A Report of Occupational Injury, dated March 31, 2016, describes the accident. (RX7) Witness statements corroborate Petitioner's testimony that he experienced soreness in his right shoulder, stiffness in his neck, and tingling in his fingers as a result of tapping an eight-inch water main. (RX8, RX9) Petitioner testified he continued to work through the pain until his arm became numb. (Tr., pp. 18-19) Petitioner testified he was then directed by Respondent to MercyWorks. (Tr., p. 19)

The records from MercyWorks indicate Petitioner was examined by Dr. Claudia Weddaburne-Bossie on March 31, 2016. (PX2) Petitioner complained of right shoulder pain that began earlier that day. He indicated that his symptoms were the result of a work-related injury after repetitive manual ratcheting while repairing a water main. He indicated that the pain radiated to his right upper arm and fingers and reported some tingling in his fingertips. (PX2, p. 3) Physical examination showed decreased range of motion in his cervical spine. Petitioner also had tenderness to the right humeral head on palpation and some tenderness along the right trapezius between the right scapula and spine. Dr. Weddaburne-Bossie was able to reproduce the pain that traveled down his right arm. Petitioner also had some tenderness to the right lateral epicondyle, but had normal range of motion in the right shoulder. He had no weakness or tenderness, and his upper extremity reflexes were intact. Petitioner was diagnosed with a strain to the back wall of the thorax, along with a right shoulder sprain, and lateral epicondylitis to the right elbow. Dr. Weddaburne-Bossie administered a Toradol injection and prescribed Skelaxin and Naproxen and took Petitioner off work. (PX2, p. 4)

On April 4, 2016, MercyWorks sent Petitioner to Northwestern Memorial Hospital for an orthopedic evaluation. (Tr., p. 20; PX2, p. 6)

Petitioner was seen by Nurse Practitioner (NP) Patrick Graham on April 12, 2016. (PX1) Petitioner complained of right shoulder pain and tingling in his right index finger. Petitioner told NP Graham that his symptoms began a couple weeks earlier at work. He stated his power drill went out and he was doing his tasks

by hand, which included drilling, taping, threading and bolting. He was doing repetitive twisting and shoulder movement to complete those tasks. His shoulder was painful and slightly swollen as a result of performing these activities. (PX1, p. 1291) NP Graham noted that Petitioner had right shoulder pain that was likely due to a rotator cuff strain. He also felt that the right index finger tingling was likely due to thoracic outlet syndrome and possibly due to cervical radiculopathy, although that was less likely. NP Graham recommended a course of physical therapy to address the shoulder issues and prescribed Meloxicam. (PX1, p. 1292) Petitioner started physical therapy at NovaCare Rehabilitation on April 18, 2016. (PX4, p. 10)

On May 10, 2016, Petitioner returned to NP Graham complaining of worsening symptoms. Petitioner reported more diffuse numbness and tingling of the right hand with radiation into the forearm. (PX4, p. 1292) NP Graham felt that Petitioner had primary shoulder pathology, which could include labral tear versus a possible rotator cuff tear. He also felt that Petitioner had cervical radiculopathy at the C6 level with noted adjacent segment changes. NP Graham ordered an MRI of the right shoulder and neck, deferred additional therapy, and kept Petitioner off work. (PX1, p. 1293)

Petitioner underwent the cervical MRI on May 16, 2016, the results of which showed a successful spinal fusion ventrally at C4-C5 without significant neural compromise at that level, moderate degenerative changes throughout the cervical region, mild spinal canal stenosis, and multilevel foraminal narrowing from C2 through T1. (PX4, p. 1465) Petitioner underwent the MRI arthrogram of the right shoulder on May 19, 2016, which showed a superior labral anterior posterior (SLAP) detachment along with supraspinatus tendinosis, AC joint osteoarthritis, subacromial subdeltoid bursitis, and degeneration in the intracapsular portion of the biceps tendon with an intrasubstance tear that did not extend to the surface of the tendon. (PX1, pp. 1467-1468)

Petitioner returned to NP Graham on May 25, 2016. NP Graham reviewed the MRIs and administered a trial intraarticular injection for symptom management. Petitioner was to resume physical therapy the following week. NP Graham noted that if Petitioner failed to improve after the injection, he would be given a surgical consultation. NP Graham also noted that Petitioner would contact a spine surgeon, Dr. Wellington Hsu, as a result of the cervical MRI findings and history of the cervical fusion. (PX1, pp. 1297-1298)

On June 7, 2016, Petitioner saw Dr. Guido Marra. (PX1) Petitioner complained of ongoing right shoulder pain, along with numbness and tingling. (PX1, p. 1302) Dr. Marra reviewed the MRI of the right shoulder from May 19, 2016, and diagnosed Petitioner with a symptomatic labral tear and cervical spine disease. Dr. Marra noted that some of Petitioner's symptoms were attributable to the neck disease and recommended that Petitioner see Dr. Hsu. Petitioner was to return after being examined by Dr. Hsu. (PX1, p. 1303)

Petitioner was seen by Dr. Hsu on June 29, 2016. (PX1) Petitioner complained of right-sided posterior neck pain, right-sided interscapular pain, and right shoulder pain extending into the dorsal aspect of the forearm into the right thumb and index finger. Petitioner told Dr. Hsu that his symptoms began on March 31, 2016. Dr. Hsu noted Petitioner had two prior spine surgeries, which occurred in 2005 with a different physician, Dr. Haak. Petitioner told Dr. Hsu that all of his cervical symptoms completely resolved following that surgery. Petitioner also had a lumbar fusion surgery with Dr. Haak in 2006. (PX1, p. 1306) Dr. Hsu reviewed Petitioner's cervical spine MRI and felt that Petitioner's symptoms were likely the result of his right sided cervical stenosis at C5-C6 and C6-C7. However, Dr. Hsu did not believe that Petitioner was a candidate for surgery at that time, as he had not tried other conservative measures. Dr. Hsu recommended an injection at the C5-C6 and C6-C7 regions, which would likely be therapeutic and diagnostic in nature. (PX1, p. 1307)

On July 1, 2016, Petitioner saw Dr. Dost Khan. (PX1) Dr. Khan noted that Petitioner presented with pain in the right posterior neck that radiated down the anterior forearm into the thumb and index finger. Dr.

Khan reviewed Petitioner's MRI and felt that Petitioner had a disc osteophyte complex with a focal disc protrusion at the C5-C6 level, severe left and moderate right neuroforaminal narrowing, diffuse disc bulging with spurring at the C6-C7 level, and moderate to severe bilateral foraminal narrowing. (PX1, pp. 1312-1313) Dr. Khan diagnosed Petitioner with cervical radiculitis and administered a right sided epidural steroid injection at the C7-T1 level. (PX1, p. 1313)

On July 5, 2016, Petitioner returned to NovaCare for physical therapy. (PX4, pp. 44-45)

Petitioner was re-examined by Dr. Hsu on August 15, 2016. Dr. Hsu noted that Petitioner had completed physical therapy and a selective nerve root injection that had improved his symptoms by approximately 75%. Dr. Hsu felt that Petitioner would benefit from another injection. (PX1, p. 1342) On August 25, 2016, Dr. Khan administered another C7-T1 injection. Petitioner would return as needed for a possible repeat injection. Dr. Khan also noted that Petitioner could consider some trigger point injections for the myofascial pain. (PX1, p. 1347)

Petitioner returned to Dr. Marra on August 30, 2016. Dr. Marra reiterated Petitioner's prior medical history and noted that, since Petitioner's initial examination with him on June 7, 2016, Petitioner obtained significant relief from his radicular symptoms as a result of the selective nerve root injections, but he continued to report pain that was primarily anterior over the glenohumeral joint and posterior pain that was waking him up at night. Dr. Marra recommended a right shoulder arthroscopic labral repair. (PX1, pp. 1372-1373)

On November 7, 2016, Dr. Marra performed a right posterior labral repair and right extensive debridement of the shoulder. (PX1, p. 590) Petitioner began post-operative therapy at NovaCare on November 22, 2016. (PX4, pp. 84-85)

On December 20, 2016, Dr. Marra noted Petitioner was doing well overall. (PX1, p. 1380) Petitioner was to continue physical therapy and return to work with no use of his right arm. (PX1, p. 1381)

On March 2, 2017, Petitioner returned to Dr. Khan with complaints of recurrent right neck and arm pain. Dr. Khan noted that the pain appeared to be in a C6 dermatomal pattern, yet Petitioner had significant pathology at the right side of C2-C3, C3-C4, C5-C6 and C6-C7. Dr. Khan recommended a repeat injection at C7-T10 and repeat trigger point injections. Dr Khan noted that Petitioner would follow up to discuss surgical intervention, pending response to the injection, with Dr. Hsu. (PX1, pp. 1383-1384)

On March 20, 2017, Petitioner saw Dr. Hsu who noted that Petitioner returned to work after his shoulder surgery with Dr. Marra, but had recurrent symptoms in his neck and intrascapular area and was unable to work as a plumber and wanted to consider further treatment. Dr. Hsu diagnosed adjacent segment degeneration at C5-C6 and right upper extremity radiculopathy. Dr. Hsu recommended physical therapy and injection. If Petitioner failed this treatment, Dr. Hsu believed Petitioner would be a candidate for a C5-C6 anterior cervical discectomy and fusion. (PX1, p. 1408)

Petitioner was discharged from physical therapy regarding his right shoulder on March 24, 2017. The therapist noted Petitioner would transition to therapy for his neck. (PX4, p. 195)

On March 28, 2017, Petitioner was re-examined by Dr. Marra who noted that Petitioner was doing well, and his only shoulder complaint was tightness when he performed specific motions. Petitioner also complained of increasing problems with his neck. (PX1, p. 1408) Dr. Marra noted that Petitioner would complete a four-week course of therapy and be released from care and gave Petitioner ten-pound lifting restrictions, along with

no overhead work. (PX1, p. 1409) That same day, on March 28, 2017, Petitioner began physical therapy at NovaCare regarding the cervical spine. (P 4, p. 198)

On April 25, 2017, Petitioner returned to Dr. Marra who noted that Petitioner was doing well overall, but complained of neck pain for which he was seeing Dr. Hsu. Dr. Marra placed Petitioner at maximum medical improvement (MMI) for his shoulder injury and was released to full duty release regarding the right shoulder. (PX4, p. 1410)

Petitioner was discharged from therapy at NovaCare regarding the cervical spine on May 8, 2017, due to a plateau in progress. (PX4, pp. 227-228)

On May 15, 2017, Dr. Hsu recommended hardware removal at C4-C5 and a C5-C6 anterior cervical discectomy and fusion with structural allograft. (PX1, p. 1412)

On May 22, 2017, Petitioner returned to Dr. Khan for ongoing neck pain. At that time, Petitioner indicated that his pain had only improved for about a week after his most recent injection. He continued to have severe symptoms, which included radiating pain as well as numbness and tingling into his first second and third fingers. (PX1, p. 1415) Dr. Khan agreed with the cervical fusion and hardware removal. (PX1, p. 1417)

On May 30, 2017, Dr. Hsu performed a C4-C5 anterior hardware removal, re-exploration of the previous spine fusion at C4-C5 and an anterior cervical discectomy and fusion at C5-C6 with instrumentation and hardware. (PX1, p. 943)

On June 14, 2017, Petitioner followed up with Dr. Hsu who noted Petitioner was doing well and his upper extremity pain was significantly improved. He noted that Petitioner would follow up in six weeks, at which time physical therapy would be commenced. Dr. Hsu kept Petitioner off work. (PX1, p. 1420)

Petitioner returned to Dr. Hsu on July 17, 2017, who noted Petitioner complained of intermittent pain between his shoulder blades. He indicated that the numbness in his right upper extremity was gone. Dr. Hsu ordered physical therapy and kept Petitioner off work. (PX 1, p. 1422)

On July 18, 2017, Petitioner began physical therapy at NovaCare. (PX4, pp. 230-231)

On August 28, 2017, Dr. Hsu noted that Petitioner continued to have some numbness and tingling in his fourth and fifth digits on the right hand and some ongoing neck pain. Dr. Hsu noted that repeat x-rays demonstrated interval boney consolidation and excellent healing. Dr. Hsu ordered a cervical spine MRI. If there was no significant pathology, Petitioner would be a candidate for a functional capacity evaluation (FCE). Until then, Petitioner was to continue with physical therapy. (PX1, p. 1425)

On September 2, 2017, Petitioner underwent an MRI scan of the cervical spine that was compared with his prior MRI scan from May 16, 2017, as well as plain radiographs from April 28, 2017. The results indicated that there were several post-operative changes, along with the removal of the fusion hardware at C4-C5 and placement of the anterior fusion hardware at C5-C6, and degenerative narrowing that was similar to the prior MRI scan and affected the neural foramina. (PX1, p. 1471)

Petitioner was discharged from physical therapy by September 30, 2017, as he had plateaued in progress. Petitioner continued to report tightness and tenderness at the cervical and thoracic regions and had limited function overall. (PX4, p. 296)

Petitioner underwent the FCE on October 20, 2017, which determined that Petitioner could not return to work in a full-duty capacity as a plumber. (PX4)

Dr. Hsu reviewed the FCE on October 30, 2017, and noted that Petitioner demonstrated the ability to occasionally lift up to 40 pounds from the floor to wait level and 30 pounds from the waist to shoulder level and the ability to push and pull 90 pounds. Petitioner reported some residual neck pain, but his symptoms were improved. His numbness and tingling had also improved. Dr. Hsu placed Petitioner at MMI as of the date of the FCE. (PX1, p. 1447)

Petitioner testified that in October of 2017, Respondent could not return him back to work. (Tr., p. 24)

On December 12, 2017, Petitioner returned to Dr. Marra complaining of shoulder blade pain. Dr. Marra noted that the pain could be from the insertion of the muscles on the scapula or could just be from compensating after neck and shoulder surgery. He noted that Petitioner would benefit from a repetitive program such as swimming or light weightlifting. However, if the pain persisted, petitioner could see a physiatrist for further trigger point injections. (PX1, p. 1450) Petitioner testified he has not seen Dr. Marra since this visit, nor does he have any future appointments scheduled with him. (Tr., pp. 52-53)

Petitioner testified that on December 14, 2017, he had his first vocational interview with Vocamotive. He testified that at that time, Vocamotive recommended computer training. (Tr., pp. 24-25)

Lisa Helma, a certified rehabilitation counselor with Vocamotive, authored a report on January 4, 2017, noting Petitioner's work injury and subsequent treatment. (RX4, pp. 1-2) Ms. Helma noted Petitioner received a high school diploma in 1989 and then received an associate's degree in electronics, which allowed him to be an electronics technician, that Petitioner had been a union apprentice through Local 130 and then became a journeyman plumber. She noted that Petitioner did have some computer skills, which included some typing and the ability to send emails and utilize the internet. (RX4, p. 4) Ms. Helma opined that Petitioner had lost access to his usual and customary line of occupation as a plumber, but felt Petitioner was employable in a position consistent with his physical capabilities, as set forth in his FCE results. (RX4, p. 8) She opined that Petitioner could be employable as a maintenance worker, janitor, warehouse worker, assembler, machine operator, dispatcher, office clerk, front desk clerk, customer service representative, along with other similar occupations. (RX4, pp. 8-9) Ms. Helma opined that marketable computer skills would be required for Petitioner to be qualified for some of the positions and that Petitioner was a candidate for vocational rehabilitation, which should include vocational testing, computer training, job seeking instruction and job placement. (RX4, p. 9)

Petitioner testified he started computer classes through Vocamotive in February 2018, at which time they were looking to find a job for him potentially earning $11.00 to $15.00 an hour. (Tr., p. 25)

On March 16, 2018, Ms. Helma authored a final vocational report. She noted that Petitioner completed an interview with Respondent for a foreman position, for which he received a job offer. (RX5, p. 9)

Petitioner testified he returned to work for Respondent on March 30, 2018, as a foreman of plumbers. (Tr., p. 25) He testified a foreman plumber is a medium-duty position that is in charge of a couple different crews at multiple job sites. He testified the job duties for this position included doing paperwork, including daily reports, time, attendance, and setting up a job. He was also responsible for safety and checking equipment. (Tr., p. 26)

At the time of trial Petitioner testified that he had stiffness and lack of range of motion in his right shoulder. (Tr., p. 26) Petitioner further testified that he continued to have neck pain. (Tr., p. 49)

Petitioner continued to experience numbness and tingling in his hands and arms and continued to take over the counter medications for his cervical and shoulder pain. (Tr., p. 49-50)

WITH RESPECT TO ISSUE (J), WERE THE MEDICAL SERVICES THAT WERE PROVIDED TO PETITIONER REASONABLE AND NECESSARY AND HAS RESPONDENT PAID ALL APPROPRIATE CHARGES FOR ALL REASONABLE AND NECESSARY MEDICAL SERVICES, THE ARBITRATOR FINDS AS FOLLOWS:

The Arbitrator finds Respondent is liable for all medical expenses incurred in the treatment of Petitioner's right shoulder, neck and thoracic injuries sustained as a result of the March 31, 2016, work accident through December 12, 2017, when Petitioner was released from Dr. Marra's care. The Arbitrator further finds that there are no outstanding medical bill balances regarding Petitioner's treatment for injuries incurred during the March 31, 2016, work accident and that Respondent has paid all the medical bills for this claim.

WITH RESPECT TO ISSUE (L), WHAT IS THE NATURE AND EXTENT OF THE INJURY, THE ARBITRATOR FINDS AS FOLLOWS:

Pursuant to Section 8.1b of the Act, the following criteria and factors must be weighed in determining the level of permanent partial disability for accidental injuries occurring on or after September 1, 2011:

(a) A physician licensed to practice medicine in all of its branches preparing a permanent partial disability impairment report shall report the level of impairment in writing. The report shall include an evaluation of medically defined and professionally appropriate measurements of impairment that include, but are not limited to: loss of range of motion; loss of strength; measured atrophy of tissue mass consistent with the injury; and any other measurements that establish the nature and extent of the impairment. The most current edition of the American Medical Association's "Guides to the Evaluation of Permanent Impairment" shall be used by the physician in determining the level of impairment.

(b) In determining the level of permanent partial disability, the Commission shall base its determination on the following factors;

(i) the reported level of impairment pursuant to subsection (a);
(ii) the occupation of the injured employee;
(iii) the age of the employee at the time of the injury;
(iv) the employee's future earning capacity; and
(v) evidence of disability corroborated by the treating medical records. No single enumerated factor shall be the sole determinant of disability. In determining the level of disability, the relevance and weight of any factors used in addition to the level of impairment as reported by the physician must be explained in a written order.

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

With regard to subsection (ii) of Section 8.1b(b), the occupation of the employee, the Arbitrator notes that the record reveals that Petitioner was employed as a journeyman plumber at the time of the accident and that he was not able to return to work in his prior capacity as a result of said injury. The Arbitrator gives this factor significant weight.

With regard to subsection (iii) of Section 8.1b(b), the Arbitrator notes that Petitioner was 44 years old at the time of the accident. The Arbitrator gives this factor some weight.

With regard to subsection (iv) of Section 8.1b(b), Petitioner's future earnings capacity, the Arbitrator notes that while Petitioner was unable to return to work as a journeyman plumber, Petitioner was able to return to work for Respondent as a foreman. There was no indication that Petitioner's earnings had been affected by the change in position when he returned to work on March 30, 2018. The Arbitrator gives this factor its appropriate weight.

With regard to subsection (v) of Section 8.1b(b), evidence of disability corroborated by the treating medical records, the Arbitrator notes Petitioner underwent right shoulder surgery and a cervical fusion with hardware removal. As a result, Petitioner was provided permanent restrictions and could not return to his prior position of journeyman plumber. The Arbitrator gives this factor significant weight.

Based on the above factors, and the record taken as a whole, the Arbitrator finds that Petitioner sustained permanent partial disability to the extent of 40% loss of use of the person as a whole pursuant to Section 8(d)2 of the Act.

WITH RESPECT TO ISSUE (M), SHOULD PENALTIES BE IMPOSED UPON THE RESPONDENT, THE ARBITRATOR FINDS AS FOLLOWS:

The Arbitrator notes that Petitioner was paid temporary total disability benefits while he was off work and his medical expenses were paid by Respondent. Therefore, Petitioner's claim for penalties and attorney's fees is denied.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	18WC018111
Case Name	Jesus Aleman v. City of Chicago
Consolidated Cases	16WC032157; 21WC010216;
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	24IWCC0365
Number of Pages of Decision	12
Decision Issued By	Raychel Wesley, Commissioner

Petitioner Attorney	Kevin Veugeler
Respondent Attorney	Michael Manseau,

DATE FILED: 8/2/2024

/s/ Raychel Wesley, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

JESUS ALEMAN,

Petitioner,

vs. NO: 18 WC 18111

CITY OF CHICAGO,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of causal connection, medical expenses, prospective medical care, nature and extent, §19(k) penalties, §19(l) penalties, and §16 attorney fees, and being advised of the facts and law, modifies the Decision of the Arbitrator as stated below and otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

FINDINGS OF FACT

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

CONCLUSIONS OF LAW

A. Penalties and Fees

The Arbitrator noted that after the stipulated April 18, 2018 accident, Petitioner was taken off of work by Dr. Wellington K. Hsu. On June 25, 2018, Dr. Hsu released Petitioner back to work with restrictions, which were not accommodated by Respondent. Further, on July 30, 2018, Respondent's own §12 physician, Dr. Goldberg, found that Petitioner suffered a cervical strain as a result of the accident, but was able to return to work as a foreman within his restrictions. Despite this, Respondent did not accommodate the restrictions, nor did they pay Petitioner temporary total disability ("TTD")

benefits. It was not until a §19(b) hearing on September 27, 2018 that Respondent agreed to pay outstanding TTD and allowed Petitioner back to work within his restrictions. In addition to the parties stipulating that Respondent paid TTD in the amount of $33,330.92, Petitioner offered evidence of outstanding medical bills from May 10, 2018 and April 24, 2019 totaling $2,012.27, which remained unpaid at the time of trial. *PX 8, p.9, 13*. On May 20, 2022, Dr. Goldberg offered a second §12 examination report, wherein he opined that all medical care for each of Petitioner's accidents was reasonable and necessary. The Arbitrator found Respondent failed to show a reasonable belief that the delay in TTD payments was justifiable, and thus awarded penalties and fees. The Commission agrees with the premise of this award. However, despite our agreeance, we note that the arbitrator did not award penalties and fees on the outstanding medical bills. Accordingly, the Commission modifies the penalties and fees awards to include the outstanding medical in the calculations.

Respondent argues that TTD was not even at issue based on the stipulation present on the Request for Hearing form. However, this appears to be a red herring argument. Although it was stipulated that TTD had been paid, and thus was not at issue, *the delay in payment* of the TTD benefits *was* at issue, as evidenced by Petitioner's claim for penalties and fees on the Request for Hearing form.

Next, Respondent argues it does not have to show it had a reasonable belief to justify its supposed failure to pay TTD, due to the aforementioned stipulation regarding TTD payment. We do not find this argument persuasive. Although TTD had been paid prior to trial, this does not change the fact that there was a *delay* in the payment. Penalties and fees require an unreasonable delay in payment, not a non-payment. Moreover, Petitioner provided evidence of outstanding medical bills totaling $2,012.27.

An employer bears the burden of proof when it comes to the issue of penalties and fees. The employer must establish it acted in an objectively reasonable manner in denying benefits under all of the existing circumstances. *Board of Education of the City of Chicago v. Industrial Commission*, 93 Ill. 2d 1, 9-10 (1982). Employers frequently point to its §12 examiner as a basis for denial, but in the instant case, Respondent cannot do so. Dr. Goldberg found causation and characterized all medical care as reasonable and necessary. Yet, Respondent delayed in paying TTD benefits, and still has not paid all medical. Respondent has shown no reasonable justification for non-payment of these bills, given the opinions of their own Dr. Goldberg.

Lastly, Respondent argues the Arbitrator failed to articulate how the §19(k) penalties of $16,665.46 were calculated, and how many days late Respondent was in paying benefits in order to assess the $10,000.00 in §19(l) penalties. In modifying the arbitrator's award, the Commission clarifies and recalculates the assessments. The record reflects that Respondent unjustifiably delayed paying TTD benefits accruing from April 18, 2018. Payment was not made until October 2, 2018. See *RX 16*. TTD which was owed and paid late was $1,392.00 (Petitioner's average weekly wage of $2,088.00 x 66-2/3%) x 23 & 2/7ths weeks, or $32,413.71. Further, there still remains outstanding medical bills in the amount of $2,012.27. Accordingly, total delayed payment equals $34,425.98.[1] We find that §19(k) penalties for unreasonable delay is $17,212.99.

[1] The Arbitrator mistakenly used the TTD paid amount of $33,330.92 to calculate penalties & fees, and also did not include the outstanding medical in the calculation.

§19(l) penalties in the form of a late fee for outstanding medical from May 10, 2018 through the hearing date of August 22, 2022[2] (1,566 days) is the maximum of $10,000.00. Lastly, §16 attorney fees equal $6,885.20. The Commission modifies the penalties and fees award accordingly.

All else is affirmed.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed April 25, 2023, as modified above, is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay the reasonable and necessary medical expenses of $2,012.27, pursuant to §8(a) and subject to §8.2 of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $790.64 per week for a period of 25 weeks, as provided in §8(d)2 of the Act, for the reason that the injuries sustained caused a 5% loss of use of the person as a whole.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner §19(k) penalties in the amount of $17,212.99.

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

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner §16 attorney fees in the amount of $6,885.20.

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

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

No bond is required for removal of this cause to the Circuit Court. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

August 2, 2024

/s/ *Raychel A. Wesley*

RAW/wde

O: 6/5/24

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/s/ *Stephen J. Mathis*

/s/ *Deborah L. Simpson*

[2] The late fee extends to this date, as the outstanding medical of $2,012.27 had not yet been paid by this date.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	18WC018111
Case Name	Jesus Aleman v. City of Chicago
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	8
Decision Issued By	Elaine Llerena, Arbitrator

Petitioner Attorney	Kevin Veugeler
Respondent Attorney	Michael Manseau

DATE FILED: 4/25/2023

THE INTEREST RATE FOR THE WEEK OF APRIL 25, 2023 4.84%

/s/Elaine Llerena, Arbitrator

Signature

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Jesus Aleman
Employee/Petitioner
v.
City of Chicago
Employer/Respondent

Case # **18** WC **018111**

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

DISPUTED ISSUES

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

FINDINGS

On **April 18, 2018**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $**108,576.00**; the average weekly wage was $**2,088.00**.

On the date of accident, Petitioner was **46** years of age, ***married*** with **2** dependent children.

Respondent shall be given a credit of $**33,330.92** for TTD, $**0** for TPD, $**0** for maintenance, and $**0** for other benefits, for a total credit of $**33,330.92**.

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

ORDER

Respondent shall pay reasonable and necessary medical services of $2,012.27, as provided in Sections 8(a) and 8.2 of the Act.

Respondent shall pay Petitioner permanent partial disability benefits of $790.64 per week for 25 weeks, because the injuries sustained caused the 5% loss of the person as a whole, as provided in Section 8(d)2 of the Act.

Respondent shall pay to Petitioner penalties of $16,665.46, as provided in Section 19(k) of the Act; $10,000.00, as provided in Section 19(1) of the Act; and $6,666.18, as provided in Section 16 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.

Elaine Llerena **APRIL 25, 2023**

Signature of Arbitrator

STATEMENT OF FACTS

Petitioner testified he was working as a foreman for Respondent on April 18, 2018, and that his duties that day included supervising two different crews installing water mains at two different sites. (Tr., pp. 26-27) He testified he would go between job sites driving Respondent's vehicles. On April 18, 2018, Petitioner was lifting himself into Respondent's truck when he felt a sharp pain in his neck that went down his right arm. (Tr., 27-28) The Report of Occupational Injury has the description of the accident, which his consistent with Petitioner's description of the accident. (RX10) Petitioner testified that his neck pain from the March 31, 2016, work accident (16WC032157) had resolved prior to April 18, 2018. (Tr., p. 29)

Petitioner testified that after his April 18, 2018, work accident he was sent to MercyWorks where he was prescribed a Medrol dose pack and referred to Dr. Wellington Hsu. (Tr., pp. 28-29)

Petitioner saw Dr. Hsu on April 23, 2018. (PX1) Dr. Hsu ordered a cervical MRI, which Petitioner underwent on May 10, 2018. (PX1) The MRI showed no significant acute pathology, mild adjacent degenerative segment at C6-C7 and normal overall alignment. (PX1) On May 14, 2018, Dr. Hsu reviewed the MRI and noted that Petitioner's neck and arm pain was improving following a flare up while pulling himself into a truck. (PX1) Dr. Hsu ordered physical therapy and took Petitioner off work. (PX1)

Petitioner began physical therapy at NovaCare on May 23, 2018. (PX4)

Petitioner returned to Dr. Hsu on June 25, 2018, complaining of ongoing posterior neck pain. (PX1) Dr. Hsu felt Petitioner had exhausted all conservative care for his cervical condition and surgery was not recommended. Dr. Hsu indicated that Petitioner could return to work within his prior restrictions (16WC032157). (PX 1, p. 1842)

Petitioner testified that Respondent did not accommodate Petitioner's restrictions and, as a result, he did not return to work as a plumbing foreman for Respondent. (Tr., p. 31)

On July 30, 2018, Petitioner underwent an independent medical examination (IME) pursuant to Section 12 of the Illinois Workers' Compensation Act (Act) with Dr. Edward Goldberg. (RX1) Petitioner told Dr. Goldberg that in 2005, he underwent an anterior cervical discectomy and fusion at C4-C5 and did extremely well up until his work accident in March of 2016. He stated that in November 2016, he had right shoulder surgery and then on May 30, 2017, he had another cervical fusion at C5-C6. He reported that prior to surgery, he had neck pain and right arm radicular pain into his thumb and index finger. Petitioner reported some improvement after the surgery, but still had some slight residual neck pain. Dr. Goldberg noted that Petitioner had a functional capacity evaluation (FCE) in October 2017 and did return to work as a foreman in March 2018. Petitioner indicated that this position involved less lifting. Petitioner told Dr. Goldberg he had a new injury on April 18, 2018, when he was getting into a pickup truck. He stepped onto the truck to get into the cab when he developed posterior neck pain and a burning sensation with some parasthesia into his fourth and fifth digits bilaterally. Petitioner stated that Dr. Hsu had recommended that Petitioner return to work per the original FCE following the March 2016 work accident. As to his symptomatology at the time of the examination, Petitioner reported posterior neck pain and that he rarely had any paresthesias in his upper extremities. On examination, Dr. Goldberg noted cervical flexion, extension and bilateral rotation were 90% normal with minimal pain, normal motor and sensory examination, and reflexes were intact. Dr. Goldberg reviewed a copy of the job description for a Foreman of Wire Pipe Construction and noted that Petitioner had to supervise a crew of skill trades and labor personnel engaged in the construction, maintenance and repair of water mains. Dr. Goldberg noted that no weight limitations were indicated. Dr. Goldberg also reviewed the job description for a plumber, which indicated Petitioner had to lift up to 70 pounds.

Dr. Goldberg diagnosed Petitioner with a cervical strain as a result of the April 18, 2018, work accident. He noted that he had an MRI scan from May 2018 that showed no herniation or stenosis and that Petitioner's objective examination showed he was neurologically intact. Dr. Goldberg felt that the medication and therapy Petitioner received as a result of April 18, 2018, work accident was appropriate, and that no additional injections or surgery was required. Dr. Goldberg opined that Petitioner could return to work pursuant to the original FCE from the March 2016 work accident and felt those restrictions were permanent. Dr. Goldberg felt that Petitioner could work as a foreman, but not as a plumber and placed Petitioner at maximum medical improvement (MMI).

Dr. Goldberg issued an addendum report on July 30, 2018. (RX2) He confirmed that Petitioner had a cervical strain as a result of the April 18, 2018, work accident and opined that Petitioner had permanent restrictions stemming from the March 31, 2016, work accident, and could not work as a plumber, but could work as a foreman. Dr. Goldberg also reiterated that Petitioner was at MMI.

Petitioner testified he attempted to return to work within his previous restrictions, but that Respondent refused to accommodate him or pay temporary total disability benefits. (Tr., p. 30) Following a hearing before the Illinois Workers' Compensation Commission on September 27, 2018, Respondent paid Petitioner the outstanding temporary total disability benefits and allowed Petitioner to return to work. (Tr., pp. 32, 57-58) Petitioner returned to work for Respondent on October 1, 2018, in the foreman plumber position. (Tr., pp. 32-33) Petitioner testified that Respondent also provided him a vehicle into which he would not have to pull himself inside. (Tr., p. 33) Petitioner testified that after he returned to work, he still had neck pain and was referred by Dr. Hsu to Dr. Tyler Koski. (Tr., pp. 33-34)

Petitioner saw Dr. Koski on January 29, 2019. (PX1, p. 1790) Petitioner complained of neck and scapular region pain that would occasionally radiate to his head, more on the right than the left. Dr. Koski noted that Petitioner had a history of two previous anterior cervical discectomies and fusion operations which helped some of his symptoms going down to his hand, but did not alleviate the neck pain. Dr. Koski reviewed Petitioner's cervical MRI and felt Petitioner had degenerative disc disease, but he did not think he had overly significant stenosis. Dr. Koski recommended nonsurgical management as Petitioner was having enough pain that it was impacting his ability to work and perform his overall activities of daily living. Dr. Koski referred Petitioner for physiatry which would consist of injections and therapy. He noted Petitioner had a solid fusion and was structurally stable.

On April 24, 2019, Petitioner saw Dr. Alexander Sheng. (PX1, pp. 1776-1779) Dr. Sheng noted that Petitioner sustained a work-related injury on March 31, 2016, when he caught a heavy pipe that weighed about 750 pounds to prevent it from falling and felt a tearing in his left shoulder and, since then, he had neck pain, upper trapezius pain and periscapular pain with radiation down the right shoulder into the hand and initially into the first and second digits. Dr. Sheng noted that Petitioner had developed new symptoms of radiation down the medial forearm into his fourth and fifth digits and had numbness and paresthesias and neck pain going off the back and inside of the right side of his head from his neck. Dr. Sheng diagnosed Petitioner with chronic neck pain with right radicular features status post cervical fusion and removal of hardware and chronic right shoulder pain and status post labral repair. Dr. Sheng felt that Petitioner had adjacent segment degeneration at both C3-C4 that was likely causing his neck pain with radiation into the head as well as C6-C7 that was causing the right upper extremity radicular feature and continued right shoulder/glenohumeral pain. Dr. Sheng ordered physical therapy and released Petitioner to return to work with the restrictions set forth by Dr. Hsu.

Petitioner underwent physical therapy at Shirley Ryan. (PX5) Petitioner continued to work with his permanent restrictions. (Tr., p. 34)

There are outstanding medical bills from Northwestern Medicine of $1,507.27 for a May 10, 2018, treatment visit and of $505.00 for an April 24, 2019, treatment visit. (PX8)

WITH RESPECT TO ISSUE (J), WERE THE MEDICAL SERVICES THAT WERE PROVIDED TO PETITIONER REASONABLE AND NECESSARY AND HAS RESPONDENT PAID ALL APPROPRIATE CHARGES FOR ALL REASONABLE AND NECESSARY MEDICAL SERVICES, THE ARBITRATOR FINDS AS FOLLOWS:

The Arbitrator notes that Respondent does not dispute the April 18, 2018, work accident nor does it dispute causal connection regarding the April 18, 2018, work accident. The Arbitrator further notes that there are two outstanding medical bills from Petitioner's treatment regarding the April 18, 2018, work accident totaling $2,012.27.

Based on the above, the Arbitrator finds that Respondent is liable for the outstanding medical bills regarding the April 18, 2018, work accident, totaling $2,012.27, pursuant to Sections 8(a) and 8.2 of the Act.

WITH RESPECT TO ISSUE (L), WHAT IS THE NATURE AND EXTENT OF THE INJURY, THE ARBITRATOR FINDS AS FOLLOWS:

Pursuant to Section 8.1b of the Act, the following criteria and factors must be weighed in determining the level of permanent partial disability for accidental injuries occurring on or after September 1, 2011:

(a) A physician licensed to practice medicine in all of its branches preparing a permanent partial disability impairment report shall report the level of impairment in writing. The report shall include an evaluation of medically defined and professionally appropriate measurements of impairment that include, but are not limited to: loss of range of motion; loss of strength; measured atrophy of tissue mass consistent with the injury; and any other measurements that establish the nature and extent of the impairment. The most current edition of the American Medical Association's "Guides to the Evaluation of Permanent Impairment" shall be used by the physician in determining the level of impairment.

(b) In determining the level of permanent partial disability, the Commission shall base its determination on the following factors;

(i) the reported level of impairment pursuant to subsection (a);
(ii) the occupation of the injured employee;
(iii) the age of the employee at the time of the injury;
(iv) the employee's future earning capacity; and
(v) evidence of disability corroborated by the treating medical records. No single enumerated factor shall be the sole determinant of disability. In determining the level of disability, the relevance and weight of any factors used in addition to the level of impairment as reported by the physician must be explained in a written order.

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

With regard to subsection (ii) of Section 8.1b(b), the occupation of the employee, the Arbitrator notes that the record reveals that Petitioner was employed as a foreman plumber at the time of the accident and that he was able to return to work in his prior capacity as a result of said injury. The Arbitrator gives this factor substantial weight.

With regard to subsection (iii) of Section 8.1b(b), the Arbitrator notes that Petitioner was 46 years old at the time of the accident. The Arbitrator gives this factor some weight.

With regard to subsection (iv) of Section 8.1b(b), Petitioner's future earnings capacity, the Arbitrator notes that no evidence was provided indicating that Petitioner's future earning capacity was negatively affected by the April 18, 2018, work accident. The Arbitrator gives this factor considerable weight.

With regard to subsection (v) of Section 8.1b(b), evidence of disability corroborated by the treating medical records, the Arbitrator notes Petitioner was diagnosed with a cervical strain as a result of the April 18, 2018, work accident and was ultimately released to return to work in his prior capacity as a foreman plumber with the restrictions in place from the March 31, 2016, work accident. The Arbitrator gives this factor substantial weight.

Based on the above factors, and the record taken as a whole, the Arbitrator finds that Petitioner sustained permanent partial disability to the extent of 5% loss of use of the person as a whole pursuant to Section 8(d)2 of the Act.

WITH RESPECT TO ISSUE (M), SHOULD PENALTIES BE IMPOSED UPON THE RESPONDENT, THE ARBITRATOR FINDS AS FOLLOWS:

Section19(k) of the Illinois Workers' Compensation Act states that "(i)n cases where there has been any unreasonable or intentional underpayment of compensation, or proceedings have been instituted or carried on by the one liable to pay the compensation, which do not present a real controversy, but are merely frivolous or for delay, then the Commission may award compensation additional to that otherwise payable under this Act equal to 50% of the amount payable at the time of such award."

Section 19(l) of the Act states that "(i)f the employee has made written demand for payment of benefits under Section 8(a) or Section 8(b), the employer shall have 14 days after receipt of the demand to set forth in writing the reason for the delay. In case the employer or his or her insurance carrier shall without good and just cause fail, neglect, refuse or unreasonably delay the payment of benefits under Section 8(a) or Section 8(b), the Arbitrator or the Commission shall allow to the employee additional compensation in the sum of $30.00 per day for each day that the benefits under Section 8(a) or Section 8(b) have been so withheld or refused, not to exceed $10,000.00. A delay in payment of 14 days or more shall create a rebuttable presumption of unreasonable delay.

Section 16 of the Act states that "(w)henever the Commission shall find that the employer, his or her agent, service company or insurance carrier has been guilty of delay or unfairness towards an employee in the adjustment, settlement or payment of benefits due such employee within the purview of paragraph (c) of Section 4 of this Act; or has been guilty of unreasonable or vexatious delay, intentional under-payment of compensation benefits, or has engaged in frivolous defenses which do not present a real controversy, within the purview of the provisions of paragraph (k) of Section 19 of this Act, the Commission may assess all or any part of the attorney's fees and costs against such employer and his or her insurance carrier.

The Arbitrator notes that Dr. Hsu took Petitioner off work on April 23, 2018, following the April 18, 2018, work accident. Dr. Hsu then released Petitioner to return to work with his prior permanent restrictions on June 25, 2018. The Arbitrator also notes that at the July 30, 2018, IME and in his addendum report, also dated July 30, 2018, Dr. Goldberg found that Petitioner was at MMI and could return to work as a foreman plumber with his prior permanent restrictions. Despite this, Respondent did not allow Petitioner to return to work in is

prior position which fell within his permanent restrictions or accommodate Petitioner's restrictions. Nor did Respondent pay Petitioner temporary total disability benefits after its failure to accommodate Petitioner's restrictions or allow him to return to work in his position as a foreman plumber. The Arbitrator further notes that Respondent stipulated that Petitioner is entitled to temporary total disability benefits from April 18, 2019, through September 27, 2018.

For purposes of assessment of penalties and fees, Respondent bears the burden to show that it had a reasonable belief that the delay in paying Petitioner his benefits was justifiable. *Gallegos v. Rollex Corp.*, 03 IIC 0173 (Mar. 10, 2003). The employer must show that the facts in its possession would lead a reasonable person to believe the employee is not entitled to prevail under the Act. *Cook County v. Indus. Comm'n*, 160 Ill.App.3d 825, 830 (1st Dist. 1987).

The Arbitrator finds that Respondent has failed to put forth any evidence to justify its failure to provide temporary total disability benefits following the undisputed work accident on April 18, 2018, Dr. Hsu's order taking Petitioner off work on April 23, 2018, Dr. Hsu's and Dr. Goldberg's releases for Petitioner to return to work with Petitioner's prior permanent restrictions and Respondent's failure to adhere to those opinions and accommodate Petitioner's restrictions by allowing him to return to work in his capacity as a foreman plumber.

Based on the above, the Arbitrator finds Respondent's failure to provide temporary total disability under the Act to be vexatious and unreasonable and orders that Respondent shall pay $16,665.46 in penalties as provided in Section 19(k) of the Act, $10,000 pursuant to Section 19(l), and $6,666.18 in attorney's fees pursuant to Section 16 of the Act.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC010216
Case Name	Jesus Aleman v. City of Chicago
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Petitioner Attorney	Kevin Veugeler
Respondent Attorney	Michael Manseau

DATE FILED: 8/2/2024

/s/ Raychel Wesley, Commissioner

Signature

STATE OF ILLINOIS)	☐ Affirm and adopt (no changes)	☐ Injured Workers' Benefit Fund (§4(d))
) SS.	☐ Affirm with changes	☐ Rate Adjustment Fund (§8(g))
COUNTY OF COOK)	☐ Reverse	☐ Second Injury Fund (§8(e)18)
		☐ PTD/Fatal denied
	☒ Modify Permanent Disability, Penalties & Fees	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

JESUS ALEMAN,

Petitioner,

vs. NO: 21 WC 10216

CITY OF CHICAGO,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by both the Respondent and Petitioner herein and notice given to all parties, the Commission, after considering the issues of nature and extent, credit for temporary total disability benefits paid, §19(k) penalties, §19(l) penalties, and §16 attorney fees, and being advised of the facts and law, modifies the Decision of the Arbitrator as stated below and otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

FINDINGS OF FACT

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

CONCLUSIONS OF LAW

A. Nature and Extent

The Commission affirms the arbitrator's award of a wage differential with respect to the instant accident. However, we modify the award to accurate reflect the calculation of the requisite benefits.

Lisa Byrne, a vocational rehabilitation counselor, met with Petitioner on January 20, 2022 for an evaluation. In a February 7, 2022 report, she opined that, in accordance with the March 29, 2021 Functional Capacity Evaluation ("FCE"), Petitioner had lost access to his career in the plumbing field

and its wages of $62.45/hour[1]. She added that, given Petitioner's transferable skills, his current job and $15.00/hour wage as a home security consultant is appropriate, and is likely his maximum earning potential. The Act states that a wage differential award is calculated by awarding 66-2/3% of the difference between what the claimant could currently earn in the full performance of his duties and the amount he is able to earn in some suitable employment after the accident. *820 ILCS 305/8(d)(1)*. The arbitrator used $63.37/hour for the wages Petitioner could currently earn in the full performance of his duties. However, based on the records and testimony of Ms. Byrne, we find this to be a likely scrivener's error. Accordingly, upon correcting this error, the Commission finds that the appropriate calculation for wage differential benefits is 66-2/3% of the difference between $63.45/hour and $15.00/hour, or $32.30/hour. Petitioner works a 40-hour week, thus his wage differential benefit equals $1,292.00/week, in contrast to the $1,289.86/week calculated by the arbitrator. Further, we correct the scrivener's error which awarded wage differential benefits beginning January 3, 2021. We note that this start date should read January 2, 2022. The parties stipulated to this start date for such benefits on the Request for Hearing form.

B. Penalties & Fees

In affirming and modifying the arbitrator's award of §19(k) penalties, §19(l) penalties, and §16 attorney fees, we reject Respondent's argument that temporary total disability ("TTD") benefits were not at issue at trial, and that penalties and fees should not be awarded on benefits that were ultimately paid prior to trial. As noted in consolidated case No. 18 WC 18111, although the payment of benefits were eventually made, the payment was still delayed. The employer must establish it acted in an objectively reasonable manner in denying benefits under all of the existing circumstances. *Board of Education of the City of Chicago v. Industrial Commission*, 93 Ill. 2d 1, 9-10 (1982). Additionally, penalties and fees were clearly marked as an issue on the Request for Hearing form for this case. Considering Respondent's stipulation to accident, notice, and causation, we find no reasonable justification for Respondent's delay in paying these benefits—which total $15,952.73—from October 18, 2021 until April 25, 2022. Accordingly, we affirm the arbitrator's awards for §19(k) penalties of $7,976.37, and §16 attorney fees of $3,190.55. However, we modify the award for §19(l) penalties, noting that the delay in payment was 190 days (October 18, 2021 through April 25, 2022). Accordingly, we find that the award for §19(l) penalties should be modified to $5,700.00.

All else is affirmed.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed April 25, 2023, as modified and corrected above, is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent is liable for all reasonable and necessary medical expenses related to the instant accident. Respondent has paid all such expenses.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $1,469.33 per week for a period of 44 & 3/7ths weeks, representing February 25, 2021 through

[1] In her trial testimony, Ms. Byrne acknowledged this was a typographical error, and that the true wage at the time of her evaluation was $63.45. *Transcript, p.88*.

January 1, 2022, that being the period of temporary total incapacity for work under §8(b) of the Act. Respondent shall have a credit of $110,966.88 for TTD benefits already paid.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $1,292.00 per week for wage differential benefits commencing on January 2, 2022, and continuing until Petitioner reaches the age of 67 or five (5) years from the date the award becomes final, whichever is later, as provided in §8(d)1 of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner §19(k) penalties in the amount of $7,976.37.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner §19(l) penalties in the amount of $5,700.00.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner §16 attorney fees in the amount of $3,190.55.

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

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

No bond is required for removal of this cause to the Circuit Court. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

August 2, 2024

/s/ *Raychel A. Wesley*

RAW/wde

O: 6/5/24

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/s/ *Stephen J. Mathis*

/s/ *Deborah L. Simpson*

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC010216
Case Name	Jesus Aleman v. City of Chicago
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	8
Decision Issued By	Elaine Llerena, Arbitrator

Petitioner Attorney	Kevin Veugeler
Respondent Attorney	Michael Manseau

DATE FILED: 4/25/2023

THE INTEREST RATE FOR THE WEEK OF APRIL 25, 2023 4.84%

/s/Elaine Llerena, Arbitrator

Signature

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Jesus Aleman
Employee/Petitioner
v.
City of Chicago
Employer/Respondent

Case # **21** WC **010216**

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

DISPUTED ISSUES

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

FINDINGS

On **February 15, 2021**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $**114,608.00**; the average weekly wage was $**2,204.00**.

On the date of accident, Petitioner was **49** years of age, ***married*** with **2** dependent children.

Respondent shall be given a credit of $**110,966.88** for TTD, $**0** for TPD, $**0** for maintenance, and $**0** for other benefits, for a total credit of $**0**.

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

ORDER

Respondent shall pay Petitioner temporary total disability benefits of $1,469.33 per week for 44-3/7 weeks, commencing February 25, 2021, through January 1, 2022, as provided in Section 8(b) of the Act. Respondent shall be given a credit of $110,966.88 for temporary total disability benefits that have been paid.

Respondent shall pay Petitioner permanent partial disability benefits, commencing January 3, 2021, of $1,289.86 per week for the duration of the disability, because the injuries sustained caused a loss of earnings, as provided in Section 8(d)1 of the Act.

Respondent shall pay to Petitioner penalties of $7,976.37, as provided in Section 19(k) of the Act; $10,000.00, as provided in Section 19(1) of the Act; and $3,190.55, as provided in Section 16 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.

Elaine Llerena
Signature of Arbitrator

APRIL 25, 2023

STATEMENT OF FACTS

Petitioner testified that on February 15, 2021, he was working for Respondent during a snowstorm. (Tr., pp. 38-39) He testified that he was going back and forth between two job locations, but the traffic was horrendous. (Tr., pp. 39-40) Petitioner testified he was driving a truck in which it felt like he was riding a rollercoaster with the snow and potholes. (Tr., p. 40) As a result, Petitioner started feeling recurrent pain in his neck. (Tr., pp. 40-41) Petitioner testified he was ultimately directed by Respondent to Concentra. (Tr., p. 41)

On February 25, 2021, Petitioner was seen at Concentra by Dr. Lidia Nelkovski. (PX6) Petitioner complained of neck pain and reported a work-related injury that occurred on February 15, 2021. He claimed he was in a new district that required different company driving. Petitioner explained that the suspension on the truck was not the best and there was a lot of uneven ground that he had to drive over, including a parking lot. He stated he became progressively worse throughout the day and started having some pain to the right side of the neck due to repetitive jarring. The neck pain progressed over the week as Petitioner continued to drive the same vehicle and perform the same duties. Dr. Nelkovski diagnosed Petitioner with a cervical strain and prescribed pain medication. Dr. Nelkovski also placed light duty restrictions on Petitioner.

Petitioner saw Dr. Wellington Hsu on March 1, 2021. (PX1) Dr. Hsu noted that Petitioner had been back to work for the last year with the restrictions provided by the functional capacity evaluation (FCE) previously performed following a prior work-related injury. Petitioner stated that he had trouble on uneven terrain while driving and reported axial neck pain without radicular symptoms. Dr. Hsu ordered a new FCE.

On March 29, 2021, Petitioner underwent an FCE at ATI Physical Therapy. (PX7) According to the FCE, Petitioner demonstrated the capability of occasionally lifting 21.4 pounds above the shoulder level, 30.2 pounds occasionally from the desk to chair level, 32.4 pounds occasionally from the chair to floor level and occasionally lifting 22 pounds bilaterally. Petitioner told the therapist that he had to drive to and from multiple job sites and indicated that he was driving on uneven terrain. He also indicated he would have to get in and out of pickup trucks to inspect equipment and materials. Petitioner reported reviewing job site plans with plumbers and crew members and stated that he had to stand for up to two hours a day, walk up to two hours and drive up to eight hours a day depending on the job and the weather. He reported he had to lift 25 pounds and was he was required to bend/stoop, squat/crouch, kneel, climb ladders/stairs and reach forward while also pushing and pulling objects. Petitioner demonstrated the ability to work at the light to medium physical demand level. The therapist noted that a copy of the plumber foreman job description was not received, but it was medium physical demand level.

Petitioner saw Dr. Hsu for the final time on April 12, 2021, to review the FCE results. (PX1) Dr. Hsu recommended some physical therapy for the cervical region and released Petitioner to return to work with light duty restrictions per the FCE.

Petitioner testified Respondent could not accommodated his restrictions and eventually initiated vocational rehabilitation. (Tr., p. 43)

Natasha Charleston issued an initial vocational report, dated October 15, 2021. (RX6) Ms. Charleston noted that noted that Petitioner had an associate's degree in electronics, along with plumbing certifications, had completed a plumbing apprenticeship and was a member of Local 130. Ms. Charleston also noted that Petitioner had been employed as a plumber since 1992, but was open to a new career field. She noted Petitioner was earning $55.95 as a foreman of plumbers and that as a foreman, Petitioner would take attendance, check equipment, order materials, check permits, and drive from site to site on very bumpy roads. Ms. Charleston completed a transferable skills analysis utilizing Petitioner's plumbing and electrical education and noted that

Petitioner had the ability to use tools, read blueprints, follow direction, supervise others, work independently and the ability to learn new skills. Ms. Charleston determined that Petitioner could return to light duty work in accordance with his FCE restrictions and that he could work as a quality inspector, order clerk, or as a customer service or sales representative. Ms. Charleston found that Petitioner lacked job seeking skills to locate employment and would be a candidate for job seeking skills training.

Petitioner testified that no further vocational rehabilitation services were provided to him after his initial meeting with Coventry, although he was able to find a job on his own through his own job search. (Tr., p. 44) He testified he began a new job with Universal Security Services on January 3, 2021. (Tr., pp. 44-45) He testified that this company is a home and commercial security provider that provides monitoring services. He testified he works as a security consultant, which involves designing monitoring systems based upon a customer's needs. (Tr., p. 45) Petitioner testified that this job is within his restrictions and that there is not much lifting over 5 pounds. (Tr., pp. 45-46, 67) Petitioner earns $15.00 an hour and works a 40-hour workweek. (Tr., p. 46)

On January 20, 2022, Petitioner attended a vocational interview with Lisa Byrne. (PX9) Ms. Byrne authored a report, dated February 7, 2022, where she opined that Petitioner had lost access to his previous career in the plumbing field and the wages of this field, which were $62.45 an hour at the time he left. She noted that this was a reduction of $47.45 an hour, based upon his current hourly rate of $15.00 an hour. However, she noted that Petitioner was able to independently secure alternative employment utilizing his blueprint reading skills to draw alarm system schematics for a local security company near his home.

On May 20, 2022, Petitioner underwent an independent medical examination (IME) with Dr. Edward Goldberg pursuant to Section 12 of the Act at Respondent's request. (RX3) In his report, Dr. addressed three different work-related accidents which occurred on April 18, 2018, June 10, 2019, and February 15, 2021, respectively. Regarding the February 15, 2021, work accident, Dr. Goldberg noted that Petitioner drove over uneven ground, resulting in in increased neck pain radiating into the shoulder with occasional abnormal sensation into the right upper extremity. Dr. Goldberg reviewed the updated records, including the most recent FCE. Dr. Goldberg opined that the February 15, 2021, work accident exacerbated the cervical strain he suffered on April 18, 2018, and causally connected the cervical strain to Petitioner's subsequent work injuries. Dr. Goldberg felt that the treatment Petitioner received for the three injuries was reasonable, necessary and causally related and did not believe Petitioner needed any additional medical treatment. He indicated Petitioner could continue to take Tylenol or an over-the-counter anti-inflammatory. Dr. Goldberg opined Petitioner could not work as a foreman based on the results of the FCE and that Petitioner's present employment was reasonable. Dr. Goldberg placed petitioner at maximum medical improvement (MMI) for the three work-related injuries.

Ms. Byrne testified on behalf of Petitioner at the August 22, 2022, hearing. She testified that Petitioner has suffered a loss of earning potential and that his current position was appropriate given his transferrable skills. (Tr., pp. 78-79). Ms. Byrne explained that Petitioner's current job reflects his maximum earning potential at this time and was actually a little bit higher than what some of the other vocational rehabilitation counselors had suggested. (Tr., p. 79) On cross-examination, Ms. Byrne testified that there was a typo in her report and that Petitioner would be earning $63.45 an hour as a second shift foreman of plumbers. (Tr., p. 88)

Petitioner testified he still has constant stiffness and pain in the neck that affects him at night. (Tr., pp. 48-49) He testified he wakes up with numb arms and hands. (Tr., p. 49) Petitioner takes Tylenol or Advil, which temporarily alleviates his symptoms. (Tr., p. 50)

Petitioner testified he was eventually paid outstanding temporary total disability benefits from October 18, 2021, through January 2, 2022, on April 25, 2022, and that no temporary total disability is owed. (Tr., pp.

46-47) He further testified that Respondent paid a lump sum of wage differential benefits in the amount of $17,262.04, for the period of January 3, 2022, through April 25, 2022, but explained this was an underpayment because Respondent was using the 2016 pay rate for plumbers instead of the foreman's wage. (Tr., pp. 47-48) Petitioner testified that he has been receiving $2,510.76 in wage differential benefits since April 26, 2022, every two weeks. (Tr., p. 48)

Petitioner testified second shift foremen working for Respondent currently earn $66.34 an hour, which would be his hourly rate if he had continued working that position. (Tr., pp. 50-51)

Petitioner testified his paystubs from his current employer reflect that he is currently earning $15.00 an hour. (Tr., p. 51; PX10)

The medical records and medical bills entered into evidence do not show any outstanding medical bills regarding the February 15, 2021, work accident.

WITH RESPECT TO ISSUE (J), WERE THE MEDICAL SERVICES THAT WERE PROVIDED TO PETITIONER REASONABLE AND NECESSARY AND HAS RESPONDENT PAID ALL APPROPRIATE CHARGES FOR ALL REASONABLE AND NECESSARY MEDICAL SERVICES, THE ARBITRATOR FINDS AS FOLLOWS:

The Arbitrator notes that Dr. Goldberg found that the treatment Petitioner received regarding the February 15, 2021, work accident was reasonable and necessary. The Arbitrator further notes that the medical bills entered into evidence do not show any outstanding medical expenses regarding the February 15, 2021, work accident.

Based on the above, the Arbitrator finds that the medical services provided to Petitioner regarding the February 15, 2021, work accident were reasonable and necessary and Respondent is liable for payment of all those medical services. The Arbitrator further finds that all medical expenses regarding the February 15, 2021, work accident have been paid as there are no outstanding medical expenses regarding the February 15, 2021, work accident.

WITH RESPECT TO ISSUE (K), WHAT AMOUNT OF COMPENSATION IS DUE FOR TEMPORARY TOTAL DISABILITY, TEMPORARY PARTIAL DISABILITY AND/OR MAINTENANCE, THE ARBITRATOR FINDS AS FOLLOWS:

The Arbitrator notes that the parties stipulated that Petitioner is entitled to temporary total disability benefits from February 25, 2021, through January 1, 2022, and wage differential benefits from January 2, 2022, through August 22, 2022. The parties also stipulated that Respondent has paid $110,966.88 in temporary total disability benefits and is allowed a credit for that amount. The Arbitrator also notes that Petitioner testified that he has been brought current on his temporary total disability benefits.

Based on the above, the Arbitrator finds that Petitioner is entitled to temporary total disability benefits from February 25, 2021, through January 1, 2022. The Arbitrator also finds that Petitioner has been paid all temporary total disability benefits due and owing. The Arbitrator further finds that Respondent is entitled to a credit for the $110,966.88 paid in temporary total disability benefits.

WITH RESPECT TO ISSUE (L), WHAT IS THE NATURE AND EXTENT OF THE INJURY, THE ARBITRATOR FINDS AS FOLLOWS:

Pursuant to Section 8(d)1, if an employee has become partially incapacitated from pursuing his usual and customary line of employment, he shall receive 66-2/3% of the difference between what he could earn in the full performance of his duties in the occupation in which he was engaged at the time of his accident and the amount he is earning or is able to earn in some suitable employment after the accident. 820 ILCS 305/8(d)1.

The purpose of a wage differential award under Section 8(d)1 is to compensate an injured employee for reduced earning capacity. *Dawson v. Illinois Workers' Compensation Commission*, 382 Ill. App. 3d 581, 888 N.E.2d 135 (5th Dis. 2008). The Illinois Supreme Court has expressed a preference for the entry of wage differential awards under Section 8(d)1. *Gallianetti v. Illinois Industrial Commission*, 315 Ill. App. 3d 721, 734 N.E.2d 482, (3rd Dist. 2000).

In the case at bar, the Arbitrator finds that Petitioner is precluded from working in the full performance of his occupation as a foreman plumber.

The Arbitrator notes that Ms. Byrne testified that given Petitioner's age, work history, education, and permanent restrictions, Petitioner's maximum earning capacity is $15.00 an hour. Respondent did not offer any testimony to rebut Ms. Byrne's vocational analysis. The current wage of a second shift plumber foreman is $63.37 per hour. The Arbitrator finds that Petitioner's earning capacity has been diminished as a result of his work-related injuries to his neck.

Based on the above, the Arbitrator finds that Petitioner is entitled to wage differential benefits pursuant to Section 8(d)1 in the amount of $1,289.86 per week commencing on January 3, 2021, when Petitioner returned to work, based on 66 2/3% difference of the February 2021 wage of a second shift foreman plumber with Respondent of $63.37 per hour, and Petitioner's current wage of $15.00 per hour.

WITH RESPECT TO ISSUE (M), SHOULD PENALTIES BE IMPOSED UPON THE RESPONDENT, THE ARBITRATOR FINDS AS FOLLOWS:

Section 19(k) of the Illinois Workers' Compensation Act states that "(i)n cases where there has been any unreasonable or intentional underpayment of compensation, or proceedings have been instituted or carried on by the one liable to pay the compensation, which do not present a real controversy, but are merely frivolous or for delay, then the Commission may award compensation additional to that otherwise payable under this Act equal to 50% of the amount payable at the time of such award."

Section 19(l) of the Act states that "(i)f the employee has made written demand for payment of benefits under Section 8(a) or Section 8(b), the employer shall have 14 days after receipt of the demand to set forth in writing the reason for the delay. In case the employer or his or her insurance carrier shall without good and just cause fail, neglect, refuse or unreasonably delay the payment of benefits under Section 8(a) or Section 8(b), the Arbitrator or the Commission shall allow to the employee additional compensation in the sum of $30.00 per day for each day that the benefits under Section 8(a) or Section 8(b) have been so withheld or refused, not to exceed $10,000.00. A delay in payment of 14 days or more shall create a rebuttable presumption of unreasonable delay.

Section 16 of the Act states that "(w)henever the Commission shall find that the employer, his or her agent, service company or insurance carrier has been guilty of delay or unfairness towards an employee in the adjustment, settlement or payment of benefits due such employee within the purview of paragraph (c) of Section 4 of this Act; or has been guilty of unreasonable or vexatious delay, intentional under-payment of compensation benefits, or has engaged in frivolous defenses which do not present a real controversy, within the

purview of the provisions of paragraph (k) of Section 19 of this Act, the Commission may assess all or any part of the attorney's fees and costs against such employer and his or her insurance carrier.

For purposes of assessment of penalties and fees, Respondent bears the burden to show that it had a reasonable belief that the delay in paying Petitioner his benefits was justifiable. *Gallegos v. Rollex Corp.*, 03 IIC 0173 (Mar. 10, 2003). The employer must show that the facts in its possession would lead a reasonable person to believe the employee is not entitled to prevail under the Act. *Cook County v. Indus. Comm'n*, 160 Ill.App.3d 825, 830 (1st Dist. 1987).

The Arbitrator notes that Petitioner's temporary total disability benefits were terminated from October 18, 2021, through January 1, 2022. There is nothing in the record justifying the termination of benefits during that period. On the contrary, Dr. Goldberg found that Petitioner's condition was causally related to the work accident and that his treatment had been reasonable and necessary.

Based on the above, the Arbitrator finds Respondent's decision to terminate temporary total disability benefits without justification to be vexatious and unreasonable and orders that Respondent shall pay $7,976.37 (50% of $15,952.73--the temporary total disability benefits from October 18, 2021, through January 1, 2022) in penalties as provided in Section 19(k) of the Act, $10,000 pursuant to Section 19(l), and $3,190.55 (20% of $15,952.73) in attorney's fees pursuant to Section 16 of the Act.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	20WC012136
Case Name	Delfina Garcia Monarrez v. RHM Staffing Solutions
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	24IWCC0367
Number of Pages of Decision	16
Decision Issued By	Raychel Wesley, Commissioner

Petitioner Attorney	Jay Johnson
Respondent Attorney	Tina DiBenedetto

DATE FILED: 8/2/2024

/s/ Raychel Wesley, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF KANE)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

DELFINA GARCIA MONARREZ,

Petitioner,

vs. NO: 20 WC 12136

RHM STAFFING,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by Respondent herein and notice given to all parties, the Commission, after considering the issues of whether Petitioner sustained an accidental injury arising out of her employment on February 25, 2020, entitlement to temporary disability benefits, entitlement to medical expenses, and the nature and extent of Petitioner's permanent disability, and being advised of the facts and law, amends the Decision of the Arbitrator as stated below, but otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

CONCLUSIONS OF LAW

I. Accident

The Arbitrator found Petitioner's accident arose out of her employment. The Commission reaches the same conclusion, however our analysis differs. The Commission finds the outcome of the employment risk analysis is dispositive.

There are three categories of risk to which an employee may be exposed: (1) risks that are distinctly associated with one's employment, (2) risks that are personal to the employee, such as idiopathic falls, and (3) neutral risks that have no particular employment or personal characteristics, such as those to which the general public is commonly exposed. *Springfield Urban*

League v. Illinois Workers' Compensation Commission, 2013 IL App (4th) 120219WC, ¶ 27. The first task in determining whether the injury arose out of the claimant's employment is to categorize the risk to which the claimant was exposed in light of the Commission's factual findings regarding the mechanism of the injury. *First Cash Financial Services v. Industrial Commission*, 367 Ill. App. 3d 102, 105 (2006). The mechanism of injury herein is Petitioner was seated on an armless, tall, wheeled-chair that, per Petitioner's unrebutted testimony, was unbalanced and rocked from side to side. T. 12-14, 16, 73. As Petitioner reached out to the cart on her right, the unsteady seat tipped and the chair skidded from under her, dropping Petitioner toward the floor; Petitioner attempted to stop her fall with her right foot and sustained a serious injury to her right ankle. T. 17-18. The Commission observes the accident histories are consistent and uniformly reflect that the employer-provided chair tipped and collapsed from underneath Petitioner:

> **February 25, 2020 Incident Report**: "Turned right in the chair (while sitting) and the chair tipped to the right and she fell off the chair" (RX2);
>
> **February 25, 2020 Physicians Immediate Care**:
> **Triage Notes** – "[patient] states that she was reaching for something while sitting down and the chair she was sitting in started to tip over so she put her right leg out to try to stop her from falling and she rolled her right ankle out and fell to the ground";
>
> **History of Present Illness** – patient has worked as an assembler at Control Solutions for 8 months and "was sitting in her chair when it started to fall to the [right]. She attempted to stop her fall by sticking her [right] leg out but instead she rolled her [right] ankle (PX1);
>
> **February 27, 2020 First Report of Injury**: "[Employee] was sitting in a chair, she turned to the right and chair became unbalanced. [Employee] fell off chair and hit R ankle on the floor" (RX1);
>
> **March 13, 2020 Dr. John Reilly, Pre-Op H&P**: "51YO female who presented to my office March 5 with right ankle pain. She states she was at work when she was on a chair, the chair started to fall, and she fell with it, twisting her right ankle" (PX2); and
>
> **May 4, 2020 Athletico Physical Therapy Evaluation**: "She was sitting in her chair, went to turn to the right and fell down to her right side. She believes she fell because the chair was loose which caused it to tip" (PX4). (Emphases added).

The Commission concludes a wheeled-chair with an unstable seat constitutes a hazard, and it is well-established that a hazard on the employer's premises is to be categorized as a risk distinctly associated with the employment:

> The presence of a "hazardous condition" on the employer's premises renders the risk of injury a risk incidental to employment; accordingly, a claimant who is injured by such a hazardous condition may recover benefits without having to

> prove that she was exposed to the risk of that hazard to a greater extent than are members of the general public. *Dukich v. Illinois Workers' Compensation Commission*, 2017 IL App (2d) 160351WC, ¶ 40 (Emphasis added).

See also McAllister v. Illinois Workers' Compensation Commission, 2020 IL 124848, ¶ 40 (Examples of employment-related risks include a defective condition at the employer's premises.)

The Commission finds Petitioner's fall was caused by the faulty chair Respondent provided to her; as Petitioner's injury resulted from a risk distinctly associated with her employment, Petitioner's accident arose out of her employment. Having concluded Petitioner's injury resulted from an employment risk, there is no need for a neutral risk analysis. *See Young v. Illinois Workers' Compensation Commission*, 2014 IL App (4th) 130392WC, ¶ 23 ("When a claimant is injured due to an employment-related risk *** it is unnecessary to perform a neutral-risk analysis to determine whether the claimant was exposed to a risk of injury to a greater degree than the general public.") As such, the Commission strikes the first full paragraph on page 5 from the Decision.

II. Corrections

1 – The Commission observes the Decision does not identify the Temporary Total Disability benefit rate. The Commission inserts the following language after the last sentence of the third paragraph on page 6: "Petitioner's average weekly wage of $400.00 yields a Temporary Total Disability rate of $266.67."

2 – The Commission observes the Decision does not identify the Permanent Partial Disability benefit rate. The Commission inserts the following language after the third paragraph on page 8:

> Petitioner's average weekly wage of $400.00 yields a Permanent Partial Disability rate of $240.00, which falls below the minimum as calculated pursuant to §8(b)2.1. *820 ILCS 305/8(b)2.1*. As the statutory minimum benefit rate for a single claimant with no dependents on Petitioner's date of accident is $266.67, the Commission finds Petitioner is entitled to PPD benefits of $266.67 per week for 58.45 weeks, representing 35% loss of use of the right foot.

All else is affirmed.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed May 31, 2023, as amended above, is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $266.67 per week for a period of 32 2/7 weeks, representing February 26, 2020 through October 8, 2020, that being the period of temporary total incapacity for work under §8(b) of the Act.

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

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $266.67 per week for a period of 58.45 weeks, as provided in §8(e)11 of the Act, for the reason that the injuries sustained caused the 35% loss of use of the right foot.

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

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

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $70,700.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

August 2, 2024

/s/ *Raychel A. Wesley*

RAW/mck

O: 6/5/24

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/s/ *Stephen J. Mathis*

/s/ *Deborah L. Simpson*

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	20WC012136
Case Name	Delfina Garcia Monarrez v. RHM Staffing Solutions
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	11
Decision Issued By	Frank Soto, Arbitrator

Petitioner Attorney	Jay Johnson
Respondent Attorney	Blake Lynch

DATE FILED: 5/31/2023

/s/Frank Soto, Arbitrator

Signature

THE INTEREST RATE FOR THE WEEK OF MAY 31, 2023 5.29%

STATE OF ILLINOIS)
)SS.
COUNTY OF KANE)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Delfina Garcia Monarrez Case # **20** WC **12136**
Employee/Petitioner

v.

RHM Staffing
Employer/Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Frank Soto**, Arbitrator of the Commission, in the city of **Geneva**, on **March 28, 2023**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On **February 25, 2020** Respondent ***was*** operating under and subject to the provisions of the Act.

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

Petitioner ***did*** sustain an accident that arose out of and in the course of employment for the February 25, 2020 injury.

Timely notice of the February 25, 2020 accident ***was*** given to Respondent.

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

In the 52 weeks preceding the injury, Petitioner's average weekly wage was **$400.00**.

On the first date of accident, Petitioner was **51** years of age, ***single*** with **zero** dependent children.

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 for medical benefits under Section 8(j) of the Act, for a total credit of $0.

ORDER

Medical Benefits

Respondent shall pay to Petitioner for the medical expenses identified in Petitioner's Exhibit number 5 pursuant to Sections 8(2) and 8(a) of the Act subject to the fee schedule, as set forth in the Conclusions of Law attached hereto;

Temporary Disability Benefits

Respondent shall pay Petitioner temporary total disability benefits for 32 2/7th weeks commencing February 26, 2020 through October 8, 2020, as provided in Section 8(b) of the Act, as set forth in the Conclusions of Law attached hereto;

Disability

Respondent shall pay Petitioner 58.45 weeks of compensation because Petitioner sustained permanent partial disability to the extent of 35% loss of use of a right foot pursuant to Section 8(e)11 of the Act, as set forth in the Conclusions of Law attached hereto;

Respondent shall pay Petitioner compensation that has accrued from February 25, 2020 through March 28, 2023 and shall pay the remainder of the award, if any, in weekly payments.

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

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

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

May 31, 2023

Procedural History

This case proceeded to trial on March 38, 2023. The disputed issues are whether Petitioner sustained an accidental injury that arose out of and in the course of employment, whether Petitioner's current condition of ill-being is causally connected to an injury, whether Respondent is liable for medical bills, whether Petitioner is entitled to TTD benefits and the nature and extent of Petitioner's injuries. (Arb. Ex. #1).

Findings of Facts

Delfina Garcia Monarrez (hereafter referred to as "Petitioner") testified she is employed by RHM Staffing Solutions (hereinafter referred to as "Respondent"), a staffing agency. (T. 10). Petitioner testified on February 25, 2020, she was working at Control Solutions assembling cables. (T. 11). Petitioner testified she performs her duties at a table sitting on a chair with 4 wheels. (T. 12). Petitioner testified the chairs are tall coming up to her hip. (T. 12, 13). Petitioner testified the chairs have a round metal circle which she places her feet while working. (T. 15). Petitioner testified the chairs rock to the left and right. (T. 16, 17). Petitioner testified a cart is located on her right side which contained parts she uses. (T. 15).

Petitioner testified, on February 25, 2020, she was sitting on the chair and when she was reaching for a cable from the cart on her right, the chair "skirted" causing her to "lunge" forward falling to the ground. Petitioner testified she was reaching for a cable when she started to fall. (T. 36). Petitioner testified she the cable was in her hand when she fell. (T. 39). (T. 17). Petitioner testified as she was falling, she tried to brace herself from falling but her feet were on the ring of the chair. (T. 17). Petitioner testified she struck her right ankle on the ground. (T. 18). Petitioner testified to feeling significant pain and crying after striking the ground. (T. 18). Petitioner was taken to an office and staff called her husband who picked her up and took her to Respondent's medical clinic, Physicians Immediate Care. (T. 19). Petitioner testified accident reports were filled out which she signed them but did not fill out. (T. 44). Petitioner testified she is only able to read some English. (T. 81).

The history Petitioner provided at Physicians Immediate Care on February 25, 2020 states "*Patient has worked as an assembler at Control Solutions for 3 months and was sitting in her chair when it started to fall to the R. She attempted to stop her fall by sticking her R leg out but instead she rolled her R ankle. She landed on her R side…*". (Px. 1). At that time Petitioner reported numbness/tingling beginning approximately 2 hours ago with rapid onset located over the right ankle. The exam noted tenderness of distal lower extremity, swelling over right ankle, swelling over lateral malleolus, swelling over medial malleolus, tenderness over the ankle, tenderness over lateral malleolus, and tenderness over the medical

malleolus. X-rays taken showed a non-displaced bimalleolar fracture of the right lower leg. Petitioner was taken off work and referred to an orthopedic surgeon. (Px. 1).

On March 5, 2020, Petitioner presented to Dr. John Reilly an orthopedic surgeon. At that time, Petitioner reported being on a chair at work which started to fall causing her to fall twisting her right ankle. Dr. Reilly indicated the x-rays showed a bimalleolar ankle fracture with some displacement that needed correction. Dr. Reilly noted bruising and swelling about the ankle in addition to tenderness medially and laterally. Dr. Reilly recommended a right ankle open reduction and internal fixation of the bimalleolar ankle fracture. (Px. 2). On March 13, 2020 Dr. Reilly performed the right ankle bimalleolar fracture open reduction and internal fixation of the lateral malleolus and medial malleolus at Edward Hospital. Dr. Reilly's post operative diagnosis consisted of a closed right ankle bimalleolar fracture with some displacement. (Rx. 2).

Petitioner attended physical therapy at Athletico from May 4, 2020 through September 18, 2020. The history Petitioner provided at her initial encounter states she was sitting in her chair at work and when she went to her right, she fell to the ground striking her right side. Petitioner further reported that she believes she fell because the chair was loose which caused the chair to tip. Petitioner also reported as she was falling to the ground, she attempted to put her foot out to catch herself which resulted in the fracture of the ankle. The Athletico discharge report, dated September 18, 2020, indicates Petitioner plateaued but had hand not achieved new ankle range of motion and that she continued to report ankle and foot soreness and stiffness. (Px. 4).

Petitioner testified Dr. Reilly allowed her to return to light duty work in October of 2020 and normal work as of December 10, 2020. (T. 29, 31). Petitioner testified she was released from treatment by Dr. Reilly on March 18, 2021. (T. 33). Petitioner testified prior to her work injury she had never previously injured her right ankle. (T. 35). Petitioner testified she continues to experience right ankle pain and burning. (T. 35). Petitioner testified the pain she experiences is daily and she rated the pain level as 8 out of 10. (T. 35). Petitioner testified she takes Ibuprofen 4 times a week and that she can only walk comfortably between 30-45 minutes. (T. 36). Petitioner testified her pain increases with cold weather and that she needs to sit-down after walking around a store for an hour. (T. 36).

The Arbitrator found Petitioner's testimony to be credible.

Conclusions of Law

The Arbitrator adopts the above Findings of Fact in Support of the Conclusions of Law as set forth below. The claimant bears the burden of proving every aspect of her claim by a preponderance of the evidence. *Hutson v. Industrial Commission,* 223 Ill.App.3d 706 (1992).

With respect to issue "C" whether an accident occur that arose out of and in the course of Petitioner's employment and to issue "F" whether Petitioner's current condition of ill-being is causally related to the injury, the Arbitrator finds as follows:

To obtain benefits under the Act, a claimant must establish by a preponderance of the evidence that he sustained an accidental injury "arising out of" and "in the course of" his employment. 820 ILCS 305/1(d) (West 2014); *McAllister*, 2020 IL 124848, Par. 32; *Sisbro, Inc. v. Industrial Comm'n*, 207 Ill. 2d. 193, 203 (2003); The "arising out of" component is primarily connected with causal connection. *McAllister*, 2020 IL 124848, Par. 36. An injury is said to "arise out of" one's employment if its origin is in some risk connected with or incidental to the employment so that there is a causal connection between the employment and the accidental injury. *Id.* Par. 36; *Caterpillar Tractor Co. v. Industrial Comm'n*, 129 Ill. 2d 52, 58 (1989). A risk is "incidental to the employment" when it belongs to or is connected with what the employee has to do in fulfilling his or her job duties. *McAllister*, 2020 IL 124848, Par. 36; *Purcell v. Illinois Workers' Compensation Comm'n*, 2021 IL App. (4th) 200359WC, Par. 18.

To determine whether a claimant's injury arose out of his or her employment, once must first categorize the risk to which the employee was exposed. *McAllister,* 2020 IL 124848, Par. 36: *Baldwin v. Illinois Workers' Compensation Comm'n*, 409 Ill. App. 3d. 472, 478 (2011). Illinois courts recognize three categories of risks: (1) risks distinctly associated with the employment, (2) risks personal to the employee, and (3) neutral risks. *McAllister*, 2020 IL 124848, Par. 38: *Baldwin,* 409 Ill. App. 3d. at 478.

The first category of risks involves risks that are distinctly associated with employment. "Employment risks include the obvious kinds of industrial injuries or occupational diseases and are universally compensated." *McAllister*, 2020 IL 124848, Par. 40; *Illinois Institute of Technology Research Institute v. Industrial Comm'n,* 314 Ill. App. 3d. 149, 162 (2000). Examples of employment-related risks include "tripping on a defect at the employer's premises, falling on uneven or slippery ground at the work side, or performing some work-related tasks which contributes to risk of falling." *McAllister*, 2020 IL 124848, Par. 40; *First Cash Financial Services v. Industrial Comm'n*, 367 Ill. App. 3d 102, 106 (2006). Injuries resulting from a risk distinctly associated with employment are deemed to arise out of the

claimant's employment and are compensable under the Act. *McAllister*, 2020 IL 124848, Par. 40; *Steak 'n Shake v. Illinois Workers' compensation Comm'n*, 2016 IL. App. 3d 150500WC Par. 35.

The second category of risks involves risks personal to the employee. "Personal risks include nonoccupational diseases and injuries caused by personal infirmities such as a trick knee." *McAllister*, 2020 IL 12484, Par 40; *Illinois Institute of Technology Research Institute*, 314 Ill. App. 3d at 162-63. Injuries resulting from personal risks generally do not arise out of employment. *McAllister*, 2020 IL 124848, Par. 40. An exception to this rule exists when the workplace conditions significantly contribute to the injury or expose the employee to an added or increased risk of injury. *Id.; Rodin v. Industrial Comm'n*, 316 Ill. App. 3d 1224, 1229 (2000).

The third category of risks involves neutral risks that have no particular employment or personal characteristics. *McAllister*, 2020 IL 124848, Par. 44; Injuries resulting from a neutral risk generally do not arise out of the employment and are compensable under the Act only where the employee was exposed to the risk to a greater degree than the general public. *Id.; Springfield Urban League v. Illinois Workers' Comm'n*, 2013 IL App (4th) 120219WC, Par. 27. Such an increased risk may be either qualitative, such as some aspect of the employment which contributes to the risk, or quantitative, such as when the employee is exposed to a common risk more frequently than the general public. *McAllister,* 2020 IL 124848, Par. 44; *Metropolitan Water Reclamation District of Greater Chicago v. Illinois Workers' Compensation Comm'n,* 407 ILL. App. 3d 1010., 1014 (2011).

The Arbitrator finds Petitioner has proven by the preponderance of the evidence she sustained an accidental injury that arose out of and in the course of her employment and that her current condition of ill being is causally related to her work accident

The Arbitrator finds Petitioner was performing a work-related task which contributed to her risk of falling. A risk is distinctly associated with one's employment if, at the time of the occurrence, the employee was performing (1) acts he or she was instructed to perform by the employer, (2) acts that he or she had a common law or statutory duty to perform, or (3) acts that the employee might reasonably be expected to perform incident to his or her assigned duties. *McAllister*, 2020 IL 124848, Par. 46; *Caterpillar Tractor Co*., 129 Ill. 2d. at 58. In the case at bar, Petitioner was sitting on chair with 4 wheels when she fell while reaching for a part. The Arbitrator finds that reaching for a part is an act Petitioner was instructed to perform and/or an act the employee might reasonably be expected to perform incident to her employment. Petitioner was employed as an assembler who soldered cables as part of her assigned duties. Respondent provided the 4 wheelchairs, workstation, and the cart containing the cables. The Commission has

previously held common bodily movements and everyday activities are compensable and employment related under the holdings in *Sisbro* and *Caterpillar Tractor.* See generally*, Peterson v. Toltech Plumbing*, 29 IL WCLB 56 (Ill. W.C. Comm'n, 2021) 21 IWCC 0095.

The Arbitrator also finds under neutral risk analysis, assuming Petitioner was not performing a task incidental to her employment, Petitioner was exposed to a common risk more frequently than the general public. As part of her job duties, Petitioner was required to sit on a steel chair, with 4 wheels, soldering cables. The general public doesn't sit on a steel 4 wheelchair soldering cables. Under both qualitative and quantitative analysis, the act of sitting on a steel 4-wheeled chair reaching for a cable exposed Petitioner to a risk to a greater degree than the general public. See *McAllister,* 2020 IL 124848, Par. 44; *Metropolitan Water Reclamation District of Greater Chicago v. Illinois Workers' Compensation Comm'n,* 407 ILL. App. 3d 1010., 1014 (2011).

Respondent argues Petitioner is not credible because the histories contained in some medical records and Respondent's First Report of Injury were inconsistent. In support of their position, Respondent claims the histories differ in the First Report of Injury and the medical records from Physician Immediate Care, DuPage Medical Group and Athletico. Respondent appears to focus upon the records not stating Petitioner was reaching for a cable when she fell. Upon review if these histories, the Arbitrator finds those histories to be consistent and any discrepancies are insignificant and insufficient to support a finding that Petitioner is not credible. In each of the histories, Petitioner reported preforming her job duties reaching to her right when the chair toppled over causing her to fall striking her right ankle on the ground. The Arbitrator notes Respondent did not proffer any witnesses to rebut Petitioner's testimony. The testimony of the employee, if not impeached or rebutted, is sufficient to support an award. *Phoell Manufacturing Co. v. Industrial Comm'n*, 54 Ill. 2d. 119, 295 N.E. 2d. 469 (1973). This is not a situation where Petitioner told one medical provider she was injured at work while telling another she was injured at home or Petitioner failed to disclose a prior injury or recent treatment to her right ankle.

With respect to issue "J" whether the medical services reasonable and necessary and has Respondent paid all appropriate charges, the Arbitrator finds as follows:

Under Section 8(a) of the Act, claimant is entitled to recover reasonable medical expenses, the incurrence of which are causally related to an accident arising our or and in the scope of employment and which are necessary to diagnose, relieve, or cure the effects of the claimant's injury. *Absolute Cleaning/SVMBC v. Illinois Workers' Compensation Comm'n,* 409 Ill.App.3d 463, 470 (4th Dist. 2011).

Respondent disputed liability for medical expenses based upon accident and causation and not that the medical services were unnecessary or reasonable. Given the Arbitrator's finding on accident and causation, the Arbitrator also finds Petitioner proved by the preponderance of the evidence the medical expenses incurred were reasonable and necessary to diagnose, relieve, or cure Petitioner from the effects of her injury. As such, Respondent shall pay the medical expenses identified in Petitioner's Exhibit number 5 pursuant to Sections 8(2) and 8(a) of the Act subject to the fee schedule.

With respect to issue "K" whether Petitioner is entitled to TTD benefits, the Arbitrator finds as follows:

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

Petitioner claims she was temporarily totally disabled from February 26, 2020 through December 10, 2020. However, at trial, Petitioner testified that Respondent called her back to work light duty after an October 8, 2020 doctor visit. Respondent disputed liability for TTD benefits based upon accident and causation and not that Petitioner was able to work. As stated above, the Arbitrator found for Petitioner on accident and causation. Therefore, the Arbitrator finds Petitioner proved by the preponderance of the evidence that she was entitled to receive TTD benefits from February 26, 2020 through October 8, 2020. As such, Respondent shall pay Petitioner 32 2/7th weeks of TTD benefits commencing February 26, 2020 through October 8, 2020.

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

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

For accidental injuries that occur on or after September 1, 2011, permanent partial disability shall be established using the following criteria:

(a) A physician licensed to practice medicine in all of its branches preparing a permanent partial disability impairment report shall report the level of impairment in writing. The report shall include an evaluation of medically defined and professionally appropriate measurements of impairment that include but are not limited to: loss of range of motion; loss of strength; measured atrophy of tissue mass consistent with the injury; and any other measurements that establish the nature and extent of the impairment. The most current edition of the American Medical Association's "Guides to the Evaluation of Permanent Impairment" shall be used by the physician in determining the level of impairment.

(b) In determining the level of permanent partial disability, the Commission shall base its determination on the following factors:

(i) the reported level of impairment pursuant to subsection (a);

(ii) the occupation of the injured employee;

(iii) the age of the employee at the time of the injury;

(iv) the employee's future earning capacity; and

(v) evidence of disability corroborated by the treating medical records.

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

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

With regard to subsection (i) of §8.1b(b), the Arbitrator notes Petitioner did not undergo an AMA Impairment Examination. Therefore, the Arbitrator places no weight on this factor.

With regard to paragraph (ii) of Section 8.1(b) of the Act: Petitioner returned to her pre-injury position and she continues to perform the same job duties as she did prior to her accident. As such, the Arbitrator gives this factor some weight in determining permanent partial disability.

With regard to paragraph (iii) of Section 8.1(b) of the Act: The Arbitrator notes Petitioner was 51 years old at the time of her injury. The Arbitrator notes that Petitioner as a significant portion of her expected work life remaining to deal with the effects of her injury. As such, the Arbitrator gives this factor some weight in determining permanent partial disability.

With regard to paragraph (iv) of Section 8.1(b) of the Act: Petitioner returned to her prior position with no earning limitation stemming from the work injury that would otherwise restrict or limit her earning capacity. As such, the Arbitrator gives this factor no weight in determining permanent partial disability.

With regard to paragraph (v) of Section 8.1(b) of the Act: Petitioner testified she continues to suffer right ankle pain. Petitioner testified she rates her pain level as 8 out of 10 and that she takes ibuprofen at least 4 times a week. Petitioner also testified to difficulty walking. Petitioner's complaints are corroborated by the medical records. The Athletico discharge summary states Petitioner has atrophy and reduced range of motion. Dr. Reilly's final note dated March 18, 2021 shows Petitioner has develop traumatic arthritic changes and that she has an antalgic gait. As such, the Arbitrator gives significant weight to this factor in determining permanent partial disability.

Based on the above factors, and the record taken as a whole, Petitioner sustained permanent partial disability to the extent of 35% loss of use of a right foot pursuant to §8(e)11 of the Act.

By: /o/ Frank J. Soto
Arbitrator

May 30, 2023
Date

May 31, 2023

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	12WC005095
Case Name	Gary Howard v. Cook of County
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	24IWCC0368
Number of Pages of Decision	30
Decision Issued By	Marc Parker, Commissioner

Petitioner Attorney	David Huber
Respondent Attorney	Terrence Donohue

DATE FILED: 8/2/2024

/s/Marc Parker, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Gary Howard,

Petitioner,

vs. NO: 12WC 5095

County of Cook,

Respondent.

DECISION AND OPINION ON REVIEW

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

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed December 22, 2023, is hereby affirmed and adopted.

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

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

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

August 2, 2024

MP:yl
o 7/25/24
68

/s/ *Marc Parker*
Marc Parker

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	12WC005095
Case Name	Gary Howard v. Cook of County
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	27
Decision Issued By	Jeffrey Huebsch, Arbitrator

Petitioner Attorney	David Huber
Respondent Attorney	Terrence Donohue

DATE FILED: 12/22/2023

THE INTEREST RATE FOR THE WEEK OF DECEMBER 19, 2023 5.13%

/s/ Jeffrey Huebsch, Arbitrator

Signature

G. Howard v. County of Cook, 12 WC 005095

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Gary Howard
Employee/Petitioner
v.
County of Cook
Employer/Respondent

Case # **12** WC **005095**

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Jeffrey Huebsch**, Arbitrator of the Commission, in the city of **Chicago**, on **1/20/2023 and 3/16/2023**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On **11/17/2011**, 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 $**97,760.00**; the average weekly wage was $**1,848.36**.

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

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

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

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

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

ORDER

Petitioner's claim for temporary total disability benefits is denied.

Respondent shall pay reasonable and necessary medical services as is set forth below.

Respondent shall pay Petitioner permanent partial disability benefits of $695.78 per week for 150 weeks, because the injuries sustained caused the 30% loss of the person as a whole, as provided in Section 8(d)2 of the Act.

Respondent shall pay Petitioner the compensation benefits that have accrued from 11/17/2011 through 3/23/2023 in a lump sum, and shall pay the remainder of the award, if any, in weekly payments.

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

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

DECEMBER 22, 2023

Signature of Arbitrator

FINDINGS OF FACT

Testimony and Medical Reports:

On November 17, 2011, Petitioner was employed by Respondent as a Plumbing Inspector. He was 63 years old at the time of his injury, 74 years old at the time of hearing. He is 5 ft. 10 in., 235 lbs. Petitioner testified that at the time of his injury he was approximately 30 lbs. lighter than his 235 lbs. at time of hearing, although his PCP's records show that he weighed 224 pounds on December 13, 2011. (RX 11)

Petitioner testified that he graduated high school and had some college experience. He worked as a plumber since he was in high school in 1966 and became an apprentice plumber in 1977. He has been a member of Local 130-Plumbers' Union since 1977. After his apprenticeship, Petitioner testified that he worked a variety of plumbing jobs as a journeyman before he started working for Cook County in December 1998. In 2006, Petitioner became a plumbing inspector for Respondent. Petitioner testified that in approximately 2000, he sustained an injury on the job while working for Respondent. He returned to work after recovering from his injury in 2006 and changed positions to plumbing inspector.

Petitioner testified that his job duties as a plumbing inspector included going to different facilities, houses, commercial, industrial, underground or other sites pertaining to plumbing to inspect and verify that all codes were being met and that plumbing projects passed inspections, or to write violations for corrections.

Petitioner testified that in order to be a plumbing inspector he went through additional training and certification. There was a written exam administered by Cook County Department of Building and Zoning. Petitioner testified that his duties as a plumbing inspector required him to climb ladders and stairs and to crawl, in order to gain access to areas he was inspecting. Petitioner described his job as being a vigorous job requiring a great deal of walking.

Petitioner testified that prior to November 2011 he did not have any problems breathing. He did not have any problems related to asthma. He had never been diagnosed with asthma or GERD. He denied prior treatment for GERD. He had never been prescribed prednisone, never had any problems completing his work tasks including walking, stairs, and crawling. Petitioner testified that prior to 2011, he had used a CPAP machine due to snoring. He had a surgical sinus repair completed and after the repair he no longer required use of the CPAP machine. Although he could not remember exactly when the sinus repair took place, it was prior to 2011.

In addition to his certification as a plumbing inspector, Petitioner holds a backflow inspection certification issued by the Illinois Department of Public Health Water Quality Plumbing Program. Petitioner testified that he holds licenses and certifications pertaining to plumbing and plumbing inspection, which are renewed every year and were current at the time of hearing.

Petitioner testified that in November 2011, he was directed by his supervisor to inspect the Daubert Chemical Company in Stickney, Illinois. Daubert was a manufacturer of chemicals, epoxies, adhesives, and protective coatings. Petitioner testified that he inspected the Daubert plant the week of the Thanksgiving holiday in November 2011, which fell on the 24th. Petitioner testified that he believes that the last day he inspected the Daubert plant was the Thursday before Thanksgiving, which was the 17th. After Thanksgiving, he had a meeting with his supervisor, the manager and superintendent of Daubert, and two people from the City of Chicago.

Petitioner testified that the Daubert facility consisted of an office area and a laboratory area. In addition, there was a bigger factory building where manufacturing took place. Petitioner testified that the factory had at least six or eight overhead rolling doors which were mostly opened during his visit. Petitioner testified that on two days, however, almost all the doors were closed except for one.

Petitioner testified that while he was at Daubert, a short while after entering the plant, he began experiencing itching and burning in his lungs. He experienced a menthol type burning of the lungs, his skin began itching, his lower legs started burning, the skin of his face was irritated. He experienced harsh chemical smells as he went through the plant to inspect it. Petitioner testified that he inspected all of the areas of the facility, including manufacturing areas and mechanical areas where heating and plumbing equipment were located. Petitioner testified that there were areas inside the plant which were congested, filled with machines and equipment where ventilation was less adequate than other areas of the plant. Petitioner testified that workers inhabited approximately 60% of the facility. 40% of the area did not have people in it regularly. Petitioner testified that the chemical smells he described were stronger in some areas than others and that he encountered them several days during the week.

Petitioner testified that he began having trouble breathing at Daubert and that it got progressively worse. At first, he thought he might have a cold, but his breathing became significantly worse. He testified that while he was at the Daubert plant, he continued to experience symptoms on a constant basis. In addition, Petitioner developed gut pain and diarrhea.

Petitioner testified that Petitioner's Exhibit 8 is a list of violations that were written by Petitioner concerning plumbing facilities at Daubert. Petitioner described a lack of backflow prevention devices on water systems either installed incorrectly or omitted altogether. He testified that water lines tied directly into sewer lines and that sewer lines were inappropriately routed. He testified that clay like chemicals or putty was all over the floor. He testified that there were chemicals leaking out of large tanks, and chemicals were stored near ignition sources, he testified that plumbing vents were not properly installed and eye wash and shower stations were not properly cared for or appropriately located.

Petitioner testified that Petitioner's Exhibit 9 is a number of photographs taken by him, where he attempted to document the condition of the plant for inclusion with his report. He testified that he was instructed by Robert Major, the Daubert representative who accompanied Petitioner during his inspection, to stop taking photos. Petitioner complied.

Petitioner testified that his symptoms were worse while he was at the plant, as opposed to when he was away from the plant. Petitioner testified that at the time of the post-inspection meeting, he wore a respirator and protective suit in the plant.

Petitioner testified that after he completed his work at the plant, filing his violations and photographs, Petitioner Exhibit 8 and 9, he continued to work. His symptoms continued.

On December 6, 2011, Petitioner presented at the Loyola Hospital Emergency Room because he had a hard time breathing and was experiencing chest pain. After taking a history and conducting an examination of Petitioner, physicians at Loyola referred Petitioner to Dr. Samala at Suburban Pulmonary and Sleep Associates. Petitioner received treatment by Dr. Samala from January 2, 2012 to April 24, 2012. When Petitioner saw Dr. Samala on January 2, 2012, Dr. Samala conducted a breathing volume test at her office and scheduled Petitioner for more testing. After several visits with Dr. Samala and at the completion of testing, she referred Petitioner to Dr. Sean Forsythe at Loyola Hospital. Dr. Forsythe is a pulmonologist. At the last visit, Dr. Samala charted that Petitioner had shortness of breath and cough (along with allergic rhinitis and sleep apnea, unable to tolerate

CPAP), possible inhalation injury secondary to chemicals at a company he was inspecting, improvement with high dose steroids, but back to prior level of problems when prednisone decreased and stopped, coughing, SOB (shortness of breath) and wheezing. Dr. Samala recommended a second opinion. (PX 12, PX 2)

Petitioner was seen by his PCP, Dr. Nazir, post the ER visit, on December 13, 2011, with a history of a chemical exposure, SOB, burning pain in the chest, coughing, wheezing. The assessment was chemical associated asthma/bronchitis. He was referred for pulmonary studies/work-up, ASAP. (RX 11)

On February 8, 2012, Respondent directed Petitioner to see Dr. Terrence Moisan for a Section 12 examination.. Petitioner described a brief examination by Dr. Moisan and his staff. (RX 2)

On June 8, 2012, Petitioner began seeing Dr. Sean Forsythe, a pulmonologist at Loyola Hospital. Petitioner testified that Dr. Forsythe has been his treating pulmonologist since 2012. Petitioner testified that his symptoms, which first presented themselves during and after his work at Daubert, severe wheezing and difficulty breathing, dry throat, pain and tightness in the chest, have continued from that time to the time of the hearing.

Petitioner testified and demonstrated to the Arbitrator that his speaking voice is lower and hoarser, and he has difficulty projecting enough breath to make himself heard in noisy environments. He testified that when he teaches classes for plumbing instruction, he must use a microphone. The Arbitrator noted on the record that Petitioner appears to exhibit a labored voice, which is not forceful. During his testimony, Petitioner coughed frequently and used an inhaler.

Petitioner testified that Dr. Forsythe prescribed medication, including prednisone, ProAir, and Symbicort,, which are different kinds of steroids. Petitioner has been taking prednisone since 2012. Prednisone is administered by tablet. ProAir and Symbicort are inhalers.

Petitioner had spoken to Dr. Forsythe about the implications of long-term prednisone use. Specifically, Petitioner said that he has experienced significant weight gain, despite a restricted calorie diet. The medical records do not show a significant weight gain.

Petitioner described a process where Dr. Forsythe had repeatedly attempted to taper or wean prednisone usage. He testified that each time this has been attempted, breathing problem symptoms return and increase. Petitioner described that prednisone use has caused him to gain weight and experience swelling in his legs. He described not being able to work in the yard, mow the lawn, and walk behind the lawn mower. Petitioner purchased a riding mower.

During December 2014, Petitioner met with Dr. Forsythe to discuss having a bone scan because long term steroid use reduces bone density. He discussed various medication regimens with Dr. Forsythe, but in the end was convinced that he was required to take steroids in order to breathe enough to participate in activities of daily living. Petitioner continues to use prednisone even though it has serious side effects with chronic use.

Petitioner testified that he saw Dr. Forsythe with increasing frequency from the summer of 2012 to the summer of 2015. At present, Petitioner sees Dr. Forsythe monthly.

Petitioner testified about several episodes where his symptoms increased and became worrisome enough to go to an emergency room. On December 5, 2012, Petitioner went to LaGrange Hospital's Emergency Room because he could not breathe despite the use of various inhalers. On September 30, 2014, Petitioner was seen at the Emergency Room at Loyola with breathing problems and weakness. Petitioner was inpatient at Loyola

Hospital from September 30, 2014, through October 1, 2014, for breathing symptoms. Each time Petitioner was seen at an emergency room or inpatient in a hospital he was treated with supplemental oxygen and various medications which caused his symptoms to lessen. (PX 12, PX 1, PX 3)

Petitioner testified that prior to the Daubert exposure/event, he did not have a problem with high pollen levels and household chemicals did not cause breathing problems.

Petitioner testified that he retired from Respondent on December 26, 2014, because he was having progressive difficulty breathing. His workload had increased, and he could not live up to the expectations of his job. Petitioner testified specifically that he had no plans to stop working in 2014 and before his breathing symptoms began, he intended to work as long as he physically could. He liked his job. He retired retired because he could not live up to his expectations. He felt he had an inability to do his job, not being able to climb ladders, breathe correctly, walk distances, climb stairs and crawl. He testified that he enjoyed working in all aspects of plumbing.

Petitioner testified that he does extensive volunteer work in the area of plumbing, including membership on committees and executive positions in various organizations dedicated to plumbing issues. Petitioner is a member and a past president of the Illinois Plumbing Inspectors' Association. Petitioner testified that he views his service to the plumbing community generally as part of his service to society. He testified that he loves teaching and giving people the right answers to ensure that plumbing issues are solved correctly. He also testified that his social and professional time is occupied by membership and participation in societies such as the American Society of Sanitary Engineering, for which he is the publishing editor of a newsletter.

Petitioner was seen at the LaGrange Hospital Emergency Room on March 25, 2019, with the same difficulty and breathing symptoms and treatment. Petitioner was admitted to the hospital for four days on this occasion. (PX 1)

Petitioner testified that in April 2015, he applied for a plumbing inspection job at the Village of Maywood. He testified that he worked for the Village of Maywood as a plumbing inspector April 9 through April 30, 2015. He testified that the duties were mostly residential plumbing inspection. Petitioner testified that the physical demands of the job, including walking up and down stairs, caused him to have breathing problems and fatigue. Petitioner testified that inability to breathe for an extended period of time causes him to experience fatigue. He testified that his physical condition interfered with his ability to do the Maywood inspection job. He stopped doing the Maywood job because he was having problems breathing and walking. (RX 6)

Petitioner was seen by Dr. Edward Diamond, MD, on March 3, 2016, for a Section 12 examination at Respondent's request. (RX 1)

In April 2018, Petitioner applied for and obtained a job as a plumbing inspector for the State of Illinois Department of Public Health (IDPH). Petitioner testified that he was educationally qualified for the position and is a certified plumbing inspector in the State of Illinois which is required for the state job. Petitioner began working at IDPH on April 16, 2018, and continued in that employment until November 8, 2019. Petitioner testified that the reason that he attempted the job was that it covered a large geographical area and consisted of mainly driving with less physical exertion, as opposed to previous jobs consisting of more inspecting as opposed to driving. In October 2018, Petitioner made a specific request to reduce his work to a four-day work week. His request was granted. Petitioner testified that he continued to have significant problems breathing and problems with fatigue. He stopped working for IDPH in February of 2020.

Petitioner testified that he wanted to continue to work and still wants to work to this day and that if he did not have breathing problems, he would still be working as a plumbing inspector. Petitioner testified that if he had the opportunity, he would continue work as a plumbing inspector.

At the time of hearing, Petitioner had applied for a job with the Illinois Attorney Generals' Office as an inspector regarding accommodations for persons with disabilities. This was described as a desk job. Petitioner testified that from time to time he has performed plumbing inspections when an inspector is needed because of vacation or illness. He keeps his licenses and certifications up to date. This also allows him to teach classes, which he continues to do.

On cross examination, Petitioner testified that his inspection at Daubert was seven hours each day including indoor and outdoor inspection. Petitioner testified that he spent a total of about 25 hours in the facility during the week he inspected it. Petitioner described chemicals spilled on the floor at the plant which got on his feet. Petitioner testified that Petitioner's Exhibit 13 is a list of chemicals that Petitioner obtained from Daubert's website which contains a list of the chemicals produced at the plant. He showed the list to Dr. Samala. The list was from MSDS documents, which also includes any chemical on the plant premises, including cleaning chemicals, etc.

Petitioner testified that the State of Illinois Inspector job was for 37.5 hours a week. Before commencing the job, Petitioner specifically discussed his physical condition as it regarded his ability to work and his breathing problems.

After the Daubert inspection, Petitioner continued to work full duty, full time, for Respondent as a plumbing inspector until he retired. He has not received work restrictions from his physicians, although, of course, he was advised to avoid triggers (as everyone should be advised). He has received no work restrictions related to the exposure at Daubert. His retirement was voluntary and not due to disability. He began receiving his pension in January of 2015.

On redirect examination, Petitioner explained that he enjoyed working as a plumbing inspector and would be working as a plumbing inspector currently if was physically able to do so. He continues to perform plumbing inspections on a very infrequent basis because he enjoys doing so.

Respondent called Kevin McGinnis to testify via subpoena. McGinnis is a retired Chief Plumbing inspector for Cook County. He was Petitioner's supervisor in 2011. McGinnis worked in the same department as Petitioner for 10-12 years, albeit in different offices. Petitioner worked out of the Skokie Courthouse. McGinnis worked out of the Bridgeview Courthouse. McGinnis testified that he is familiar with the Daubert Chemical plant in Stickney Illinois. During his tenure with the County as an inspector, he had previously conducted approximately 20 inspections at Daubert. Mr. McGinnis testified that he did not personally experience any health issues or negative effects from being at the Daubert plant. He was not aware of any concerns with safety at the plant during his inspections. Mr. McGinnis testified that employees at the plant wore safety goggles and helmets or hard hats, but not masks. McGinnis testified that to his understanding, chemicals at the Daubert plant were low-hazard-type chemicals.

Mr. McGinnis testified that in November 2011, he was on vacation. He testified that he received two telephone calls from Petitioner before Thanksgiving 2011, putting the first call at approximately 2:00 in the afternoon. Petitioner called Mr. McGinnis to wish him a happy Thanksgiving. He testified that the call lasted for approximately 10 minutes. Five minutes later, Petitioner called him back, indicating that he had an attack of shortness of breath.

Mr. McGinnis testified that when Petitioner called him before Thanksgiving to report that he was having trouble breathing, he instructed Petitioner to go to the emergency room. Thereafter, Mr. McGinnis called the Commissioner's secretary, Joyce to report Petitioner was at the hospital because he was having a breathing problem.

Mr. McGinnis testified that by 2011 he had conducted approximately 20 inspections at the Daubert plant. He was called to inspect any time there was a plumbing permit pulled for work at Daubert. During those inspections, he had not observed any mess due to leaking chemicals. He testified that he was told that material coming out of the tanks was safe and non-hazardous. He did not observe any oozing of chemicals from machinery or storage tanks onto the floor collecting into open drains or dripping from mixing equipment. He did not observe chemicals leaking from large outdoor storage tanks into city sewer lines. He testified he did not observe limited ventilation or opening of shipping bay doors when the weather permitted at the plant. McGinnis testified that he would not have noted limited ventilation issues at the Daubert plant because those issues would fall under someone else's purview. They were not the subject of his plumbing inspections.

On cross-examination, Mr. McGinnis confirmed he did not inspect the Daubert plant the week of November 17, 2011. The previous time he had been at the inspection was to inspect a particular piece of equipment. McGinnis testified that the Daubert facility contained a 20 ft. by 40 ft. "Development and Research room" (D&R). Mr. McGinnis did not know what kind of chemicals were used at Daubert, but he understood they manufactured adhesives. Mr. McGinnis did not know how chemicals used at Daubert were stored, processed, or packaged. He never came in contact with any of the Daubert product. Mr. McGinnis testified that he had not been in the D&R room since 2010. At some point, violations were written concerning the D&R room and it was demolished in order to abate and comply with the violations that were written by Petitioner after his 2011 inspection. Mr. McGinnis testified that the violations that precipitated the demolition of the Daubert D&R room were the ones that Petitioner wrote during his inspection.

Mr. McGinnis testified that he was not at the Daubert plant during Petitioner's inspections. McGinnis testified that he had never conducted a multiday inspection at Daubert previously. McGinnis testified that in 2010, the County began annual all-facility inspections, which encompassed the entirety of the Daubert plant. Previously, a comprehensive inspection had never been done. Previously, inspections at Daubert were in response to plumbing permits to install some particular piece of machinery that required plumbing modification or service hook-up. During those inspections, the inspection would have been focused on the specific location of the specific piece of equipment being inspected.

Mr. McGinnis testified that prior to Petitioner's inspection, the Daubert plant had not gone under a plumbing inspection by anyone at the county that was a multiday "stem-to-stern" inspection. McGinnis testified that the Daubert facility occupies approximately one square block, including the main room, consisting of 200,000 square feet.

During the inspections that Mr. McGinnis conducted at the Daubert plant, the piece of machinery inspected would not be in service at the time of inspection. He understood that when Petitioner conducted his inspection the plant was in operation. He testified that Petitioner's inspection would have brought him to places in the Daubert plant other than the specific segregated machine areas where Mr. McGinnis's targeted inspections took place. Mr. McGinnis testified that if there were enclosed areas that contained machinery or other processing equipment at Daubert which did not require his specific targeted inspections, he would not have gone into them.

Petitioner took the evidence deposition of Dr. Sean Forsythe, Petitioner's treating pulmonologist, on November 24, 2015. (PX 4) Deposition Exhibit 1 is Dr. Forsythe's Curriculum Vitae. He is board-certified in

internal medicine, pulmonary medicine and critical care medicine. He was fellowship trained in pulmonary medicine and critical care medicine and is a professor of medicine at Loyola.

Exhibit 2 to the deposition is a letter authored by Dr. Forsythe on June 7, 2013. In it, Dr. Forsythe summarizes Petitioner's case from the perspective of following him in the pulmonary clinic at Loyola:

> "In October of 2011 (sic), he was exposed to chemicals while on the job. After about one hour of exposure, he developed symptoms—dry throat, itchy skin and slight cough. He was exposed 3+ hours the first day, continued to work and be exposed to the same chemicals. His symptoms waxed and waned. When his breathing got worse and he started wheezing, coughing and getting short of breath he came into LUMC emergency room on 12/6/2011 and was diagnosed with a chemical pneumonitis. (Dr. Forsythe testified that he did not know the basis of this diagnosis). He started seeing Dr. Samala, a pulmonologist at Hinsdale/LaGrange Hospital, in Jan. 2012. A work-up included PFTs showing restriction and airway obstruction and a CT scan with old granulomatous disease. He improved with steroids. He saw a toxicologist. I first saw him in June 2012. At that time, he had wheezing, cough and shortness of breath. His symptoms have been difficult to control with inhaled medicines and he has required frequent courses of oral steroids.
>
> My impression is that this is either difficult to control asthma or RADS (reactive airway disfunction syndrome). Without having seen him initially (or before the exposure) it is difficult to differentiate these. Either way, at this point the treatment remains the same—inhaled medicines for asthma, course of oral steroids for exacerbations and trigger avoidance. Those triggers would include strong chemical smells, particulates, allergens. As his symptoms have persisted for the past year and one-half, I doubt they will spontaneously resolve."

Dr. Forsythe described evaluating Petitioner's medical condition by performing pulmonary function testing, which showed restriction or obstruction in the airways. Petitioner had wheezing, cough and shortness of breath. Those conditions were poorly controlled despite treatment and hospitalizations. Dr. Forsythe diagnosed Petitioner with either asthma or reactive airway disfunction syndrome (RADS). Dr. Forsythe explained that RADS is a subset of asthma that is brought about by having a component of inhaled irritant, which is consistent with Petitioner's history. In Dr. Forsythe's records from 2014, he diagnosed Petitioner with steroid dependent asthma which is chronic and severe. Dr. Forsythe explained that asthma is a chronic disease with airway inflammation that is typically reversable. It manifests itself with shortness of breath, wheezing, cough and chest congestion. Petitioner's asthma is chronic and steroid-dependent, which has not responded to the use of inhalers. Petitioner's condition has not improved even with aggressive therapy and has been difficult to control. Dr. Forsythe prescribed a variety of inhalers and medications including Singulair, prednisone, albuterol, and budesonide which were intended to open airways and lessen symptoms.

Dr. Forsythe explained that it is the nature of asthma/RADS that once a patient experiences a trigger that worsens its symptoms, similar triggers more easily trigger symptoms. Dr. Forsythe explained that although Petitioner's symptoms of asthma/RADS have waxed and waned during treatment, Petitioner has never been without symptoms since he began treating him.

Dr. Forsythe confirmed that spirometry shows Petitioner's lung function has decreased. Considering Petitioner's age and size, spirometry percentages of 80-100% are normal. Petitioner's spirometry results show scores between 54-71%, indicating a mild restrictive defect. Dr. Forsythe noted that Petitioner's condition improved somewhat with the administration of steroids and rescue inhalers, but he continued to have symptoms every day and was using a rescue inhaler every day. Dr. Forsythe started Petitioner on prednisone, an oral steroid, in August 2013. Dr. Forsythe noted that in 2014, he prescribed antibiotics including azithromycin to Petitioner because he had an upper respiratory infection. Dr. Forsythe noted that in patients such as Petitioner with conditions such as RADS or asthma who get an infection, their underlying asthma or RADS can make the

infection process worse for longer than someone without Petitioner's underlying asthma/RADS. In August 2014, Dr. Forsythe attempted to taper prednisone dosage. In September of 2014, Dr. Forsythe attempted to wean Petitioner from prednisone. Petitioner was hospitalized as a result of an exacerbation of his pulmonary symptoms Petitioner was off work from October 31 through November 4, 2014. By December 26, 2014, Dr. Forsythe thought he had adequate control over his symptoms using the nebulizer and albuterol while maintaining prednisone daily. The medication protocol that Dr. Forsythe employed by the end of 2014 was still in place at the time of Dr. Forsythe's evidence deposition on November 24, 2015. Dr. Forsythe conducted a trial treatment including a nebulizer for administration of medicine. By August of 2014, Dr. Forsythe notes contained his discussion with Petitioner that he has constant dyspnea, shortness of breath, wheezing, and that it was difficult to work. His shortness of breath was causing it to be difficult for him to exert himself, thus making it difficult for him to work.

In February 2015, Dr. Forsythe had a conversation with Petitioner concerning the long-term consequences of constant prednisone use. Dr. Forsythe testified that osteopenia, or loss of bone density, is a concern with any patient taking chronic steroids. By the fall of 2015, Petitioner is described as having a stable cough, using a rescue inhaler three times a day but waking up nightly with shortness of breath. Petitioner used multiple inhalers including albuterol twice a day and nebulized budesonide. Dr. Forsythe testified that a common side effect is difficulty in losing weight. Patients on prednisone have a common problem with putting on weight and being unable to take it off.

Dr. Forsythe opined he believes that Petitioner's asthma would tend to be a chronic relapsing condition. He described Petitioner's asthma as a chronic condition. Dr. Forsythe testified that Petitioner's ongoing persistent pulmonary symptoms were caused or aggravated by the exposure at Daubert in 2011. He testified that the treatment he has rendered to Petitioner has been reasonable and necessary. Dr. Forsythe testified that Petitioner's condition is permanent. Given that all persons lose lung function as they age, Petitioner's pulmonary condition will render him more susceptible to the problems decrease function over age because he has less lung capacity due to his injury. Dr Forsythe believes Petitioner will be more susceptible to more frequent and worse symptomatic episodes the longer he remains symptomatic and that he will require treatment into the future as a result of his pulmonary problems stemming from his exposure at Daubert.

On cross examination, Dr. Forsythe agreed that medically, Petitioner was classified as obese. Dr. Forsythe testified that obesity would not directly pose an exacerbation of Petitioner's particular asthma symptoms. He noted that any impairment in lung function is made worse by having more weight to carry around. He advised Petitioner to avoid or limit his exposure to certain irritants and chemicals and avoid activity that provoked symptoms.

On cross examination, Dr. Forsythe agreed that he was unaware of the specific agent to which Petitioner was exposed or what level of exposure he encountered at the time he experienced symptoms. Given Petitioner's symptoms have basically remained unchanged or worsened for over three years that his prognosis was that Petitioner's symptoms would continue. Dr. Forsythe testified that any condition of enlarged heart present in Petitioner had nothing to do with his asthma. Dr. Forsythe testified that an enlarged heart would not necessarily make Petitioner more suspectable to pulmonary conditions. Dr. Forsythe denied that Petitioner's prostate cancer would have any effect on his asthma and that treatment for prostate cancer including chemotherapy or radiation probably would not exacerbate his asthma condition.

On redirect examination Dr. Forsythe testified that he believes that on the subject of Petitioner's obesity, his major health problem is that he has asthma rather than the fact that he may or may not be obese. Dr. Forsythe testified that although he did not specifically impose limitations on Petitioner's work activities such as

stair climbing or walking long distances, he instructed Petitioner to avoid activity that provoked symptoms, including exertion, it was reasonable that Petitioner avoid those activities that provoked symptoms.

Dr. Forsythe testified that during his treatment of Petitioner, he never described any onset of symptoms under any circumstance in which he encountered household chemicals or other triggers. Moreover, on the subject of whether the presence of pet animals in Petitioner's home caused or contributed to his condition, Dr. Forsythe opined that because animals were present in Petitioner's house before his exposure and the onset of his symptoms, their presence was unlikely to be the cause of the problem that Petitioner has. Dr. Forsythe reiterated that the hospitalization in 2014 which occurred at a time when Dr. Forsythe was attempting to wean Petitioner off of Prednisone was part of the waxing and waning of symptoms coupled with the attempt to reduce Petitioner's prednisone intake.

On further redirect examination, Dr. Forsythe said he was not aware that Petitioner had acid reflux. Petitioner was not on any medications for that condition. The Arbitrator notes that Dr. Forsythe did not testify to any perceived faking by Petitioner while undergoing medical testing. He also did not offer any comment on the significance of a GERD diagnosis for Petitioner.

Petitioner's Exhibit 5 is the December 23, 2020, report of Dr. Jeffrey Coe, MD, Ph.D. His report details the history he obtained from Petitioner including his experience at the Daubert plant in 2011. Due to Covid-19 protocols, Dr. Coe examined Petitioner via Zoom after reviewing Petitioner's treatment and medical records, medical evaluations, and diagnostic tests. The history includes that until the events of 2011, Petitioner was able to perform his activities and duties as a plumbing inspector without shortness of breath, cough, or any respiratory limitation. In November 2011, Petitioner was assigned to inspect the Daubert Chemical Company manufacturing plant which required several days due to the size of the facility. Petitioner related that during the inspection he encountered a "strong chemical smell" and there were areas of spillage and chemical leaks.

Dr. Coe noted that Petitioner's eyes, nose, throat, and arm irritation symptoms improved in the two weeks after his visits to the Daubert plant, but that his breathing problems persisted. By December 2011, Petitioner was experiencing difficulty walking and not being able to get a deep breath. He had a cough and rash. Dr. Coe recites Petitioner's treatment by Dr. Samala and referral to Dr. Forsythe at Loyola University in June 2012. Dr. Coe noted that Petitioner had a lack of asthma symptoms before his exposures at Daubert, noting that prolonged exposure at Daubert produced worse symptoms. Absence from Daubert lessened the symptoms somewhat. Dr. Coe noted that Dr. Forsythe diagnosed chronic steroid-dependent asthma which he opined was linked to Petitioner's irritant exposures at Daubert. Dr. Coe described efforts by Dr. Forsythe to reduce steroid usage. Noting that steroid administration below 7.5mg of prednisone per day could not be sustained because of increasing symptoms.

Dr. Coe noted that in spite of Petitioner's continued coughing, shortness of breath, and breathing problems only partially controlled by medication and steroid dependence, he continued to work as a plumbing inspector until January 2020. He later worked for the City of Maywood as a plumbing inspector for two months, finding the work to be "too physical". Thereafter he took a job as a plumbing inspector for the State of Illinois, where he was able to work with less difficulty due to the nature of the work.

Dr. Coe noted that Petitioner has no history of gastroesophageal reflux disease and has never been a smoker.

At the time of Dr. Coe's evaluation, Petitioner complained of frequent coughing which was spontaneous or precipitated by deep breathing or talking. He was sensitive to dust and strong odors. He described sleeping difficulty wherein Petitioner awakens from sleep with wheezing and coughing. Petitioner stated that his current activities are limited by shortness of breath and coughing. He lives in a house with 14 steps to the second floor

and 15 steps to the basement, with which he has difficulty climbing and does so with difficulty, requiring rest. Petitioner uses a riding mower, as opposed to the push mower he previously used to tend to his lawn prior to 2011. Petitioner stated that he previously could walk five to seven miles two or three times a week in addition to walking at work. He has discontinued baseball and golf due to coughing and shortness of breath.

Dr. Coe opined that Petitioner's symptoms are consistent with irritant-induced asthma. Dr. Coe explains that in current occupational medicine practice, irritant-induced asthma is a condition of pulmonary injury caused by inhalation of irritant chemicals such as those contained in the more than 25 compounds manufactured by Daubert, all of which are recognized as having significant skin, lung, and eye irritation potential. The chemicals include solvents, coatings, and isocyanate-based adhesives.

Dr. Coe reviewed Material Safety Data Sheets "MSDS" sheets supplied by Petitioner based upon a review of Daubert's website stating which products they manufactured there. Dr. Coe opined environmental conditions described by Petitioner at the Daubert plant were consistent with the potential for significant exposure.

Dr. Coe explained that irritant-induced asthma was initially believed to represent a condition acquired only after long periods of exposure. However, he stated that it is now recognized that irritant induced asthma may develop in as little as days to weeks of exposure and may be intermittently persistent or permanent. Dr. Coe opined that based on Petitioner's pattern of symptoms onset, lack of other plausible explanation for acute onset of the symptoms, and their persistence in spite of treatment, chronic work-related, irritant-induced asthma is the appropriate diagnosis for Petitioner.

Dr. Coe specifically discusses the two evaluations by Dr. Moisan in February 2012, and October 2019. Dr. Moisan's reports document the onset of Petitioner's symptoms during his work inspecting the Daubert plant in the presence of "a number of chemical fumes and dusts in the area" with the onset of coughing, difficulty breathing, eye burning, dry lips, and burning in the lungs. Dr. Coe noted that in spite of this consistent chain of causation, Dr. Moisan concluded that irritant-induced asthma was "unlikely" and he concluded that causation associated with GERD was "very likely". Dr. Coe opines that GERD is an impossible cause of Petitioner's ongoing pulmonary symptoms. Petitioner has been treated by a pulmonologist at a tertiary treating hospital for years where no evidence of GERD has been found. Dr. Coe concurs with Dr. Forsythe's clearly stated opinion that Petitioner's irritant inhalation at Daubert caused his pulmonary symptoms. Dr. Coe concludes that in his opinion to a reasonable degree of medical certainty, Petitioner's now chronic steroid-dependent, irritant-induced asthma has caused permanent disability to the person as a whole and lung injury. He states that Petitioner is in need of ongoing medical treatment for his chronic pulmonary condition, including regular follow-ups with Dr. Forsythe.

Respondent's Exhibit 1 is the evidence deposition of Dr. Edward Diamond, MD, taken on October 4, 2016. Dr. Diamond is board-certified in pulmonary medicine and internal medicine. He has been specializing in pulmonary medicine for 34 years. He examined Petitioner March 3, 2016. He prepared a report dated April 6, 2016.

Dr. Diamond indicated that he had formed the impression that something unusual happened at the time of Petitioner's work at Daubert Chemical Company. He forms the impression that in 2011, Petitioner worked for eight or ten days in an environment where there was no obvious spillage or inhalation exposure and that Petitioner had not been constantly exposed to anything. Based on his understanding of the circumstances surrounding Petitioner's experience at Daubert Chemical Company, Petitioner did not suffer from reactive airway dysfunction syndrome or RADS, which requires a big exposure and immediate symptoms. Dr. Diamond opined that Petitioner did not suffer from occupational asthma as a result of work exposure. Petitioner would

have been required to have been repeatedly exposed to an irritant for this to be the case. Dr. Diamond testified that Petitioner reported to him that he was not experiencing anything unusual other than a regular work environment at Daubert. Dr. Diamond opined that Petitioner's respiratory symptoms were not related to any workplace exposure.

Dr. Diamond surmised that Petitioner's problems may all stem from GERD. He further surmised that steroids are not effective for Petitioner's symptoms. Dr. Diamond opined that Petitioner did not suffer steroid-dependent asthma because based on his review of medical records, steroids did not alleviate Petitioner's symptoms.

On cross examination, Dr. Diamond stated that he had never encountered Petitioner before March 3, 2016. Dr. Diamond testified that he received 55 pages of medical records beginning from February 2012 and Dr. Terrence Moisan's, Section 12 report. Dr. Diamond was aware that Dr. Moisan was not a treating physician. Dr. Diamond testified that he had access to some medical records including one page from the Emergency Department at Loyola dated December 6, 2011. However, Dr. Diamond had only one page of the record which did not contain the reason for visit or the history taken at that time. Dr. Diamond testified that he received approximately 20 pages of medical records from Dr. Forsythe beginning on February 27, 2015.

On page 41 of Dr. Diamond's evidence deposition, counsel for Respondent asserted Attorney-Client privilege, instructing Dr. Diamond to not answer questions concerning conversations between counsel and Respondent's expert, Dr. Diamond. The Arbitrator overruled the objection, as there is no applicable privilege which applies to conversations between counsel and a retained expert witness under the circumstances revealed in the record.

Dr. Diamond testified that it was his understanding that Petitioner began treating with Dr. Forsythe February 27, 2015. On page 45, Dr. Diamond testified that he believed that Petitioner began treating in 2015. Dr. Diamond testified he did not review records from Dr. Forsythe's first visit with Petitioner dated June 8, 2012, where it was charted that Petitioner was wheezing, coughing, has dyspnea after exposure, which Dr. Forsythe thought might fit the definition of RADS or may have represented a bronchospasm after the exposure.

When questioned about what materials he reviewed, Dr. Diamond testified that he was sent materials for him to review in anticipation of Petitioner's examination by an entity known as "Corvel" or "Triune". Dr. Diamond testified he did not review any other materials except for those provided by those entities on behalf of Respondent. Dr. Diamond confirmed that he did not review records from Loyola University Pulmonary or Dr. Forsythe beginning on December 6, 2011 through May 27, 2016.

Dr. Diamond was aware that prior to November 2011, Petitioner had no previous asthma symptoms or treatment. Dr. Diamond was aware that since November 2011 through to the time of his examination, Petitioner had asthma symptoms consistently and he was not aware of any days that asthma symptoms were nonexistent. Dr. Diamond did state that a summary letter prepared by Corvel or Triune may have stated that at a certain point in time Petitioner was doing "quite very well".

Petitioner's attorney, on page 57 of Respondent's Exhibit 1, made a motion to strike any opinion based on the hearsay evidence contained in the summary report generated by Corvel or Triune since it was not a medical record and was therefore hearsay. The Arbitrator overruled the objection and denied the motion to strike, because no such opinion was identified.

Dr. Diamond's report recited that Petitioner owned a cat, a dog, and a bird, which resided in the house with him. However, Dr. Diamond did not know how long the cat, dog, or bird had been living in the same

house as Petitioner. He did not know whether Petitioner was allergic to animals or whether he had any symptoms provoked by or related to the presence of animals in his home. Although Dr. Diamond testified that presence of an animal in a home may increase "the allergy burden or trigger burden" for a particular person, he acknowledged that presence of an animal would only make Petitioner more susceptible to other asthma triggers, as opposed to being an independent and intervening cause of asthma symptoms.

Dr. Diamond testified he did not know what Daubert Chemical made or what chemicals they used in making product, however, he reviewed a list of chemicals supplied by Petitioner. Dr. Diamond testified that they are not triggers of the type of symptoms that are occurring a long time after exposure, in his view.

Dr. Diamond testified that it was his understanding that nothing unusual occurred during Petitioner's work at the Daubert Chemical plant.

Dr. Diamond testified that Petitioner did not experience any wheezing before 2011. Dr. Diamond was not aware of any pulmonary function testing of Petitioner by Dr. Forsythe. He did not review any pulmonary function testing performed by or on behalf of Dr. Forsythe. Dr. Diamond did not know whether Dr. Forsythe had attempted to wean Petitioner off of steroids, including prednisone. Dr. Diamond did not know what happened to Petitioner's symptoms during efforts to wean from prednisone. Dr. Diamond did not review any medical records concerning or surrounding hospitalizations of Petitioner.

Dr. Diamond, apart from his opinions regarding causation, was of the opinion that at the time of his exam, Petitioner was unable to work full duty. He recommended follow-up regarding GERD. It was significant that Petitioner was out of the environment where the alleged exposure occurred and was still symptomatic (it was not expected that the symptoms would be permanent and severe). The care provided to Petitioner might be reasonable, but Dr. Diamond was not sure that it was necessary. Because he was unsure of Petitioner's diagnosis, he could not comment on MMI. He might have bronchospasm. The likely diagnosis for Petitioner was asthma, caused by GERD or allergic rhinitis to pets.

Dr. Terrence Moisan testified by evidence deposition taken September 14, 2018. (RX 2) Dr. Moisan is a board-certified internal medicine and pulmonary disease physician. Dr. Moisan is also Respondent's Section 12 examiner.

Dr. Moisan examined Petitioner and prepared a report dated February 8, 2012. He discussed Petitioner's pertinent medical history as having developed itching and a rash after exposure to chemical fumes at the Daubert Chemical facility in November 2011. He was seen at the Loyola Emergency Room December 6, 2011, for a chest x-ray that was unremarkable. Dr. Moisan testified that he reviewed medical records from January 2, 2012, wherein Petitioner described burning in the eyes and dry lips and burning in the lungs. Thereafter, he developed wheezing, shortness of breath, and coughing. He described Petitioner's oxygen saturation in his blood at 95%, close to normal. Petitioner was prescribed oral cortisone, prednisone, at the amount of 40mg per day for five days, which Dr. Moisan observed as a "aggressive dose". Dr. Moisan administered a spirometry test to Petitioner in his office. He testified Petitioner displayed sub-optimal peak flow results (not being involuntary). He was hesitating when he was exhaling, which was volitional. He observed that Petitioner had coughing during the test but no obstructive pattern of breathing. Dr. Moisan opined that Petitioner did not have any airway obstruction or asthma based on his review of Petitioner's history, the medical records that he reviewed, and the testing he administered. Dr. Moisan opined that if Petitioner had asthma, the high dose medication he was administered would have produced a substantial improvement in symptoms, Petitioner's symptoms did not improve, indicating to Dr. Moisan that Petitioner's symptoms were not due to asthma. Dr. Moisan opined that Petitioner's breathing problems were more likely a result of body weight rather than airway restriction. Dr. Moisan opined that Petitioner had GERD, which was contributing to his cough. He attributed

Petitioner's symptom of not being able to draw a deep breath to him feeling anxious. Dr. Moisan opined that Petitioner did not have irritant-induced asthma. He based his opinion on the understanding that irritant-induced asthma is a long-standing asthma that requires many months to years of exposure to low level irritants to manifest. He stated that he did not believe that a week or two of exposure, such as that described by Petitioner, could produce irritant-induced asthma. Dr. Moisan opined that the Petitioner did not have reactive airway dysfunction syndrome or RADS. He based his opinion on his understanding that RADS can only be caused by massive exposure to irritants, in usually a confined space. He gave an example of a chlorine spill, as distinguished from intermittent bystander exposure for a period of weeks as described by Petitioner.

After his initial examination, Dr. Moisan was provided additional records which contained records from Dr. Forsythe at Loyola. Dr. Moisan produced a report addendum. Dr. Moisan described Dr. Forsythe's treatment as extremely aggressive use of bronchodilators, steroids, and Singulair, which produced no symptomatic response.

Dr. Moisan testified to his opinion that the notation in Petitioner's medical records which note that he may have "chemical pneumonitis" is an error. He stated that it was his belief that this was an artifact of electronic medical record keeping based on a mistaken diagnosis by an intern at some stage at Petitioner's treatment.

Dr. Moisan noted that Petitioner's spirometry testing in March 2017 suggested no airway obstruction, but does show a mildly restrictive pattern which he described as "borderline restrictive defect". He attributed this to Petitioner's body weight instead of any particular condition of his lungs. Dr. Moisan described a post-bronchodilator test as normal, showing no evidence of airway obstruction. He stated that the breathing lung volume tests administered by various pulmonologists were unreliable and indicated a lack of effort or cooperation on Petitioner's part. Dr. Moisan testified that Petitioner does not have typical asthma because he has no airway obstruction and has not had any positive response from extremely aggressive medication. Dr. Moisan opined that it is possible that Petitioner has laryngeal function connected with anxiety that produces wheezing. He observes that condition frequently in patients with anxiety-irritated vocal chords.

Dr. Moisan testified that if Petitioner was exposed to an irritant and had irritant-induced exposure that might produce a cough, but he would expect those symptoms to be temporary and get better after lack of exposure for a week or two. Dr. Moisan testified that Petitioner suffered an irritant effect at Daubert, but that there was no evidence of long lasting sequelae and no connection between the exposure and the protracted multiyear symptoms that Petitioner exhibits. He based his opinions on Petitioner's normal breathing tests and lack of response to aggressive therapy. He opined that Petitioner does not have asthma from the exposure described, nor RADS-type asthma. Dr. Moisan testified that he doubted that Petitioner had bronchial asthma because he has none of the stigmata that would identify asthma, including airway obstruction or relief of symptoms after therapy. He doesn't seem to have any physiologic correlates for asthma. Dr. Moisan opined that if Petitioner does have asthma, it is caused by GERD. Dr. Moisan testified that Petitioner has GERD-related cough. He bases that on Petitioner's height and weight.

Dr. Moisan produced a second addendum on August 24, 2018, based on his review of additional records from Suburban Pulmonology & Sleep Associates. He also reviewed additional records from Loyola, including visits in January, February, March, and April 2012, and a pulmonary function test from March 13, 2012, conducted by Dr. Leikan. Dr. Moisan testified that pulmonary function tests he reviewed did not show any airway obstruction, but rather a laryngeal phenomenon caused by coughing. He testified that Petitioner's total lung capacity estimated at 71% of the predicted lung volume was due to Petitioner's weight.

Dr. Moisan opined that Petitioner's medical condition does not reflect that the intermittent exposure he had caused for the need of his current treatment. He testified that any treatment by Dr. Forsythe for protracted symptoms would not be related to workplace exposure.

On cross-examination, Dr. Moisan admitted that he was never able to view Petitioner's CT scan because his computer did not read the disk. Dr. Moisan testified that the records he reviewed when he generated his first report were not available to him at his evidence deposition because he had shredded them by the time of his deposition. Dr. Moisan acknowledged that Petitioner did not report a history of shortness of breath, persistent cough, or inability to draw a full breath before the exposure event in 2011. He did not have problems ascending or descending stairs. Dr. Moisan acknowledged that those were new symptoms Petitioner was complaining of when he arrived in the emergency room that did not go away after the inspection had been completed. He was aware that Dr. Forsythe described Petitioner's symptoms as having waxed and waned during Dr. Forsythe's treatment, but that they had never gone away.

Dr. Moisan knows Dr. Forsythe professionally. He acknowledged that he is a competent and conscientious physician, who is motivated by providing medical care that was appropriate for Petitioner. Dr. Moisan based his opinions on the understanding that Petitioner had not experienced any changing symptoms despite treatment by Dr. Forsythe including inhaled steroids, bronchodilators, and other therapy. However, Dr. Moisan testified that he did not review Dr. Forsythe's treatment records to evaluate any change in symptoms related to treatment. For instance, Dr. Moisan was made aware that Petitioner's medical records show that in 2013, he reported some improvement with inhalers and that Dr. Forsythe described that Symbicort inhaler was "keeping things in check". He acknowledged that prednisone reduces Petitioner's symptoms during use, but symptoms were not eliminated permanently. He was aware that efforts to wean Petitioner off of prednisone resulted in an increase of symptoms and had provoked emergency room visits and hospitalizations. Dr. Moisan was unaware of how many emergency room visits or hospitalizations occurred during attempts to wean Petitioner off prednisone. Dr. Moisan opines that Petitioner is "symptomatically dependent on steroids".

Dr. Moisan testified that he did not opine that Petitioner was malingering or deliberately putting forth suboptimal or volitional poor effort on the spirometry exam that Dr. Moisan conducted. Dr. Moisan opined that Petitioner's inability to draw a deep breath was an anxiety-related issue at the time of his examination. He could not opine that Petitioner suffered from anxiety. Dr. Moisan acknowledged that he was unaware of any medical record that indicated that anxiety played any part in Petitioner's shortness of breath or breathing problems.

Dr. Moisan opined that Petitioner had an exposure to irritants at the Daubert plant in 2011 and his initial symptoms of cough, shortness of breath, and wheezing flowed from that exposure. Dr. Moisan acknowledged that Petitioner's symptoms persist. He acknowledged that those symptoms first appeared after the Daubert exposure in 2011 and that they have not gone away despite aggressive treatment by Dr. Forsythe and others. Dr. Moisan acknowledged prolonged steroid use as causing osteopenia and weight gain and was to be avoided if possible.

After Dr. Moisan's 2018 evidence deposition, he produced a June 11, 2021, addendum report submitted Respondent's Exhibit 4. In Respondent's Exhibit 4, Dr. Moisan reviews medical records from LaGrange Hospital and Loyola consisting of Dr. Forsythe's continued treatment and Dr. Coe's report. Dr. Moisan disputed the accuracy of Dr. Coe's opinion that irritant-induced asthma explains Petitioner's symptoms because Dr. Moisan believes that short term exposures cannot produce irritant-induced asthma. Dr. Moisan reiterated that lack of positive symptom response to aggressive inhaler and oral steroids militates against a diagnosis of irritant-induced asthma or RADS. Dr. Moisan reiterated his opinion that Petitioner's breathing problems are a

result of Gerd induced cough. Dr. Moisan points out that his opinions have not changed from those expressed in his evidence deposition based on Dr. Coe's report.

Medical Records-Petitioner's Medical Treatment:

Petitioner's Exhibit 12 is a medical records appendix. It contains selected medical records which are contained in Petitioner's Exhibit Numbers 1, 2, and 3.

On December 6, 2011, Petitioner was seen at the Emergency Department at Loyola Hospital in Maywood Illinois. The history provided states that Gary Howard was a 63-year-old male, previously in good health, doing a survey in a chemical plant one week increasing of shortness of breath. He reported the "Friday before last Friday" he had lung pain and "cold burning, like menthol" bilaterally across the chest. He reported abdominal pain for days with diarrhea. The History and Present Illness states that the Petitioner had shortness of breath when he started working at the chemical plant which worsened when he entered the plant. He reported he spent approximately 25 hours at the facility. He had a cough accompanying his shortness of breath, which was dry and nonproductive. He had intermittent headaches, dizziness, diarrhea/constipation since starting his work at the chemical plant. Petitioner was discharged after being diagnosed with dyspnea and mild pneumonitis.

Petitioner's Exhibit 2 is medical records from Suburban Pulmonary & Sleep Associates. On February 2, 2012, Petitioner was seen by Dr. Vasantha Samala. Dr. Samala noted a history of working at the Daubert Chemical Company plant with his last date of work there on December 5, 2011. He gave a history of burning eyes, dry lips, burning in the lungs. He developed shortness of breath, wheezing, and coughing. Dr. Samala reviewed a list of chemicals provided by Petitioner which he obtained from Daubert's website (PX 13). Petitioner was seen January 19, 2012, February 14, 2012, and March 13, 2012. The history stated by Dr. Samala shows that Petitioner continued to have symptoms which were worsening despite use of inhalers. Dr. Samala prescribed a proton pump inhibitor for GERD symptoms which arose as a result from runny nose after inhaler use. On March 13, 2012, Dr. Samala reported Petitioner had worsening post-nasal drip and GERD symptoms with inhaler use. He had been seen by a toxicologist who reported that Petitioner might possibly be suffering from reactive airway disease. Dr. Samala noted that Petitioner coughed up blood in the office after a spirometry exam and prescribed Petitioner prednisone. On April 24, 2012, Dr. Samala noted that Petitioner was feeling a bit better until the prednisone was decreased from 40mg daily to 30mg daily. Once the course of prednisone completed, Petitioner reported his symptoms returned back to where they were initially. He continued with coughing, shortness of breath, and wheezing. Dr. Samala recommended Petitioner undergo another round of prednisone and referred Petitioner to a pulmonologist. Dr. Samala's records contain medical records from Dr. Leikian. He conducted a battery of blood tests which did not reveal the presence of unexpected chemicals in Petitioner's blood or urine. Spirometry and lung volume testing by Dr. Samala showed that Petitioner suffered from severe airway obstruction and reduced lung volumes. Dr. Samala commented that the positive response to bronchodilators indicated that Petitioner's symptoms might be reversable.

Petitioner's Exhibit 3 is Loyola University Medical Center medical records. Page 52 of Exhibit 3 contains notes from Petitioner's first visit with Dr. Sean Forsythe, a pulmonologist. Dr. Forsythe is Petitioner's treating pulmonologist. Petitioner first saw Dr. Forsythe on June 8, 2012. The history obtained by Dr. Forsythe is that in November, 2011, Petitioner was exposed to chemicals while on the job. He developed dry throat, itchy skin, and a cough. He continued to work and was exposed to the same chemicals. His breathing symptoms became worse and he started wheezing, coughing, and having shortness of breath. He was seen at the Loyola Emergency Department. After seeing Drs. Samala and Leikian, a toxicologist, he came under Dr. Forsythe's care. Dr. Forsythe noted that Petitioner's symptoms remained almost the same, breathing had gotten

somewhat better but the cough and wheezing remained the same. Petitioner had wheezing every day which was worse at night. Dr. Forsythe suggested Petitioner restart Symbicort and albuterol inhalers.

On December 5, 2012, Petitioner was seen at Adventist LaGrange Memorial Hospital's Emergency Room. See Petitioner's Exhibit 12, page LAGRANGE00001 and following. LAGRANGE000020 contains the History of Present Illness wherein Petitioner presented with a cough which had been ongoing for approximately six weeks, described as chronic, combined with a history of restrictive airway disease after chemical exposure the previous year. Petitioner was confirmed to have no acute cardio-pulmonary emergency and was instructed to return to Dr. Forsythe.

Petitioner returned to Dr. Forsythe December 28, 2012. In Petitioner's Exhibit 3, LOYOLA000060, Dr. Forsythe noted that Petitioner's coughing and wheezing was persistent despite inhalers. Dr. Forsythe continued the longer course of prednisone and oral Singulair. Petitioner saw Dr. Forsythe on February 1, 2013, LOYOLA000076, and March 15, 2013, LOYOLA000089. Dr. Forsythe conducted a spirometry exam June 7, 2013, LOYOLA000103, wherein he commented that Petitioner had asthma/RADS and recorded that his lung volumes were restricted, but slightly less so than in January 2012. Dr. Forsythe continued inhalers. Dr. Forsythe expressed doubt that there would be any spontaneous resolution to Petitioner's symptoms. LOYOLA000103. Petitioner continued to see Dr. Forsythe on August 2, 2013, LOYOLA000157, January 31, 2014, LOYOLA000176, April 18, 2014, LOYOLA000191, May 30, 2014, LOYOLA000211, July 11, 2014, LOYOLA000224, and August 22, 2014, LOYOLA000247. On August 22, 2014, he was noted to be experiencing poorly controlled asthma, which was not responding to any treatment other than oral steroids. Dr. Forsythe began a trial of lower dose prednisone, 5mg daily, to determine if Petitioner's symptoms could be controlled on lower doses of prednisone, LOYOLA000248. September 19, 2014, LOYOLA000255, Dr. Forsythe noted that Petitioner had been maintained on prednisone, 5mg daily, was still experiencing symptoms during the day, but awaking at night with symptoms. Petitioner used albuterol, a rescue inhaler four times daily and had nocturnal symptoms on most nights.

On September 30, 2014, Petitioner was seen at Loyola University Medical Center's Emergency Room, LOYOLA000270. The history states the patient became short of breath that morning, with no relief from home nebulizer or rescue inhaler. The History and Present Illness section of emergency room report, LOYOLA000279, shows that Petitioner presented with shortness of breath and chest pain for the previous 2.5 days. The emergency room physician noted that Petitioner had a history of asthma with daily wheezing and shortness of breath at night but that his symptoms acutely worsened the previous day while he was at work, and he became short of breath and dizzy. Previous to this episode, he had been able to walk 10 blocks without becoming short of breath, but at the time of this visit, he could only walk about 40 feet. Petitioner had attempted to double his dose of nebulizer treatments, with no improvement in symptoms. He went to the hospital because of shortness of breath and inability to breathe. The emergency room physician noted that two weeks prior, Dr. Forsythe had attempted to begin tapering prednisone to half of the previous dose. Petitioner was stabilized and showed vast improvement with nebulizer treatment in the emergency room, LOYOLA000282. At that time, Petitioner was returned to a 40mg daily dose of prednisone and admitted to Loyola as an inpatient. LOYOLA000395. He was discharged October 1, 2014.

Petitioner returned to Dr. Forsythe on October 31, 2014, LOYOLA000398. Dr. Forsythe noted that Petitioner had been hospitalized from September 30 to October 1 with asthma exacerbation which was treated with nebulizer treatments and steroids. After the increased dosage of steroids, they were gradually tapered and Petitioner had returned to his previous dose of 5mg of prednisone daily. At this visit with Dr. Forsythe, he was noted to be wheezing more than usual. Petitioner felt his symptoms since stopping the steroid taper worsened. He was using an albuterol inhaler three times a day but had wheezing that awakened him at night.

Petitioner next saw Dr. Forsythe on December 26, 2014, LOYOLA000408. During this visit, Petitioner's condition was noted to be unchanged. Dr. Forsythe ordered a bone scan to determine whether Petitioner had osteopenia or osteoporosis as a result of chronic steroid use. LOYOLA000409.

Petitioner saw Dr. Forsythe on February 27, 2015, LOYOLA000418. At that visit it was noted that his symptoms were the same and that he was experiencing side effects including osteopenia. Despite this, Dr. Forsythe continued prednisone at the current dose and began a calcium/vitamin D regimen for osteopenia, LOYOLA000428. From May to September 2015, Petitioner reported to Dr. Forsythe that he was feeling relatively well with continued stable symptoms. LOYOLA000438, LOYOLA000455. On November 27, 2015, Petitioner was seen by Dr. Forsythe. LOYOLA000472. Since his last visit, Dr. Forsythe had attempted to taper Petitioner's prednisone. Within five days the symptoms worsened, and he needed to increase the prednisone to the previous level, 5mg twice a day. LOYOLA000472. In February 2016, Petitioner was seen at the emergency room after attempting to reduce prednisone, which again, resulting in an increase of symptoms requiring prednisone to be prescribed at the previous dosage. LOYOLA000488. On April 25, 2016, Petitioner was seen at the Emergency Room at LaGrange Memorial Hospital. LaGrange000155. Petitioner reported to the emergency room with three days of shortness of breath. He was diagnosed with community acquired pneumonia in the left lung. One month later he was seen by Dr. Forsythe on May 27, 2016, LOYOLA000511. Petitioner was still experiencing cough, wheezing, and shortness of breath.

On September 2, 2016, Dr. Forsythe saw Petitioner, LOYOLA000536. Dr. Forsythe noted that since his last visit with Petitioner, he needed to increase prednisone due to an exacerbation of symptoms, but at the time of this visit he was back to his regular 5mg, twice daily dosage. Dr. Forsythe noted that three days prior to the visit, Petitioner had an increase in symptoms after doing some yard work. LOYOLA00536. Dr. Forsythe reiterated his continued attempts to get to the lowest dose of prednisone to control Petitioner's symptoms. LOYOLA00537. In November 2016, Dr. Forsythe noted that Petitioner's symptoms seemed most stable at 5mg of prednisone twice a day. Lower doses resulted in frequent exacerbations of symptoms and urgent care visits. Dr. Forsythe noted that Petitioner had weight gain and osteopenia with the use of steroids. Dr. Forsythe discussed an attempt to reduce prednisone dosage from 5mg twice a day to 5mg per day. LOYOLA000553. On January 26, 2017, Dr. Forsythe noted that a decrease in prednisone resulted in dyspnea and wheezing increasing. Therefore, prednisone dosage was increased to 5mg twice a day. At the time of this visit, Petitioner reported dyspnea on exertion walking up stairs. He was participating in a weight loss program at Hines VA Hospital. He was on a 2,000 calorie a day diet and was beginning an exercise program. His symptoms persisted at that time. LOYOLA000560. On February 17, 2017, Petitioner was seen at the Emergency Room at Loyola. LOYOLA00573. At that time Petitioner had experienced three days of shortness of breath with left sided chest pain. His shortness of breath had not improved with home inhalers. Petitioner reported that his chest symptoms were worse upon breathing or coughing, that he was unable to walk from the parking lot to the waiting room of the emergency room without experiencing shortness of breath. Previously, he had been able to walk three quarters of a block before experiencing shortness of breath.

Petitioner saw Dr. Forsythe on March 10, 2017, LOYOLA000608. He was continuing to experience shortness of breath and chest pressure while walking. He had undergone a stress test after his previous visit to the ER. In June of 2017, Dr. Forsythe reported that he had begun a weight loss program at Hines VA Hospital which had resulted in some fluctuations in weight. His symptoms continued. LOYOLA000621. During 2018, Petitioner reported to Dr. Forsythe that he was doing reasonably well with stable symptoms. LOYOLA000700, LOYOLA000727. On July 9, 2018, Petitioner saw Dr. Forsythe and reported that he had been doing reasonably well and had attempted to decrease prednisone to one pill a day. Wheezing and shortness of breath returned and Petitioner returned to his previous dose. LOYOLA000576. On February 4, 2019, Petitioner saw Dr. Forsythe who noted that since his last visit, Petitioner was feeling more fatigue and exercising tolerance. LOYOLA000810. Dr. Forsythe noted that Petitioner remained on 5mg prednisone twice a day. He noted that

Petitioner had missed doses and his breathing is worse when the dose is missed. LOYOLA000810. Dr. Forsythe continued prednisone at the current dose and restarted Symbicort. On March 25, 2019, Petitioner was admitted to the Emergency Room at LaGrange Hospital, LAGRANGE000355. He was diagnosed with acute hypoxemic respiratory failure with possible sepsis secondary to pneumonia. Physicians at LaGrange Hospital noted that Petitioner was on daily steroids and therefore immunocompromised. LAGRANGE000356. He was placed on antibiotics and followed by the pulmonary service. Petitioner was admitted to LaGrange Hospital for four days. Prednisone was increased to 20mg twice a day.

On April 8, 2019, Petitioner saw Dr. Forsythe regarding the four-day hospitalization. LOYOLA000821. Dr. Forsythe noted that since discharge from the hospital, Petitioner had insomnia and nightmares every night. Since his discharge Petitioner's prednisone had been tapered back to his normal dosage of 5mg twice a day. LOYOLA000821.

During April and May of 2019, Petitioner continued treatment with Dr. Forsythe. LOYOLA000821, LOYOLA000832. On July 8, 2019, Dr. Forsythe started Petitioner on Methotrexate in an attempt to wean Petitioner off prednisone. LOYOLA000844. On August 17, 2020, Petitioner saw Dr. Forsythe who reported that Petitioner's symptoms were being mostly managed. LOYOLA000864. He was using albuterol as needed for wheezing with additional maintenance inhalers twice per day. Petitioner was continuing to attempt to wean from prednisone. On November 14, 2020, Dr. Forsythe performed a spirometry exam which he described as normal. LOYOLA000889. On March 8, 2021, Petitioner visited Dr. Forsythe. Petitioner had been attempting to continue to decrease prednisone dosage, but the symptoms worsened and he was forced to increase prednisone dosage again. LOYOLA000924. Petitioner reported increased asthma symptoms approximately every two weeks. By June of 2021, Petitioner reported having had an asthma flareup the previous month, causing him to need to increase prednisone dosage. LOYOLA000941. In September 2021, Dr. Forsythe noted that asthma symptoms worsened while outdoors. LOYOLA000960. In December 2021, March 2022, and September 2022, Petitioner's symptoms and medications remained approximately the same. He was scheduled for a follow up appointment in March of 2023. LOYOLA000974, LOYOLA001050, LOYOLA001051.

Employment Records:

Respondent's Exhibit 5 is records from the Cook County Employee's Annuity and Benefit Fund. Petitioner retired from employment by Respondent on December 26, 2014. Respondent's Exhibit 6, records from the City of Maywood Human Resources Department. Respondent's Exhibit 6 shows that Petitioner's first day of work for Maywood was April 9, 2015. His last day of work was April 30, 2015. During the three weeks Petitioner worked for Maywood, he earned $1,000.00, resulting in an average weekly wage of $333.33. Respondent's Exhibit 7 are subpoenaed records from the Illinois Department of Public Health. Respondent's Exhibit 7 show that Petitioner worked for the Illinois Department of Public Health starting November 15, 2019. He worked until February 15, 2020, for a total of 13 and 6/7 weeks. During that time Petitioner was paid $14,731.58 or an average weekly wage of $1,063.11.

Medical Bills:

Petitioner's Exhibit 6 are medical bills corresponding to the medical records in evidence. Exhibit 6 contains medical bills from Suburban Pulmonology & Sleep Associates, Loyola University, Adventist LaGrange Hospital, and Suburban Radiology.

Petitioner's Exhibit 7 is a itemization of medical bills paid by the Centers for Medicare and Medicaid Services, CMS. Petitioner's Exhibit 7 shows that bills from Loyola University Medical Center, including Dr. Forsythe and other specialists at Loyola were paid by CMS.

Respondent's Exhibit 12 is a printout of charges paid by Petitioner's group health insurance.

CONCLUSIONS OF LAW

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

Section 1(d) of the Act provides that, in order to obtain compensation under the Act, the employee bears the burden of showing, by a preponderance of the evidence, that he or she has sustained accidental injuries arising out of and in the course of employment. 820 ILCS 305/1(b)3(d). To obtain compensation under the Act, Petitioner has the burden of proving, by a preponderance of the evidence, all elements of their claim (O'Dette v. Industrial Commission, 79 Ill. 2d 249, 235 (1980)), including that there is some causal relationship between their employment and their injury. Caterpillar Tractor Co. v. Industrial Commission, 129 Ill. 2d 52, 63 (1989)

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

The Arbitrator finds Petitioner's testimony to be credible.

It is noted that this disputed case is very complicated and the case was well tried by both counsel. The Petitioner's case and Respondent's case are supported by the opinions of well-credentialed pulmonologists. The Arbitrator makes his findings below on the disputed issues after weighing the experts' opinions, along with the remainder of the evidence adduced.

AS TO ISSUE (C), DID AN ACCIDENT OCCUR THAT AROSE OUT OF AND IN THE COURSE OF PETITIONER'S EMPLOYMENT BY RESPONDENT?, AND ISSUE (F), IS PETITIONER'S PRESENT CONDITION OF ILL-BEING CAUSUALLY RELATED TO THE INJURY, THE ARBITRATOR FINDS:

The issues of accident and causation are, of course, related in all Illinois Workers' Compensation cases and they are so intertwined in this case that the Arbitrator addresses both issues together.

Petitioner sustained accidental injuries which arose out of and in the course of his employment by Respondent on November 17, 2011. This finding is based upon Petitioner's testimony, the medical records and the opinions of the medical experts.

Regarding causation, Petitioner's current condition of ill-being, to wit: breathing problems, shortness of breath, wheezing, fatigue, and steroid-dependent asthma was caused or aggravated by Petitioner's work-related exposure to chemical irritants during his inspection of the Daubert Chemical facility in November 2011. This finding is based upon the persuasive opinions of Dr. Forsythe, the testimony of Petitioner, the medical records and the report of Dr. Coe.

Petitioner's testimony was that prior to November 2011, he did not have any problems breathing. He had no problems related to asthma and he had not ever been diagnosed with asthma. He had not ever received a prescription of prednisone. He did not have any problems completing his work tasks, including walking, stairs, or crawling. This testimony was unrebutted.

Petitioner also said that he did not have GERD and was not ever diagnosed with GERD or treated for it. The Arbitrator notes that the records of Dr. Nazir contain mentions of GERD, heartburn, hiatal hernia and difficulty swallowing and also Petitioner was seen for a screening colonoscopy in August of 2007, with the history noting heartburn symptoms for a number of years and difficulty swallowing, without other specific GI complaints. The Arbitrator finds that Petitioner was honest in his testimony on this issue (there are GERD like symptoms, but not a formal diagnosis of GERD and no active treatment for GERD), and he was not trying to deceive the finder of fact.

Petitioner's testimony and medical records show that during Petitioner's inspection of the Daubert Chemical plant commencing on November 17th and concluding on December 5th, 2011, Petitioner was exposed to chemicals which provoked breathing difficulty symptoms. While Petitioner was at the Daubert facility, he experienced irritation in his eyes and lips. He had a burning sensation in the skin of his lower legs and chest. Petitioner continued to work and by the third day experienced a burning sensation in his nose and throat as well as a rash on his arms. Petitioner began to develop breathing problems, including shortness of breath and a nonproductive cough made worse by deep breathing. Petitioner continued to work with difficulty. Petitioner's symptoms were worse while inside the Daubert facility and lessened, but did not completely abate when he was not inside the Daubert facility. Petitioner spent approximately 25 hours in the Daubert facility during his weeklong inspection. During that inspection, Petitioner described chemical smells, lack of ventilation, areas where airborne irritants were in sufficient concentrations to cause him to develop symptoms. Petitioner was seen in the Loyola Emergency Room on December 6, 2011, was short of breath and not able to take a deep breath either in or out. He had a cough and a rash. He was referred to a pulmonologist, Dr. Samala. After Dr. Samala, Petitioner was referred to a pulmonologist, Dr. Forsythe who treated Petitioner from 2012 through to the time of hearing. Dr. Forsythe continues to be Petitioner's treating pulmonologist. Dr. Moisan believed that there could have been an exposure at Daubert.

Given the above, accident has been established. Petitioner sustained accidental injuries which arose out of and in the course of his employment by Respondent on November 17, 2011.

The Arbitrator finds that Petitioner's breathing problems were caused or aggravated by his exposure to chemical irritants at the Daubert facility. The work-related exposure is a causative factor leading to Petitioner's condition of ill-being and necessitated the medical treatment undergone by Petitioner. Petitioner's symptoms have persisted since the time of exposure to this day.

Dr. Forsythe endorsed causation regarding the exposure at Daubert and Petitioner's steroid dependent asthma. Significantly, he did not note any lack of effort by Petitioner and the treating medical records contain no mention of any concerns regarding malingering by Petitioner.

The Arbitrator is not persuaded by the opinions of Drs. Diamond or Moisan, Respondent's Section 12 examiners.

The Arbitrator is not persuaded of the opinions of Dr. Diamond. Dr. Diamond testified that he reviewed only portions of the Petitioner's medical records. Dr. Diamond did not appear to have a clear understanding of Petitioner's work history, the history as it pertains to Petitioner's experience at the Daubert Chemical facility, nor of Petitioner's medical condition or treatment. Dr. Diamond did not offer competent opinions on the subjects of injury or causation. The Arbitrator finds that the opinions of Dr. Forsythe and Coe are more persuasive than those of Dr. Diamond.

The Arbitrator is unpersuaded by testimony of Dr. Moisan and Dr. Moisan's reports. Dr. Moisan did agree that Petitioner was exposed to an irritant at Daubert, as demonstrated by the symptoms that he described

when he was at the plant. Dr. Moisan's assertion that Petitioner's breathing problems are not the result of steroid-dependent asthma are not convincing. Dr. Moisan's opinions contradict the evidence and are not persuasive in light of testimony of Dr. Forsythe and the report of Dr. Coe. Dr. Moisan's assertion that Petitioner's breathing problems are a result of his body weight or GERD symptoms are unpersuasive. The timing of Petitioner's onset of symptoms in relation to the irritant exposure Dr. Moisan acknowledges and the persistence of symptoms despite aggressive treatment by Dr. Forsythe, militates against assigning any weight to Dr. Moisan's opinions. Dr. Moisan does not dispute that Petitioner suffers from breathing problems, but his attempts to identify some other cause or downplay the effect of the symptoms is contrary to the evidence and unpersuasive.

Dr. Forsythe diagnosed Petitioner with persistent steroid-dependent asthma. Dr. Forsythe's treatments consisted mainly of administration of medication designed to alleviate Petitioner's symptoms. Petitioner's symptoms have been resistant to any medication or therapy with the exception of large doses of prednisone, which Petitioner has undergone from the start of Dr. Samala's treatment to the time of hearing. Petitioner's intake of prednisone is noted by Dr. Forsythe to make him immunocompromised. Petitioner's prednisone intake has caused him osteopenia and osteoporosis as confirmed by bone density scans ordered by Dr. Forsythe. Dr. Forsythe has persistently attempted to reduce Petitioner's prednisone intake. The efforts of attempting to wean Petitioner from prednisone resulted in an increase of symptoms, leading to hospitalizations and emergency room visits at both Loyola and Adventist LaGrange. Dr. Forsythe has opined that the only viable therapy to treat Petitioner's symptoms is chronic steroid administration including prednisone and other drugs administered orally and by inhaler. The Arbitrator finds Dr. Forsythe's testimony to be persuasive.

Respondent's Section 12 experts want to limit a diagnosis associated with a workplace chemical exposure in this case to RADS (Massive exposure/short duration) or IIA (Low exposure/long duration), neither of which match with the facts of this case. Dr. Coe mentions that IIA may now be a result of a short-term exposure. As Dr. Forsythe testified, Petitioner "lives in the land of this is either asthma or (RAD). (PX 4, p.11) The bottom line is: Petitioner experienced symptoms consistent with a chemical exposure when he was performing his job at the Daubert facility, he did not have pulmonary problems before and he continues to suffer pulmonary problems now. Causation as been established.

Here, the evidence shows a chain of events which demonstrates a previous condition of good health, an accident and a subsequent injury resulting in disability. Causation has been established. International Harvester v, Industrial Comm'n, 93 Ill. 2d 59, 63 (1982)

AS TO ISSUE (J), WERE THE MEDICAL SERVICES THAT WERE PROVIDED TO PETITIONER REASONABLE AND NECESSARY AND HAS RESPONEDNT PAID ALL APPROPRIATE CHARGES FOR ALL REASONABLE AND NECESSARY MEDICAL SERVICES, THE ARBITRATOR FINDS:

The medical services provided to Petitioner regarding his breathing issues were reasonable and necessary to cure or relieve the symptoms and effects of Petitioner's work injury.

Dr. Coe's report explains the relationship between Petitioner's ongoing symptoms and his exposure. Dr. Coe's opinions that Petitioner's current problems are caused by his 2011 exposure match the facts and explain Petitioner's condition. Dr. Coe is professionally qualified to render the opinions contained in his report. His opinions align with and bolster Dr. Forsythe's opinions. The Arbitrator finds Dr. Coe's report to be persuasive.

This finding is based upon the Arbitrator's findings on the issue of causation, medical records, and the above opinions of Doctors Forsythe and Coe.

Accordingly, Respondent shall pay the medical providers listed in Petitioner's Exhibits 6 and 7 and Respondent's 12, in accordance with the applicable fee schedule or negotiated rate, in accordance with §§8(a) and 8.2 of the Act.

Respondent is entitled to a credit for all awarded medical expenses that it has paid or compromised.

AS TO ISSUE (K), WHAT AMOUNT OF COMPENSATION IS DUE FOR TEMPORARY TOTAL DISAVILITY, TEMPORARY PARTIAL DISABILITY AND/OR MAINTENANCE, THE ARBITRATOR FINDS:

Petitioner testified that he retired from his job in December of 2014, due to breathing problems and the inability to physically do his work. This testimony is supported by Drs. Forsythe and Coe's observations that Petitioner's chronic steroid asthma that resulted in shortness of breath, wheezing, and fatigue upon exertion were persistent and debilitating. On cross examination, Petitioner agreed that he took a non-disability retirement.

Thereafter, Petitioner worked for Maywood and IDPH. He also did random inspection work and had applied for work with the Illinois Attorney General's Office.

On cross examination, Petitioner agreed that none of his treating doctors have restricted him from work. They did advise Petitioner to avoid triggers, which is probably good advice for everyone.

It is axiomatic that in order to be successful in a claim for TTD, Petitioner must not only show that he did not work, but he was unable to work. Pietrzak v. Industrial Comm'n, 329 Ill.App. 3d 828, 832 (2002) An essential component of a claimant proving that he was unable to work is that his physician has placed work restrictions on him. Here, Petitioner agreed, and the medical evidence shows, that no treating physician restricted him from work.

As Petitioner was not medically excused from work, his claim for TTD is DENIED.

AS TO ISSUE(L), WHAT IS THE NATURE AND EXTENT OF THE INJURY THE ARBITRATOR FINDS:

As Petitioner's accident occurred after September 1, 2011, the Arbitrator must consider the factors set forth in §8.1b(b) of the Act in determining PPD. The five factors are:

1. The reported level of impairment;
2. Petitioner's occupation;
3. Petitioner's age at the time of the injury;
4. Petitioner's future earning capacity; and
5. Petitioner's evidence of disability corroborated by treating medical records.

Section 8.1(b) also states, "No single factor shall be the sole determinant of disability. In determining the level of disability, the relevance and weight of any factors used in addition to the level of impairment as reported by a physician must be explained in a written order."

The term "impairment" in relation to the AMA Guides to the Evaluation of Permanent Impairment 6th Edition is not synonymous with the term "disability" as it related to the ultimate partial disability award.

As the Act requires the consideration of the above five factors, they are found to be relevant.

Regarding the five factors, the Arbitrator finds:

1. The reported level of impairment:
An AMA impairment rating was not done in this case. This does not preclude an award for partial permanent disability. This factor is given no weight is determining PPD.

2. Petitioner's Occupation:
On the date of the accident, Petitioner was a Plumbing Inspector. After his injury, Dr. Forsythe and Dr. Coe describe significant difficulty in performing duties necessary as a Plumbing Inspector. The duties include walking, crawling, climbing ladders, stairs, and being active is a variety of physical settings. Petitioner described shortness of breath, wheezing, and coughing which prevented him from conducting the duties necessary as a Plumbing Inspector. Petitioner continued to work as a Plumbing Inspector for 3 years after the accident. This factor is given substantial weight in determining PPD.

3. Petitioner's age at the time of injury:
Petitioner was 63 years old at the time he inspected the Daubert facility, and his is 74 years old at the time of hearing. Despite his age, Petitioner is in reasonably good health with the exception of his breathing issues. Petitioner has had other health issues which have been treated and resolved. Petitioner describes himself, and is to the observation of the Arbitrator, active but for his breathing issues. Petitioner's age receives some weight in determining PPD, as he will have to live with the effects of his injury for the rest of his life.

4. Petitioner's future earning capacity:
Petitioner has retired from his job at Respondent. However, Petitioner has attempted to work in his field, that of Plumbing Inspector, with both the Village of Maywood and the Illinois Department of Public Health. Petitioner has testified that he has applied for a job as an Americans with Disabilities Act Inspector with the State of Illinois, which he describes a largely sedentary position. It is clear that Petitioner desires to work in some capacity, but he is hampered by his breathing problems. Petitioner's future earning capacities as a Plumbing Inspector is found to be almost nonexistent (he said that he has performed some inspections). He unable to do Plumbing Inspector work including reduced hours and in positions where less physical activity is required. The Arbitrator finds that sustantial weight should be given to Petitioner's future earning capacity in determining PPD.

5. Petitioner's evidence of disability corroborated by medical records:
As a result of his breathing problems, Petitioner has suffered from steroid dependent asthma since 2011. This condition has manifested itself in shortness of breath, wheezing, and coughing. Moreover Petitioner, as a result of chronic prednisone use, is immunocompromised and at risk for osteopenia. He has been hospitalized and treated in emergency rooms for breathing related problems, pneumonia and shortness of breath symptoms which are associated with his breathing problems and asthma condition. Petitioner's medical records detail Dr. Forsythe's efforts to control Petitioner's symptoms without success. The evidence in testimony is uncontroverted that Petitioner's breathing problems cause him significant inability to walk or exert himself in any meaningful way. Drs. Diamond and Moisan do not dispute that Petitioner has breathing problems. Dr. Coe opines that Petitioner's now chronic steroid-

dependent, irritant-induced asthma has caused permanent disability due to his lung injury. The medical records support Petitioner's description of his symptoms as preventing him from exerting himself in any meaningful way. This factor is also given substantial weight in determining PPD.

After considering the above factors and the Record as a whole, the Arbitrator finds that Petitioner has lost the ability to continue work in his trade and, as a result of the injuries sutained, Petitioner suffered the 30% loss of use as the person as a whole, in accordance with Section 8(d)2 of the Act.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	17WC005618
Case Name	Steven E Hose v. Quality Metal Finishing Co.
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	24IWCC0369
Number of Pages of Decision	36
Decision Issued By	Christopher Harris, Commissioner

Petitioner Attorney	Jason Esmond
Respondent Attorney	Derrick Lloyd

DATE FILED: 8/2/2024

/s/Christopher Harris, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF WINNEBAGO)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

STEVEN HOSE,

Petitioner,

vs. NO: 17 WC 5618

QUALITY METAL FINISHING,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Petitioner herein and notice given to all parties, the Commission, after considering the issues of causal connection, medical expenses, temporary benefits and permanent partial disability (PPD) benefits, and being advised of the facts and applicable 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 only modifies the Arbitrator's decision to specify the weight afforded to the first factor related to impairment rating under Section 8.1b of the Act. The parties did not offer any impairment rating into evidence. The Commission therefore gives no weight to this factor. All else is affirmed.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed November 6, 2023 is hereby modified as stated and otherwise affirmed and adopted.

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

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

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $9,600.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in the Circuit Court.

August 2, 2024

CAH/pm
O: 7/25/24
052

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

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

/s/ *Marc Parker*
Marc Parker

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	17WC005618
Case Name	Steven E Hose v. Quality Metal Finishing Co.
Consolidated Cases	
Proceeding Type	Request for Hearing
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	33
Decision Issued By	Paul Seal, Arbitrator

Petitioner Attorney	Jason Esmond
Respondent Attorney	Derrick Lloyd

DATE FILED: 11/6/2023

/s/ Paul Seal, Arbitrator

Signature

INTEREST RATE WEEK OF OCTOBER 31,2023 5.32%

STATE OF ILLINOIS)
)SS.
COUNTY OF WINNEBAGO)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Steve Hose
Employee/Petitioner

v.

Quality Metal Finishing
Employer/Respondent

Case # **17** WC **005618**

Consolidated cases:

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Paul Seal** Arbitrator of the Commission, in the city of **Rockford, IL**, on 9**/26/23**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On **1/16/17**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $**28,491.84**; the average weekly wage was $**547.92**.

On the date of accident, Petitioner was **57** years of age, ***single*** with **0** dependent children.

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

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

Respondent shall be given a credit against petitioner of $**9,148.32** for TTD, $**0** for TPD, $**0** for maintenance, and $**0** for other benefits, for a total credit of $**9,148.32**.

ORDER

The Arbitrator finds that petitioner's subdural hematoma and medical care directed to the subdural hematoma through his release by Dr. Sonti on March 1, 2017 were causally related to the accident. The Arbitrator finds that petitioner reached MMI as of March 1, 2017. The Arbitrator finds that Petitioner's condition of ill-being subsequent to March 1, 2017 is not causally related to the January 16, 2017 work accident.

Petitioner is entitled to 6 weeks of temporary total disability as a result of the accident. Respondent shall be given a credit of $9,148.32 for temporary total disability benefits that have been paid.

Respondent is liable for reasonable, necessary, and causally related medical services up to March 1, 2017, when Petitioner reached maximum medical improvement. The Arbitrator finds that all medical treatment received by petitioner after March 1, 2017 is not causally related to the January 16, 2017 accident.

Respondent shall pay Petitioner permanent partial disability benefits of $328.75/week for 50 weeks, because the injuries sustained caused a 10% loss of use of the person as a whole as provided in Section 8(d)(2) of the Act.

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

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

Signature of Arbitrator

November 6, 2023

STATEMENT OF FACTS

This case was tried on September 26, 2023 in Rockford, Illinois. Petitioner alleges that he sustained a closed head injury as result of a work accident on January 16, 2017. He alleged he is now permanently and totally disabled as a result of that accident.

PETITIONER'S TESTIMONY

Petitioner worked full time as a Material Handler for Respondent, Quality Metal Finishing. (Tr.9). As a part of that position, he spend most of his time on his feet and would have to lift up to 20 pounds. (Tr. 9) He would occasionally have to push over very heavy barrels. (Id.)

Petitioner testified that on January 16, 2017 he was walking to his car following his shift when he slipped on ice in the parking lot and struck his head. (Tr. 10) He testified he landed on his back and then hit his head. (Tr.11) Following the fall, petitioner got into his car, drove two and a half blocks to his house, and then called Respondent to report the accident. (Id.) He admitted that he did not go into the building following his accident to directly report it to Respondent. (Tr. 28)

Petitioner testified that he attempted to work the next day but could not stand or carry anything. (Tr. 12) His sister then drove him to Swedish American Hospital the same day. (Id.) On cross-examination, petitioner admitted this was not accurate, as he did not seek medical attention until two days after his alleged accident. (Tr. 28) Petitioner reported that in the hospital he felt head pain, rib pain, and dizziness. (Tr. 13)

Petitioner testified that after his accident he treated with a neurosurgeon, Dr. Sonti until at least March 1, 2017. (Id.) He testified that his March of 2017 he began treating with Dr. Rozman who referred petitioner to a new neurologist, Dr. Bielkus. (Tr. 16)

Petitioner testified that Dr. Bielkus recommended a brain MRI and an EEG. (Id.) Br. Bielkus has also recommended petitioner take Gabapentin. (Id) Petitioner continues to take this medication. (Tr. 18)

Petitioner presented for testimony in a wheelchair (Tr.19) Petitioner admitted that he was never prescribed a wheel chair. (Id.) He testified he has been using the wheelchair for a year. (Id.)

Petitioner testified that when he is not using the wheelchair he uses a walker. (Tr. 20) He testified that he has been prescribed a walker (id.) No medical exhibits entered into evidence include a prescription for a walker. (Emphasis added) Petitioner testified that he can only walk 30 feet without a walker (Tr. 22)

Petitioner testified that he does not think he can return to work because of his dizziness and an inability to bend over and pick stuff up. (Tr. 21) Petitioner testified that he falls on occasion. (Tr. 22) He testified that he last fell six to eight months prior (Id.) Petitioner admitted that he has never gone to the hospital following a fall. (Tr.47)

Petitioner testified that he currently requires help to grocery shop, clean his driveway, mow his yard, cook and clean due to his dizziness. (Tr. 25-26). He also testfied that he no longer does stairs. (Tr 26) Petitioner admitted that no doctor has told him he cannot do any of those activities. (Tr 48-49)

On cross examination, Petitioner admitted that following his accident, he treated with Dr. Kimball (Tr.29) He admitted that on February 20, 2017, Dr. Kimball told petitioner that he was nearing resolution of his condition. (Id.) Petitioner admitted that following that news, he decided not to return to Dr. Kimball. (Id.)

Petitioner admitted that he also initially treated with Dr. Sonti, a neurologist. (Tr. 30). He admitted that by March 1, 2017, Dr. Sonti released him from her care. (Id.) Petitioner admitted that he therefore decided to see a different neurologist, Dr. Bielkus. (id.) Petitioner admitted he was referred to Dr. Bielkus by his sister, Crystal Zell. (Tr. 30-31)

Petitioner admitted that during the February 3, 2017 visit with Dr. Kimbell, Dr. Kimbell's nurse was concerned either petitioner or his sister, Crystal Zell, were attempting to secure narcotic pain medications for abuse. (Tr. 46-47) Petitioner admitted he has been convicted of selling drugs. (Tr. 47)(Emphasis added)

Petitioner admitted that his primarily only treats with Dr. Bielkus now for his conditions once per year. (31-32) His only complaints to Dr. Bielkus has been ongoing dizziness (Tr. 31). He admitted that Dr. Bielkus merely prescribes Gabapentin (Tr. 32) He still takes Gabapentin (Id) No one has ever told him that one of the potential side effects of Gabapentin is increased dizziness. (Id.) Dr. Bielkus has never taken him off of work. (Tr. 33)

No one has ever told him that Neurontin, Tramadol, and Flexeril have potential side effects of increased dizziness. (Tr. 33-34) He has taken these medications and Gabapentin since his accident to present. (Tr. 34)

Petitioner admitted that he has treated with Dr. Myers for medication management of his personal COPD and hypertension conditions. (Tr. 35-37) He has not rec3eived any treatment from Dr. Myers for his alleged dizziness complaints. (Tr. 35) Petitioner admitted that on November 27, 2019 he asked Dr. Myers for an opinion stating that he was disabled because neither he nor his attorney could find any other doctors who would write it for him. (Tr. 37-38) (Emphasis added)

Petitioner admitted that he spends a lot of time with motorcycle clubs including the Hells Angels and Kishwaukee Valley ABATE (Tr 44) He would go to meetings once per month. (Tr. 45)

MEDICAL EXHIBITS

Following Petitioner's accident, Petitioner did not seek medical treatment for two days. He first presented to the emergency room at Swedish American Hospital on January 18, 2017. Petitioner reported that he had slipped on ice on Monday. Petitioner stated he fell from an upright position while walking. Petitioner complained of headaches and dizziness since the fall. He denied a loss

of consciousness. He also complained of mid-back, low back, and head pain. He was taking over-the-counter pain medication to minimal relief. He denied any numbness, tingling, or weakness in his extremities. (PX1)

Physical examination of the head, neck, and face were normal. Physical examination of the back revealed painful range of motion with all movement. Petitioner had normal spinal alignment. He had vertebral tenderness appreciated at T5, T6, T7, T8, T9, L3, L4, and L5. Petitioner's cerebellar function and cranial nerves were grossly normal. He had a normal gait. He had 5/5 strength to all extremities. He had a trauma score of 12. (PX1)

Petitioner was diagnosed with an intracranial bleed that was traumatic in nature with tiny subdural hematomas. It was noted that Dr. Sonti, a neurosurgeon, was consulted and requested a repeat CT scan for January 19, 2017. Dr. Sonti noted that petitioner did not have any neuro deficits. Petitioner was discharged the next day. (PX1)

A CT scan of the brain was performed on January 18, 2017 that showed tiny acute bilateral anterior frontal subdural and interhemispheric subdural hematomas. It also showed a bilateral frontal hemorrhagic contusion. X-ray of the thoracic and lumbar spine showed degenerative disc changes. Petitioner was admitted and referred to neurosurgery. (PX1)

On January 25, 2017, Petitioner presented to his PCP, Dr. Kimbell. The noted purpose for this visit was to establish work compensation after his injury. Petitioner told Dr. Kimbell that he was working at Quality Metal Finishing Company on January 17, 2017 when he was walking through a parking lot after work. He stated he slipped on the ice in the parking lot and fell hitting his head on the blacktop. Petitioner stated that as a result he had a headache and weakness. Later, he developed back and hip pain. Petitioner returned to work the next day and worked a full shift. He claimed he then went to the emergency room after work due to his symptoms becoming more severe. Dr. Kimbell noted that petitioner presented to the emergency room on January 18, 2017 and underwent a CT scan of his head that found a tiny acute bilateral anterior frontal subdural and interhemispheric subdural hematomas, and bilateral inferior frontal hemorrhagic contusions. It was noted that he was admitted to the hospital and evaluated by a neurosurgeon. Petitioner had stable neurological exam with no findings. A repeat CT scan showed that his bleed had not worsened. Lumbar spine x-rays were negative for fracture. Petitioner was discharged home the next day on January 19, 2017 with instructions not work or exert himself for three weeks and to follow up with neurosurgeon, Dr. Sonti. (PX4)

Petitioner complained of continued headaches that had improved since his previous visit to the emergency room. He also reported dizziness when he gets out of bed that slowly resolves. He also complained of low back pain and left hip pain. Petitioner denied having any fevers, chills, night sweats, temperature intolerance, or weakness. He denied any abdominal or flank pain as well as any change in his bowel habits including dysphagia, heartburn, tarry stools, or blood in his rectum. He had normal genitourinary frequency. It was noted that he had normal neurological findings. (PX4)

On physical examination, petitioner did not appear to be in any acute distress. He had pinpoint pupils, PERLA, and a horizontal nystagmus to be the lateral and medial aspect. Physical examination of the neck was normal. Physical examination of petitioner's extremities was unremarkable with no joint swelling, tenderness, or erythema. He had mild tenderness to palpation over the lateral aspect of the left hip. He had full range of motion in his left leg without pain. Physical examination of the neck was revealed full range of motion without pain and no tenderness. Physical examination of the back showed no spinal tenderness to percussion, no CVA tenderness, but soft tissue tenderness. Neurological exam was unremarkable without focal findings. (PX4)

Dr. Kimbell diagnosed petitioner with a posttraumatic subdural hematoma without loss of consciousness. Dr. Kimbell recommended that petitioner follow up with a neurosurgeon the following Wednesday. Petitioner was also diagnosed with a mild intermittent asthma, acute bilateral low back pain without sciatica, and left hip pain. Dr. Kimbell prescribed Naproxen. He was to return in one month for a follow up after the fall. (PX4)

On January 26, 2017, Petitioner returned to Swedish American Hospital. Complaining of urinary incontinence, low back pain, and difficulty walking since his last visit. He denied any blood in his urine, diarrhea, abdominal pain, or other complaints. It was noted that petitioner is an everyday smoker. (PX1)

On physical examination, petitioner was neurovascular intact with full normal range of motion. There was no tenderness throughout. He consulted with Dr. Martin Gryfinski, a neurosurgeon. Petitioner's differential diagnosis included cerebral abscess, cluster headaches, a cerebral vascular accident, epidural hematoma, hypersensitive headache, intracerebral hemorrhage, migraine, neoplasm, sinusitis, subarachnoid bleed, subdural hematoma, temporal arteritis, tension headache, traumatic injuries, and vasomotor headache. (PX1)

Dr. Gryfinski performed a neurological evaluation, which was normal. Petitioner was admitted due to his inadequate improvements after his last visit for observation care. Petitioner stated that his symptoms had mildly improved. Dr. Gryfinski noted that petitioner presented after a trip and fall incident slipping outside of his work on January 18, 2017. Petitioner complained of difficulty walking for the past few days. He denied any upper extremity numbness, tingling, or weakness. A repeat CT scan of Petitioner's head was performed that showed a hemorrhagic component associated with a right inferior frontal parenchymal contusion that was resolving. He continued to have a small posterior and interhemispheric subdural hematoma on the left side that was diminishing in size. There were no new areas of hemorrhage. (PX1)

An MRI of petitioner's cervical spine was performed on January 26, 2017, which showed degenerative disc disease with disc space narrowing at C6-C7. Likewise, at C6-7 there was small posterior disc osteophyte complex that indents the ventral aspect of the cord resulting in a mild central canal narrowing. There was marked left and moderate to marked right neuroforaminal narrowing. The remainder of the cervical levels had no herniation or stenosis. There were no compression fractures. The cervical cord demonstrated no evidence for cervical demyelination process or mass myelopathic changes. (PX1)

A CT scan of petitioner's abdomen and pelvis was performed on January 27, 2017, which showed a round low-density nodule in the right adrenal gland consistent with adenoma. It was noted that this was present in 2007 but had since enlarged. Likewise, there were multiple small renal cysts. Likewise, there was a prominent distention of the bladder. Given the degree of the distention it was likely chronic. There was a question as to a bladder outlet obstruction versus a neurogenic bladder. The prostate was not enlarged. (PX1)

Petitioner presented to Swedish American Home Healthcare on January 31, 2017 for a physical therapy evaluation. Petitioner complained of moderate pain in the scapular muscles and left hip since his fall. Petitioner also complained of new weakness in his bilateral hip muscles especially with abduction, left weaker than right as well as decreased balance and ataxia with gait. Petitioner also complained of limited endurance and intermittent dizziness with position changes. It was noted the petitioner scored a 20/28 on the Tinneti balance scale and 13 seconds on the TUG. The therapist analyzed those results to mean an increased risk for falls. It was recommended that the petitioner begin a course of physical therapy. (PX2)

Petitioner was seen by Dr. Sonti, a neurosurgeon, on February 1, 2017/ Dr. Sonti noted that petitioner had no complaints in his arms or legs that corresponded to the degenerative disc disease seen in the MRI which was noted to be chronic. Petitioner told Dr. Sonti that that he was improving with his gait problems, balance problems, and dizzinessHe denied fecal incontinence and genitourinary incontinence. (PX3)

On physical examination, petitioner did not have to be in any acute distress. Neurologically he had normal speech and was alert and oriented. His cranial nerves 2 through 12 were intact. His motor exam was grossly normal. His sensation was grossly normal. His gait and station were normal. Dr. Sonti reviewed petitioner's CT scan and MRI which showed stenosis at C6-7 and a contusion with a subdural hematoma in the brain that was resolving. Dr. Sonti diagnosed petitioner with a subdural hematoma, a contusion of the right side of the brain without loss of consciousness and sequela, and a traumatic brain injury without loss of consciousness. (PX3)

Dr. Sonti did not have any recommendations regarding surgical intervention. Due to petitioner's balance difficulty, Dr. Sonti recommended three weeks of therapy with a subsequent return to work. She also recommended petitioner see a physiatrist for work specific restrictions and a possible release to MMI. (PX3)

Petitioner returned to Dr. Kimbell's office and was seen by RN Willis on February 3, 2017. Petitioner was complaining of left rib pain. Petitioner had been taking Naproxen without improvement. It was also noted the petitioner's sister had accompanied him to that visit and was "hysterical" in the office over the petitioner's pain. Petitioner's sister continuously interrupted and requested "strong pain medication." The resident nurse indicated concern that petitioner's sister might abuse these medications. Petitioner denied any narcotic use in the past 20 years. Petitioner denied any significant headaches, dizziness, fainting, or motor or sensory losses. (PX4)

On physical examination, petitioner presented in a wheelchair and appeared in only mild distress due to pain. Neurological exam was unremarkable without focal findingsPetitioner was diagnosed

with left sided rib pain. He was prescribed tramadol, Flexeril and was instructed to continue to take Naproxen. (PX4)

Petitioner was seen at Swedish American Hospital on February 9, 2017 due to his foot and ankle swelling for two days. He denied any recent dizziness or syncope. Further, he denied any calf tenderness but did report right ankle foot and calf swelling. An ultrasound was performed that showed an acute deep vein thrombosis in the common femoral vein. The doctors consulted with Dr. Sonti due to petitioner's recent subdural hematoma and the subsequent need for treatment of his deep vein thrombosis Petitioner was admitted for further care. (PX1)

Petitioner underwent a CT of the brain on February 9, 2017. The same showed a small amount of new subdural subacute blood as well as resolving interhemispheric blood. Likewise, there were new areas of parenchymal hemorrhage noted. (PX1)

Petitioner underwent an initial therapy evaluation on February 15, 2017. The therapist noted that Petitioner used crude language the majority of the time. Petitioner did not use an assistive device with ambulation despite reporting instability with ambulation in the home. Petitioner complained of "buzzing sounds in his head" and occasional dizziness. It was noted the petitioner had good lower extremity muscle strength but decreased tolerance to functional activities and ambulation due to reports of fatigue and shortness of breath. It was recommended that petitioner undergo a course of physical therapy. (PX2)

Petitioner returned to see Dr. Kimbell on February 20, 2017. Petitioner complained of some dizziness and unsteadiness with walking since his fall. He reported that his strength had increased. He denied any weakness, slurred speech, numbness/weakness. His rib pain had decreased and that the swelling in his right foot had nearly resolved. He was now able to walk without an aid. (PX4)

On physical examination petitioner did not appear to be in any acute distress. Petitioner's neurological examination was once again unremarkable without any focal findings. Dr. Kimbell diagnosed petitioner with a traumatic brain injury without loss of consciousness in a subsequent encounter. He was recommended to continue physical therapy for strengthening and to follow up with a neurosurgeon for clearance to return to work. (PX4)

Petitioner was seen by Dr. Taylor, a urologist, on February 27, 2017. Petitioner was being seen due to his developing an acute urinary retention one week prior.

On physical examination, petitioner was not in any acute distress. Examination of his genitourinary revealed no CVA tenderness of the bilateral kidneys. Dr. Taylor diagnosed petitioner with retention of urine with an unspecified cause. Dr. Taylor discussed lifestyle changes with the petitioner and directed him to initiate timed voiding every two to three hours and to avoid taking any PO two hours prior to retiring for bed. He prescribed an alpha blocker, Flomax. Petitioner was to return in one month.

On March 1, 2017 Petitioner was seen by Dr. Daniel Houlihan, a DO. Petitioner was diagnosed with an unspecified retention of urine.

Petitioner returned to see Dr. Sonti on March 1, 2017. Petitioner was complaining of gait imbalance and dizziness. However, Dr. Sonti noted that none of these complaints could be related to the findings of the CT of the brain or the MRI of the cervical spine. Petitioner denied fecal incontinence and well as genitourinary incontinence. It was noted that the petitioner's gait and balance was slowly improving. (PX3)

On physical examination petitioner had normal mental status and speech. He was alert and oriented. Cranial nerves 2 through 12 continued to be intact. He continued to have normal motor exam, sensation, and gait and station. (PX3)

Dr. Sonti diagnosed petitioner with a subdural hematoma, a contusion on the right side of the brain without loss of consciousness, and a traumatic brain injury without loss of consciousness. He filled petitioner's medications. Dr. Sonti stated that he had a 45 minute discussion with the petitioner, his sister, and the nurse care manager discussion the results of the CT and MRI. Dr. Sonti continued to have no recommendations with regards to surgical intervention and released petitioner from care. (PX3)

Petitioner returned to see Dr. Taylor on March 7, 2017. Petitioner stated that he had been taking his Flomax and had been voiding slightly better. Dr. Taylor noted that petitioner had an elevated PSA which could mean the presence of prostate cancer. He recommended a prostate US and biopsy review. Petitioner refused to undergo a prostate biopsy due to his other current medical problems.

Petitioner then transferred his care to Dr. Rozman on March 24, 2017. Petitioner was complaining of intermittent dizziness and balance difficulty. On physical examination it was noted petitioner had a mildly decreased memory, problem solving, and attention span. Petitioner was not agitated or irritable. It was noted that his cranial nerves were grossly intact. He did not have any significant hearing loss. Petitioner only had "fair endurance." Petitioner was unable to walk toe to heel. He had preserved muscle stretch reflexes in the upper and lower bilateral extremities with preserved range of motion. Petitioner complained of dizziness upon change of positions. He had no atrophy or swelling. His muscle reflexes were preserved. (PX6)

Dr. Rozman diagnosed a traumatic injury with subdural hematoma with apparent diffuse axonal loss with no loss of consciousness, abnormal balance, and vertigo/abnormal balance/possible inner ear injury following a fall. Dr. Rozman recommended petitioner see an ENT and attend physical therapy and occupational therapy three times a week. (PX6)

On April 3, 2017 Petitioner was seen by Dr. Lundine, an ENT. Petitioner complained of ringing and pain in his bilateral ears. Likewise, he complained of "off" balance which he stated was getting better. It was noted that petitioner had a past history of hearing loss.

Petitioner returned to see Dr. Rozman on April 25, 2017. Petitioner advised Dr. Rozman that he did not start physical, occupational, or speech therapy despite Dr. Rozman's prescription. Dr, Rozman noted that this was hard to explain. It was noted that the ENT, Dr. Lundine recommended

a vestibular system. Petitioner reported doing better with his bladder, as he no longer required a straight catheter. It was stated that petitioner did not otherwise change since his last visit (PX6)

On physical examination, petitioner noted dizziness with any heights. He denied an ability to walk heel to toe. He had decreased balance, endurance, and coordination. It was noted that he had a mild cognitive deficit. He had a positive Romberg's test. Dr. Rozman continued to diagnose petitioner with a traumatic brain injury. He recommended physical, occupational, and speech therapy. Dr. Rozman restricted petitioner to not working at heights, no high-speed driving, no twisting, no bending, no kneeling, no pushing, no lifting more than 25lbs, and no operating heavy machinery. (PX6)

Petitioner was seen at Respondent's request for an independent medical examination with Dr. Elizabeth Kessler, a board certified neurologist, on June 1, 2017. Petitioner stated that on June 16, 2017 he got off work and was walking to his vehicle. Petitioner stated that it was icy and that he slipped and fell to the parking lot. Petitioner stated that his feet went out from under him, he landed on his buttocks, and slammed his back and the back of his head. Petitioner alleged that he was unconscious for at least 5 minutes. (Rx2)

Petitioner reported that when he awoke he was unable to open his mouth and thought that his jaw was broken. He stated that he yelled for help but that nobody was around and that he was laying on the ice in misty rain. (RX2)

Petitioner stated that he then arose slowly and "barely" walked 20 feet to his truck. Petitioner stated that he was "fully aware of what had happened." Petitioner alleged that he was unable to get up the stairs to the office to give notice of the accident due to "really bad" generalized pain. Petitioner stated that he drove home 2.5 blocks, called Respondent, and reported the fall. Petitioner stated that he was sore all over particularly in his head and back and went to bed. (RX2)

Petitioner told Dr. Kessler that he went to work the next morning and carried racks, trays and buckets of chemicals from 3:00 a.m. to 3:00 p.m. despite feeling sore all over. He noted that he was able to perform his regular work duties, albeit very slowly. Petitioner stated he was able to express himself, understand, and was fully aware of what was going on. (RX2)

Petitioner told Dr. Kessler that on January 18, 2017 he got up in the morning and almost fell down. He described feeling "tipsy." Petitioner stated he called the insured advising that he was unable to go to work. He stated he called his sister who stated that his right eye was droopy and told petitioner that he had a concussion. (RX2)

Petitioner then claimed that he went to SwedishAmerican Hospital ER where he had a headache, felt tipsy, head pain in his back and hips as well as pain in his ribs. Petitioner stated that a CT scan of his brain showed blood in his head and that he had a tough time remembering. Petitioner reported that he later went to the ER again due to bladder incontinence and no sensation of needing to urinate. Petitioner stated that his bladder was found to be enlarged as well as his colon for which he was later catheterized. Petitioner now claims he self-catheterizes two times per day. Petitioner stated he has not received any diagnosis regarding his bladder. (RX2)

Petitioner stated that he received an IBC filter at the ER due to a pulmonary embolism after a deep vein thrombosis. Dr. Kessler correctly notes that petitioner was never diagnosed with a pulmonary embolism. (RX2)

Petitioner states that he has been off balance since the fall and has had physical therapy for his balance issues. Petitioner reports that when he turns quickly he "feels fuzzy across his forehead" and becomes off balance starting right after the fall. (RX2)

Petitioner stated that he has been referred to speech therapy for his memory loss. Petitioner, however stated that he dis not have any memory issues. This was corroborated with petitioner's sister and case manager who both in attendance at the IME and both agreed that there was no need for him to have speech therapy as petitioner has no memory impairment. (RX2)

Petitioner reported to Dr. Kessler that he is getting better and states that he no longer has headaches. He complained that for several seconds three times per week he has pain inside his ears that increases if he raises his head. He also reported pain over the front and back of his shoulders while at rest and with movement. He denied pain radiating down his arms as well as any numbness or tingling. He also reported swelling in his left hand with no color or temperature changes for the past two weeks for which he has not been given a diagnosis. He denied neck pain and complained of minimal low back pain with no lower extremity symptoms. (RX2)

Petitioner reported that his balance is "not that good." When he stands he has a "fuzzy feeling" across his forehead which occurs if he bends or turns too quickly. He reports feeling light headed when arising or turning too fast. He denied a spinning sensation. He reports impaired equilibrium due to light headedness and a fuzzy feeling. (RX2)

He reported continued tinnitus. He did, however, state that he is able to sleep without using anything to mask the sound of the tinnitus. He denied any hearing changes. He also denied any impairments to the sense of smell or taste. Petitioner reported that his memory, thinking, and language are okay with no difficulties. He has no difficulty finding his way around the house and does not misplace things. He is able to use household objects and appliances and handles his own daily living activities. He reported being in a good mood although he is frustrated being unable to do things like mow his lawn, work on the roof, climb ladders, or climb stairs. Petitioner reported that he currently spends his time watching television, cooking, on the phone, paying bills, and handling household chores such as dishes and laundry. He denies returning to work.

Petitioner denied that any of his symptoms predated the accident. He denied any other accident or injuries. He stated he was trying to quit smoking and denies drinking. (RX2)

Dr. Kessler performed a physical examination of petitioner during which petitioner was alert and oriented. It was noted he did not have any memory or cognitive deficits and that his affect was normal in range and tensity. Petitioner was noted to be obese and had shortness of breath with mild exertion but was otherwise in no acute distress. Petitioner had full range of motion in the cervical spine and reported no tenderness to palpation over the trapezii, cervical paraspinal

muscles, and upper back. There were no muscle spasms. Cranial nerve examination was normal. It was noted that there was a minimal nystagmus with a slight rotary component during Dix-Hallpike testing on the left head turn and left lateral, but that petitioner did not report any associated symptoms with the same. (RX2)

On motor examination petitioner was normal except for a slight postural tremor of the upper extremities and head. (RX2)

Deep tender reflexes were 1+ and symmetric. He had no Babinski sign or Hoffman sign. Petitioner had no deficits in vibratory or pin sensation during sensory examination. Cerebellar examination revealed that petitioner was able to perform finger to finger, heel to heel and rapid alternating movements normally. Dr. Kessler noted that petitioner stood from sitting cautiously and stood still being walked. His gait was wide based and took multiple steps to turn. His legs were slightly bent and he had somewhat of a forward posture. He declined to walk on his heels, toes, due to a reported fear of falling. (RX2)

Dr. Kessler reviewed all of the forwarded medical records including records from SwedishAmerican Hospital, Dr. Kimball, Rockford Urological Associates, Dr. Sonti, Dr. Rozman, Dr. Lundine, and Dr. Dhanekula. (RX2)

During her review of the medical records, Dr. Kessler noted multiple inconsistencies regarding petitioner's subjective complaints, the objective findings, and the timing of the same. Specifically, Dr. Kessler noted that during the January 26, 2017 visit with Dr. Kimball, petitioner indicated worse head, butt cheek, and back pain as well as pain "all over." Dr. Kessler noted that there is no injury from the accident that would have resulted in worsening pain more than a week afterwards. She further noted that there was no objective evidence of any injury sustained by Mr. Hose from the accident that could have caused any bladder disfunction or difficulty walking. (RX2)

Dr. Kessler noted that the CT of the brain scan revealed a reported prominent posterior ofssa arachnoid cyst which she noted was an incidental finding and could not have been related to the accident. She noted that during the neurological evaluation that same day petitioner had normal gait despite reported gait difficulty. (RX2)

Dr. Kessler pointed out that petitioner was readmitted to the hospital with a diagnosis of benign positional vertigo despite the lack of any symptoms or objective findings during physical examination of benign positional vertigo and a statement in the records that Mr. Hose had a "non-focal exam." (RX2)

Dr. Kessler next noted that on January 26, 2017 Dr. Gryfinski stated that the symptoms of slight dizziness and gait instability could have been post-concussive. Dr. Kessler points out that the initial medical records indicated that *petitioner had no loss of consciousness or other symptoms necessary at the time of the fall to make a diagnosis of concussion*. She noted that petitioner's reported slight dizziness and gait instability would not relate to any injury sustained by him from the January 16, 2017 accident. (RX2)

With regards to petitioner's bladder issues, Dr. Kessler pointed out that petitioner was said to have provide a urine sample in the ER without any hesitation immediately after the accident. She noted that while a neurogenic bladder was questioned, petitioner sustained no neurological or other injury in the accident that could affected this bladder. (RX2)

She next noted that Petitioner's February 9, 2017's complaints of increasing left rib pain extending into his mid chest and back could not have been caused by the accident. Therefore, the ketorolac, tramadol, and cyclobenzaprine prescriptions were not necessitated by the accident. (RX2)

She opined that the cardiologic atrial flutter was not related to the accident. (RX2)

With regards to petitioner's DVT, Dr. Kessler noted that petitioner was ambulatory after the accident and that his injuries would not have necessitated restrictions inactivity that could have been associated with the development of deep vein thrombosis. As such, she did not believe that any of petitioner's thrombosis or cardiological issues were causally related to the accident. (RX2)

With regards to Petitioner's alleged memory issues, Dr. Kessler noted that such issues were not documented until the March 24, 2017 visit with Dr. Rozman. She pointed out that there were no specific findings provided by Dr. Rozman documenting the same. Dr. Kessler noted that Dr. Rozman also diagnosed abnormal balance without providing a physical explanation for that diagnosis. Dr. Kessler noted that none of the difficulties reported by Dr. Rozman could have been caused by the accident. (RX2)

With regards to petitioner's tinnitus, Dr. Kessler noted that petitioner did not previously report bilateral ear pain. Similarly, his only report of a buzz in his head was on February 15, 2017. Therefore, petitioner's complaints of bilateral ear pain and tinnitus are additional symptoms that are not a result from the accident. Likewise, petitioner's progressive left hearing loss would not have been caused from the accident either. (RX2)

Dr. Kessler opined that petitioner's only diagnosis that was causally related to the January 16, 2017 fall was a small subdural hematoma and intraparenchymal frontal contusion. As a result of these injuries, petitioner likely would have had headaches for a few days. Dr. Kessler also opined that petitioner could have suffered blunt head trauma, contusions to his back, and contusions to his hip. These contusions could also have been associated with transient pain. (RX2)

Dr. Kessler opined that petitioner did not suffer any injures that could have affected his memory or cognition. She noted that the first report of such injuries did not occur until months after the accident and could not be accounted for on any of the basis of the injuries with which he sustained. (RX2)

Dr. Kessler stated it was not clear if petitioner had any inner ear injuries related to the fall. She noted that the medical records did not report specific positional vertigo with specific head movements or positions as of being expected if he had developed benign proximal positional vertigo from the fall. Likewise, three days after the fall petitioner was discharged and reported no

dizziness. Dr. Kessler opined that his subsequent increased reports of dizziness could not be accounted for a basis of any injuries sustained as a result of the accident. (RX2)

Dr. Kessler stated that none of the injuries that petitioner sustained in the accident could have caused the gait difficulties he was now reporting. She stated that there was no evidence of any brain injury, ear injury, or spinal cord injury sustained in the accident that would account for this reported increased gait instability and imbalance days after the accident. She noted that there were no deficits on neurological examination that petitioner was neurologically intact and ambulating without issue three days after the accident. She noted that various medical records throughout his treatment have documented petitioner having a normal gait. (RX2)

Dr. Kessler unequivocally stated that petitioner did not sustain any injury on January 16, 2017 that could have caused urinary frequency or incontinence. She noted that he sustained no injury to the brain, spinal cord, or nerves in the pelvis going to the bladder and that these symptoms were therefore unrelated. (RX2)

She noted that the records do not support the petitioner's report of developing tinnitus from the fall. She noted that petitioner did not sustain any injury that could account for reported ear pain months after the accident. Likewise, she noted that he did not sustain any injuries that could have caused hearing loss. (RX2)

She unequivocally stated that petitioner did not have an exacerbation of any heart problems from the January 16, 2017 accident and that he did not develop disc erythema due to the accident. (RX2)

Dr. Kessler stated that the only causally related, reasonable, and necessary treatment petitioner received in this case was the first visit to the ER and overnight hospitalization, two of the follow up visits with the primary care provider, and a single follow up outpatient neurosurgical visit two weeks after the fall. She stated that petitioner should have reached MMI for his small subdural hematomas and frontal contusions within a month after the accident. (RX2)

Following the IME, Petitioner was seen by Dr. Bielkus, a neurologist, on August 14, 2017. Petitioner was seen due to complaints of dizziness. It was noted he was there with his sister. Petitioner told Dr. Bielkus that he slipped and fell on a patch of ice at his place of work on January 16, 2017. Petitioner told Dr. Bielkus that the fall was unwitnessed so that he was not certain if he experienced a loss of consciousness. Petitioner advised Dr. Bielkus that since the accident he has experienced dizziness and light headedness whenever he moves his head or changes body positions. He did not describe a spinning component to the dizziness and stated that the symptoms could last several seconds. He stated that his balance is poor and feels unsteady while ambulating. Likewise, he was complaining of pressure like sensations across his forehead but did not describe any specific vision, hearing, speech or swelling difficulties. Likewise, he did not describe any significant weakness, numbness or tingling affecting any extremity. (PX7)

Dr. Bielkus noted that the remainder of petitioner's neurologic review of symptoms was negative. Dr. Bielkus noted petitioner had a history of COPD for which he was taking medication. Petitioner noted that he continues to smoke a half of pack of cigarettes per day. (PX7)

Dr. Bielkus performed a physical examination which showed normal blood pressure. He was alert and oriented to person, place and time and had good recall of recent and remote events. His memory did not appear to have any issues. Petitioner's speech was fluent without any evidence of dysarthria with normal comprehension and vocabulary. Cranial nerve examination was normal as were visual fields. Petitioner's pupils were equal and reactive to light. Facial sensation and strength were intact. Motor examination was normal. Strength was intact and symmetric in the bilateral upper and lower extremities. With regards to petitioner's coordination, Dr. Bielkus noted terminal dysmetria on finger-finger-nose and bilateral upper extremities with the right further than the left. Likewise, petitioner's gait was wide-based and unsteady. Petitioner was intact to light tough in the bilateral upper and lower extremities. Dr. Bielkus recommended additional evaluation for the complaints of dizziness as well as recommended an MRI scan of the brain and any EEG. She recommended that petitioner discontinue meclizine and begin gabapentin. (PX7)

Petitioner underwent an MRI of his brain without contrast at Summit Radiology on August 21, 2017. This MRI was compared to the CT of the brain taken on February 9, 2017. The findings showed no acute intracranial findings. It did note small vessel white matter disease with cerebral atrophy. There was also a prominence of the basal cisterns with giant cisterna magna. It also showed pan sinusitis with evidence of an acute left maxillary sinusitis with air fluid level. (PX7)

Petitioner followed up with Dr. Bielkus on August 31, 2017. Dr. Bielkus noted that petitioner underwent an MRI of his brain which indicated the presence of non-specific white matter changes, cerebral atrophy, and the prominence of the basal cisterns with a giant cisterna magna as well as evidence of sinusitis. Likewise, she noted that petitioner underwent an EEG that showed evidence of mild swelling of the background rhythm but that was otherwise unremarkable. Petitioner continued to complain of dizziness and light headedness as well as loss of balance while ambulating. (PX7)

On neurologic examination petitioner did not appear to be in any acute distress and was alert and oriented to person, place and time. His comprehension and speech were completely intact. He continued to have terminal dysmetria with finger-finger-nose in the bilateral upper extremities right greater than left. Likewise, his gait continued to be slightly wide and unsteady. Otherwise, petitioner's examination was completely normal. Dr. Bielkus diagnosed petitioner with dizziness due to a post-concussion syndrome. She recommended that petitioner remain on gabapentin and undergo an evaluation with an ENT specialist. Petitioner was advised to return to her office in three months for reevaluation. (PX7)

Petitioner was seen by ENT, Dr. Ferguson, on September 8, 2017. Petitioner was primarily being seen due to complaints of dizziness. He also reported having a stuffed nose that "comes and goes." He also reported tinnitus. He reported that these symptoms began several months prior after head trauma. He denied any associated nausea or vomiting. He denied that these symptoms were intermittent. He denied any episodes of falling. He stated that these symptoms did depend upon his position as lying down, sitting down and rolling over all caused these symptoms to occur. It was noted that MRI Imaging had been performed that showed maxillary sinusitis. The doctor noted petitioner was not symptomatic from the same.

On physical examination, petitioner's ear canals were clear and normal. Petitioner's nose was noted to have a deviated septum with a 1cm perforation. Examination of the throat was noted to be normal. Neurologic examination was normal. Petitioner's entire examination was normal. Petitioner was diagnosed with tinnitus of the bilateral ears and dizziness. Petitioner was given a prescription for Gabapentin and a referral to an audiologist.

Petitioner returned to see Dr. Ferguson on September 28, 2017. Petitioner was primarily complaining of disequilibrium. Petitioner was diagnosed with a tinnitus of the bilateral ears, dizziness, and sensorineural hearing loss of the bilateral ears. Finally, petitioner was diagnosed with a vestibulopathy of the left ear. Petitioner was again given a referral to an audiologist and was instructed to follow up in six weeks. In the meantime, petitioner was to continue with balance therapy and was given a referral for a hearing aid evaluation

Petitioner returned to see Dr. Ferguson on May 10, 2018. Petitioner was still complaining of dizziness. He indicated that he was okay unless he "gets really worn out." Petitioner reported no change in his hearing.

Physical examination of the bilateral ears remained unchanged and normal. Diagnosis was vestibulopathy of the left ear and tinnitus of the bilateral ears. Petitioner was given a prescription for Prednisone and Doxycycline, Hyclate and was instructed to return in one year. Petitioner never returned.

Dr. Bielkus next saw petitioner on March 4, 2019. It was noted that petitioner was still taking Gabapentin and Potid. Petitoner reported intermittent dizziness, especially when walking short distances or bending over. Neurologic examination was normal. Petitioner walked with a wide and slightly unsteady gait. He had normal reflexes. Dr. Bielkus diagnosed petitioner with dizziness and postconcussion syndrome. It was recommended petitioner remain on 300 mg of Gabapentin and return in six months and return in six months. (PX7)

On June 5, 2019 Respondent's IME, Dr. Kessler, drafted an addendum report. In anticipation of drafting this report, Dr. Kessler was given a copy of Dr. Bielkus's medical records, a copy of the MRI scan from August 21, 2017, and a copy of Dr. Bielkus's deposition. Dr. Kessler stated that review of these records did not in any way change the opinions contained in Dr. Kessler's original report dated June 26, 2017. Dr. Kessler continued to state that none of the symptoms that were reported to petitioner to Dr. Bielkus or any of the reported abnormalities on neurologic examination were caused by the January 16, 2017 accident. Dr. Kessler did not believe that any of the evaluations or treatment provided by Dr. Bielkus were necessitated by petitioner's accident on that date. Rather, Dr. Kessler continued to be of the opinion that petitioner sustained a small subdural hematomas and intraparenchymal contusions due to the January 16, 2017 fall. Dr. Kessler noted that petitioner recovered from these injuries within a month to two months at which point he could have returned to all of his usual activities including work, exercising, and other aspects of his life. Dr. Kessler specifically noted that two months after the accident he was found by a neurosurgeon to be neurologically intact. Further, petitioner did not require any work restrictions at the time that he was seen by Dr. Bielkus. (RX3)

Finally, Dr. Kessler took issue with the prescriptions provided by Dr. Bielkus, specifically Gabapentin. She noted that Dr. Bielkus prescribed petitioner Gabapentin due to light headedness. However, Dr. Kessler states that Gabapentin is not used to treat light headedness and that further, petitioner's alleged light headedness was not caused by the January 16, 2018 accident. (RX3)

Dr. Kessler also specifically reviewed both the MRI scan from August 21, 2017 as well as the EEG obtained by Dr. Bielkus on August 24, 2017. With respect to the MRI, Dr. Bielkus stated that the same only showed white matter changes that were consistent with small vessel disease as well as cerebral atrophy. Dr. Bielkus noted that neither of these findings could have been caused by the accident and would not account for petitioner's reported symptoms or demonstrated findings on examination. Dr. Bielkus further noted that this MRI scan was not necessitated by the accident. (RX3)

With respect to the EEG, Dr. Bielkus noted that it was performed to "rule out" seizures despite a lack of any notation indicating that petitioner had symptoms consistent with seizures. Dr. Kessler noted that the EEG was read by Dr. Bielkus to show minimal slowing of the background activity which Dr. Kessler noted is non-specific and could not be ascribed to the accident. (RX3)

In addition to the above, Dr. Kessler took issue with Dr. Bielkus placing petitioner off of work on November 30, 2017. She noted that Dr. Bielkus placed petitioner off of work at that time, but did not anticipate returning to see petitioner for six months thereafter. Dr. Kessler noted that if petitioner did in fact require a month off a work, it would have been appropriate to re-evaluate him after that month in order to determine whether or not those work restrictions needed to continue (RX3).

With respect to Dr. Bielkus's deposition, Dr. Kessler specifically took issue with Dr. Bielkus's statement that dizziness could follow a concussion and might start weeks after an injury. Dr. Kessler stated that this statement was not neurologically accurate. Rather, Dr. Kessler noted that dizziness was non-specific and non-indicative of any particular pathology. Dr. Kessler also took issue with Dr. Bielkus's statement that dizziness following a concussion could be permanent. Dr. Kessler stated that this statement was also not neurologically accurate. (Rx3)

In addition, Dr. Kessler took issue with Dr. Bielkus's statement that petitioner's reported worsening of symptoms more than 1.5 years after the accident are consistent with her seeing patients that have fluctuation in symptoms. Rather, Dr. Kessler stated that these symptoms if ascribed to post-concussion syndrome, could not worsen more than 1.5 years after said concussion.(rx3)

Petitioner was next seen by Dr. Bielkus on September 3, 2019. Petitioner continued to report consistent medications. He reported that he occasionally experienced intermittent dizziness and reduced his dosage of Gabapentin because he believed he was experiencing side effects such as drowsiness. He stated he had been limiting his physical activities due to his dizziness. Neurologic examination was unchanged from the previous visit. Diagnosis was unchanged. Petitioner was given a refill of his prescriptions and instructed to return in six months for reevaluation. (PX7)

Petitioner was then seen by his primary care physician, Dr. Myers, on November 27, 2019. He was seen primarily for medication management. Again, it was noted that petitioner was unchanged from his previous visit on pril 11, 2019. With respect to his dizziness, petitioner reported dizziness mainly with position changes as well as after walking for a while. He reported that he was "currently hating his life" as he was not able to do much at all without getting dizzy. Petitioner advised that he was currently on disability, but could not find anyone to say he was disabled even with his lawyer helping him. Petitioner stated it took him approximately two hours to vacuum two rooms earlier that day. It was noted petitioner was a smoker and had COPD. He also had a positive medical history that included hepatitis C, which he stated was now cleared. (PX9)

Upon physical examination, petitioner was noted to be seated in an exam room without any acute distress. Examination of his head and extremities was normal. There were no abnormalities found during physical examination. Dr. Myers indicated that as far as she was concerned, petitioner was disabled due to the severity of his dizziness and balance issues. She believed these issues would make it difficult for him to work at all. She indicated she was unsure what petitioner's issues were with respect to disability and that if petitioner had qualified for SSDI and had a disability card, he should be declared disabled. (PX9)

Petitioner returned to see Dr. Bielkus on March 2, 2020. He reported ongoing intermittent dizziness, especially when he turns suddenly or gets up suddenly. Neurologic examination was again unchanged from the previous visit. Diagnosis remained unchanged. Prescriptions remained unchanged. Petitioner was to return in six months for reevaluation. (PX7)

On June 17, 2020 petitioner was involved in a motor vehicle accident involving a semi-truck.

Petitioner then presented to the emergency room at Javon Bea Hospital on June 17, 2020. He remained inpatient until June 29, 2020. It was noted petitioner was the driver of a pickup truck that was in a collision with a heavy transport vehicle or bus. Petitioner indicated that he was struck from behind by a semi-truck that was going 70 mph. Petitioner reported that he was driving 30 mph at the time of the impact. Petitioner admitted he had pulled out in front of a semi-truck without any intrusion into the truck cab. Petitioner admitted he did not recall the event and that therefore this history was likely provided by the reporting police station. Petitioner admitted to a loss of consciousness and had a bleeding laceration to the back of the head. On neurologic examination, petitioner was noted to be positive for intermittent dizziness and headaches, while negative for any tingling or sensory changes. He also was negative for any speech or focal weakness issues. (RX9)

On June 17, 2020 Petitioner underwent a CT of his brain. According to the reviewing radiologist, the same showed no acute intracranial processes. There was a large posterior left scalp hematoma and laceration. He had acute right sphenoid sinusitis and a large left posterior fossa subarachnoid cyst with diffuse cerebral cortical atrophy. (RX9)

Petitioner was discharged by Dr. Emiko Hayakawa on June 29, 2020. Petitioner denied any current complaints. Petitioner was not in any acute distress, but was still wearing his Aspen collar. (RX9)

On July 6, 2020, Petitioner was seen by Dr. Alexander in follow-up. Petitioner was seen for a follow after subsequent to a C4 spinal cord contusion. Of note, Dr. Alexander specifically stated that petitioner was doing very well. Petitioner did not have any neck pain or tenderness. He had no pain with range of motion. Petitioner was not having any neurologic symptoms. (RX9)

Petitioner returned to see Dr. Bielkus on October 19, 2020. Petitioner reported that he was still compliant with his medication. He advised that since his most recent visit, he was involved in a motor vehicle accident when he was rear-ended by a semi-truck. Petitioner advised that he sustained an injury to the back of his head and was hospitalized for eight days. He was complaining of intermittent dizziness, as well as drowsiness secondary to the medication. He was requesting a reduction of the dosage of his medication. (PX7)

Neurologic examination remained normal. He continued to only have a slightly unsteady gait as the only positive exam finding. Diagnosis remained dizziness and postconcussion syndrome. Petitioner's Gabapentin prescription was decreased to 100 mgs. Petitioner was to return in six months. (PX7)

Petitioner returned to see Dr. Bielkus on April 19, 2021. He stated he was taking 100 mg tablets of Gabapentin on an as needed basis. He continued to report difficulty with balance as well as intermittent dizziness. He denied any side effects from his medication. Examination remained unchanged Petitioner was diagnosed with dizziness and postconcussion syndrome. Gabapentin was to remain at 100 mgs. He was recommended to undergo a course of physical therapy for balance. Petitioner declined proceeding with the same at that time. Petitioner was to return in six months. (PX7)

Petitioner returned to see Dr. Bielkus on November 4, 2021. Petitioner was still experiencing intermittent dizziness and difficulty with balance. Petitioner indicated that he recently fell. He denied any side effects from his medication. Petitioner again indicated he was not interested in pursuing physical therapy for balance.On physical examination, his gait was still wide-based and unsteady, otherwise normal. Diagnosis was unchanged. Petitioner was to remain on 100 mgs of Gabapentin and return in six months. (PX7)

Petitioner returned to see Dr. Bielkus on May 5, 2022. Petitioner stated that he was still experiencing intermittent dizziness and difficulty with balance. He was not experiencing any side effects from Gabapentin. Physical examination remained unchanged from the previous visit as did his diagnosis. Petitioner was to remain on 100 mgs of Gabapentin and to return in six months for reevaluation. (PX7)

TESTIMONY OF DR. BIELKUS

Dr. Bielkus testified via evidence deposition on November 20, 2018. Dr. Bielkus is a board certified neurologist having been board certified since 1985.

Dr. Bielkus testified that she first saw petitioner on August 14, 2017 following a referral by Dr. Rozman. At that time, petitioner was complaining of dizziness. Petitioner was present with his sister. Both petitioner and his sister provided a history of petitioner's accident. Petitioner and his sister told Dr. Bielkus that in January of 2017, petitioner suffered an unwitnessed fall. Petitioner was unsure whether or not he experienced a loss of consciousness. He was then taken to the emergency room at Swedish American Hospital two days later wherein imaging was performed that showed a tiny acute bilateral anterior frontal subdural and interhemispheric subdural hematomas as well as bilateral inferior frontal hemorrhagic contusions. Dr. Bielkus testified that this CT scan showed evidence of a hemorrhage in the brain as well as bilateral contusions. These findings were consistent for an individual who sustained a head injury.

Dr. Bielkus also reviewed the medical records of petitioner's lone visit with Dr. Gryfinski wherein petitioner was complaining about slight dizziness and gait instability. Dr. Bielkus took note that Dr. Gryfinski believed that petitioner's symptoms regarding dizziness and gait instability may have been related to post-concussion syndrome.

Petitioner's symptoms when Dr. Bielkus saw petitioner on August 14, 2017 were dizziness, light headedness, poor balance, and a pressure sensation over the forehead. Dr. Bielkus believed that petitioner's poor balance was due to dizziness or his head injury. Dr. Bielkus stated that she did not document whether or not petitioner had any of the symptoms prior to the accident date.

On physical examination, petitioner had a wide based gait. Likewise, petitioner had terminal dysmetria. This meant that when Dr. Bielkus asked petitioner to touch his finger to his finger or his finger to his nose, petitioner experienced a tremor. This tremor was more evident on the right than left. Dr. Bielkus stated that this was an essentially benign finding. She did not believe that this finding was related to the accident date. She stated that this finding could indicate some trouble with coordination. Dr. Bielkus recommended an MRI of the brain and prescribed Gabapentin.

Petitioner underwent an MRI of his brain in August of 2017. This MRI showed no bleeding in the brain. There was evidence of changes in the white blood vessels. Likewise, the spaces in the brain were more prominent. Dr. Bielkus stated that these findings were not indicative of a head injury. She advised that it was possible, however, for a head injury to result in a shrinkage of the brain.

Dr. Bielkus stated she performed an EEG on August 24, 2017 that showed a mild slowing of the background rhythm. Dr. Bielkus stated that this was a non-specific abnormality.

On August 31, 2017, Dr. Bielkus performed a normal physical and neurologic examination. At that time, her diagnosis of petitioner was dizziness due to post-concussion syndrome. She believed that this dizziness was related to petitioner's head injury on January 16, 2017. She stated that dizziness following a concussion can be normal. Likewise, there can be a latency regarding the onset of dizziness complaints.

Dr. Bielkus stated that dizziness for seven months is not uncommon in patient's symptoms with post-concussions. However, Dr. Bielkus could not predict how long the dizziness may last.

Dizziness can last from anywhere between hours to days to months to years. She stated it was also possible for dizziness to become permanent. Dr. Bielkus had no opinion as to the permanency of petitioner's dizziness.

Dr. Bielkus then saw petitioner on November 30, 2017. Petitioner described having slightly improved dizziness. Dr. Bielkus stated that petitioner was requesting an off work note as he recently learned that his physiatrist, Dr. Rozman, was going to be moving away from Rockford. Petitioner requested an off work status note in order to allow him to remain off of work until he could find a new physiatrist. Dr. Bielkus therefore placed petitioner off of work for four weeks.

Petitioner returned to Dr. Bielkus on June 4, 2018. Petitioner reported gradual improvement in his dizziness complaints. Dr. Bielkus continued to prescribe petitioner Gabapentin.

Petitioner returned to see Dr. Bielkus on August 30, 2018. Petitioner now described increased symptoms including daily dizziness and a light headed sensation. Dr. Bielkus stated it is not uncommon for patients suffering from post-concussion syndrome to have a waxing and waning of symptoms. She has seen many patients with symptoms that have waxed and waned.

Dr. Bielkus subsequently performed a second EEG which had normal findings.

Dr. Bielkus stated that typical additional treatment for patients who have ongoing complaints of dizziness would be physical therapy and Gabapentin. She does not believe that there is any surgical intervention that could fix petitioner's problem.

Dr. Bielkus stated that she has not seen any evidence of malingering or an exaggeration of symptoms on the part of petitioner. Dr. Bielkus has no opinion regarding petitioner's ability to return to work. Rather, she would refer petitioner to physical therapy for an FCE in order to determine his ability to return to work in his pre-accident position.

On cross examination, Dr. Bielkus admitted she had only reviewed records from Swedish American Hospital as well as Dr. Rozman. Dr. Bielkus did not review any pre-accident records and therefore did not know petitioner's baseline with respect to these alleged symptoms prior to January 16, 2017.

Dr. Bielkus stated that she was familiar with a condition called cerebral small vessel disease. Dr. Bielkus admitted that this was a common condition in older people and that it is degenerative in nature. Likewise, there are other risk factors of cerebral small vessel disease including smoking, hypertension, intravenous drugs, and potentially Cocaine. She admitted that small white matter disease has been found to correlate with memory issues. She stated that it also has a relationship with the onset of dementia and strokes. She was unsure whether or not there was any evidence that small white matter disease could cause gait instability, fatigue, weakness, dizziness, or headaches. Dr. Bielkus admitted that the August 21, 2017 MRI showed small vessel white matter disease along with cerebral atrophy. She also admitted that cerebral atrophy takes a while to develop.

Dr. Bielkus stated that both Cocaine and Heroin can cause long lasting problems with the brain although she was unsure on what specifically those problems are. Likewise, alcohol can have an affect such as ataxia and hallucinations after long periods of abuse.

She admitted that petitioner alleged that he slipped on ice, landing on his butt, and striking his head. She admitted that if an individual were to fall in such a manner, you could expect some signs of trauma to other parts of the body such as erythema, ecchymosis, or bruising. Dr. Bielkus admitted that she reviewed the January 18, 2017 ER visit and that the same did not note any ecchymosis, erythema, or bruising to any of petitioner's body parts. Further, this ER showed a normal neurologic exam.

Dr. Bielkus admitted she did not review any of the records of petitioner's primary care physician, Dr. Kimbell. She admitted she did not review the January 25, 2017 note and did not know whether or not petitioner had already indicated that his dizziness was resolving. She had no idea whether or not a neurologic examination was performed and whether or not the same was normal. She stated she did not know whether or not petitioner was prescribed Naproxen. She stated she does not know whether or not Naproxen has a side effects of dizziness and gait instability.

Dr. Bielkus did review the January 26, 2017 treatment note with Dr. Gryfinski, neurosurgeon. She admitted that Dr. Gryfinski found a normal neurologic examination of the petitioner.

Dr. Bielkus stated she did not review any of Dr. Sonti's outpatient treatment notes. She did not review the February 1, 2017 treatment note. She did not know whether or not petitioner described having improved symptoms at that time. She admitted she did not know whether or not a neurologic examination was performed and whether or not the same was normal. She did not know whether or not Dr. Sonti had believed that petitioner was near maximum medical improvement at that time.

Bielkus did not know that petitioner was prescribed Tramadol, Flexeril, and Naproxen from his prior doctors. Dr. Bielkus stated that she is unfamiliar with whether or not Tramadol has side effects listed as dizziness and headaches. She is unaware whether or not Flexeril has common side effects of dizziness, fatigue, and headaches.

Dr. Bielkus admitted that she does not have an opinion as to whether or not petitioner's DVT is related to the accident. Likewise, she admitted that as she is not a urologist, she does not have an opinion as to whether or not petitioner's urologic issues are related to the alleged accident. Finally, she admitted that she does not have an opinion as to whether or not petitioner's complaints of tinnitus are causally related to the alleged accident.

Dr. Bielkus also admitted she did not review the March 1, 2017 treatment note with Dr. Sonti wherein petitioner was noted to have a continued normal neurologic examination and was released from care.

Dr. Bielkus reviewed Dr. Rozman's March 24, 2017 treatment note. She admitted this was over two months after petitioner's alleged accident date. She admitted that Dr. Rozman believed that

petitioner was suffering from increased dizziness, decreased memory, decreased problem solving, and decreased attention span. Dr. Bielkus admitted that she did not find that petitioner had decreased memory, decreased problem solving skills, or decreased attention span.

Dr. Bielkus admitted that she did not see petitioner until August 14, 2017, seven months after the accident date. She admitted that petitioner told her that he did not know whether or not he lost consciousness at that time. Dr. Bielkus admitted that she does not know whether or not that was consistent with the history petitioner provided to Swedish American Hospital, Dr. Kimbell, Dr. Sonti, or physical therapy.

She admitted that during this visit, petitioner listed his active medications which included Meclizine, Metoprolil, Xarelto, Tanulosim, Abar, Proair, and Albuteral. Dr. Bielkus admitted that she does not know whether or not Meclizine has listed side effects of dizziness and headaches. She does not know whether or not Metoprolil has listed side effects of dizziness and fatigue. She did not know whether or not Tanulosim had listed potential side effects of dizziness, weakness, and headaches. She admitted she does not know whether or not Albuteral has listed side effects of headaches and tremors.

She admitted that during this August 14, 2017 visit she prescribed petitioner Gabapentin. Dr. Bielkus admitted that she is familiar with Gabapentin and that many of her patients have described a side effect of increased dizziness due to Gabapentin. She admitted that when she next saw petitioner on August 30, 2017, petitioner had increased complaints of dizziness. As a result, Dr. Bielkus recommended that petitioner keep the same dosage.

She admitted that when petitioner returned on November 30, 2017, petitioner described self-decreasing his Gabapentin intake prior to that visit. Likewise, he described that his dizziness symptoms had improved on that visit. As a result, Dr. Bielkus decreased petitioner's Gabapentin prescription.

When petitioner returned to see Dr. Bielkus again on June 4, 2018, he once again described having self-limited and decreased his Gabapentin intake. He again also described having an improvement with his dizziness during that visit.

When petitioner returned on August 30, 2018, however, petitioner described having self-increased his Gabapentin intake. Likewise, petitioner experienced a recurrent increase in dizziness that was now occurring on a daily basis. Dr. Bielkus therefore increased petitioner's Gabapentin prescription.

When petitioner returned on September 20, 2018, he continued to complain of the same level of dizziness and as a result, Dr. Bielkus increased petitioner's dosage of Gabapentin.

When petitioner finally returned on October 18, 2018, he again increased complaints of dizziness. Further, he reported that he could not handle the Gabapentin side effects.

Dr. Bielkus admitted that petitioner has not complained of any headaches since August 14, 2017. She admitted that petitioner's headaches were therefore completely resolved at this time. She admitted that petitioner's only complaint which she believed was related to post-concussion syndrome and the accident of January 16, 2017 was petitioner's subjective complaints of dizziness.

Dr. Bielkus admitted that the only instance that she provided petitioner with work restrictions was in November of 2017. She admitted that she only did so at the specific request of petitioner and his sister. She admitted that she has no opinion regarding petitioner's current ability to work or his ability to work throughout her care other than that four week period of time.

Dr. Bielkus admitted that dizziness can resolve over time and that she did not have an opinion one way or the other regarding whether or not petitioner's dizziness would be permanent.

TESTIMONY OF DR. MYERS

Dr. Myers, petitioner's primary care physician testified via evidence deposition on May 30, 2023.

Dr. Myers testified that she first saw petitioner on October 8, 2018. On that date, petitioner was there to establish himself as a new patient as well as for medication management. Dr. Myers testified that petitioner provided her with a brief history of petitioner's alleged January 2017 accident. He told Dr. Myers during that visit that he had slipped and fallen on ice, striking his head and sustaining a subdural hematoma. Petitioner told her that since then, he had continued to have some balance and gait issues. Petitioner told Dr. Myers that he was treating for this condition with Dr. Bielkus and that he had upcoming appointments with her for the same. Petitioner reported that he was currently taking 300 milligrams of gabapentin four times per day.

Petitioner also reported personal conditions that included COPD and erectile dysfunction.

Dr. Myers then testified that her examination of petitioner appeared to be consistent with his reports of having difficulty with dizziness and balance. She noted that oftentimes during his appointments, petitioner would show up utilizing a walker. She also noted that he would sometimes request a wheelchair be brought to his car in order to help bring him into the office for examination.

Dr. Myers testified that with respect to petitioner's alleged neurologic condition, he should continue to follow up with Dr. Bielkus for further treatment for the same.

Dr. Myers then testified regarding the November 27, 2019 visit wherein she rendered her opinion that petitioner was disabled. She noted that petitioner had appeared to her primarily for medication management rather than treatment related to the dizziness or gait instability. She noted that during that visit, petitioner did report that he was disabled but that he was having trouble finding anybody to officially document that he was fully disabled and incapable of working. Dr. Myers stated that she believed petitioner was severely disabled and incapable of working due to his significant complaints of gait instability and dizziness. She noted that during this visit, petitioner stated that

it took him two hours to vacuum his whole house. She noted that her opinion that petitioner was totally disabled was based solely upon petitioner's subjective reports of his ongoing symptoms. She recommended petitioner continue to follow up for treatment with Dr. Bielkus.

On cross-examination, Dr. Myers admitted that she does not have an independent recollection of petitioner or of the specific physical exam findings or subjective complaints of each patient during each visit. As a result, she is heavily reliant on the medical records that she documents contemporaneous with each visit in order to remember the status of each patient's care, subjective complaints, and course of care and treatment for various conditions.

Dr. Myers again testified that she first saw petitioner on October 8, 2018. She admitted that during that visit, petitioner provided her with subjective reports of dizziness, shakiness in his hips and legs, and the need to take things slow following a work accident in 2017. Dr. Myers testified that she performed a physical examination of petitioner. She admitted that petitioner had a normal mood and affect and his condition appeared to be atraumatic in nature. He did not appear to be in any acute distress. Neurologic examination was completely normal. She noted petitioner was found to have a normal gait and station while in the examination room. Dr. Myers admitted that if he had an abnormal gait and station outside the examination room, in light of his subjective complaints of dizziness and gait instability, she would have made note of the same. She admitted there were no such notations contained in that medical record. She therefore admitted that petitioner had a completely normal physical examination during the visit in question. She admitted that she was not treating petitioner for any neurologic condition and that she recommended petitioner continue to treat with Dr. Bielkus for the same.

Dr. Myers admitted that she is not a neurosurgeon or a neurologist. She admitted that if she had a patient she suspected had a neurologic condition, she would refer that patient out to treatment with a neurosurgeon or neurologist. She admitted that neurosurgeons and neurologists have specialized experience and knowledge of neurologic conditions that she does not possess. She admitted that she would defer to the treatment recommendations and diagnoses of neurosurgeons and neurologists for neurologic conditions.

Dr. Myers testified that she next saw petitioner on October 28, 2018. She admitted that at that time, petitioner made no complaints relative to any dizziness or gait instability. She admitted that petitioner again had a completely normal physical examination during that visit.

Petitioner then returned to see Dr. Myers on April 11, 2019. Petitioner again reported to Dr. Myers that he had ongoing dizziness and gait instability. He again reported ongoing shaking in his hips and legs. Petitioner reported he was taking things slow.

Dr. Myers testified that she took a physical examination of petitioner during this visit as well. She admitted that petitioner had completely normal neurologic and physical examinations.

Dr. Myers testified that on November 17, 2019 petitioner again reported ongoing dizziness and gait instability. Petitioner reported that he had some improvement in his dizziness following a decrease in his gabapentin medication. Dr. Myers admitted that petitioner then reported to her that

he was on disability. Dr. Myers admitted that she did not know what petitioner meant by "on disability." She admitted that he also inconsistently told her that he could not find anybody to tell her that he was disabled.

Dr. Myers admitted that Dr. Bielkus, petitioner's treating neurologist, is the doctor in the best position to render an opinion regarding whether petitioner is truly disabled and unable to work as a result of any alleged neurologic condition. Dr. Myers admitted that her opinion that petitioner was disabled was based exclusively upon his own subjective reports regarding the severity of his symptoms. She admitted that she took petitioner's complaints at face value as though they were true. She admitted that she also took a physical examination of petitioner on November 27, 2019 that was again completely normal. Dr. Myers admitted that during every visit up to and including this visit when she found that petitioner was completely disabled, she found petitioner to have a completely normal physical examination. Dr. Myers admitted that she did not know whether she had reviewed any of Dr. Bielkus's medical records prior to rendering this opinion on November 27, 2019.

Dr. Myers admitted she was familiar with the medication gabapentin. She admitted that one of the potential side effects of gabapentin is increased dizziness. She admitted that the higher the dose of gabapentin, the more likely that that side effect occurs. She admitted that according to her own records, when petitioner decreased his gabapentin prescription, his subjective reports of dizziness decreased.

Dr. Myers admitted that petitioner also had a personal diagnosis of COPD. She admitted that this was unrelated to the work accident. She admitted that COPD can cause decreased oxygen levels. She admitted that decreased oxygen levels can increase subjective complaints of dizziness. She admitted that petitioner was a smoker and that smoking can exacerbate COPD symptoms.

CONCLUSIONS OF LAW

In support of the Arbitrator's decision relating to (F) Is Petitioner's current condition of ill-being causally related to the injury?

Petitioner alleges that he sustained a number of injuries as a result of the alleged accident on January 16, 2017 including concussion, post-concussion syndrome, urinary incontinence, deep vein thrombosis, tinnitus, and ongoing dizziness. For the reasons set forth below, the Arbitrator finds that Petitioner sustained a compensable accident that caused a subdural hematoma that resolved by March 1, 2017. However, the Arbitrator finds that Petitioner's complaints subsequent to March 1, 2017, including his current complaints of ongoing dizziness, are not causally related to the January 16, 2017 accident. Further, the Arbitrator finds petitioner's alleged bladder, leg, and inner ear conditions are not causally related to the January 16, 2017 fall.

An injury arises out of the employment where it originates from a risk connected with, or incidental to, the employment so as to establish a causal connection between the injury and the employment. *Efremidis v. Indus. Comm'n*, 308 Ill. App. 3d 415, 719 N.E.2d 11133 (1999). An employee must

prove causal connection by evidence from which inferences can fairly and reasonably be drawn. *Caterpillar Tractor Co v. Industrial Commission*, 83 Ill.2d 213, 414 N.E.2d 740 (1980). In determining causal connection, the Appellate Court of Illinois has held that inferences cannot reasonably be drawn from matters of "speculation, surmise, and conjecture." *First Cash Financial Services v. Industrial Commission*, 367 Ill.App.102, 853 N.E.2d 799 (2006).

It is undisputed by the parties that Petitioner sustained a subdural hematoma as a result of the January 16, 2017 work related fall. Therefore, the primary issue with respect to causation turns upon whether or not petitioner's ongoing dizziness complaints are related to the alleged work accident. For the reasons set forth below, the Arbitrator finds these complaints are not related to the work accident. The Arbitrator finds the opinions of Petitioner's first neurologist, Dr. Sonti, and Respondent's IME, Dr. Elizabeth Kessler, convincing on this issue.

The Arbitrator notes that Respondent's IME and board certified neurologist, Dr. Elizabeth Kessler, is the only doctor in this case to be afforded the opportunity to review all of petitioner's post-accident medical records and examine petitioner in connection with this case. The Arbitrator therefor affords great weight to Dr. Kessler's opinions.

In her report, Dr. Kessler properly identified that following petitioner's accident, his primary complaints began to resolve shortly after his accident. This is consistent with the medical records admitted into evidence. The records from both Dr. Kimball and Dr. Sonti show that following petitioner's accident, his primary complaints were of some rib pain and headaches that were quickly resolving.

During visits with Dr. Kimball on January 25, 2017, February 3, 2017, and February 20, 2017, Dr. Kimball noted that petitioner's subjective complaints were improving. Likewise, petitioner repeatedly had a normal neurologic examinations during each visit. By February 20, 2017, Dr. Kimball believed petitioner's condition was nearly resolved. (Emphasis added)

Similarly, Petitioner saw Dr. Sonti on January 18, 2017, February 1, 2017, and March 1, 2017. During each of the outpatient visits, Dr. Sonti noted petitioner was improving. Much like Dr. Kimball, each of Dr. Sonti's outpatient visits also had consistently normal neurologic examinations. Dr. Sonti ultimately released petitioner from care on March 1, 2017. During that visits Dr. Sonti noted that while petitioner did have subjective complaints of dizziness, the same could not be explained by any of the findings seen on the medical imaging of his brain. (PX3)(Emphasis added)

This opinion was shared by Dr. Kessler. During the June 1, 2017 IME, Petitioner reported that his primary complaints were dizziness and balance issues. Petitioner admitted that his headaches had

resolved (RX2) Dr. Kessler opined that based upon the objective medical records and her examination of petitioner's petitioner sustained a subdural hematoma as a result of the January 16 2017 fall. This would have resulted in occasional headaches that would have resolved within a month or two.

With respect to Petitioner's claimed dizziness, Dr. Kessler correctly noted that petitioner's own medical records show a documented resolution of those symptoms shortly after the fall. By January 19, 2017 petitioner denied any dizziness. Dr. Kessler noted that these complaints would not get worse over time but rather only improve. In further, support, Dr. Kessler also noted that following petitioner's fall there was no evidence of any brain injury, ear injury, or spinal injury that could account for petitioner's alleged gait instability and dizziness. There were no noted deficits on neurologic examination found by any of the many doctors who examined petitioner following the accident. Likewise, despite petitioner's complaints, he was found to ambulate normally by many of his doctors shortly after the accident. Therefore, Dr. Kessler opined that petitioner's ongoing dizziness complaints were not related to the accident. The Arbitrator notes that this opinion is well supported by the medical records.

Conversely, Petitioner relies on the opinions of Dr. Regina Bielkus in his contention that his ongoing complaints of dizziness and gait instability were caused by the accident. However, the Arbitrator does not find Dr. Bielkus's opinions to hold much weight.

First, the Arbitrator notes that Dr. Bielkus was not afforded the opportunity to review much of petitioner's post-accident records. She was unaware of the course of petitioner's condition while treating with Dr. Kimball and Dr. Sonti. Therefore, unlike Dr. Kessler, Dr. Bielkus's opinions regarding causation were created without the opportunity to see the trajectory of petitioner's complaints, medical imaging, and physical examination findings in the months following the accident. Dr. Bielkus was similarly unaware that two of petitioner's initial treaters, Dr. Kimball and Dr. Sonti, believed petitioner's condition was nearly resolved.

Next, the Arbitrator notes that the only treatment that Dr. Bielkus has prescribed petitioner has been refills for Gabapentin. Respondent's IME, Dr. Kessler took issue with this prescription, noting that Gabapentin is not a medication that is accepted in the medical community to light headedness or dizziness. This opinion by Dr. Kessler is corroborated by Respondent's Exhibit 8, drug information on Gabapentin authored by the National Library of Medicine. The National Library of Medicine does not list dizziness or lightheadedness as conditions for which Gabapentin is treated. Conversely, Gabapentin (and all of petitioner's prescribed medications) all have dizziness as listed and known potential side effect. (Rx5, 6, 7, 8)(Emphasis added)

Finally, the Arbitrator notes that Dr. Bielkus's opinions regarding petitioner diagnosis and treatment recommendations are premised almost entirely upon petitioner's subjective complaints. Both Dr. Bielkus's medical records and her own testimony establish that petitioner has routinely had a normal physical and neurologic examination. Rather, Dr. Bielkus's diagnosis of ongoing post-concussive dizziness and gait instability were supported solely by petitioner's own reports and subjective complaints.

As Dr. Bielkus's opinions are based almost entirely upon petitioner's subjective complaints, the Arbitrator must consider the credibility of Petitioner. After reviewing the medical and documentary evidence, the Arbitrator does not find petitioner to be credible with respect to his subjective complaints.

With respect to Petitioner's credibility, the Arbitrator first notes that petitioner presented to testify at trial in a wheelchair. Petitioner testified that he has utilized a wheel chair for the past year prior to the trial. Review of the medical records indicates that petitioner has presented to many medical appointments in a wheelchair and walker dating back to shortly after the accident. Despite this continuous use of a wheelchair, the Arbitrator was unable to find a single treatment note wherein petitioner was encouraged, instructed, or prescribed the use of a wheel chair or assistive device. The Arbitrator therefore finds petitioner's presentation at trial disingenuous and takes note of the same.

Next, the Arbitrator notes that one of Petitioner's primary and most consistent complaints is of instability with positional changes. Petitioner testified to the same, and his medical records contain numerous allegations of the same since he began treatment with Dr. Bielkus. Respondent offered into evidence surveillance footage of petitioner. Petitioner admitted the footage was of him. Review of the footage shows petitioner making several positional changes including climbing in and out of his pickup truck, seemingly without issue. This footage calls into question the veracity of those complaints.

Finally, the Arbitrator notes that petitioner has made several attempts to direct his physicians in this case. The first such instance occurred on February 3, 2017. During that visit, Petitioner and his sister demanded strong opioid pain medications from Dr. Kimball's office. The Arbitrator noted that the manner in which this request was made caused the nurse to suspect the request was made for illicit purposes either by petitioner (an admitted convicted drug dealer) or his sister,(who the Arbitrator notes referred petitioner to Dr. Bielkus). The Arbitrator next notes that during Dr. Bielkus's deposition, she admitted that the only time she placed petitioner with work restrictions, she did so at the insistence of petitioner and his sister. Lastly, the Arbitrator notes that both Dr. Myers and Petitioner admitted that Dr. Myers's disability opinion was authored at the direction of Petitioner after all other doctors refused to draft the same.

This pattern by petitioner throughout his coarse of care is troubling and casts serious doubt on the validity of his subjective complaints. As Dr. Bielkus's opinions are based upon incomplete information and the suspect complaints of Petitioner, and as Dr. Bielkus's own treatment recommendations seem to be at odds with the medical literature, the Arbitrator affords her opinions little to no weight.

The Arbitrator therefore affords great weight to the opinions of Dr. Kessler and Dr. Sonti and finds petitioner reached MMI for this subdural hematoma when he was released from care by Dr. Sonti on March 1, 2017.

Finally, the Arbitrator notes that the opinion of Dr. Kessler is unrebutted on this issue of causation of Petitioner's alleged tinnitus, DVT, and urinary incontinence. Dr. Kessler unequivocally opinioned that none of these conditions were caused by the fall on January 16, 2017. Petitioner offered medical opinions establishing that any of these conditions were causally related to the work accident. Accordingly the Arbitrator finds that these conditions were personal in nature rather that caused by the work accident.

In support of the Arbitrator's decision relating to (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? And (O) Is Respondent due a credit for overpayment of medical benefits?

The claimant bears the burden of proving, by a preponderance of the evidence, his or her entitlement to an award of medical care under section 8(a). *Westin Hotel v. Industrial Comm'n*., 372 Ill. App. 3d 527, 546 (2007). The Workers' Compensation Act requires the employer to provide all "necessary first aid, medical and surgical services…reasonably required to cure or relieve from the effects of the accidental injury." 820 ILCS 305/8(a).

For the reasons stated above, the Arbitrator finds that petitioner reached maximum medical improvement for his work related injuries on March 1, 2017. Accordingly, the Arbitrator finds that Petitioner's condition of ill-being subsequent to March 1, 2017 was not causally to his work duties for Respondent. Therefore, the Arbitrator denies compensability for all medical treatment received by Petitioner subsequent to March 1, 2017, as it was not causally related to his work duties for Respondent.

Further, for the reasons set forth above, the arbitrator also denies the medical treatment rendered for Petitioner's personal conditions of DVT, tinnitus, and urinary incontinence.

Respondent is entitled to a credit against Petitioner for medical benefits erroneously paid for unrelated personal conditions and any treatment rendered subsequent to March 1, 2017.

In support of the Arbitrator's decision relating to (K) What temporary total benefits are owed?

In order to recover temporary total disability benefits under the Act, a claimant must prove that he did not work and that he was unable to work due to sustaining a work-related injury. *Arbuckle v. Industrial Commission*, 32 Ill. 2d 581, 586 (1965).

In this case, Petitioner was first placed off work on January 18, 2017 following his release from the emergency room at Swedish American Hospital. Thereafter, as has been discussed above, Petitioner reached maximum medical improvement for his work-related injuries on March 1, 2017 when he was released from care by his neurologist, Dr. Sonti. Accordingly, Petitioner proved entitlement for temporary total disability benefits from January 18, 2017 through March 1, 2017.

In support of the Arbitrator's decision relating to (L) What is the nature and extent of injuries and (O) Is Petitioner entitled to a permanent total disability award?

As indicated above, the Arbitrator is not convinced that Petitioner sustained a loss of profession. The Arbitrator notes that petitioner's treating neurologist has not provided any work restrictions as a result of the accident. Likewise, Respondent's IME is of the opinion that Petitioner could work in an unrestricted capacity.

The Arbitrator affords little weight to the opinion of Petitioner's primary care physician, Dr. Myers, that petitioner is disabled. The Arbitrator notes that by both petitioner and Dr. Myers' admittance, Dr. Myers never treated petitioner for his alleged work related conditions. Likewise, both Petitioner and Dr. Myers admitted that the opinion that petitioner was disabled was only authored at petitioner's request because neither petitioner nor his attorney could find any other doctors that would author such an opinion.

Accordingly, Petitioner is not entitled to any awards based upon permanent total disability, wage differential, or loss of profession. Rather, petitioner is entitled to a specific loss pursuant to Section 8.1(b)(b)(v) of the Act. Consistent with that provision of the Act, the Arbitrator takes into consideration the enumerated factors noting first that no impairment ratings were rendered in this case.

Occupation of the Injured Employee

Petitioner is employed as a material handler for the Respondent. He testified that he lifts up to 20 pounds and could occasionally push heavy drums. According to the job description offered by Respondent, Petitioner's position was primarily light duty in nature but could occasionally require petitioner to lift objects in the medium physical demand level.

Although petitioner has not returned to work in this position since the accident, the Arbitrator is not convinced that petitioner could not return to this position. The Arbitrator finds this factor to be relevant to the disability determination and attaches some weight to this factor.

Age of the Employee at the Time of the Injury

Petitioner was 57 years old at the time of the injury. He is currently 63 years old. There was no evidence produced by either party to suggest that petitioner's age played a factor in his injury or resulting disability. As such, the Arbitrator does not find this factor relevant to the determination of disability. The Arbitrator applies no weight to this factor in determining the resulting disability.

Employee's future earning capacity.

Petitioner has been released to return to work in his regular duty capacity as a material handler since March 1, 2017. Although Petitioner claims he is unable to return to work in any capacity, the medical records do not support this contention, as petitioner has not been provided with any work restrictions by his treating physicians since March 1, 2017. Other than unreliable statement made by petitioner's primary care physician at petitioner's direction, No evidence was presented by Petitioner that he has sustained any diminished earning capacity as a result of the accident. The Arbitrator therefore affords this factor some weight.

Evidence of Disability Corroborated by the Treating Medical Records

As was established above, the medical records show that petitioner sustained a subdural hematoma as a result of the January 16, 2017 accident. Petitioner treated conservatively for this injury and reached maximum medical improvement less than two months later on March 1, 2017 when his initial neurologist, Dr. Sonti, released him from her care. The Arbitrator affords great weight to this factor.

After considering all of the factors and for the reasons set forth above, the Arbitrator finds that petitioner sustained a loss of 10% loss of use of the person as a whole.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	18WC002664
Case Name	Janice Steuer v. Von Maur
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	24IWCC0370
Number of Pages of Decision	15
Decision Issued By	Christopher Harris, Commissioner

Petitioner Attorney	Kevin Millon
Respondent Attorney	Daniel Flores

DATE FILED: 8/2/2024

/s/Christopher Harris, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF DUPAGE)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

JANICE STEUER,

Petitioner,

vs. NO: 18 WC 2664

VON MAUR,

Respondent.

DECISION AND OPINION ON REVIEW

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

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed September 28, 2023 is hereby affirmed and adopted.

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

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

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

August 2, 2024

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

CAH/pm
O: 7/25/24

052

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

/s/ *Marc Parker*
Marc Parker

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	18WC002664
Case Name	Janice Steuer v. Von Maur
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	12
Decision Issued By	Frank Soto, Arbitrator

Petitioner Attorney	Kevin Millon
Respondent Attorney	Daniel Flores

DATE FILED: 9/28/2023

THE INTEREST RATE FOR THE WEEK OF SEPTEMBER 26, 2023 5.31%

/s/Frank Soto, Arbitrator

Signature

CPKSTATE OF ILLINOIS)

)SS.

COUNTY OF DU PAGE)

24IWCC0370

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Janice Steuer
Employee/Petitioner
v.
Von Maur
Employer/Respondent

Case # **18 WC 2664**

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Frank Soto**, Arbitrator of the Commission, in the city of **Wheaton, Illinois on 8/21/2023**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS
On **9/20/17**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

Timely notice of the alleged 9/20/17 accident ***was*** given to Respondent.

Petitioner's current condition of ill-being ***is*** causally related to the alleged **9/20/17** work accident.

In the year preceding the alleged injury, Petitioner earned **$66,376.44.** The average weekly wage was $**1,276.47.**

On the alleged 9/20/17 accident date, Petitioner was **65** years of age, **married** with **0** dependents under the age of 18.

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

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

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

Respondent ***is not*** entitled to a credit of **$0.00** under Section 8(j) of the Act.

ORDER
Respondent shall pay the medical bills involving treatment for the right shoulder as identified in Petitioner's Exhibit #1, pursuant to Sections 8(a) and 8.2 of the Act and subject to the fee schedule, as set forth in the Conclusions of Law attached hereto.

Petitioner failed to prove that she is entitled to TTD and TPD benefits, as set forth in the Conclusions of Law attached hereto.

Respondent shall pay Petitioner permanent partial disability benefits of 75 weeks because the injuries sustained caused 15% loss of use of a person as a whole, pursuant to §8(d)2 of the Act, as set forth in the Conclusions of Law attached hereto.

RESPONDENT SHALL PAY PETITIONER COMPENSATION THAT HAS ACCRUED FROM SEPTEMBER 20, 2017 THROUGH AUGUST 21, 2023 AND SHALL PAY THE REMAINDER OF THE AWARD, IF ANY, IN WEEKLY PAYMENTS.

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

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

By: */o/ Frank J. Soto* **SEPTEMBER 28, 2023**
Arbitrator

Procedural History

This case proceeded to trial on August 21, 2023. The disputed issues are whether Petitioner sustained accidental injuries that arose out of and in the course of employment, whether Petitioner's current condition of ill-being is causally connected to her injury, whether Respondent is liable for unpaid medical bills, whether Petitioner is entitled to TTD and TPD benefits as well as the nature and extent of Petitioner's injury. (Arb. Ex. #1).

Findings of Fact

Janice Steuer (hereafter referred to as "Petitioner") testified on September 20, 2017, she was working for Van Maur (hereinafter referred to as "Respondent") as a part-time sales associate for 15 years. (T. 9). Petitioner testified prior to September 20, 2017 she informed Respondent she was retiring as of October 7, 2017. (T. 36). Petitioner testified that she was also employed by Phillips Flowers as an administrator's assistant. (T. 10-14). Petitioner testified Respondent was aware of her other job. (T. 14).

Petitioner testified on September 20, 2017 she was at work when she was pushed by a coworker causing her to fall to the floor striking a counter as she fell. (T. 15). Petitioner testified a coworker was upset and tried to explain something that happened between the coworker and another employee. As Petitioner was trying to calm the coworker down the coworker tried to demonstrate what previously had occurred the coworker stepped on Petitioner's toe and pushed Petitioner causing her to fall. (T. 15-18). Petitioner testified she fell against the counter and onto the ground striking her right shoulder. (T. 16, 22). Petitioner testified after falling to the ground she experienced immediate pain and couldn't raise her right arm. (T. 16, 22). At that time, Petitioner contacted her manager, completed a Notice of Injury form, and went to the emergency room at Advocate Good Samaritan Hospital. (T. 24).

Petitioner testified at the hospital x-rays were taken of her right shoulder and she was told to follow up with an orthopedic surgeon. (T. 25). The following day, September 21, 2017, Petitioner followed up with Dr. Ronak Patel who ordered an MRI. (T. 27). Petitioner returned to Dr. Patel who indicated the MRI showed a large rotator cuff tear and, at that time, he recommended surgery. (T. 34). Petitioner testified prior to September 20, 2017 she never received medical treatment for her right shoulder. (T. 27).

Petitioner testified she underwent right shoulder surgery on October 31, 2017. (T. 37). After the surgery, Petitioner attended physical therapy and she was allowed to return to work full duty on January 25, 2018 and she was released from care on October 3, 2018. (T. 41).

The medical records from Advocate Good Samaritan Hospital, dated September 20, 2017, show x-rays were taken, Petitioner was provided medication, given a shoulder immobilizer, and told her to follow up with an orthopedic doctor. (T. 25). On September 21, 2017, Petitioner followed up with Dr. Patel who ordered an MRI which Petitioner underwent on October 4, 2017. The following day, Petitioner returned to Dr. Patel who recommended surgery because the MRI showed a large rotator cuff tear. On October 31, 2017, Petitioner underwent right shoulder surgery at Elmhurst Hospital. The surgery consisted of an arthroscopic repair of a torn rotator cuff, labral debridement, biceps tenotomy, and a subscapularis repair.

Petitioner testified Respondent paid her full wages through October 7, 2017, the date of her retirement. (T. 36). Regarding her other employment, Petitioner testified she continued to work for Phillips Flowers from September 20, 2017 through January 25, 2018 and that she did not miss any work during that period. (T. 32).

As to her current condition, Petitioner testified that she continues to experience tenderness and soreness in her right shoulder when she lifts her arm to wash her hair, reaches for things or while playing with her grandson. (T. 42, 43). Petitioner testified she takes Aleve for pain and she recently saw her primary care physician, Dr. DeSimone. (T. 43).

The Arbitrator finds Petitioner's testimony to be credible.

Conclusions of Law

The Arbitrator adopts the above Findings of Fact in support of the Conclusions of Law as set forth below. The claimant bears the burden of proving every aspect of his claim by a preponderance of the evidence. *Hutson v. Industrial Commission*, 223 Ill.App.3d 706, 714 (Ill. App. 5th Dist. 1992).

With Respect to Issue (C), Whether an accident occur that arose out of and in the course of Petitioner's employment, the Arbitrator Finds as follows:

The claimant has the burden of establishing by a preponderance of the evidence that her injury arose out of and in the course of her employment. *O'Dette v. Industrial Comm'n*, 79 Ill. 2d 249, 253, 403 N.E.2d 221, 38 Ill. Dec. 133 (1980); *Edward Don Co. v. Industrial Comm'n*, 344 Ill. App. 3d 643, 654, 801 N.E.2d 18, 279 Ill. Dec. 726 (2003). The phrase "in the course of

employment" refers to the time, place, and circumstances of the injury. *Scheffler Greenhouses, Inc., v. Industrial Comm'n,* 66 Ill. 2d 361, 366-67 (1977). "A compensable injury occurs 'in the course of' employment when it is sustained while a claimant is at work or while he performs reasonable activities in conjunction with his employment." *Wise, v. Industrial Comm'n*, 54 Ill. 2d 138, 142 (1973). "The 'arising out of' component is primarily concerned with causal connection. To satisfy this requirement it must be shown that the injury had its origin in some risk connected with, or incidental to the employment so as to create a causal connection between the employment and the accidental injury." *Sisbro Inc. v. Industrial Comm'n*, 207 Ill. 2d 193 (2003) Citing Caterpillar Tractor, 129 Ill. 2d at 58.

An injury "arises out of one's" employment if it originates from a risk connected with, or incidental to the employment, involving a causal connection between the employment and the accidental injury. *Orsini v. Industrial Comm'n*, 117 Ill. 2d 38 (1987). A risk is incidental to the employment when it belongs to or is connected with what the employee has to do in fulfilling his or her job duties. *Orsini,* 117 Ill. 2d at 45. Injuries resulting from a risk distinctly associated with employment are deemed to arise out of the claimant's employment and are compensable under the Act. *Steak 'n Shake*, 2016 IL App.(3d), 150500WC, Par. 34. A risk is distinctly associated with an employee's employment if, at the time of the occurrence, the employee was performing (1) acts he or she was instructed to perform by the employer, (2) acts that he or she had a common-law or statutory duty to perform or (3) acts that the employee might be reasonable be expected to perform incident to her or her assigned duties. *Caterpillar Tractor*, 129 Ill. 2d at 58, see also *The Venture-Newberg-Perini, Stone & Webster v. Illinois Workers' Compensation Comm'n,* 2013 IL 115728, Par 18, *Sisbro*, 207 Ill. 2d. at 204. Risk incident to employment are those acts the employer might reasonably expect the employee to perform in fulfilling is assigned job duties. *McAllister v. v. Illinois Workers' Compensation Comm'n*, 2020 IL 124848 (2020), citing *Orsini,* 117 Ill. App. 2d. at 45, *Ace Pest Control, Inc. v. Industrial Comm'n*, 32 Ill. 2d 386, 388 (1965). The Act is a remedial statute, which should be liberally construed to effectuate its main purpose of providing financial protection for injured workers. *Interstate Scaffolding, Inc. v. Illinois Workers' Compensation Comm'n,* 236 Ill. 2d 132, 149 (2010).

Respondent denied accident claiming Petitioner's injury did not "arise out of her employment" because her actions (*i*.e. attempting to calm down a coworker) was a voluntary act which Respondent would not reasonably expect Petitioner, a sales associate, to perform.

The Arbitrator finds Petitioner proved by the preponderance of the evidence that she sustained an accidental injury that arose out of and in the course of her employment as more fully explained below.

A risk incident to employment are acts the employer might reasonably expect the employee to perform in fulfilling one's assigned job duties. *McAllister v. v. Illinois Workers' Compensation Comm'n*, 2020 IL 124848 (2020), citing *Orsini,* 117 Ill. App. 2d. at 45, *Ace Pest Control, Inc. v. Industrial Comm'n*, 32 Ill. 2d 386, 388 (1965). The question presented involves whether the act of being pushed by a coworker while trying to calm down a coworker is an act that Respondent might reasonably expect an employee to perform. The Arbitrator notes Petitioner was pushed and being pushed was not an act Petitioner performed. Petitioner was working as a sales associate in an area exposed to the public. Attempting to calm down a coworker who was upset and crying in an area exposed to the public is an act that benefits Respondent. The Arbitrator finds trying to calm down a coworker who was crying in an area exposed to the public is an act Respondent might reasonably expect to be performed regardless of whether or not Petitioner was a manager or a sales associate.

Respondent claims calming down a coworker is outside of a sales associates job duties and Respondent would not reasonably expect Petitioner to perform since it is an act not specifically contained in her job description. It appears Respondent is arguing that employees who perform work not specifically contained in a written job description is the equivalent to willful and wanton conduct not covered under the Act.

Petitioner was injured after being pushed by a coworker. The Arbitrator notes that even employees who are injured while acting negligently or recklessly are still compensable under the Act. *Stembridge Builders, Inc. v. Industrial Comm'n*, 263 Ill. App. 3d. 878 (1994); *McKernin Exhibits, Inc. V. Industrial Comm'n*, 361 Ill. App. 3d. 666 (2005). The exception to this rule involves employees whose conduct is willful or wanton. *See, Parro v. Industrial Comm'n*, 167 Ill. 2d. 385 (1995); *Pagasnelis v. Industrial Comm'n*, 132 Ill. 2d. 468 (1989). In this case, no evidence was presented showing that Petitioner's conduct was willful or wanton or even negligent.

With Respect to Issue (F), Whether the Petitioner's Current Condition of Ill-being is Causally Related to the Injury, the Arbitrator Finds as follows:

The Arbitrator finds Petitioner proved by the preponderance of the evidence that her right shoulder condition is causally related to her injury. All medical evidence shows Petitioner injured her right shoulder on September 20, 2017 at work. The emergency room records from Advocate Good Samaritan Hospital state "*right shoulder pain after being shoved at work, impacting shoulder vs. glass case*." (Px. 6, p. 34). Dr. Patel's initial examination of Petitioner on September 21, 2017 states "*Patient suffered a work-related injury to her right shoulder*". (Px. 5, p.14). In his October 5, 2017, note, Dr. Patel repeats a history of the incident in detail and further remarks that the MRI shows a "*traumatic rotator cuff tear*" and "*Patient suffered a work-related injury to her right shoulder*" and "*the MRI evidence of a traumatic tear without any sign of chronic issues*." (Px. 5, p. 20). The operative report also states "[*g]iven this was a work-related injury*" (Px. 5, p.105). The Arbitrator also notes that Dr. Verma, who performed the Section 12 examination, stated that "[*i]t is my opinion that the causal relationship exists between the right shoulder condition and the work injury based on the acute fall, immediate onset of pain and subsequent functional loss with MRI evidence of rotator cuff tear*". (Rx. 4, p. 4)

With Respect to Issue "J", Whether Respondent is liable for Medical Expenses, the Arbitrator Finds as Follows:

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

Respondent denied the claim based upon accident. As stated above, the Arbitrator found Petitioner sustained an accidental injury that arose out of and in the course of her employment. No evidence was presented claiming that Petitioner's treatment was not reasonable or necessary or related to her September 20, 2017 work accident. The Arbitrator notes that Dr. Verma, Respondent's Section 12 examinator, opined that *"[t]reatment to date appears reasonable and necessary with regard to the right shoulder condition including diagnostic imaging, surgical repair and postoperative physical therapy*." (Rx. 4, p. 5). The Arbitrator finds that Petitioner

proved by the preponderance of the evidence the medical treatment rendered was reasonable and necessary to cure and alleviate her condition. As such, Respondent shall pay the medical bills involving treatment for the right shoulder as identified in Petitioner's Exhibit #1, pursuant to Sections 8(a) and 8.2 of the Act and subject to the fee schedule.

With respect to issue "K" whether Petitioner is entitled to TTD benefits, the Arbitrator finds as follows:

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

Petitioner seeks TTD benefits from October 8, 2018 through January 25, 2018 and TPD benefits from October 29, 2017 through January 25, 2018. (Arb. Ex.#1). The Arbitrator finds Petitioner failed to prove by the preponderance of the evidence that she is entitled to TTD and TPD benefits as more fully explained below.

Regarding TTD benefits, Petitioner testified she did not provide Respondent a copy of her work restrictions nor did she attempt to return to work for Respondent. Petitioner testified prior to her fall at work, she notified Respondent that she was retiring as of October 7, 2017. (T. 36, 50). Despite not returning to work after the fall, Petitioner was paid her full salary through October 7, 2017, the date of her retirement. Based upon her retirement, Petitioner never attempted to return to work for Respondent. The Arbitrator finds Petitioner removed herself from Respondent's workforce and, as such, she failed to prove that she was unable to work. To show entitlement to temporary total disability benefits, a claimant must prove not only that he did not work, but also that he was unable to work. *Gallentine*, 201 Ill. App. 3d at 887; *see also City of Granite City v. Industrial Comm'n*, 279 Ill. App. 3d 1087, 1090 (5th Dist. 1996).

Petitioner failed to prove she was entitled to TPD benefits. Petitioner testified Phillips Flowers accommodated her work restrictions and that she did not miss any work from September

20, 2017 through January 25, 2018. (T. 32). To support her claim for TPD benefits, Petitioner relies upon a payroll history which allegedly shows hours worked before and after her work injury. (*See,* Px. 2). Petitioner did not testify with any degree of specificity regarding the dates and hours missed from work due to her injury. The payroll history doesn't identify the dates and hours Petitioner was scheduled to work verses the dates and hours she actually worked nor does the payroll history contain any explanations for the missed time. Based upon the record, it is speculation that all the dates and hours Petitioner missed from work at Phillips Flowers, as detailed in the payroll history, was due to Petitioner's work injury. An employers' liability for benefits cannot be based on guess, speculation, or conjecture. *Illinois Bell Telephone v. Industrial Comm'n*, 265 Ill. App. 3d 681, 638 N.E.2d 207 (1994). The claimant bears the burden of proving every aspect of his claim by a preponderance of the evidence. *Hutson v. Industrial Commission*, 223 Ill.App.3d 706, 714 (Ill. App. 5th Dist. 1992).

With respect to issues (L), what is the nature and extent of the injury, the Arbitrator finds as follows:

Pursuant to §8.1b of the Act, the following criteria and factors must be weighed in determining the level of permanent partial disability for accidental injuries occurring on or after September 1, 2011:

(a) A physician licensed to practice medicine in all of its branches preparing a permanent partial disability impairment report shall report the level of impairment in writing. The report shall include an evaluation of medically defined and professionally appropriate measurements of impairment that include but are not limited to: loss of range of motion; loss of strength; measured atrophy of tissue mass consistent with the injury; and any other measurements that establish the nature and extent of the impairment. The most current edition of the American Medical Association's "Guides to the Evaluation of Permanent Impairment" shall be used by the physician in determining the level of impairment.

(b) In determining the level of permanent partial disability, the Commission shall base its determination on the following factors:

(i) the reported level of impairment pursuant to subsection (a);
(ii) the occupation of the injured employee;
(iii) the age of the employee at the time of the injury;
(iv) the employee's future earning capacity; and
(v) evidence of disability corroborated by the treating medical records.

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

With regard to subsection (i) of §8.1b(b), the Arbitrator notes that Dr. Nikhil Verma performed an AMA impairment rating of Petitioner's right shoulder in conjunction with his independent medical evaluation. He opined that the AMA guidelines resulted in a 6% upper extremity impairment rating which is equivalent to a 4% impairment of the whole person. The impairment rating is part of the determination of permanent partial disability benefits but is not the sole or the main factor. As such the Arbitrator gives some weight to this factor in determining permanent partial disability.

With regard to subsection (ii) of §8.1b(b), the occupation of the employee, the Arbitrator notes that Petitioner was employed as a sales associate which is not, in this case, a physically demanding occupation. Prior to her fall at work, Petitioner was planning on retiring. As such, the Arbitrator gives this factor little weight in determining permanent partial disability.

With regard to subsection (iii) of §8.1b(b), the age of Petitioner. The Arbitrator notes that Petitioner was 65 years old at the time of the accident nearing the end of her work life expectancy. Generally, individuals near the end of their work life expectance tend to experience greater difficulties recovering from injuries or are more prone for reinjury but, Petitioner submitted her request to retire prior to her work accident. As such, the Arbitrator gives this factor some weight in determining permanent partial disability.

With regard to subsection (iv) of §8.1b(b), Petitioner's future earning capacity. Petitioner decided to retire prior to her work accident. Petitioner testified that she continued to work at Phillips Flowers after her work accident. No evidence was submitted showing impairment of her future earning capacity. As such, the Arbitrator gives this factor no weight in determining permanent partial disability.

With regard to subsection (v) of § 8.1b(b), Evidence of disability corroborated by the treating medical records, the Arbitrator notes that Petitioner underwent arthroscopic surgery consisting of the repair of a massive rotator cuff tear, labral debridement, a biceps tenotomy, and a subscapularis repair. The Arbitrator notes Petitioner's testimony as to her ongoing symptoms which are consistent with the medical records. Petitioner was released to return to work full duty and she takes Aleve depending upon her activity level. The Arbitrator notes that the discharge summary from ATI, dated January 23, 2018, indicates Petitioner was restricted with reaching overhead and that he pain levels are 0/10 at rest and 2-3/10 with activities. As such, the Arbitrator gives this factor greater weight in determining permanent partial disability.

Based on the above factors, and the Record taken as a whole, the Arbitrator finds that Petitioner sustained permanent partial disability to the extent of 15% loss of use of a person as a whole, pursuant to §8(d)2 of the Act.

By: */o/ Frank J. Soto* September 27, 2023
Arbitrator Date

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	22WC033580
Case Name	Hayley Crackel v. Columbian Club
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b) Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	24IWCC0371
Number of Pages of Decision	18
Decision Issued By	Deborah Simpson, Commissioner

Petitioner Attorney	Thomas C Rich
Respondent Attorney	Dana Benedetti

DATE FILED: 8/5/2024

/s/ Deborah Simpson, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF MADISON)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Hayley Crackel

Petitioner,

vs. NO: 22 WC 33580

Columbian Club
Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by the Petitioner herein and notice given to all parties, the Commission, after considering the issues of accident, medical expenses and temporary disability and being advised of the facts and law, changes the Decision of the Arbitrator as stated below and otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

As indicated above, this matter was arbitrated under §19(b) of the Act. The Arbitrator found that Petitioner failed to meet her burden of proving a compensable accident. The Commission affirms that finding. However, in the "ORDER" section of the decision, the Arbitrator included the language that "in no instance shall this award be a bar to subsequent hearing and determination of any additional amount of medical benefits or compensation for a temporary or permanent disability, if any." Because the claim was denied in its entirety and there is no award, the matter will not be remanded for determination of any benefits. Therefore, the Commission strikes the above quoted language from the "ORDER" section of the Decision of the Arbitrator.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed June 15, 2023, is hereby affirmed and adopted with the changes noted above.

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

The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

August 5, 2024

o7/24/24
DLS/rm
046

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

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	22WC033580
Case Name	Hayley Crackel v. Columbian Club
Consolidated Cases	
Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	15
Decision Issued By	Maureen Pulia, Arbitrator

Petitioner Attorney	Thomas C Rich
Respondent Attorney	Diandra Abate

DATE FILED: 6/15/2023

/s/Maureen Pulia, Arbitrator

Signature

THE INTEREST RATE FOR THE WEEK OF JUNE 13, 2023 5.15%

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

HAYLEY CRACKEL
Employee/Petitioner

v.

COLUMBIAN CLUB,
Employer/Respondent

Case # **22** WC **33580**

Consolidated cases: _____

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Maureen Pulia**, Arbitrator of the Commission, in the city of **Collinsville**, on **5/25/23**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On the date of accident, **12/10/22**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

In the year preceding the injury, Petitioner earned $**25,959.06**; the average weekly wage was $**701.59**.

On the date of accident, Petitioner was **33** years of age, ***single*** with **0** dependent children.

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

Respondent shall be given a credit of $**00.00** for TTD, $**00.00** for TPD, $**00.00** for maintenance, and $**2,560.00** advance, for a total credit of $**2,560.00**.

Respondent is entitled to a credit of $**00.00** under Section 8(j) of the Act.

ORDER

Petitioner's claim for compensation is denied. Petitioner has failed to prove by a preponderance of the credible evidence that she sustained an accidental injury to her left knee that arose out of and in the course of her employment by respondent on 12/10/22.

Respondent is entitled to a credit in the amount of $2,560.00 for the advance it made to petitioner pending trial. Given that petitioner's claim for compensation is denied, petitioner shall pay a credit in the amount of $2,560.00 to respondent.

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

June 15, 2023

ICArbDec19(b)

THE ARBITRATOR HEREBY MAKES THE FOLLOWING FINDINGS OF FACT:

Petitioner, a 33 year old bar manager, alleges she sustained an accidental injury to her left knee that arose out of and in the course of her employment by respondent on 12/10/22. Petitioner had worked as a bar manager for respondent for about 8 months on the date of her alleged injury.

Petitioner testified that she was the supervisor, and because of that did not report her injury to any of her co-workers. She did not feel it was appropriate. She testified that she reported to David Opp, President of the Board, but did not report the injury to him because he had resigned three weeks prior. Petitioner testified that all the while she worked for respondent, she did not know the protocol for reporting work injuries.

On 12/10/22 a Christmas party for Knight Hawk Coal was being held at the Columbian Club for 628 people. On that date petitioner's duties included getting the venue and bar ready, bartending, counting money, and mopping up spills. Petitioner testified that behind the bar she helped the other bartenders: Kaliyn Leucker, Raven Malanowski, Sarah Knight, and Amanda Hepp. Petitioner testified that she sent Sarah home early because she was pregnant and she did not want her to slip on the floor. Petitioner testified that when the draft beer was being poured it overflowed the cups, and as a result, filled the reservoir under the taps, and then flowed over onto the floor. Petitioner also testified that she saw some of the bartenders spill beer on the floor.

Petitioner testified that she did not drink that night while working, but did see Raven and Kaliyn drink while they were working. When asked if she, as their supervisor, reprimanded for them drinking while working, she stated that she did not reprimand them at work, or after work. Petitioner testified that she never drinks at work because she could mess up a lot of things.

Petitioner testified that beer was flowing from the bar floor into the cooler. Petitioner testified that she entered the cooler and there was beer, as well as sugar water on the porcelain floor. Petitioner stated that due to this liquid being on the cooler floor she slipped on the wet floor, underneath the microwave where the sugar water was made. When she slipped, petitioner stated that she did not fall to the floor, but instead fell back onto a case of water. She testified that she went into a sitting position when her left knee gave out.

Following the incident, petitioner was sitting on the case of water when Kaliyn entered the storage room, saw her, and helped her up. Petitioner stated that she did not tell Kaliyn what happened. Instead, she stated that she went in the office and put an ice pack on her left knee for 20 minutes. Petitioner stated that although her left knee hurt, she continued working. She did not know if she was limping at that time.

She testified that she finished her shift at approximately 1:00 am, followed by cleanup of the Club until approximately 3:00 am. Petitioner testified that following the incident her left knee was very sore, and she was hyperaware of her surroundings because she did not want to slip.

Petitioner denied any prior injury to her left knee before 12/10/22. In college petitioner was a catcher for the college's softball team. She denied any injuries, aches, or pains from catching while in college. Petitioner denied having any prior MRI or x-rays to her left knee.

Kenneth Kellerman was called as a witness on behalf of petitioner. Kellerman testified that he is being represented by petitioner's attorney, Rich, Rich, Cooksey & Chappell in an unrelated case.

Kellerman testified that he knows petitioner, was present at the Christmas party on 12/10/22, and was the one that hosted the "after party" following the Knight Hawk Christmas party at the Columbian Club. Kellerman testified that he and petitioner were friends, and he had known petitioner for about a year. He stated that he does not see her very often now because he used to only see her at the bar. Kellerman testified that he arrived at the Christmas party about 4:30 pm, and had about 12 drinks before leaving early with a friend that had gotten into a fight. He testified that he was drinking free beer on tap, and did not have any shots. Petitioner stated that he was capable of driving himself home. He stated that he arrived home about 8:00 pm, and had about 9-10 drinks at his "after party". When asked if he was drunk, he stated that he was "inebriated by the end of it." Keller stated that petitioner arrived at the "after party" about 1:00 am, and the "after party" went to about 4:30 am.

Petitioner testified that she went to the "after party" at Kellerman's house once she finished work at about 3:00 am. A lot of her co-workers and patrons, approximately 20, were at the "after party". She testified that they played games and hung out. She stated that she spent most of her time sitting at the bar downstairs. Petitioner denied falling down the stairs when she descended the stairs to the basement, and also denied any injury at the "after party". She testified that she had two white claws at the "after party".

Petitioner could not state how long she was at the "after party" or the actual time she left the "after party", but did state that it took her three hours to find her keys that someone hid in the rafters as a joke. She testified that she needed to get home to move the "Elf on the Shelf" before her stepdaughter got up. Petitioner testified that when she got home she elevated her right knee and sat on the couch.

Kellerman testified that petitioner was at his "after party" with her coworkers. Kellerman stated that the party was mostly in the basement because it was cold out. He testified that the stairs from the ground level to the basement were made of wood. He stated that his basement is concrete. He testified that the bar is 5 feet from the base of the stairs, and he was sitting sideways in the 'captain's chair' with a

guitar at the end of the bar by the stairs, and could see whoever went up and down the stairs. He testified that he was in this seat most of the night. Kellerman testified that he did not notice petitioner limping at the Christmas party or the "after party" that night, and she did not mention to him that she was injured.

Kellerman testified that Luke reached out to him at some point after the "after party" and asked him some questions to see if the rumors that petitioner fell down the stairs were true. Kellerman testified that he did not see anyone fall down the stairs.

Kellerman did testify that he was arrested for a felony. He testified that he was arrested for spanking his daughter once with an open hand. He stated that it did not even leave a mark. After a year and a half he plead guilty. He testified that he has had jobs since then, and it has not affected him getting a job.

Petitioner testified that on 12/11/22, the day after the party, she had trouble walking and could not get out of bed. She further testified that on 12/12/22 she called Kristin Massey, the nurse practitioner, at 10:00 am. Petitioner sent pictures of her knee to Massey at 1:36 pm. At 3:46 pm she received a text response indicating that Massey ordered an x-ray of her left knee. At 4:40 pm petitioner received another text message that indicated Massey told her to go to Urgent Care.

On 12/12/22 Bill Luke, who petitioner identified as the Treasurer of the Board, called her at 5:36 pm that evening because she was not at the bar. Petitioner testified that Luke terminated her at that time. Petitioner testified that she told Luke during that conversation that she was hurt on 12/10/22, and it was work related. Petitioner testified that she sought legal counsel after she was fired.

Luke testified that he was voted in as the President of the Board of the Columbian Club in November of 2022 by his fellow Board Members, after Opp resigned. He stated that prior to that time he was Treasurer. Luke testified that he was not present at the Columbian Club on 12/10/22, but knew there was a party there that night. He also testified that he was not at the "after party". Luke denied being notified by petitioner of any work incident on 12/10/22 or 12/11/22.

Luke testified that he called petitioner on 12/12/22 when he was made aware by Club members that petitioner did not open the bar. He stated that he was made aware that the bar was not open through a text message from a patron. Luke testified that when he asked petitioner why she did not open the bar, she told him that her dog was on his death bed, and she hurt her left knee. Luke stated that he told petitioner that he was going to let her go if she did not go and open the bar. Petitioner did not go and open the bar, so he terminated her. Another bartender came and opened the bar. Luke testified that

petitioner did not provide any additional details regarding her knee injury during that phone conversation. He stated that the phone call lasted about 5 minutes.

On 12/12/22 petitioner sent an email to Luke stating that she had all her doctor's paperwork from that day. She further noted that her knee was 4 times the normal size and she could not even work. She further stated that she had never had to notify before, and that he had not sat down with her before and given her any rules or protocols. The parties stipulated that this email was being admitted for the sole purpose of what it actually says, not the truth of the matter asserted.

On 12/13/22 at 1:42 pm petitioner sent text to Massey asking for a doctor note. She stated that she tried coming to the office but there were no available appointments. At 1:44 pm she received a response asking her "what days did you miss work and was it due to the knee pain?" At 1:46 pm petitioner responded "yesterday and today". She also wrote "I still can't put pressure on it bend it or walk on it." She also asked if they received her pictures. At 4:40 pm she received a response that said she would need to go to Urgent Care, since there was no way she could get an MRI covered without a visit and an x-ray.

Petitioner stated that on 12/14/22 she could not get out of bed due to her left knee pain. She noted that her left knee was swollen round, and hard, and it was hard to walk on. As a result, she called her primary care physician to get an appointment. Since she could not get in that day, she sent the doctor's office pictures of her left knee, and the doctor gave her an order for an x-ray of the left knee.

On 12/14/22 at 1:40 pm petitioner sent another text to Massey asking if she can only get an x-ray done at Urgent Care, and if she could make an appointment at a hospital. She also stated that she needed "those Dr notes." At 4:40 pm she received a text message indicating that Massey approved her work note. The work note from Massey, dated 12/14/22 stated "Hayley Crackel is currently under my medical care. Please excuse Hayley for her absence from work on Monday 12/12 and Tuesday 12/13.

On 12/15/22 petitioner presented to Dr. Bradley. Petitioner selected Dr. Bradley because her husband Blake had treated with him before. Petitioner complained of left knee pain. She gave a history of slipping on a wet surface while working for respondent on 12/10/22. She reported that this caused her knee to twist in and her foot twist out. She also reported that she felt an immediate popping sensation in her left knee and was unable to extend her knee. She reported that she caught herself before she fell. She was eventually able to get her knee straight. She noted that she had significant swelling and effusion in her left knee, that significantly improved over the next couple of days. She denied any instability in her left knee, and identified the anterior aspect of her left knee as the source of her pain. She also denied any significant history of injury to her left knee similar to what she was experiencing. Following an

examination, and review of her left knee x-rays, Dr. Bradley did not appreciate any fractures or any significant degenerative disease. He noted tenderness over the medial patella and lateral femoral condyle consistent with that of a patella dislocation and spontaneous relocation. He ordered an MRI of the left knee. He restricted petitioner to light duty work. He was of the opinion that the injury as described by petitioner as occurring on 12/10/22 directly resulted in, and would therefore be causally related to, her ongoing left knee pain, and her need for further medical workup and potential intervention.

Petitioner followed-up with Dr. Bradley on 12/29/22. She reported that her chief complaint was the instability on her left knee. She reported that she was going down the stairs on 12/24/22 and her left knee spontaneously gave out. She noted that she was able to catch herself and did not fall. She reported that with any kind of twisting or turning her left knee gives out on her. Dr. Bradley reviewed the results of the MRI of the left knee on 12/29/22 and was of the opinion that it showed ACL and medial meniscus tears, as well as a Baker's cyst. Dr. Bradley recommended an ACL reconstruction with arthroscopic medial meniscectomy. He continued petitioner on light duty, desk work only.

Luke testified that the first he learned that petitioner was alleging that her left knee injury was work related was when he got a letter from her attorney in early January of 2023. Following receipt of the letter, Luke testified that he did an investigation into the alleged accident by talking to the other bartenders present on 12/10/22: Sarah, Raven, Kaliyn, and Amanda. He testified that he asked them if petitioner was hurt, or was there an accident. On 12/12/22 Luke was not aware petitioner was taken off work.

On 1/12/23 Luke completed the Workers' Compensation – First Report of Injury regarding petitioner's alleged accident on 12/10/22. He noted that petitioner alleged an injury to her left knee at work on 12/10/22 when she slipped and fell. Luke noted on the report that petitioner had not previously reported an injury. He also noted that he terminated her over the phone on 12/12/22 for not coming into work.

On 2/8/23 petitioner under went an arthroscopic anterior cruciate ligament reconstruction, and arthroscopic partial medial meniscectomy performed by Dr. Bradley. The post-operative diagnosis included a complete rupture of the left anterior cruciate ligament and a very large bucket handle medical meniscus tear.

Petitioner followed-up post-operatively with Dr. Bradley. On 2/8/23 recommended formal physical therapy. She was continued on desk duty restrictions. On 4/10/23 Dr. Bradley noted that her ACL was functioning well and her anterior translation was similar to her contralateral knee. She showed no post-

operative complications. Her left quadricep continued to be significantly weak and atrophic as compared to the right. He ordered another 6-8 weeks of physical therapy. He also continued her work restrictions, and instructed her to follow-up in 6-8 weeks.

Petitioner's last physical therapy at ApexNetwork Physical Therapy before trial was on 5/9/23. At that time petitioner reported that her hips had been hurting her and were sore lately. Petitioner was able to perform exercises well with good form and no issues or adverse effects.

On 5/12/23 the evidence deposition of the Raven Malanowski was taken on behalf of respondent via Zoom. The arbitrator was present to view Malanowski's testimony and rule on the objections real time. Malanowski worked as a bartender for respondent on 12/10/22. She testified that she quit working for respondent in April of 2023. She testified that she began working for respondent in October of 2022. Malanowski reported to petitioner. She testified that she only knew petitioner from her work at the bar. She stated that the only time they went out together was to the "after party" on 12/10/22.

Malanowski testified that there were a couple hundred people at the Knight Hawk Christmas Party on 12/10/22. There were 5 bartenders working the party. She stated that Kaliyn, Sarah, Amanda and petitioner were the other bartenders. Malanowski arrived at the bar prior to 4:30 pm on 12/10/22. She stated that it was busy and she helped Amanda before Hayley got there. She testified that her and Hayley set up the hall and got everything ready for the party. Once done, Malanowski testified that she went behind the bar when people started arriving. She stated that the party went on until the Club closed. She was behind the bar all night pouring drinks, as well as restocking the cooler and bar. She testified that it was chaotic, but everyone was kind of all in the same vicinity at the same time. Malanowski testified that there were a lot of times that she did not know where petitioner was, and figured maybe she was in the hall helping some of the guests, or in the kitchen helping the kitchen people, or in the bathroom. She testified that she saw petitioner pop in and out throughout the night.

Malanowski testified at no time while she was working on 12/10/22 did she see petitioner fall. She stated that she, Hayley, and Kaliyn closed the bar, and then they all went to Kenny Kellerman's house for an "after party.

Malanowski testified that petitioner was drinking at the "after party". She stated that they all were drinking, listening to music, and playing games in the basement. She testified that she recalled petitioner coming down the stairs. She stated that she did not see petitioner coming down the stairs, but turned when she heard the scuffle and saw petitioner on the floor laughing. She testified that she assumed that petitioner had fallen down the stairs. Malanowski stated that she was standing about 10 feet away from

the stairs by the pool table when she heard the scuffle. There was nothing obstructing her view. Malanowski testified that she then asked petitioner if she was okay. She stated that petitioner then got up laughing and went back upstairs. She stated that no one else was present at that time. She testified that Kaliyn and Coty were in his room at the time, and Cody and Kenny were outside with Kelsey and Zach. She testified that petitioner had been in and outside a couple of times throughout the night. Malanowski testified that she had a beer or two at the "after party", and was still very coherent enough to drive her friends home that night.

Malanowski testified that the first time she became aware that petitioner was claiming an injury at work on 12/10/22, was when she was asked to testify by Luke. Petitioner testified that she did not receive a subpoena to testify, and that she was just asked by Luke.

On cross examination, Malanowski testified that she knew a few of the party guests. She stated that she did not consume any alcohol while working the Christmas party on 12/10/22. She also did not see petitioner consume any alcohol while working the party. Malanowski testified that while bartending on 12/10/22 she did not personally spill any draft beer or liquor on the floor, but did know that when the girls were going back and forth from filling the draft cups for the party, at one point there was a spillage on the floor. She believed that following that spill, petitioner and Kaliyn went and got towels and cleaned it up. She said it was spillage from the beer foam. She testified that she did see beer, or something like that spilled on the floor, and saw petitioner clean it up.

Malanowski testified that there is a microwave in the backroom above where the alcohol and popcorn is stocked. She testified that she used the microwave on 12/10/22 to make simple syrup for Old Fashioneds. She did not remember any of the contents of that bowl getting onto the floor. She testified that she brought the bowl from the microwave to the front of the bar, but did not remember any of it spilling, or the bowl having any holes in it. She said it might have boiled over in the microwave.

Malanowski testified that she did not actually see petitioner fall down the stairs, but did hear her. When she turned around and saw petitioner on the floor laughing, she just assumed petitioner had fallen. When she asked petitioner if she was okay, petitioner just giggled and said "yes" and got up and went back upstairs. Malanowski testified that she fell asleep on the couch at Kellerman's house around 2:00 am or 3:00 am, because she had been up all day working two jobs. She stated that her friends had to wake her up when they were ready to go home. Malanowski could not recall who opened the bar on 12/11/22. She testified that she did not see petitioner that day. She also testified that she was unaware of any complaints regarding her work for respondent, and she was never disciplined. Malanowski testified that she stopped working in April 2023 because she began working at another bar closer to her

hometown, after her separation and divorce. She also testified that she never saw Luke working in the Columbian Club, other than in the office.

On cross-examination Malanowski testified that she did not notice anything strange about petitioner, while they were cleaning up after the party. She stated that she did see petitioner walking around, but did not see her limping. She further testified that petitioner did not mention that she sustained any type of work accident that evening, but noted that petitioner has no obligation to report any work injury to her.

Petitioner texted fellow employees to let them know that her attorney had been trying to get of them to discuss what happened on 12/10/22. She provided them with her attorney's name and phone number. RX6, RX7.

Petitioner testified that currently she is still wearing her immobilizer. She stated that she is doing good and improving. She also testified that she was still in physical therapy and had light duty restrictions.

Petitioner testified that prior to trial she did not contact any of her employees at the Columbian Club to testify on her behalf. Petitioner stated that she did send text messages to Raven and Kaliyn just to inform them that her lawyer wanted to talk to them. She testified that her co-workers were told that they could not speak to her.

Petitioner offered into evidence pictures of her left knee.

At some point petitioner drafted a memo regarding her version of what occurred on 12/10/22 with respect to the Knight Hawk Employee Christmas party at the Columbian Club. She noted that her job description for that party was preparing for 700 people, 200 over capacity. Due to this overcrowding she had to maneuver chairs, tables, stock, and staff. She indicated that her duties included mostly running around putting out fires and making everything flow. She noted that on 12/10/22 the Club's keg lines went completely down (the party had 12 kegs for their employees). Inside the beer cooler under and around each keg was a lot of standing water. She noted that when she climbing in and out between the kegs her foot got caught, and she slipped and felt a pop. She then exited the beer cooler. She noted that the floor behind the bar was absolutely soaked from the girls' spills. She indicated that she had to change to CO2 tanks, and when she made an immediate left into the liquor storage room her left foot slipped on some liquid, and her left knee immediately felt like it locked up, and just as fast she hit the ground. She noted that she felt like her knee popped out of socket. She noted that she then went in the office and sat for about 15 minutes before going back out. She noted that she had no idea how hurt she actually was

until Sunday morning when she could not get out bed or walk on her swollen left knee. She indicated that she immediately made a doctor appointment with her primary care doctor as soon possible, which was Monday morning.

Petitioner offered into evidence her personal work calendar for respondent. PX12

C. DID AN ACCIDENT OCCUR THAT AROSE OUT OF AND IN THE COURSE OF PETITIONER'S EMPLOYMENT BY RESPONDENT?

The threshold issue in this case is whether or not petitioner sustained an accidental injury to her left knee that arose out of and in the course of her employment by respondent on 12/10/22. Petitioner claims she sustained an accidental injury to her left knee that arose out of and in the course of her employment by respondent on 12/10/22. Respondent disputes this claim.

Petitioner claims that she injured her left knee on 12/10/22 while working for respondent. The arbitrator notes that petitioner provided a few different histories as to how the left knee injury at work on 12/10/22 occurred. The various histories include:

1. Petitioner testified at trial that on 12/10/22 she entered the cooler and slipped on a wet floor under the microwave. She testified that she slipped on beer, as well as sugar water on the porcelain floor. She testified that she did not fall to the ground, but instead fell back onto a case of water, and when she went into the sitting position her left knee gave out.
2. When petitioner presented to Dr. Bradley on 12/15/22 she gave a history of slipping on a wet surface while working for respondent on 12/10/22. She reported that this caused her knee to twist in and her foot to twist out. She reported an immediate popping sensation in her left knee. She stated that she caught herself before she fell.
3. Petitioner drafted a memo describing what happened at work on 12/10/22. She noted that the Club's keg lines went completely down, and inside the beer cooler, under and around each keg was a lot of standing water. She noted that when she was climbing in and out between the kegs her foot got caught, and she slipped and felt a pop. She noted that she exited the cooler and noticed that the floor behind the bar was absolutely soaked from the girls' spills.
4. In the same memo that she drafted she noted that after slipping and feeling a pop in the cooler, she exited the cooler and made an immediate left into the liquor storage room where she was going to change the CO2 tanks. As she made an immediate turn into the liquor storage room, she stated that her left foot slipped on some liquid, and her left knee immediately felt like it locked up, and just as fast she hit the ground. She noted that it felt like her left knee popped out.

The arbitrator finds these 4 accident histories not only vary as to the mechanism of injury, but also as to the location of injury. The mechanism of injury varies from a simple slip and fall onto a water case, followed by a pop in her knee while sitting; to a slip on a wet surface that caused her knee to twist in and her foot out, and an immediate popping sensation in her left knee; to climbing in and out between the kegs in the cooler when her foot got caught, and she slipped and felt a pop; to her left foot slipping on some liquid as she immediately turned into the liquor storage room, and her left knee immediately feeling

like it locked up, and she hit the ground. The arbitrator finds it significant that not only do these mechanisms of injury vary greatly, they also take place in different places in the bar, namely the cooler and the liquor storage room.

In one version of her alleged injury, petitioner testified that Kaliyn Leucker entered the storage room, saw her, and helped her up. However, the arbitrator finds it significant that with this being the only possible person that could potentially corroborate part of her accident history, the petitioner failed to call her as a witness.

The petitioner testified that after the injury she went to office and put an ice pack in her left knee for 20 minutes. She testified that even though her left knee hurt, she continued working until 3 am. Thereafter, she went to Kellerman's "after party". However, the arbitrator notes that Kellerman testified that petitioner got there about 1:00 am.

Malanowski testified that she helped petitioner set up for the party on 12/10/22 and then worked behind the bar, and restocked the cooler and the bar. She testified that she did not have eyes on petitioner all night long, but at no time did she see petitioner fall. She did testify that at one point there was a spillage on the floor from the beer foam, and she saw petitioner clean it up. Malanowski also testified that she made sugar water for the Old Fashioneds in the microwave in the back room, but did not recall spilling any of it on the floor. If anything, she said it might have overflowed in the microwave. Malanowski testified that at no time while she was working the party on 12/10/22 did she see petitioner fall. She stated that petitioner did not report any fall to her, and she did not see petitioner limping or favoring her left knee in the Club that evening.

Malanowski testified that she did go to the "after party" at Kellerman's house and while she was playing pool in the basement she heard a scuffle on the stairs and turned around and saw petitioner at the bottom of the stairs laughing. She asked petitioner if she was okay, and petitioner just giggled and said "yes". Malanowski noted that petitioner then got up and went back upstairs. Malanowski testified that she did not drink while at work on 12/10/22, and only had two drinks at the "after party".

Kellerman testified that he and petitioner were friends and he had known her for a year while she worked at the bar. Kellerman did not see her after he left the bar, until she arrived at his "after party". Kellerman testified that he did not see petitioner fall at the "after party". He further testified that at the "after party" he sat in the "captain's chair" at the end of the bar which was 5 feet from the base of the stairs. He testified that he was sitting sideways in the chair with a guitar, and could see who went up and down the stairs. He stated that he was in this seat most of the night and never saw petitioner fall down the stairs.

The arbitrator finds it hard to place a lot of credibility on Kellerman's testimony given that he had 12 beers at the party between the hours of 4:30 pm and 8:00 pm; had an additional 9-10 drinks at his "after party"; admitted that he was inebriated; and, admitted that he was not sitting at the bar in his basement all night long. Additionally, the arbitrator does take note that Kellerman is currently being represented by petitioner's attorney in an unrelated action.

The arbitrator found the testimony of Malanowski to be the most credible. The arbitrator finds Malanowski had no relationship with petitioner, other than at work, and had only worked for respondent for no more than 2 months on 12/10/22. Additionally, Malanowski was not even an employee for respondent at the time of her deposition due to personal reasons, and therefore had no reason to tell anything other than the truth. In contrast to the petitioner, the arbitrator found Malanowski's testimony consistent and credible throughout.

On 12/12/22 Luke called petitioner and told her that if she did not come and open the bar she would be terminated. Petitioner testified that she told Luke during that phone call that she was hurt at work on 12/10/22, and it was work related. However, Luke testified that when he called petitioner and asked her why she did not open the bar, she told him that her dog was on his death bed, and she hurt her knee. He testified that she never mentioned that it happened at work. Thereafter, Luke told petitioner that he was going to let her go if she did not go and open the bar. Petitioner did not go and open the bar, so Luke terminated her.

After being terminated petitioner sought counsel. Luke testified that the first he learned that petitioner was claiming a work accident was when he received a note from her attorney in early January 2023.

Lastly, the arbitrator finds the text messages petitioner offered into evidence between her and Massey from 12/12/22 through 12/14/22 very significant for one and only one reason, that being the fact that in each and every one of these text messages petitioner never mentioned that she injured her left knee at work. The arbitrator also finds the email to Luke on 12/12/22 very significant for the same reason. This email also contains no reference to petitioner's left knee injury occurring at work on 12/10/22.

Based on the above as well as the credible evidence, the arbitrator finds the petitioner has failed to prove by a preponderance of the credible evidence that she sustained an injury to her left knee that arose out of and in the course of her employment by respondent on 12/10/22. The arbitrator bases this finding on the multiple alleged mechanisms of injury petitioner provided in the days following the alleged injury; the different locations in the Club petitioner claims she was injured depending on her accident history; her decision to not call as a witness the only person who allegedly helped her up off the floor after the alleged injury on 12/10/22; the fact that in all text and email correspondence from 12/12/22 through

12/14/22 petitioner never mentions that she injured her left knee at work; that petitioner did not seek legal counsel until after she was terminated; that the testimony of Malanowski and Luke were far more credible and believable than that of Kellerman; and, that the petitioner's testimony was less than persuasive given the multiple inconsistencies in her accident histories and locations, and failure to make any mention of a work related injury to her left knee at work on 12/10/22 until after she was terminated by respondent.

The arbitrator notes that it is the petitioner's burden to prove all elements of her claim. 820ILCS 305/1(b)3(d); *Board of Trustees of the University of Illinois v Industrial Commission,* 44 Ill.2d at 214 (1969); *Edward Don v Industrial Commission,* 344 Ill.App.3d 643 (2003). However, in this case the arbitrator finds the petitioner has clearly failed to do so as it relates to the threshold issue of whether or not she sustained an accidental injury to her left knee that arose out of and in the course of her employment by respondent on 12/10/22.

F. IS PETITIONER'S CURRENT CONDITION OF ILL-BEING CAUSALLY RELATED TO THE INJURY?
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?

Having found the petitioner failed to prove by a preponderance of the credible evidence that she sustained an accidental injury to her left knee that arose out of and in the course of his employment by respondent on 12/10/22, the arbitrator finds these remaining issues moot.

N. IS THE RESPONDENT DUE ANY CREDIT?

Respondent is entitled to a credit in the amount of $2,560.00 for the advance it made to petitioner pending trial. Given that petitioner's claim for compensation is denied, petitioner shall pay a credit in the amount of $2,560.00 to respondent.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	20WC000579
Case Name	Roenita Hamilton v. Ford Motor Company
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	24IWCC0372
Number of Pages of Decision	5
Decision Issued By	Kathryn Doerries, Commissioner

Petitioner Attorney	Melvyn Romanoff, David Feuer
Respondent Attorney	Kisa Sthankiya

DATE FILED: 8/6/2024

/s/Kathryn Doerries, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

ROENITA HAMILTON,

Petitioner,

vs. NO: 20 WC 000579

FORD MOTOR COMPANY,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Petitioner herein and notice given to all parties, the Commission, after considering the issue of Petitioner's Petition to Reinstate, and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed December 08, 2023, is hereby affirmed and adopted.

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

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

The bond requirement in Section 19(f)(2) is applicable only when "the Commission shall have entered an award for the payment of money." *820 ILCS 305/19(f)(1) (West 2013)*. Based upon the denial of Petitioner's Petition to Reinstate herein, no bond is set by the Commission. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

August 6, 2024
O07302024
KAD/as
42

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

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

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

STATE OF ILLINOIS)
)
COUNTY OF **Cook**)

ILLINOIS WORKERS' COMPENSATION COMMISSION

ORDER

Roenita Hamilton
Employee/Petitioner

v.

Ford Motor Company
Employer/Respondent

Case # **20** WC **000579**

The **Petitioner** filed its first petition or motion for **Reinstatement**

on **August 12, 2022**, and properly served all parties. Subsequent Petitions to Reinstate Case were filed on October 19, 2022; December 02, 2022; February 02, 2023; August 08, 2023 and August 15, 2023 with proper service to all parties. The matter came before me on

December 07, 2023 in the city of **Chicago** . After hearing

the parties' arguments and due deliberations, I hereby ***deny*** the petition.

A record of the hearing ***was*** made.

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

A hearing, pursuant to Rule 9020.90, was had. Both Parties were represented by counsel and a record was had.

Being fully advised in the premises, The Arbitrator Finds:

1. That this matter appeared on Arbitrator Kane's status call on February 07, 2022.
2. That at the status call, this matter was set for pretrial on February 18, 2022.
3. That neither Petitioner nor Petitioner's attorney appeared at the pretrial.
4. Due to the failure of Petitioner or her representative to appear, Arbitrator Kane entered an order of dismissal.
5. That said order of dismissal was sent to attorney Melvin Romanoff's email on February 18, 2022 via Compfile. (see RX 1)
6. That on that same date of February 18, 2022, Arbitrator Kane sent a *second* email to attorney Melvin Romanoff notifying him that the case was dismissed for want of prosecution. (see RX 2)
7. That it is acknowledged by Petitioner's attorney that Attorney Romanoff did not notice the Compfile order of dismissal, did not read it and did not forward it to anyone in his office.
8. That it is acknowledged by Petitioner's attorney that Attorney Romanoff did not notice Arbitrator Kane's email notifying him of the order of dismissal, did not read it and did not forward it to anyone in his office.
9. That the Petition to Reinstate must be filed within 60 days of receipt of the dismissal order.

10. That said Petition to Reinstate was not filed within 60 days of receipt of the dismissal order.

Accordingly, Petitioner's Petition to Reinstate is DENIED.

December 8, 2023

Signature of arbitrator

December 7, 2023
Date

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	22WC001620
Case Name	Julio Pichardo v. Honda of Lisle
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b) Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	24IWCC0373
Number of Pages of Decision	19
Decision Issued By	Carolyn Doherty, Commissioner

Petitioner Attorney	Luis J. Magaña
Respondent Attorney	Daniel J Levato

DATE FILED: 8/7/2024

/s/Carolyn Doherty, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF DuPAGE)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

JULIO PICHARDO,

Petitioner,

vs. NO: 22 WC 1620

HONDA OF LISLE,

Respondent.

DECISION AND OPINION ON REVIEW

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

The Commission modifies the award of temporary total disability (TTD) benefits. The Arbitrator ordered Respondent to pay Petitioner TTD benefits for the period from October 27, 2022, through October 19, 2023. However, the hearing date in this matter was October 11, 2023. Section 19(b) of the Act provides that "[t]he Arbitrator may find that the disabling condition is temporary and has not yet reached a permanent condition and may order the payment of compensation *up to the date of the hearing*..." 820 ILCS 305/19(b) (West 2022) (Emphasis added). Accordingly, the award of TTD benefits beyond the October 11, 2023, hearing date is hereby vacated.

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

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator dated January 17, 2024, is modified as stated herein. The Commission otherwise affirms and adopts the Decision of the Arbitrator.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay Petitioner temporary total disability benefits of $480.00 per week for a period of 50 weeks, commencing October 27, 2022, through October 11, 2023, as provided in Section 8(b) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that the award of post-hearing temporary total disability benefits is vacated.

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

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

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

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $53,400.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

August 7, 2024

O: 07/25/24
CMD/kcb
045

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

/s/ *Marc Parker*
Marc Parker

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	22WC001620
Case Name	Julio Pichardo v. Honda of Lisle
Consolidated Cases	
Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	16
Decision Issued By	Frank Soto, Arbitrator

Petitioner Attorney	Luis J. Magaña
Respondent Attorney	Daniel J. Levato

DATE FILED: 1/17/2024

THE INTEREST RATE FOR THE WEEK OF JANUARY 17, 2024 4.97%

/s/Frank Soto, Arbitrator

Signature

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

Julio Pichardo
Employee/Petitioner

v.

Honda of Lisle
Employer/Respondent

Case # **22** WC **001620**

Consolidated cases: **NA**

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Soto**, Arbitrator of the Commission, in the city of **Wheaton**, on **10-11-23**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On the date of accident, **12-13-21**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $**37,440.00**; the average weekly wage was $**720.00**.

On the date of accident, Petitioner was **47** years of age, ***married*** with **2** dependent children.

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

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

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

ORDER

Respondent shall pay the medical bills identified in Petitioner's Exhibits 1 and 2, pursuant to Sections 8(a) and 8.2 of the Act, subject to the fee schedule, as set forth in the Conclusions of Law attached hereto and incorporated herein.

Respondent shall pay for the L5-S1 decompression and fusion recommended by Dr. including all reasonable and necessary attendant care following the surgery pursuant to Sections 8.2 and 8(a) of the Act, as set forth in the Conclusions of Law attached hereto and incorporated herein.

Respondent shall pay Petitioner TTD benefits from October 27, 2022 through October 19, 2023, pursuant to Section 8(b) of the Act, as set forth in the Conclusions of Law attached hereto and incorporated herein.

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

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

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

By: /o/ Frank J. Soto **JANUARY 17, 20204**
Arbitrator

Procedural History

This case proceeded to hearing on October 11, 2023 pursuant to Sections 19(b) and 8(a) of the Act. The disputed issues are causation, outstanding medical bills, TTD, and prospective medical care consisting of decompression and fusion surgery. (Arb. Ex. #1).

Findings of Fact

Julio Pichardo (hereafter referred to as "Petitioner") testified that he started working for Honda of Lisle (hereafter referred to as "Respondent") in 2001 working in the parts department. (T12). Petitioner testified prior to December 13, 2021 he did not have any work restrictions and he was able to perform his job duties. (T.14). Petitioner acknowledged previously experiencing back pain but nothing that ever prevented him from working in a full duty capacity. (T.15).

Petitioner testified on December 13, 2021 he slipped on oil twisting and falling on his left side. (T.16). Petitioner testified after the fall he began to experience back, left shoulder and knee pain. (T.16). Petitioner spoke to his supervisor who told him to continue working and to let him know if the pain went away. (T.17). Petitioner continued working and, at the end of the day, he told his supervisor that his pain didn't go away. (T.18).

Petitioner returned to work the following day and while working he tripped over a hydraulic jack causing his symptoms to worsen. (T.18). At that time, an accident report was completed referencing both incidents. (T.19). Petitioner testified Mike Morales, his supervisor, sent him to an occupational health clinic and that he was taken off work by the clinic. (T.19). Petitioner testified prior to tripping over the jack that his symptoms were already getting worse. (T.18).

On December 16, 2021, Petitioner went to Duly Immediate Care Center in Warrenville reporting slipping at work twice and that he "slipped on oil." (Px10, p. 1 & 8). In the H&P portion of her note, the physician's assistant, Kailie Seneczko recorded, "history of chronic back pain which has been exacerbated." (*Id*.). Petitioner was then taken off work until December 26, 2021.

After returning to work, Petitioner fell again near a car repair bay. (T21). Petitioner testified the fall made his back, shoulder, and knee symptoms a little worse but that his symptoms were already continually worsening after slipping on the oil at work. (T.22). Petitioner returned to Duly Immediate Care Center reporting the new incident but also reporting that his pain was also worsening and progressing into his left leg. (T23).

On January 7, 2022, Petitioner started treating with Dr. Tian Xia at Integrated Pain Management. (T23, Px4. P. 97). In his medical records, Dr. Xia noted, "*patient works very physical job, on 12/13/21, he was scanning items and walking over the oil change bin, he slipped on oil, and fall on his left side. On 12/14/21, he was pulling heavy object, he fell onto other boxes. WC claim was for the 12/13.*". (Px4, p. 99). Dr. Xia also noted the January 3, 2022 fall on ice. (Id.). The medical records state Petitioner's low back pain worsens with extension and that his pain travels down the left hip and his right leg and feels like needles. The lumbar spine examination noted restricted range of motion with flexion, pain with extension, bilateral lumbar paraspinal muscle spasms, positive straight leg raise test on the left with radicular leg pain. At that time, Dr. Xia assessed lumbar radiculopathy with left knee and left shoulder pain. (Px4, p. 100). Dr. Xia prescribed physical therapy and he placed Petitioner on restricted work. (Id.).

Petitioner continued treating with Dr. Xia who, on February 18, 2021, ordered MRIs of the lumbar spine and left shoulder. At that visit, Dr. Xia noted, "*continue to c/o left shoulder pain and low back pain. He is very concerned about this. His work is very physical. Low back pain is on left side goes around the hip and goes down to medial aspect of leg/calf. Shoulder pain is a problem with lifting.*" (Px4, p. 93). After undergoing the MRIs, Petitioner returned to Dr. Xia on March 4, 2022, who indicated Petitioner's left shoulder MRI was normal but that his lumbar MRI demonstrated his low back radiating pain was due to a disc bulge at L5/S1. (*Id*., p. 89). At that time, Dr. Xia prescribed a lumbar steroid injection which Petitioner underwent on March 19, 2022 but only provided temporary relief. (T.29). In his office note dated March 29, 2022, Dr. Xia stated Petitioner, "…*had 60% pain relief from his previous injection. Patient reports that pain of his low back is now 4/10. Pain is worse with bending and lifting. Pain is relieved with physical therapy.*" (Px4, p. 83).

On May 5, 2022, Petitioner was examined by Dr. Mark Levin pursuant to Section 12 of the Act. In his report dated May 5, 2022, Dr. Levin indicated Petitioner reported slipping and falling at work on December 13, 2021 and experiencing left shoulder and left knee but that his low back pain was worse. Dr. Levin noted that Petitioner reported prior back pain and treatment with Dr. Moja as well as prior work injuries in 2005 when he was run over by a car and in 2006 when a box dropped on his head.

At that visit, Petitioner complained of low back pain on the left side which radiated down the left lateral hip down to the calf. The examination noted tenderness directly over the left L4

transverse process and the straight leg raise test was negative. Dr. Levin reviewed the lumbar spine x-ray dated January 3, 2022 which, he said, showed preexisting chronic spurring and arthritic changes. Dr. Levin diagnosed resolved left shoulder pain and potential lumbar radiculopathy. Dr. Levin opined all the medical treatment was appropriate and that Petitioner reached MMI for the left shoulder. Dr. Levin recommended low back work restrictions of no lifting over 10 pounds, no repetitive bending, and no squatting and stooping. In his report, Dr. Levin stated he needed additional information before providing a causation opinion and treatment recommendations for Petitioner's low back injury. (Rx.1).

Petitioner returned to Dr. Xia and underwent a second injection which again only provided temporary relief. Dr. Xia noted Petitioner's low back pain improved after the injection. (Px4, p. 73). Petitioner testified he worked light duty during the spring and summer of 2022 but that he continued to experience considerable back pain and problems lifting, handling parts, and walking for too long. (T33). On June 7, 2022, Dr. Xia noted Petitioner's low back pain was progressing and was now intermittently radiating to his left foot. (Px4, p. 77). At that time, Dr. Xia referred Petitioner to orthopedic spine surgeon, Dr. Chintan Sampat. (Px.4, p. 68).

On July 28, 2022, Dr. Levin authored an addendum report. (Rx.2). In his addendum report, Dr. Levin acknowledged receiving and reviewing Petitioner's prior medical records including records from Dr. Moja, Petitioner's primary care physician, dated June 4, 2021 and September 15, 2021, which, he believed, showed that Petitioner had chronic left-sided low back pain with left sided sciatica. Dr. Levin stated he did not see any findings that Petitioner had any significant prior low back medical treatment. (Rx.2). Dr. Levin opined that Petitioner's current complaints consist of radiculopathy and his symptoms were aggravated, if not caused, by his December 2021 work injury. In that report, Dr. Levin opined Petitioner's chronic degenerative condition was asymptomatic at the time of his injury and that he suffered an aggravation of his underlying condition. Dr. Levin further opined Petitioner's medical treatment was appropriate. Dr. Levin recommended another epidural injection and to keep Petitioner on light duty. (Rx.2).

On September 10, 2022, Petitioner presented to Dr. Sampat. Petitioner provided a history similar to his trial testimony. Petitioner reported that his low back pain was traveling all the way down his left leg. (Px5, p. 22). After a physical examination and review of Petitioner's x-rays and MRIs, Dr. Sampat diagnosed Petitioner with, "*L5-S1 degenerative disc disease with low*

back pain and lumbar radiculopathy in the left lower extremity with L5 foraminal stenosis exacerbated by a work related injury." (Px5, p. 23). In his records, Dr. Sampat elaborated,

> "*…the need for current workup and treatment is related to his injuries at work because he was asymptomatic before the injuries and became symptomatic afterwards. At this point, he has already tried multiple injections and physical therapy with only short-term relief. I recommended improvement in his blood sugar control. Once the blood sugar is better controlled, then L5-S1 decompression and fusion can help eliminate the prominent disc and help improve the neural foraminal height. Treatment, alternative, risk, and benefits were discussed*." (Px5, p.24).

On August 24, 2022, Petitioner was examined again by Dr. Levin pursuant to Section 12 of the Act. In his report from that day, Dr. Levin stated he was provided and reviewed additional medical records from ReLive Physical Therapy and that Petitioner advised him about receiving a surgical recommendation. Dr. Levin's examination noted tenderness in the left sacroiliac joint, left buttock, and a negative straight leg test. (Rx.3). Dr. Levin also noted Petitioner did not improve with injections and therapy. Dr. Levin opined Petitioner was not a surgical candidate. (Rx.3).

In his August 24, 2022 report, Dr. Levin's causation opinion and diagnosis changed. In his July 28, 2022 report Dr. Levin stated Petitioner's current complaints were consistent with radiculopathy and that his symptoms were aggravated, if not caused, by his December 2021 work injury. (Rx.2). In his August 24, 2022 Dr. Levin diagnosed chronic subjective back and left buttock pain with no objective orthopedic pathology from an alleged December 13, 2021 traumatic episode at work. (Rx.3).

Petitioner testified after his appointment with Dr. Levin his benefits terminated and the surgery wasn't approved. Petitioner testified he has not worked for Respondent since October 27, 2022. Petitioner testified he would like to have the surgery stating "*…because I think that would be the solution so that I'm able to continue to supporting (sic) my family*." (T35). Petitioner testified prior to his December 13, 2021 work accident he was never issued any work restrictions nor did he ever receive prior surgical recommendations. (T.31, 36). Petitioner also testified that prior to his December 13, 2021 work accident he worked a considerable amount of overtime. (T.32).

On February 9, 2023 Petitioner was examined a third time by Dr. Levin pursuant to Section 12 of the Act. At that time, Petitioner reported pain over the center to left side of his lumbar spin which radiated to his left buttock and left leg. Petitioner reported discomfort over

the anterior pectoral area but denied any left shoulder pain. The exam of the lumbar spine noted tenderness over the lower lumbar area just above the gluteal crease. Dr. Levin found no lumbar spasm or buttock pain. Dr. Levin also examined Petitioner's left shoulder. Dr. Levin indicated that he reviewed Dr. Sampat's medical records recommending lumbar surgery for Petitioner's low back pain with L5 foraminal stenosis and left-sided lumbar radiculopathy. (Rx.4).

Dr. Levin opined Petitioner left shoulder was at maximum medical improvement. In his report, Dr. Levin requested additional medical records from Dr. Moja and any 2019 MRI studies to determine what preexisting symptoms Petitioner had. Dr. Levin stated the surgy recommended by Dr. Sampat consisting of the L5-S1 decompression and fusion may be appropriate but that he doesn't know if the surgery is related to Petitioner's work injury. Dr. Levin believed Petitioner could work light duty. (Rx.4).

Dr. Chintan Sampat participated in an evidence deposition on May 15, 2023. Dr. Sampat testified he attended college at Northwestern University earning degrees in biomedical engineering and economics. Dr. Sampat attended the Chicago Medical School and completed his orthopedic surgery residency at the University of Illinois at Chicago and he also completed a combined orthopedic and neurosurgical spine surgy fellowship. Dr. Sampat testified he is broad certified in orthopedic surgery with a subspeciality in the spine. (Px.8, p. 4-7).

Dr. Sampat testified to first seeing Petitioner on September 10, 2022 and, at that time, Petitioner reported being asymptomatic prior to multiple work related falls staring on December 13, 2021 after slipping on oil. (Px.8, p. 9). Dr. Sampat testified Petitioner also reported having prior low back pain since early 2000 but that he was not having the same types of symptoms as before and that he was able to work full duty before to his work accident. (Px.8, p. 10). Petitioner told Dr. Sampat since his work accident it has been hard to bend, twist, or lift and that he now was experiencing radiating pain down the buttock and posterior. (Px.8, p. 10). Dr. Sampat noted Petitioner underwent seven months of therapy and two epidural injections with only temporary relief. (Px.8, p. 11-12). Dr. Sampat also noted Petitioner has diabetes and that pain, lack of activity, and steroids cause an increase in Petitioner's blood sugar. Dr. Sampat opined Petitioner's work injury contributed to his overall increase in blood sugar. (Px.8, p. 13).

Dr. Sampat conducted an orthopedic and neurological examination. Dr. Sampat indicated Petitioner's exam was abnormal noting mechanical low back pain with flexion and extension, positive straight leg raise test in the left extremity, which, he said, was consistent with

Petitioner's low back pain that radiated down his left leg. (Px.8, p. 14). Dr. Sampat testified the straight leg test identifies lumbar radiculopathy due to irritation of the nerve root round the L4-5 and L5-S1 area. (Px.8, p. 15).

Dr. Sampat reviewed Petitioner's MRI which, he said, showed degenerative disk disease and decreased disk height at L5-S1 and foramen narrowing resulting in the narrowing of the space available for the L5 nerve root which corresponded with Petitioner's symptoms. (Px.8, p. 16). Dr. Sampat diagnosed L5-S1 degenerative disk disease with L5 foraminal stenosis resulting in low back pain and left lower extremity radiculopathy exacerbated by a work-related injury. (Px.8, p. 16).

Dr. Sampat opined Petitioner's work accident exacerbated his preexisting condition because Petitioner did not have the same symptoms prior to his injury and he became symptomatic afterwards. Dr. Sampat further opined the mechanism of the fall, or in this case the falls, was a reasonable mechanism and a competent mechanism to result in an onset of lumbar radiculopathy. (Px.8, p. 17). Dr. Sampat testified Petitioner did not have the same symptoms prior to his work accident and he was able to work full duty but that after his work accident Petitioner became symptomatic and had trouble walking. (*Id.*).

Dr. Sampat testified his examination correlated with the MRI findings and that he did not see any symptom magnification. (Px.8, p. 18). Dr. Sampat testified he agreed with Dr. Levin's opinion that Petitioner had a low back condition and his work injury exacerbated Petitioner's condition. (Px.8, p. 20). Dr. Sampat testified Petitioner reported prior low back pain after a 2000 car accident but that he had returned to full duty work and Petitioner denied having the same symptoms prior to his work accident. (Px.8, p. 21).

Dr. Sampat opined Petitioner's condition was causally related to his initial work accident in December of 2021. (Px.8, p. 24). Dr. Sampat testified Petitioner did not have the same type of symptoms before his work accident and that he became symptomatic afterwards. Dr. Sampat opined Petitioner's work accident exacerbated his underlying degenerative condition at L5-S1. Dr. Sampat testified his opinions were based upon the mechanism of accident as well as the temporal relationship with Petitioner's symptoms. (Px.8, p. 24). Dr. Sampat testified Petitioner had prior back pain but not the same radiating symptoms as compared to before his work accident. (Px.8, p.48). Dr. Sampat testified Petitioner was able to work full duty before his work accident but not after his work accident. (Px.8, p. 49).

Dr. Sampat testified the treatment recommended was directed toward Petitioner's new leg pain, the pain that now shoots down the buttock and back of the thigh and front part of the lower leg, which is related to Petitioner's work injury and is the reason for the surgery. (Px.8, p. 25). Dr. Sampat opined the decompression fusion surgical recommendation and the treatment provided was reasonable and necessary. (Px.8, p. 25).

On cross examination, Dr. Sampat testified that Petitioner's prior back pain and chronic back pain wouldn't change is opinion unless he had the exact type of radicular symptoms he is having now as before. Dr. Sampat testified the surgery was being recommended due to the radicular symptoms. (Px.8, p. 42-43). Dr. Sampat said the neurological involvement necessitates the surgical intervention. (Px.8, p. 45). Dr. Sampat testified he took Petitioner off work. (Px.8. p. 43). Dr. Sampat also testified Petitioner's diabetes was not causing his radiculopathy and there was no relationship between diabetes and radicular pain. (Px.8, p. 46). Dr. Sampat testified Petitioner's radicular pain might be affecting his diabetes but that his diabetes isn't affecting his radiculopathy. (Px.8, p. 46).

Petitioner last saw Dr. Sampat in May of 2023 reporting difficulty walking, low back pain, numbness and tingling radiating down his left buttock, thigh, and anterior left leg. (T.38) In his note dated May 26, 2023, Dr. Sampat reiterated Petitioner would benefit from lumbar spine surgery. (Px5, p. 9). In his office notes, Dr. Sampat indicated Petitioner's condition was the result of his work injury on December 13, 2021 and his prior back pain didn't involve the same radicular symptoms and Petitioner was previously capable for working full duty. (*Id*.).

On June 7, 2023 Dr. Levin authored another report after being provided additional medical records. In his report Dr. Levin referenced office notes from Dr. Moja dated June 4, 2021, where Petitioner reported low back pain with left sided sciatic that comes and goes after a work injury the prior year, and office note dated September 15, 2021, where Petitioner reported intermittent pain which radiated into his hip. Dr. Levin noted, at that time, Petitioner was prescribed physical therapy and an MRI for the hip. (Rx.5). No evidence was presented showing that Petitioner attended therapy or obtained the hip MRI.

In his June 7, 2023 report Dr. Levin wrote, "*Based on the records, this gentleman was symptomatic for chronic left-sided low back pain with left sciatic which is documented in the office records by his private physician on June 4, 2021, as well as having hip pain on September 15, 2021. And further evaluation was recommended. This would predate his alleged work injury*

of December 13, 2021". (Rx.5). However, the Arbitrator notes Dr. Levin stated in his July 28, 2022 report after reviewing Dr. Maja's June 3, 2021 and September 15, 2021 medical records, that, "*He did in the past have some low back pain, but I have no finding that he had any significant treatment for that. His treatment all began after the December 13, 2021 occurrence…his current complaints were that of lumbar pain with left leg pain consistent with radiculopathy. It would appear that these symptoms were at least aggravated, if not caused, by his work injury in December 2021.*". (Rx.2).

At the hearing, Petitioner testified his prior back pain was not "*as high and as often*." (T.71). Petitioner also testified although he had pain before it was not as bad. (T.72). Petitioner testified his prior symptoms never precluded him from working full duty and those symptoms would always go away. (T.77-78).

Petitioner testified he had not undergone the surgery recommended by Dr. Sampat. Petitioner testified everyday he suffers from low back pain that shoots down his left leg. (T.40-41). When asked if his activities are limited, Petitioner responded, "*Well, doing things like mowing the lawn. I can't fix my cars like I should. To take care of activities around the house, physical ones, it's too much when I do those kind of things, and sometimes I have to lay down or sit down. Whenever it comes strongly, I have to sit down or lay down."* (*Id*.) Petitioner testified he would like to undergo the surgery recommended by Dr. Sampat because he cannot tolerate his symptoms for the rest of his life. (T.42). Petitioner testified he still is off work pursuant to Drs. Sampat and Xia. (*Id*.).

Conclusions of Law

The Arbitrator adopts the above Findings of Fact in support of the Conclusions of Law as set forth below. The claimant bears the burden of proving every aspect of his claim by a preponderance of the evidence. *Hutson v. Industrial Commission*, 223 Ill.App.3d 706, 714 (Ill. App. 5th Dist. 1992).

With Respect to Issue (F) Whether Petitioner's current condition of ill-being is causally related to his injury, the Arbitrator Finds as follows:

In pre-existing condition cases, recovery will depend on the employee's ability to show that a work-related accidental injury aggravated or accelerated the pre-existing disease such that the employee's current condition of ill-being can be said to have been causally connected to the work-related injury and not simply the result of a normal degenerative process of a pre-existing

condition. *Caterpillar Tractor Co. v. Industrial Comm'n,* 92 Ill.2d 30, 36-37. When a worker's physical structures, diseased or not, give way under the stress of their usual tasks, the law views it as an accident arising out of and in the course of employment. *General Electric Co. v. Industrial Comm'n,* 89 Ill.2d 432, 60 Ill. Dec. 629, 433 N.E.2d 671 (1982). When an employee with a preexisting condition is injured in the course and of his employment the Commission must decide whether there was an accidental injury which arose out of the employment, whether the accidental injury aggravated or accelerated the preexisting condition or whether the preexisting condition alone was the cause of the injury. *Sisbro, Inc. Industrial Comm'n*, 207 Ill.2d 193, 278 Ill. Dec. 70,797 N.E.2d 665, (2003). Even though an employee has a preexisting condition which may make him more vulnerable to injury, recovery for an accidental injury will not be denied as long as it can be shown that the employment was also a causative factor. *Caterpillar Tractor Co. v. Industrial Comm'n,* 129 Ill.2d 52, 133 Ill. Dec. 454, 541 N.E.2d 665 (1989). Furthermore, it has long been held that "a chain of events which demonstrates a previous condition of good health, an accident, and a subsequent injury resulting in disability may be sufficient circumstantial evidence to prove a causal nexus between the accident and the employee's injury." *International Harvester v. Industrial Comm'n*, 93 Ill.2d 59, 63-64 (1982). "When the claimant's version of the accident is uncontradicted and his testimony is unimpeached, his recital of the facts surrounding the accident may be sufficient to sustain an award. *Id*. at 64.

The Arbitrator finds Petitioner proved by the preponderance of the evidence that his current low back condition is causally related to his work injury of December 13, 2021, as set forth more fully below.

The Arbitrator finds the opinions of Drs. Sampat and Xia more persuasive than the opinions of Dr. Levin, the Section 12 examiner. Dr. Sampat opined Petitioner's work accident exacerbated his underlying degenerative condition at L5-S1. Dr. Sampat testified his opinions were based upon the mechanism of accident as well as the temporal relationship with Petitioner's symptoms. (Px.8, p. 24). Dr. Sampat opined Petitioner's work accident exacerbated his preexisting condition because Petitioner did not have the same symptoms prior to his injury and became symptomatic afterwards. Dr. Sampat testified Petitioner had prior back pain but not the same radiating symptoms as he has now as compared to before his work accident. (Px.8, p.48). Dr. Sampat testified his examination correlated with the MRI and that he did not see any

symptom magnification. (Px.8, p. 18). Dr. Sampat noted since Petitioner's work accident he has had trouble bending, twisting, and lifting and that Petitioner was now experiencing radiating pain down the buttock and posterior. (Px.8, p. 10). Dr. Sampat testified Petitioner was able to work full duty before his work accident but not after his work accident. (Px.8, p. 49).

The Arbitrator finds that Dr. Sampat's opinions correlate to Petitioner's testimony. Petitioner testified before his work accident his back pain it wasn't as high and he was able to work but after his work accident his symptoms became worse. (T.25). Petitioner testified his prior back pain was not "*as high and as often*." (T.71). Petitioner also testified although he had pain before it was not as bad. (T.72). Petitioner testified his prior symptoms never precluded him from working full duty and those symptoms would always go away. (T.77-78). In addition to being able to work full duty prior to his work accident, Petitioner was also able to work overtime. Petitioner testified prior to his December 13, 2021 work accident he worked a considerable amount of overtime. (T.31-32, 36). Prior to the work accident, Petitioner was able to work full duty but after his work accident Petitioner was unable to return to work full duty work. No evidence was introduced at trial rebutting Petitioner's testimony.

The Arbitrator doesn't find Dr. Levin's causation and MMI opinions persuasive. The Arbitrator notes that Dr. Levin's opinions changed after Petitioner received a surgical recommendation. On July 28, 2022, prior to the surgical recommendation, Dr. Levin issued a report stating he reviewed Petitioner's prior medical records including Dr. Moja's records dated June 4, 2021 and September 15, 2021. After reviewing these medical records, Dr. Levin stated Petitioner did not receive any prior significant low back treatment and that his radiculopathy was aggravated, if not caused, by Petitioner's work injury in December of 2021. (Rx.2). However, in his June 7, 2023 report, after Petitioner received a surgical recommendation, Dr. Levin changed his causation opinions stating, "*Based on the records, this gentleman was symptomatic for chronic left-sided low back pain with left sciatic which is documented in the office records by his private physician on June 4, 2021, as well as having hip pain on September 15, 2021. And further evaluation was recommended. This would predate his alleged work injury of December 13, 2021*". (Rx.5). The Arbitrator finds Dr. Levin's opinions, after the surgical recommendation, are significantly undermined by his inconsistent and conflicting interpretations of Petitioner's prior medical records. Additionally, the Arbitrator also notes that Dr. Levin ignored the

evolution of the nature of Petitioner's symptoms pre and post accident. Dr. Levin also failed to articulate his justification for ignoring the evolution of the nature of Petitioner's symptoms.

The Arbitrator further finds Petitioner also sustained his burden of proof under a chain-of-events theory. Even though an employee has a preexisting condition which may make him more vulnerable to injury, recovery for an accidental injury will not be denied as long as it can be shown that the employment was also a causative factor. *Caterpillar Tractor Co. v. Industrial Comm'n,* 129 Ill.2d 52, 133 Ill. Dec. 454, 541 N.E.2d 665 (1989). Furthermore, it has long been held that "a chain of events which demonstrates a previous condition of good health, an accident, and a subsequent injury resulting in disability may be sufficient circumstantial evidence to prove a causal nexus between the accident and the employee's injury." *International Harvester v. Industrial Comm'n*, 93 Ill.2d 59, 63-64 (1982). "When the claimant's version of the accident is uncontradicted and his testimony is unimpeached, his recital of the facts surrounding the accident may be sufficient to sustain an award." *Id*. at 64. In this case, Petitioner had a preexisting condition which made him more vulnerable to injury. Petitioner was working full duty prior to his December 13, 2021 work accident. After that accident, Petitioner was placed on light duty work and he was eventually taken completely off work. The Arbitrator notes that Petitioner' version of the accident was uncontradicted and his testimony was not impeached. As such, under the chain of events theory Petitioner's work accident created a causal nexus between his current condition and his work accident.

With respect to issue "J" has Respondent paid all appropriate changes for all reasonable and necessary medical services, the Arbitrator Finds as follows:

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

The Arbitrator incorporates the Conclusions of Law in Section F into this Section. Respondent denied paying for the outstanding medical bills based upon liability not that the treatment was not reasonable nor necessary. As stated above, the Arbitrator found Petitioner's current low back condition to causally related to his work accident. As such, the Arbitrator finds

that Petitioner proved by the preponderance of the evidence the medical treatment rendered was reasonable and necessary to cure and alleviate Petitioner's condition. The Arbitrator notes that both Drs. Sampat and Levin opined Petitioner's medical treatment was reasonable and necessary. Therefore, Respondent shall pay the medical bills identified in Petitioner's Exhibits 1 and 2, pursuant to Sections 8(a) and 8.2 of the Act, subject to the fee schedule.

With respect to issue "K", whether Petitioner is entitled to prospective medical care, the Arbitrator finds as follows*:*

Section 8(a) of the Act entitles a claimant to compensation for all necessary medical, surgical and hospital services "thereafter incurred" that are reasonably required to cure or relieve the effects of injury. Procedures or treatment that have been prescribed by a medical service provider are "incurred" within the meaning of the statute, even if they have not yet been paid. *Plantation Mfg. Co. v. Industrial Comm'n*, 294 Ill.App.3d 705, 710 (Ill. App. 2nd Dist. 1997).

The Arbitrator incorporates the Conclusions of Law in Sections F and J into this Section. The Arbitrator finds Petitioner proved by the preponderance of the evidence that the L5-S1 decompression and fusion surgery recommended by Dr. Sampat is related, reasonable, and necessary to cure or relieve Petitioner from the effects of his injury. The Arbitrator notes that Respondent's Section 12 examiner, Dr. Levin, did not believe the surgery was causally related to Petitioner's work accident but he acknowledged that the surgery may be reasonable and necessary. As such, Respondent shall pay for the L5-S1 decompression and fusion recommended by Dr. including all reasonable and necessary attendant care following the surgery pursuant to Sections 8.2 and 8(a) of the Act.

With Respect to Issue (L) Whether Petitioner is entitled to TTD benefits, the Arbitrator Finds as follows:

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

to work. *Gallentine*, 201 Ill. App. 3d at 887; *see also City of Granite City v. Industrial Comm'n*, 279 Ill. App. 3d 1087, 1090 (5th Dist. 1996).

Petitioner seeks TTD benefits from October 27, 2022 through October 19, 2023. (Arb. Ex. #1). The Arbitrator incorporates the Conclusions of Law in Sections F and J into this Section. Given the Arbitrator's finding on causation, the Arbitrator also finds Petitioner proved by the preponderance of the evidence that he is entitled to TTD benefits from October 27, 2022 through October 19, 2023. Petitioner testified he stopped working as of October 27, 2022 pursuant to Dr. Sampat's recommendations and Dr. Sampat testified to taking Petitioner off of work. (Px8, p. 26 & 27). Petitioner has remained off work since October 27, 2022. Respondent disputed liability for TTD benefits based upon Dr. Levin's causation opinions. Dr. Levin opined Petitioner could work light duty but Respondent offered no testimony indicating that Respondent would continue to accommodate Petitioner's light duty restrictions after October 27, 2022. As such, Respondent shall pay Petitioner TTD benefits from October 27, 2022 through October 19, 2023, pursuant to Section 8(b) of the Act.

By: /o/ *Frank J. Soto* January 16, 2024
Arbitrator Date

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	19WC012761
Case Name	Glenn Martin v. Harlem School District
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	24IWCC0374
Number of Pages of Decision	13
Decision Issued By	Carolyn Doherty, Commissioner

Petitioner Attorney	Jason Esmond, Tracy Jones
Respondent Attorney	John Harp

DATE FILED: 8/7/2024

/s/Carolyn Doherty, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF WINNEBAGO)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Glenn Martin on behalf of the
estate of Lorchid Martin,

Petitioner,

vs. NO: 19 WC 012761

Harlem School District,

Respondent.

DECISION AND OPINION ON REVIEW

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

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed February 14, 2024 is hereby affirmed and adopted.

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

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

Under Section 19(f)(2) of the Act, no "county, city, town, township, incorporated village, school district, body politic, or municipal corporation" shall be required to file a bond. As such,

Respondent is exempt from the bonding requirement. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in the Circuit Court.

August 7, 2024

O: 07/25/24
CMD/ma
045

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

/s/ *Marc Parker*
Marc Parker

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	19WC012761
Case Name	Glenn Martin v. Harlem School District
Consolidated Cases	19WC002013;
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	10
Decision Issued By	Stephen Friedman, Arbitrator

Petitioner Attorney	Jason Esmond, Tracy Jones
Respondent Attorney	Catherine Cavenagh

DATE FILED: 2/14/2024

/s/Stephen Friedman, Arbitrator
Signature

THE INTEREST RATE FOR THE WEEK OF FEBRUARY 14, 2024 5.065%

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Glenn Martin on behalf of the estae of Lorchid Martin
Employee/Petitioner

v.

Harlem School District
Employer/Respondent

Case # **19** WC **012761**

Consolidated cases: **See Decision**

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Stephen J. Friedman**, Arbitrator of the Commission, in the city of **Rockford**, on **January 24, 2024**. 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 **October 30, 2018**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $**4,562.75**; the average weekly wage was $**422.98**.

On the date of accident, Petitioner was **51** years of age, ***married*** with **0** dependent children.

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

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

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

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

ORDER

BECAUSE PETITIONER FAILED TO PROVE BY A PREPONDERANCE OF THE EVIDENCE THAT LORCHID MARTIN'S CONDITION OF ILL BEING WAS CAUSALLY CONNECTED TO THE ACCIDENT ON OCTOBER 30, 2018, PETITIONER'S CLAIM FOR COMPENSATION IS HEREBY DENIED.

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

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

/s/ Stephen J. Friedman **February 13, 2024**
Signature of Arbitrator Date

February 14, 2024

Statement of Facts

This matter was tried in conjunction with case 18WC002013 (DOA 9/14/18). A single record was prepared. The Arbitrator has entered separate decisions for each case number.

Petitioner Glenn Martin testified that he was married to Lorchid Martin (hereinafter referred to as "Lorchid") from January 8, 2002 until her death on January 4, 2022 (PX 3). He testified that she was a para-educator for special education students for Respondent Harlem School District off and on from 2014. She began her last period of employment with the beginning of the school year in August 2018. Prior to September 14, 2018, Lorchid was an insulin dependent diabetic. She was able to perform her job requirements without restrictions.

He testified that following September 14, 2018, he took Lorchid the next day to OSF Prompt Care where the doctor took x-rays and diagnosed broken bones. Lorchid was allowed to return to work. He testified she was seen by Dr. Fischer a week later on recommendation of Prompt Care. He took her to the appointment. She was given a boot and allowed to return to work. The September 14, 2018 accident is the basis of case 19WC002013 decided in conjunction with this matter.

Lorchid was seen by Dr. Mohiuddin on September 18, 2018 with complaints of chest pain, sob, dizziness, sweating. He noted a history of insulin dependent diabetes, irregular heartbeat, obesity, obstructive sleep apnea, and that she had injured her right 5th toe 3 days ago and having severe pain (PX 5, p 12). Examination of the right foot found 4th and 5th toe were swollen and bruised. There was an open wound, infected. X-rays found a comminuted, impacted fracture of the fourth digit proximal phalanx extending into the articular surface of the proximal interphalangeal joint. She was advised to see her PCP within 7 days (PX 5, p 13-14, 17).

Lorchid was seen by Dr. Fischer on September 25, 2018 for a right foot injury, which she says occurred perhaps 2 weeks or so ago, having her toes smashed. She was uncertain as to how. She noted she works with disabled kids, and they do a fair amount of stomping. She noted a wound about her little toe. She stated her would is improving. She is on antibiotics and has been off work. She notes she has neuropathy and is diabetic. Review of symptoms notes numbness/tingling. Inspection notes healing little toe wound. Dr. Fischer advised Lorchid to wear a postop shoe. She stated there was no other treatment for the fracture. She had more concerns about the wound (PX 6, p 67-68). Dr. Fischer authored a note that Lorchid could return to work with restrictions of no running (PX 6, p 70). On October 16, 2018, Dr. Fischer noted that the wound remains present, although much improved from previous, and she anticipates this to close up on its own. Follow up was open ended (PX 6, p 69). On October 19, 2018, Lorchid saw Dr. John Mueller of OSF Glen Park for a recheck of diabetes, lipids, and blood pressure (PX 5, p 21-25).

On October 30, 2018, Respondent school nurse Jennifer Murray prepared a Nurse's Report (of Work Injury or Illness). It noted Lori Martin suffered an injury at 11:15 AM. The description is "staff tripped over student who fell on the ground and injured right foot that had previous injury. She went to the nurse for assessment and took ibuprofen for pain and swelling. The nurse noted full range of motion in the right foot (PX 4).

Petitioner testified that on October 30, 2018, he received a phone call advising that Lorchid had been admitted to the hospital with a foot infection. He testified he called the school secretary and the Board of Education saying that she had been admitted to the hospital. He did not get a return call. He testified he brought paperwork from the hospital admission to the office of the Board of Education and dropped in into the mailbox on the day after Halloween.

Lorchid was seen on October 31, 2018 by Dr. Mohiuddin with complaints of right ankle and foot injury yesterday, and right 5th toe draining. She had fever and body aches. Physical examination noted mild swelling at the malleolar are of the right ankle with tenderness at the lateral malleolus. The right foot was swollen. The 5th toe was pigmented with drainage, open wound, warm and tender. X-rays noted severe degenerative changes, heel spur and old fracture. She was instructed to see her primary doctor or to go to the ER if increasing problems (PX 5, p 15-16).

Lorchid went to the emergency department at OSF St. Anthony on November 5, 2018 (PX 7). The initial history stated that she was recently diagnosed with cellulitis and started on Clindamycin for a foot infection. When she got home from work, she noticed a foul smell and pus from the toe. She has a significant reddening, warmth, tenderness, and swelling to the foot. She also has large blister. X-rays confirm osteomyelitis. She was begun on IV antibiotics and admitted (PX 7, p 87-91). Brian Gray RN noted that "Patient says she fell over a boy who threw himself down at her feet a week ago. Patient tore her foot open when she fell. Patient was seen at prompt care, was given an antibiotic" (PX 7, p 92).

The 12/3/2018 Discharge Summary states "Patient initially had injury around the end of September 2018 when she sustained injury at work from disabled kids; had smashed her toes. Patient had imaging workup which showed fracture of the phalanx of the toe of right foot; patient was seen by Orthopedic surgery; was given postop shoe with instructions for weight-bearing as tolerated. Patient a couple of weeks later started developing wound on the right little toe. Symptoms gradually worsened; patient was seen in prompt care and had imaging workup which showed 5th digit proximal and middle phalanx osteomyelitis; patient was discharged with oral clindamycin with follow-up at wound clinic. Patient however had worsening of her infection of the right foot, drainage of pus and made her come to the ER" (PX 7, p 93-94).

Lorchid was treated in the hospital by Dr. Blint. He performed a bedside incision and drainage. An MRI of the leg showed extensive subcutaneous, multi-compartmental fascial and muscular edema, presumable infectious cellulitis, fasciitis, myositis. Dr. Blint performed multiple surgical procedures including I&D right foot ankle, 5th toe amputation with 5th metatarsal resection on 11/06/2018; right leg anterior lateral compartment fasciotomy, irrigation and debridement right anterior leg, vacuum assisted closure on 11/13/18; and full-thickness excisional debridement of ulcer to right foot with application of wound VAC, full area debridement and VAC coverage approximately 75 sq cm on 11/15/18 (PX 7); and multiple irrigations and debridement with vacuum assisted closure dressings on 11/19/2018, 11/26/2018, 11/30/2018 (PX 8, p117-124). Lorchid continued with inpatient IV antibiotics. She was discharge 12/03/2018. The plan was to continue with antibiotics to December 17, 2018 (PX 7, p 94).

Lorchid followed up with Dr. Blint 12/13/2018 and 12/27/2018. She was using a wheelchair and walker at home. Dr. Blint recommended follow up with Dr. Hagerty (PX 8, p 015-111). Lorchid underwent grafting with Dr. Hagerty on 1/31/2019 and 2/6/2019 (PX 7, p 72-86). On March 22, 2019, she was seen by Dr. Mueller for a preoperative examination prior to a scheduled skin grafting. She reported 15 surgeries by Dr. Hagerty (PX 5, p 26). Dr. Mueller notes he is retiring and referring Lorchid to Dr. Khan (PX 5, p 32).

She saw Dr. Khan on May 10, 2019. She reported a work injury 2018, fractured her leg when she tripped over a student. Reports her right 5th toe was previously infected to the fall. She notes that she has been seen weekly by plastic surgeon currently. Not on any antibiotics. Denies any open ulceration at this time. Does have symptoms of neuropathy (PX 5, 33). Petitioner is noted to be 5' 3" tall and weighs 357 pounds. Right foot is in a postop shoe with dressing. Dr. Khan's instructions were continued follow up with plastic surgeon and focus

on weight loss and healthy lifestyle (PX 5, p 39-41). On August 9, 2019, Dr. Khan notes that she continues to see Dr. Hagerty, She walks more and stands up to 25 minutes, She is using a cane (PX 5, p 43). At a telemedicine visit on April 9, 2020, Lorchid reported she is slowly improving, is more ambulatory with a cane. She had a fall over her cat with some drainage (PX 5, p 48-49). On July 8, 2020, Lorchid stated the wound was healing and split open recently. She was seen at the wound clinic. Her weight is now 392 pounds. She is ambulatory using a cane (PX 5, p 54-55). On October 1, 2020, Dr. Khan records that the wound has healed. Now has scar tissue. No longer seeing wound clinic. She is able to walk better. She continues to have uncontrolled diabetes.(PX 5, p 61).

Dr. Blint testified by evidence deposition taken July 13, 2020 (PX 9). He testified to his treatment beginning on November 9, 2018 for right lower extremity osteomyelitis and extensive soft tissue cellulitis and extension up into her leg. He testified she was referred by Dr. Matt Keane for the significant soft tissue injury. He does not believe there was any discussion of it being a work related condition. He testified to the treatment including the multiple procedures performed. He testified he did not have a description of a work related injury provided to him (PX 9). Dr. Blint identified his narrative report prepared October 11, 2019 (PX 9, Ex. 2). It states Miss Martin identified two separate incidents that occurred at work on September 14, 2018 and October 30, 2018. She sustained a fracture to her toe as well as a wound problem. He found the two traumas are causative factors in her ultimately developing this horrific infection of her foot (PX 9, Ex 2, p 170). He testified that in the absence of breaking her toe, it is unlikely that she would have just developed spontaneously the issue that she had. Without the trauma, she likely would not have sustained the entire problem. Dr. Blint testified he was unaware of treatment before his first consultation on November 9, 2018. He does not recall reviewing Dr. Fischer's records. He agreed Lorchid was diabetic and morbidly obese. She would be more prone to problems with her feet. These problems can be from trauma or pressure phenomenon such as ill-fitting shoes. He testified that no records other than his narrative contain a history of a work trauma. The history of work trauma came in a letter from Petitioner's counsel. There are no specifics of how the trauma occurred. He did not ever obtain a work injury history from Lorchid. His opinion is based upon the letter from the attorney (PX 9).

Lorchid was examined at Respondent's request by Dr. Anand Vora on February 7, 2020 (RX 1, Ex 2). Dr. Vora testified by evidence deposition taken August 10, 2020 (RX 1). He testified he took a history of two separate injuries. The first was the end of September when a child stepped on her foot, and then another child stamped on her foot and toe. Then a month later, she was tripped by another child and broke her foot in four places. Dr. Vora testified he reviewed medical records from Lorchid's multiple treaters from September 2018 through the date of his examination. The records indicated Lorchid had a diabetic foot infection that required treatment . She had medical conditions related to diabetic neuropathy. He testified that diabetics have to be careful of foot and ankle complications irrespective of trauma. Neuropathic people do not have protective sensation, so they usually do not even know about trauma. Dr. Vora testified there is no medical entry of a traumatic injury causing a foot wound or foot problem. No medical record reflects either of the traumas noted. Dr. Vora testified that the November 6, 2018 procedure was a release of tissues of the leg, which has no relationship with stomping on the foot. The records of Dr. Syed on September 18 is inconsistent with the supposed first injury. The second injury of multiple fractures was not identified by other providers. The records contain no documentation of any of the traumatic injuries reported to him. Dr. Vora opined that the treatment was not related to any work injury. It is related to her diabetic neuropathy and poorly controlled diabetes (RX 1).

Dr. Vora testified a trauma can cause a diabetic foot infection. He did not recall the October 31, 2018 record referring to an injury yesterday. If there was an accident report, it would not change his opinions but might have some effect. Even if there was an accident, the mechanism as described to him would not have led to the

extensive surgery. A diabetic foot infection does not occur from a trauma like this unless the bone is sticking through the skin. A broken bone does not cause infection (RX 1).

Petitioner testified that Lorchid had multiple procedures due to the infection. She was discharged from the hospital on December 3, 2018. She returned home and was treated for wound care. She had medication administered 8 times through a PIC line. She had 4 more postoperative visits with Dr. Blint. She used a walker, wheelchair and cane though 2020. After that time, she was doing better. She could move around and was almost back to normal. He testified she had lost a toe. Lorchid did not return to work. She had been terminated by Respondent. She did try to work for a private school for younger children but did not get the position. Lorchid was not taking any medication other than for her diabetes. Petitioner testified he never worked for Respondent on either date of accident or at any other time.

Conclusions of Law

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

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

While Lorchid Martin was unable to testify to the accident due to her death prior to the trial in this matter, the Arbitrator finds sufficient evidence to establish that she sustained accidental injuries arising out of and in the course of her employment on October 30, 2018.

On October 30, 2018, Respondent school nurse Jennifer Murray prepared a Nurse's Report (of Work Injury or Illness). This document was prepared on a form titled by Respondent contemporaneously to the date of accident. It noted Lori Martin suffered an injury at 11:15 AM. The description is "staff tripped over student who fell on the ground and injured right foot that had previous injury. On November 5, 2018, Brian Gray RN at the OSF Emergency Department noted that "Patient says she fell over a boy who threw himself down at her feet a week ago. Patient tore her foot open when she fell.

Based upon the record as a whole, the Arbitrator finds that Petitioner has proved by a preponderance of the evidence that Lorchid Martin suffered accidental injuries arising out of and in the course of her employment with Respondent on October 30, 2018.

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

Section 6(c) of the Act requires the claimant to give notice of the accident "to the employer as soon as practicable, but not later than 45 days after the accident." 820 ILCS 305/6(c) (West 2010). Section 6(c) further provides that "[n]o defect or inaccuracy of such notice shall be a bar to the maintenance of proceedings on arbitration or otherwise by the employee unless the employer proves that he is unduly prejudiced in such proceedings by such defect or inaccuracy." Id. The purpose of the notice requirement is "both to protect the employer against fraudulent claims by giving him an opportunity to investigate promptly and ascertain the facts of the alleged accident and to allow him to minimize his liability by affording the injured employee immediate medical treatment." *United States Steel Corp. v. Industrial Comm'n*, 32 Ill. 2d 68, 75, 203 N.E.2d 569, 573 (1964). The notice is jurisdictional, and the failure of the claimant to give notice will bar his claim. *Thrall Car Manufacturing Co. v. Industrial Comm'n*, 64 Ill. 2d 459, 465, 356 N.E.2d 516, 519, 1 Ill. Dec. 328 (1976). However, a claim is only barred if no notice whatsoever has been given. *Silica Sand Transport, Inc. v. Industrial Comm'n*, 197 Ill. App. 3d 640, 651, 554 N.E.2d 734, 742, 143 Ill. Dec. 799 (1990). "If some notice has been given, but the notice is defective or inaccurate, then the employer must show that he has been unduly prejudiced." Id.

The Nurse's Report prepared by Respondent school nurse Jennifer Murray on October 30, 2018, contemporaneously to the date of accident, noted Lori Martin suffered an injury at 11:15 AM. The description is "staff tripped over student who fell on the ground and injured right foot that had previous injury. Glenn Martin's unrebutted testimony is that he delivered the paperwork from the hospital admission to the office of the Board of Education and dropped in into the mailbox. While his testimony that this occurred the day after Halloween is contradicted by the hospital admission not occurring until November 5, 2018, this would still be well within the 45 day period.

Based on the record as a whole, the Arbitrator finds that Petitioner has provided timely notice to Respondent of the October 30, 2018 accident.

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

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

If the claimant had health problems prior to a work-related injury, he bears the burden of showing that the preexisting condition was aggravated by the employment and that the aggravation occurred as a result of an accident which arose out of and in the course of his employment. *Nunn v. Industrial Comm'n, 157 Ill. App. 3d 470, 476, 510 N.E.2d 502, 505, 109 Ill. Dec. 634 (1987)*. Lorchid Martin had begun treatment for her right foot prior to the incident on October 30, 2018. As more fully discussed in the decision in companion case 18WC002013, she began treatment for fractures of the 4th toe, an open wound and infection on September 18, 2018. She had follow-up treatment through October 16, 2018, less than 2 weeks prior to this accident, when Dr. Fischer noted that the wound remains present, although much improved from previous.

When Lorchid was seen on October 31, 2018 by Dr. Mohiuddin, she had complaints of right ankle and foot injury yesterday, and right 5th toe draining. She had fever and body aches. Physical examination noted mild swelling at the malleolar are of the right ankle with tenderness at the lateral malleolus. The right foot was swollen. The 5th toe was pigmented with drainage, open wound, warm and tender. X-rays noted severe degenerative changes, heel spur and old fracture. When she went to the emergency department at OSF St. Anthony on November 5, 2018, the initial history stated that she was recently diagnosed with cellulitis and started on Clindamycin for a foot infection. When she got home from work, she noticed a foul smell and pus from the toe. She has a significant reddening, warmth, tenderness, and swelling to the foot. She also has large blister. X-rays confirm osteomyelitis. Brian Gray RN noted that "Patient says she fell over a boy who threw himself down at her feet a week ago. Patient tore her foot open when she fell. The 12/3/2018 Discharge Summary states "Patient initially had injury around the end of September 2018 when she sustained injury at work from disabled kids; had smashed her toes. Patient had imaging workup which showed fracture of the phalanx of the toe of right foot; patient was seen by Orthopedic surgery; was given postop shoe with instructions for weight-bearing as tolerated. Patient a couple of weeks later started developing wound on the right little toe. Symptoms gradually worsened; patient was seen in prompt care and had imaging workup which showed 5th digit proximal and middle phalanx osteomyelitis."

Petitioner submitted the testimony of Dr. Blint who testified he was provided correspondence from Petitioner's counsel that Lorchid Martin suffered injuries on September 14, 2018 and October 30, 2018. She sustained a fracture to her toe as well as a wound problem. He found the two traumas are causative factors in her ultimately developing this horrific infection of her foot.

Respondent offered the medical testimony from Dr. Vora who testified there is no medical entry of a traumatic injury causing a foot wound or foot problem. No medical record reflects either of the traumas noted. Dr. Vora testified that the November 6, 2018 procedure was a release of tissues of the leg, which has no relationship with stomping on the foot. The records of Dr. Syed on September 18 is inconsistent with the supposed first injury. The second injury of multiple fractures was not identified by other providers. The records contain no documentation of any of the traumatic injuries reported to him. Dr. Vora opined that the treatment was not related to any work injury. It is related to her diabetic neuropathy and poorly controlled diabetes.

It is the Commission's province to assess the credibility of witnesses, draw reasonable inferences from the evidence, determine what weight to give testimony, and resolve conflicts in the evidence, particularly medical opinion evidence. *Berry v. Industrial Comm'n*, 99 Ill. 2d 401, 406-07, 459 N.E.2d 963, 76 Ill. Dec. 828 (1984); *Hosteny v. Illinois Workers' Compensation Comm'n*, 397 Ill. App. 3d 665, 675, 928 N.E.2d 474, 340 Ill. Dec. 475 (2009); *Fickas v. Industrial Comm'n*, 308 Ill. App. 3d 1037, 1041, 721 N.E.2d 1165, 242 Ill. Dec. 634 (1999). Expert testimony shall be weighed like other evidence with its weight determined by the character, capacity, skill and opportunities for observation, as well as the state

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

Having reviewed Dr. Blint's testimony, the Arbitrator finds his opinions of causation to the October 30, 2018 accident unpersuasive. Dr. Blint testified that he did not have any medical histories that including the work related trauma. His testimony was based upon correspondence from counsel. No details of what description of the October 30, 2018 incident was contained in this correspondence was provided. The Arbitrator notes that Lorchid provided different descriptions of the incident in the medical histories and particularly in the history given to Dr. Vora.

Dr. Blint testified he was unaware of Petitioner's treatment before he saw her in early November 2018 and did not recall reviewing the records of treatment beginning in September 2018. His causation opinion was focused on the trauma caused by fractures, but these were not sustained in the October 30, 2018 incident. He was unaware of what actually was injured on that date or how it occurred. He also did not address the history of the progression of the condition as described in the 12/3/2018 discharge summary which noted patient a couple of weeks later started developing wound on the right little toe. Symptoms gradually worsened. He did not address the existence of the infection found at the initial visit on September 18, 2018, over a month before the October 30, 2018 injury.

A treating doctor's findings and opinions can be undermined, or even disregarded, through reliance on inaccurate or incomplete information." See *Ravji v. United Airlines*, 2012 WL 440353 at 13 (Ill. Indus. Comm'n) interpreting *Horath v. Industrial Commission*, 96 Ill.2d 349 (Ill. 1983). Dr. Blint did not address the pre-existing condition and infection. He had not reviewed these records. It is unclear what mechanism of injury he assumed, since Petitioner had given varied descriptions of what happened and whether there were fractures from that incident. The pathology relied on by Dr. Blint was the finding of a fracture, which did not occur in the October 30, 2018 incident. When these failures and reliance on incomplete and inaccurate facts are coupled with Dr. Blint's admission, echoed by Dr. Vora, that Petitioner was at high risk for foot ulcers from such things as ill-fitting shoes due to her poorly controlled diabetes, morbid obesity, and history of neuropathy, the Arbitrator finds Dr. Blint's opinion is undermined.

Based upon the record as a whole, the Arbitrator finds that Petitioner failed to prove by a preponderance of the evidence that Lorchid Martin's condition of ill being is causally connected to the accident on October 30, 2018.

In support of the Arbitrator's decision with respect to (J) Medical, (K) Temporary Compensation, and (L) Nature & Extent, the Arbitrator finds as follows:

Based upon the Arbitrator's finding with respect to Causal Connection, the issues of Medical, Temporary Compensation, and Nature & Extent are moot.

Petitioner's claim for compensation is denied.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	23WC009215
Case Name	Stephen Hudson v. Lakeshore Recycling Systems
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b) Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	24IWCC0375
Number of Pages of Decision	16
Decision Issued By	Carolyn Doherty, Commissioner, Christopher Harris, Commissioner

Petitioner Attorney	Mark Fromm
Respondent Attorney	Michael Milstein

DATE FILED: 8/7/2024

/s/Carolyn Doherty, Commissioner

Signature

DISSENT: /s/Christopher Harris, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

STEPHEN HUDSON,

Petitioner,

vs. NO: 23 WC 9215

LAKESHORE RECYCLING SERVICES,

Respondent.

DECISION AND OPINION ON REVIEW

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

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed November 30, 2023 is hereby affirmed and adopted.

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

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

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

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $63,100.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

August 7, 2024

CAH/tdm
O: 7/25/24
052

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

/s/ *Marc Parker*
Marc Parker

DISSENT

Here, the video clearly reflects Petitioner's awareness of the oncoming car, his stepping backwards whilst looking at the car, then extending his arm and stepping into the side of the car as it drives past. As Petitioner's injuries were the result of his intentional act, I find this claim not compensable and therefore dissent from the majority.

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	23WC009215
Case Name	Stephen Hudson v. Lakeshore Recycling Systems
Consolidated Cases	
Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	13
Decision Issued By	James Byrnes, Arbitrator

Petitioner Attorney	Mark Fromm
Respondent Attorney	Michael Milstein

DATE FILED: 11/30/2023

THE INTEREST RATE FOR THE WEEK OF NOVEMBER 28, 2023 5.24%

/s/ James Byrnes, Arbitrator

Signature

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

STEPHEN HUDSON
Employee/Petitioner

v.

LAKESHORE RECYCLING SYSTEMS
Employer/Respondent

Case # **23** WC **009215**

Consolidated cases: _____

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **James Byrnes**, Arbitrator of the Commission, in the city of **Chicago**, on **October 5, 2023**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On the date of accident, **March 28, 2023**, 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 $**104,305.24**; the average weekly wage was $**2,005.87**.

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

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

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

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

ORDER

Respondent shall pay reasonable and necessary medical services, pursuant to the medical fee schedule, of $4,374.00 to Northwestern Medicine, $1,403.54 to Chicago Pain & Orthopedic Institute, $18,015.00 to Team Rehabilitation Physical Therapy, and $2,889.00 to City of Chicago EMS, as provided in Sections 8(a) and 8.2 of the Act.

Respondent shall pay Petitioner temporary total disability benefits of $1,337.25/week for 27-1/7 weeks, commencing March 29, 2023 through October 5, 2023, as provided in Section 8(b) of the Act.

Respondent shall authorize and pay for additional reasonable and necessary treatment consistent with the recommendations of Dr. Steven Sclamberg, specifically right shoulder arthroscopic surgery, and any post-operative treatment, physical therapy or other reasonable and necessary care associated with the right shoulder surgery, pursuant to Sections 8(a) and 8.2 of the Act.

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

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

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

Jan M. Byrne

Signature of Arbitrator

NOVEMBER 30, 2023

ICArbDec19(b)

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION – 19(b)

STEPHEN HUDSON,	)	
	)	
Petitioner,	)	
vs.	)	23 WC 009215
	)	
LAKESHORE RECYCLING SYSTEMS	)	
	)	
Respondent.	)	

MEMORANDUM OF DECISION OF ARBITRATOR

This matter proceeded to hearing on October 5, 2023, in Chicago, Illinois before Arbitrator James M. Byrnes pursuant to a Petition for Immediate Hearing Under Section 19(b) of the Act. Issues in dispute include whether an accident arose out of and in the course of employment, causal connection, temporary total disability benefits, unpaid medical bills and prospective medical treatment. (Arbitrator's Exhibit 1)

The Arbitrator had the opportunity to closely observe the testimony of the Petitioner and witnesses and considered the entire record in this matter. After reviewing all the evidence presented, the Arbitrator hereby makes findings on the disputed issues noted above.

FINDINGS OF FACT

Petitioner's Job Duties

On March 28, 2023, Petitioner was employed by Lakeshore Recycling Systems as a roll-off driver. (T. 9-10) He has worked for the Respondent as a full-time roll-off driver for 10 years. (T. 9-11) As a roll-off driver, Petitioner was responsible for picking up and delivering containers of various sizes to customers in downtown Chicago. (T. 10) Petitioner was assigned a specific route on the northeast side of Chicago which included the River North area. (T. 11) This is the same route he had on March 28, 2023. (T. 12)

Petitioner testified that on that date, he was assigned to do a "switch out" at a construction site at the Hilton Garden Inn in the River North area of downtown Chicago for customer Kinsale Construction. (T. 12-13) A "switch out" is when the roll-off driver brings an empty dumpster to a location and switches it out with a full dumpster, so the customer has an empty dumpster. (T. 15) If there is anything holding up the service for the customer, the driver will call dispatch, as well as the customer (or contractor), and the contractor will try to move whatever is in the way in order to allow the driver to service the dumpster. (T. 16)

When Petitioner arrived at the location on March 28, the alley access was blocked by a Sysco truck pulling in to make a delivery. (T. 16-17) Petitioner called dispatch to let them know there would be a delay because the truck was there. (T.16) He called "Alex," the foreman at the construction site. (T. 16) Alex helped the Sysco truck

leave the alley to give Petitioner access. (T. 17-18) Both Alex and the Sysco truck blocked traffic so Petitioner could back down the alley to get the full container and replace it with an empty one. (T. 19-20) Petitioner continued to complete the "switch out" operation, including the paperwork and moving his truck out of the alley with the full dumpster. (T. 21)

According to Petitioner, blocking downtown traffic was common in his job, especially in downtown Chicago and in the River North area due to the one-way streets and narrow alleys. (T. 24) It was also common for other drivers to assist Petitioner and he would return the favor. (T. 46-47) He has never been instructed not to assist other people that have assisted him in the performance of his job. (T. 47)

Marvin Garcia, called as a witness by Petitioner, testified he is a roll-off driver who works for Lakeshore Recycling Systems, and has done so for the past eleven years. (T. 66-67) He testified that he has received assistance from other truck drivers who may have been blocking his path while he was working. (T. 68) Mr. Garcia testified that he and other drivers try to help each other where possible because there is a high pedestrian and traffic volume in downtown Chicago. (T.69-70) Stopping traffic is common in the Chicago area while performing his job. (T.70-71) He has never been instructed by Respondent to not help other drivers that have helped him in the performance of his duties as a roll-off driver. (T. 72) Mr. Garcia did not witness the alleged accident on March 28, 2023. (T.73)

Accident

After the empty container was placed, Alex asked for Petitioner's assistance getting the Sysco truck back into the alley. (T. 21) Petitioner parked his truck facing southbound on Wabash. (T. 50) Petitioner got out of his truck wearing a reflective orange shirt (T. 21-22) Petitioner proceeded to stop northbound traffic while Alex stopped southbound traffic. (T.22) Petitioner testified that while directing traffic to assist the Sysco truck in backing into the alley, a vehicle came around the backing truck and struck Petitioner on the right side of his body, specifically his right shoulder and elbow. (T. 23-24) From what he recalls, he spun around and landed in either a fetal position or on his face or front area. (T. 23) Petitioner testified that he "sort of had a chance to move out of the way and then my hands were up and then, bam…" (T. 63) He agreed it was "too quick" and "felt way too fast" to move out of the way. (T. 63-64) Petitioner testified that he did not really see the vehicle coming, as he was watching the Sysco truck go back in (to the alley). (T. 64) He testified it felt like he turned his head and the car ran into him. (T. 64)

Following the incident, the Petitioner got off the street and police and paramedics arrived shortly thereafter. (T. 26) He was taken by ambulance to Northwestern Memorial Hospital, where he told medical personnel that his right arm was bothering him, including his shoulder and elbow. (T. 27)

Respondent offered into evidence a video of the accident on March 28, 2023. (RX 1) John Williamson, a claims manager for Lakeshore Recycling Systems, testified to lay the evidentiary foundation for the video. (T.75) According to Mr. Williamson, Respondent uses cameras in all of their trucks for coaching opportunities and information after an accident occurs. (T. 76-77) The Respondent's roll-off trucks are typically equipped with forward-facing and in-cab forward-facing cameras. (T. 78) The cameras operate when the engine of the truck is on, and the cameras shut off when the engine is off. (T. 78)

After finding out about the incident on March 28, 2023, Mr. Williamson identified Petitioner's truck and accessed his video from the server. (T. 79) There is no way for Mr. Williamson or any other party to alter the

video. (T. 79) After reviewing the video, Mr. Williamson determined that the video was a true and accurate reflection of the video taken from Petitioner's truck. (T. 81-82)

Petitioner entered the video frame at 5:25. (R. Ex. 1) He was wearing an orange high visibility safety shirt. (*Id.*) He exited his truck and pointed toward the Sysco truck in front of him. (*Id*.) At 5:45, Petitioner jogged toward the Sysco truck and began using hand signals to guide the driver back into the alley. (*Id*.) From 5:45-6:40, Petitioner assists the driver of the Sysco truck while stopping traffic. (*Id*.) During this process, Petitioner was standing between two opposite lanes of traffic. (*Id*.)

At 6:40, Petitioner stops a black vehicle traveling southbound. (*Id*.) At 6:43, a black sedan enters the frame driving northbound. At 6:44, the sedan drives around the Sysco truck on the left. (*Id*.) Simultaneously, Petitioner looks in the direction of the sedan and takes two steps backwards. (*Id*.) At 6:46, Petitioner takes a step toward the car as the vehicle approaches him. At 6:47, Petitioner is struck on the right arm by the driver's mirror. (*Id.*) There was no contact with his head. (*Id.*) Petitioner spun 180 degrees and landed on his buttock and right hand/arm by 6:48 (*Id*.) By 6:53 Petitioner rose to his knees to get off the ground and by 6:56, Petitioner is on his feet. At 6:59, he begins making his way toward the curb, holding his right arm in the process. (*Id*.) At 8:34, Petitioner is seen flexing and extending his right elbow, and continues this motion to 8:56. (*Id.*) Petitioner remained on the curb with two unidentified males and is seen crossing the street in front of a red sedan at 9:17. (*Id*.) From 9:24-9:37 he is seen rotating his right arm at the shoulder in a circular motion. (*Id*.) At 9:38, he jogs back to the Sysco truck and begins assisting the driver back down the alley. During this process, he extends and flexes his right arm and rub his right shoulder (10:10 to 10:20), as well as extend his lumbar spine (10:21). (*Id*.) The Sysco truck successfully backs down the alley and Petitioner is seen returning to his truck at 11:00. (*Id*.) The Petitioner is not seen again on the video through its end at 15:20. (*Id.*)

Medical Treatment

The Petitioner testified that after being struck by the vehicle, paramedics arrived on the scene and he was taken to Northwestern Memorial Hospital. (T. 27) At the emergency room, Petitioner provided a history of directing traffic at a construction site that morning, when "someone swerved around the construction vehicle," and the car was heading toward him. (PX 1, p. 4) He jumped to get out of the way and reported that his right arm hit the mirror, as he tucked and rolled to get out of the way. (*Id.*) He stated that he did not hit his head or lose consciousness. (*Id.*) He reported some soreness at the right elbow and shoulder, with an abrasion over the elbow. (*Id.*)

The physical examination at that time showed tenderness to palpation over the olecranon process of the right elbow with a small abrasion present, and an ability to perform elbow flexion/extension, pronation and supination, as well as normal grip strength. (PX 1, p. 6) Regarding the right shoulder, there was mild tenderness over the anterior glenohumeral joint, with an ability to perform internal/external rotation, flexion/extension, abduction/adduction and range of motion, and a negative impingement test. (*Id.*) There was no tenderness over the cervical, thoracic or lumbar spine. (*Id.*) X-rays of the right elbow, right humerus and right shoulder were negative for fracture or malalignment. (PX 1, pp. 6-7)

Based on the clinical presentation, examination and x-rays, the Petitioner was diagnosed with a right elbow contusion and right shoulder strain. (PX 1, p. 11) He was advised concerning pain control and given a sling to use as needed, as well as instructed to continue range of motion exercises to avoid a frozen shoulder and was discharged home. (*Id.*)

Petitioner testified that when he returned home, he noticed that his back was tight, and he couldn't lift his arm very high. (T. 29) He testified his whole body was sore, his right side was sore, and his neck was sore. (T. 30) He attempted to return to work the next day, but he punched in and went home. (T. 31) Petitioner testified that he was not capable of doing his job with his right arm in a sling. (T. 32)

Petitioner testified that over the next week, the pain in the right shoulder became worse and interfered with his ability to sleep. (T. 32, 33) The pain also made activities of daily living difficult, especially reaching behind and reaching above. (T. 33) He was also taking four to five Motrin per night to help with sleep. (T. 34) He eventually sought additional medical treatment at Chicago Pain and Orthopedic Institute. (*Id.*)

Petitioner was initially seen for treatment at Chicago Pain and Orthopedic Institute on April 5, 2023. According to the history, Petitioner reported he was assisting moving a truck into an alley when he was struck by another vehicle that decided to go around that truck. (PX 2, p. 1) The history also notes "[t]he patient states that he was hit to his right side causing him to lift off the ground and onto the windshield of the of the car and sliding down and hitting the ground, ending up in a fetal position." (*Id.*) Based on the Petitioner's clinical presentation and physical examination, he was diagnosed with neck pain, cervical strain, right shoulder pain, right shoulder impingement, low back pain and lumbar strain. (PX 2, p. 2) He was advised to undergo MRI scans of the cervical and lumbar spine, as well as the right shoulder. (*Id.*) He was also provided with medications and a prescription for physical therapy and was advised to remain off work. (*Id.*)

The Petitioner underwent an MRI scan of the right shoulder on April 17, 2023. The results showed labral tearing, low to moderate partial thickness tear of the supraspinatus, subscapularus tendon fraying at the humerus attachment and severe AC osteoarthritis. (PX. 2, p. 14) He underwent an MRI scan of the cervical spine on April 18, 2023, with the results showing multilevel spurring and disc dessication and multilevel disc protrusions with associated canal and neuroforaminal stenosis. (PX 2, p. 15) He underwent an MRI scan of the lumbar spine on April 19, 2023, with the results showing a 1-2 mm broad based left paracentral disc protrusion at L1-2 and a 4 mm broad based central disc protrusion with mild canal stenosis and mild bilateral neuroforaminal stenosis at L5-S1. (PX 2, p. 15)

Following the MRI scans, Petitioner was seen by Dr. Steven Sclamberg of Chicago Pain and Orthopedic Institute on April 26, 2023. Dr. Sclamberg saw him that day regarding the right shoulder pain. (PX 2, p. 5) Petitioner provided a similar history as prior and reported pain with overhead reaching and clicking in the shoulder. He denied any numbness, tingling or paresthesias. (*Id.*) Based on the physical examination and his review of the MRI scan of the right shoulder, Dr. Sclamberg diagnosed a right shoulder labral tear and partial thickness rotator cuff tearing. (*Id.*) The doctor recommended a right shoulder arthroscopy with subacromial decompression, possible rotator cuff repair, possible labral repair, synovectomy and debridement. (*Id.*) The Petitioner expressed understanding and his willingness to undergo the procedure. (*Id.*) Dr. Sclamberg maintained the off work restrictions and noted the patient should continue treating with pain management for his neck and back. (*Id.*)

The Petitioner was seen by Dr. Narayan Tata of Chicago Pain and Orthopedic Institute regarding his neck and back on May 5, 2023. He provided a similar history concerning the work accident as originally reported on April 5, 2023, adding that there was a momentary loss of consciousness. (PX 2, p. 8) Regarding the low back, he complained of pain at a level of 6/10, but denied any radicular symptoms or paresthesias or dysthesias in the lower extremities. (*Id.*) The pain was worse with any type of lumbar flexion or twisting or side bending. (*Id.*) Based on the clinical presentation, physical examination and review of the lumbar MRI films, Dr. Tata diagnosed low back pain with etiology most likely secondary to a herniated disc at L5-S1. (PX 2, p. 9) The doctor

recommended a bilateral L5-S1 transforaminal epidural steroid injection, as well as physical therapy and continued care with Dr. Sclamberg regarding the right shoulder. (*Id.*)

The Petitioner commenced physical therapy at Team Rehabilitation Physical Therapy on June 9, 2023. He provided a history of servicing a hotel dumptser on March 28, 2023, with traffic stopped in order to back a customer's truck out of the alley when another vehicle did not stop. (PX 3, p. 1) "Patient was wearing his protective gear when he was hit on the R side by the vehicle." (*Id.*) His chief complaints on June 9 were primarily low back pain and right shoulder pain, as the neck had improved since the accident. (*Id.*) The examination showed tenderness to palpation along the right thoracolumbar paraspinals and right upper trapezius muscles, as well as painful lumbar range of motion, as well as pain in the right shoulder. (PX 3, p. 3) The therapist set various goals to reduce pain and increase function and recommended therapy 2x per week until July 21, 2023. (PX 3, p. 4)

The Petitioner continued to treat at Chicago Pain and Orthopedic Institute. At the office visit with Dr. Tata on August 11, 2023, he reported that he was making gains and his pain was slowly improving with physical therapy, and so he did not wish to proceed with any type of injection at that time. (PX 2, p. 24) He was advised to complete his physical therapy and to transition to a home exercise program. (PX 2, p. 25) He was discharged from pain management and advised to continue treatment with Dr. Sclamberg regarding the right shoulder. (*Id.*)

He was most recently seen at Team Rehabilitation Physical Therapy on September 12, 2023. At that time, Petitioner reported improvement to low back pain and stiffness, with ongoing pain with sidebending and prolonged driving. (PX 3, p. 98) It was reported that he had met several goals (e.g., uninterrupted sleep time, ambulation/standing time increased to greater than 60 minutes, independence with home exercise program) and was progressing toward other goals. (PX 3, p. 99) He was advised to continue with physical therapy 2x per week until October 5, 2023. (*Id.*)

The Petitioner was most recently seen by Dr. Sclamberg on September 18, 2023. The examination of the right shoulder showed tenderness along the medial scapular border with tenderness and decreased range of motion and negative impingement testing. (PX 2, p. 27) Dr. Sclamberg again diagnosed a right shoulder labral tear and partial thickness rotator cuff tearing and the Petitioner again expressed a willingness to proceed with right shoulder arthroscopic surgery. (*Id.*)

Petitioner's Current Condition

The Petitioner testified that his lower back has "definitely improved" as a result of physical therapy (T. 41) and that he did not undergo the lumbar injections because he was "scared" (T. 43) and the physical therapy had greatly improved the condition of his back since March. (T. 44) Regarding the right shoulder, he testified it still clicks and it hurts to reach overhead. (T. 42) He never had such a problem prior to the accident of March 28, 2023. (*Id.*) Dr. Sclamberg continues to recommend surgery and he wishes to undergo such surgery. (T. 45)

The Petitioner further testified that prior to the accident of March 28, 2023, he never had any problems with his right shoulder or elbow (T. 25) or to his neck or low back. (T. 34, 35)

CONCLUSIONS OF LAW

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

Decisions of an arbitrator shall be based exclusively on the evidence in the record of the proceeding and material that has been officially noticed. 820 ILCS 305/1.1(e). Credibility is the quality of a witness which renders his evidence worthy of belief. The Arbitrator, whose province it is to evaluate witness credibility, evaluates the demeanor of the witness and any external inconsistencies with his/her testimony. Where a claimant's testimony is inconsistent with his/her actual behavior and conduct, the Commission had held that an award cannot stand. *McDonald vs. Industrial Commission*, 39 Ill. 2d 396 (1968); *Swift vs. Industrial Commission*, 52 Ill. 2d 490 (1972).

It is the function of the Commission to judge the credibility of the witnesses and to resolve conflicts in the medical evidence and assign weight to witness testimony. *O'Dette vs. Industrial Commission*, 79 Ill. 2d 249, 403 N.E. 2d 221, 223 (1980); *Hosteny vs. Worker's Compensation Commission*, 397 Ill. App. 3d 665, 674 (2009). Internal inconsistencies in a claimant's testimony, as well as conflicts between the claimant's testimony and medical records, may be taken to indicate unreliability. *Gilbert vs. Martin & Bayley/Hucks*, 08 IL WC 004187 (2010).

In the case at hand, the Arbitrator observed Petitioner during the hearing and finds him to be a credible witness. The Arbitrator compared Petitioner's testimony with the totality of the evidence submitted and while there were some inconsistencies between the testimony concerning the accident and the medical histories, the Arbitrator did not find any material contradictions that would deem the witness unreliable.

Regarding Issue (C), did an accident occur that arose out of and in the course of Petitioner's employment by Respondent, the Arbitrator finds as follows:

The Illinois Workers' Compensation Act (the "Act") provides: "To obtain compensation under this Act, an employee bears the burden of showing, by a preponderance of the evidence, that he or she has sustained accidental injuries arising out of and in the course of the employment." 820 ILCS 305/1. A petitioner must establish both the "arising out of" and the "in the course of" elements were present to prove a compensable injury. *Univ. of Ill. v. Indus. Comm'n*, 365 Ill. App. 3d 906, 910 (2006). The mere fact that a petitioner was at work or engaged in some work-related activity is not sufficient to support an award under the Act. *Brady v. Louis Ruffolo & Sons Constr. Co.*, 143 Ill. 2d 542, 552 (1991).

The "arises out of" requirement mandates that the injury must have originated from some risk connected with, or incidental to, the employment so that there is a causal connection between the employment and the accidental injury. *Caterpillar Tractor Co. v. Indus. Comm'n*, 129 Ill.2d 52, 58, 541 N.E.2d 665, 667 (1989). To determine whether a claimant's injury arose out of his or her employment, the arbitrator must categorize the risks to which the claimant was exposed. *Dukich v. Illinois Workers' Compensation Comm'n,* 2017 IL App (2d) 160351WC, ¶31.

The first step in risk analysis is to determine whether Petitioner's injuries arose out of an employment-related risk — a risk distinctly associated with Petitioner's employment. *McAllister v. Illinois Workers' Compensation Comm'n*, 2020 IL 124828. A claimant must show that the injury had its origin in some risk connected with or, incidental to, his employment to create a causal connection between the injury and

employment. *Id.* at ¶36. Generally, a risk is distinctly associated with Petitioner's employment if, at the time of the occurrence, Petitioner was performing:

1) Acts he or she was instructed to perform by the employer,
2) Acts that he or she had a common-law or statutory duty to perform, or
3) Acts that the employee might reasonably be expected to perform incident to his or her assigned duties.

McAllister v. Illinois Workers' Compensation Comm'n, 2020 IL 124828, ¶46.

The phrase "in the course of employment" refers to the time, place and circumstances of the injury. *McAllister v. Illinois Workers' Compensation Comm'n*, 2020 IL 124828, ¶34. A compensable injury occurs "in the course of" employment when it is sustained while he performs reasonable activities in conjunction with his employment. *Id*.

In the present case, Petitioner's injuries occurred in the course of employment as he was injured while on the job performing a switch-out of dumpsters at a construction site in the River North area of downtown Chicago.

Petitioner met his burden of proving that the incident on March 28, 2023, arose out of his employment as he was exposed to a risk distinctly associated with his employment. Petitioner was hurt while directing and helping another truck driver back into an alley after that truck driver assisted Petitioner in performing his job to switch out dumpsters at the construction site he was assigned to by the Respondent. Petitioner's act of assisting another truck driver was an act that he could reasonably be expected to perform incidental to his assigned duties. Petitioner testified that it was common practice when making switches of dumpsters in the downtown and River North areas of Chicago to seek assistance from other truck or delivery drivers, including those employed by other companies, in order to back into one-way streets and alleys. This practice of assisting other drivers was corroborated by witness Marvin Garcia, who works for the Respondent and has been doing this type of work for almost 40 years. Both Petitioner and Mr. Garcia testified that without assisting other drivers and getting assistance from them in directing traffic it would be very difficult to perform their assignments in downtown Chicago and River North. Both also testified that they were never instructed by Respondent to not engage in such a practice with drivers from other companies, and Respondent presented no evidence to dispute acquiescence in this practice.

Furthermore, the video evidence submitted by Respondent clearly establishes that Petitioner was struck by a vehicle while he was assisting the driver of the Sysco truck back into the alley on March 28, 2023. The Arbitrator recognizes the histories set forth in the medical records are not entirely consistent with what is seen on the video (e.g., he did not "lift off the ground and onto the windshield of the car," nor did he strike his head or face on the ground or appear to lose consciousness, as indicated in the Chicago Pain and Orthopedic Institute histories). The Arbitrator, however, does not find the inconsistencies between the Petitioner's testimony and the medical histories to be sufficiently significant or material such to impute intent or gross negligence by the Petitioner, or otherwise negate or diminish what is seen on the video of the actual accident: the Petitioner was directing traffic at the site to assist the Sysco driver and a car drives around the Sysco truck, striking Petitioner on his right arm.

Based on the above, the Arbitrator finds Petitioner sustained an accident which arose out of and in the course of his employment with Respondent on March 28, 2023.

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

To obtain compensation under the Act, a claimant must provide that some act or phase of his employment was a causative factor, as long as it was a causative factor in the resulting condition of ill-being. "A chain of events which demonstrates a previous condition of good health, an accident, and a subsequent injury resulting in disability may be sufficient circumstantial evidence to provide a causal nexus between the accident and the employee's injury." *International Harvester vs. Industrial Commission*, 93 Ill. 2nd 59, 63, 442 N.E. 2d 908 (1982).

Petitioner testified that at the time of the accident on March 28, 2023, he had been performing his regular activities as a roll-off driver for Respondent for the previous ten years. He testified that prior to this accident, he never had any problems with his right shoulder, right elbow, neck or low back. No evidence was presented to rebut this assertion or to show that Petitioner had any such problems prior to the work accident.

In addition, the video of the accident shows Petitioner moving his right elbow, shoulder and back in such ways that would indicate pain and discomfort in those body parts immediately after the accident (e.g., the extension/flexion of the right elbow, the rotation and rubbing of the right shoulder and extension of the low back).

Finally, Petitioner was diagnosed at the emergency room on the date of accident with a right elbow abrasion/contusion and right shoulder strain, was advised concerning pain control and given a sling to use as needed, all evidence of being struck in the right arm by the passing vehicle. He testified that upon returning home from the hospital, his whole body, including his neck and right side, was sore. This was borne out by the examination at Chicago Pain and Orthopedic Institute on April 5, 2023, at which time he was diagnosed with a cervical strain, a lumbar strain and right shoulder impingement.

Based on the above, the Arbitrator finds the Petitioner's current condition of ill-being is causally related to the work accident of March 28, 2023.

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

Having found Petitioner sustained an accident arising out of and in the course of employment with Respondent on March 28, 2023, and that his current condition of ill-being is causally related to the work accident, the Arbitrator finds that Petitioner was entitled to reasonable and necessary medical treatment incurred as a result of that accident.

Petitioner testified that on the date of the accident, he was transported by a City of Chicago EMS ambulance to Northwestern Memorial Hospital, resulting in a charge of $2,889.00. (PX #4).

Petitioner also testified and the medical records establish that he was treated in the emergency room at Northwestern Memorial Hospital on the date of accident, incurring $3,872.00 in hospital charges, $365.00 in professional charges and $137.00 in radiology professional charges, for a total of $4,374.00 owed to Northwestern Medicine (PX #1).

Petitioner further testified and the medical records establish that he treated at Chicago Pain and Orthopedic Institute from April 5, 2023, through September 18, 2023. The total charges for services rendered for that period was $1,403.54. (PX #2)

Petitioner testified and the therapy records establish that he underwent physical therapy at Team Rehabilitation Physical Therapy from June 9, 2023, through September 12, 2023, incurring charges of $18,015.00. (PX. #3).

Respondent offered no evidence to rebut the reasonableness of medical expenses incurred by the Petitioner, the necessity of such treatment or its causal relationship (from a medical perspective) to the accident of March 28, 2023. Respondent offered no evidence of payment of such medical expenses and claims no credit under Section 8(j) of the Act.

Based upon the testimony of the Petitioner, the medical records and the medical bills from each provider, the Arbitrator finds the treatment rendered to the Petitioner by the medical providers listed above was reasonable, necessary and causally related to the work accident of March 28, 2023, and that Respondent is liable for the medical charges set forth above.

Regarding Issue (K), whether Petitioner is entitled to any prospective medical care, the Arbitrator finds as follows:

Having found Petitioner sustained an accident arising out of and in the course of employment with Respondent on March 28, 2023, and that his current condition of ill-being is causally related to the work accident, the Arbitrator also finds that Petitioner is entitled to prospective medical care.

Petitioner testified that he has been treating with Dr. Sclamberg, who has recommended a right shoulder arthroscopy with subacromial decompression, possible rotator cuff repair, possible labral repair, synovectomy and debridement. Petitioner testified that his shoulder symptoms have worsened, and he would like to proceed with the right shoulder surgery being recommended by Dr. Sclamberg. Respondent offered no evidence to rebut the reasonableness or necessity of the treatment recommended by Dr. Sclamberg.

Based on the above, the Arbitrator finds Petitioner is entitled to prospective medical care, consistent with the recommendations of Dr. Sclamberg, specifically right shoulder arthroscopic surgery, and any post-operative treatment, physical therapy or other reasonable and necessary care associated with the right shoulder surgery.

Regarding Issue (L), whether Petitioner is entitled to receipt of temporary total disability benefits, the Arbitrator finds as follows:

Having found Petitioner sustained an accident arising out of and in the course of employment with Respondent on March 28, 2023, and that his current condition of ill-being is causally related to the work accident, the Arbitrator also finds that Petitioner was entitled to receipt of temporary total disability benefits following that accident.

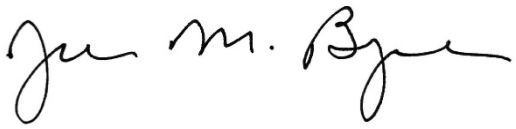
The Petitioner was discharged from the emergency room of Northwestern Memorial Hospital with a sling to be used on his right arm. He testified that he attempted to return to work the day after the accident but could not perform his regular work activities while wearing a sling, and so he went home without working. Respondent

offered no evidence to rebut this assertion or that alternative work was available which would allow Petitioner to perform work while wearing a sling on his right arm.

When initially seen at Chicago Pain and Orthopedic Institute on April 5, 2023, the Petitioner was advised to remain off work. Dr. Sclamberg continued to keep him off work, pending the proposed right shoulder surgery, during the entire course of his treatment of Petitioner and Dr. Tata deferred to Dr. Sclamberg regarding Petitioner's ability to work. Respondent offered no evidence to rebut the opinion of Dr. Sclamberg regarding Petitioner's ability to return to work.

Based on the above, the Arbitrator finds Petitioner was temporarily totally disabled from March 29, 2023, through the date of hearing on October 5, 2023, a period of 27-1/7 weeks, and is entitled to receipt of temporary total disability benefits at a rate of $1,337.25 per week for that period.

It is so ordered:



Arbitrator James M. Byrnes

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	18WC033530
Case Name	Edward McClendon v. School District 149
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	24IWCC0376
Number of Pages of Decision	29
Decision Issued By	Maria Portela, Commissioner

Petitioner Attorney	Richard Victor
Respondent Attorney	Jeffrey Rusin

DATE FILED: 8/7/2024

/s/Maria Portela, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

EDWARD McCLENDON,

Petitioner,

vs. NO: 18WC033530

SCHOOL DIST. 149,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Petitioner herein and notice given to all parties, the Commission, after considering the issues of causation, medical expenses, temporary total disability and nature and extent, and being advised of the facts and law, affirms and adopts, with the following changes and corrections, the Decision of the Arbitrator, which is attached hereto and made a part hereof.

We initially clarify that the records of Dr. Manatt and Dr. Tan are not in evidence. However, we find the contents of them, as summarized by Drs. Wehner, Deutsch and Vitello, to be reliable. We also note that it is unclear whether Petitioner saw Dr. Manatt on July 31, 2018 or if it was Dr. Tan. Again, although the records are not in evidence, it appears that both physicians practice in the same office.

Next, we agree with the Arbitrator's ultimate conclusion that Petitioner failed to prove his cervical condition was caused or aggravated by his July 30, 2018 work accident. However, the Arbitrator mentioned several times in the Decision that Petitioner did not have any cervical complaints or treatment for his neck prior to the July 15, 2019 motor vehicle collision (MVC). *Dec. at 11, 12, 16*. We clarify that there are some records that do reflect neck pain and cervical treatment prior to the MVC. For example, Dr. Labana's record, dated March 21, 2019, states, "mainly CTS [right carpal tunnel] but also some neck pain." *Px1, T.146*. However, the cervical exam was normal and Dr. Labana did not make a cervical diagnosis. There are also physical

therapy (PT) records (11/12/18 through 7/12/19) that reflect complaints of neck pain. *Px1, T.216-299*. For example, the initial PT evaluation reflects tenderness to palpation at C5 and slightly reduced range of motion (ROM). Petitioner received treatment of "muscle energy technique to correct FSRD on the left side at C5, T6, and T8." *Px1, T.300*. Subsequent records also contain complaints of neck pain and "MET" treatment to correct "FSRD" at various cervical levels along with "c-spine retraction." Based on the reference to "muscle energy technique" in the initial PT evaluation, it appears that "MET" means "Muscle Energy Technique." We are unable to determine, from the record, what the abbreviation "FSRD" means.

In any event, we point out that Petitioner did have some neck complaints and some cervical treatment prior to his July 15, 2019 MVC, so a reviewing court knows that the Commission is aware of this fact. However, we also specifically affirm the Arbitrator's finding that Petitioner had pre-existing left shoulder and cervical complaints as documented in the March 14, 2016 Ortho/Neuro Evaluation at Ingalls Memorial Hospital. *18 Dec. at 10*. That evaluation indicates Petitioner had a diagnosis of left shoulder full thickness rotator cuff tear with 8/10 pain in the left shoulder along with "left sided cervical pain since development of rotator cuff tear." *Rx5, T.1207-08*.

We also affirm the Arbitrator's finding that Petitioner failed to prove his neck pain after the July 30, 2018 accident was related to that accident. Rather, it is more likely than not related to Petitioner's pre-existing cervical pain or due to referred pain from his shoulder as opined by Dr. Wehner in her October 22, 2019 report when she wrote, "Although Mr. McClendon had some subjective complaints of neck pain, he had no radicular complaints and the neck pain complaints were tied to his left shoulder complaints. These resolved with treatment of his shoulder and were most likely due to trapezial pain associated with the left shoulder." *Rx2, T.1109 (answer to question #2)*.

Dr. Wehner reviewed the records of Dr. Savio Manatt and noted that, on June 10, 2017, Petitioner was seen for low back pain and tingling in the right leg. On March 2, 2018, almost five months prior to his July 30, 2018 work accident, Petitioner complained of occasional pain in the right shoulder, right leg and neck. *Rx2, T.1103.*

Petitioner argues that his significant left shoulder injury overshadowed his back and neck symptoms in an attempt to explain why the initial medical records do not document his neck and back complaints. *P-Brief at 4*. However, the Commission does not find Petitioner's argument persuasive. Dr. Sashedri's records consistently document positive Phalen's and Tinel's tests on the right side, which is not a condition at issue in this claim, and specifically state that Petitioner's cervical spine exam was normal. Therefore, it does seem like Dr. Sashedri was documenting all of Petitioner's complaints and exam findings and did not find that Petitioner had a cervical issue.

We also call attention to the July 30, 2019 PT evaluation for cervical herniations and right upper extremity radicular symptoms that states:

> The patient underwent surgery of the left shoulder on October 9, 2018. The patient states after the shoulder surgery, the neck pain did resolve some and would come and go but states recently in the past few months, the pain had been more consistent.
>
> Pain was then exacerbated on July 15, 2019 after the patient was involved in a motor vehicle accident. Currently, the patient states that pain at worst is 10/10 especially at night and first thing in the morning. *Px1, T.209*.

Based on the above and a thorough review of all the evidence, we affirm the Arbitrator's finding denying cervical causation but clarify that, even though some records contain complaints of neck pain and PT treatment, we do not find this related to the July 30, 2018 work accident. We also affirm that Arbitrator's finding that the July 15, 2019 MVC was an intervening accident which led to the order for an MRI and treatment for cervical disc herniations.

We also correct the following clerical and scrivener errors:

1. Page 1, last paragraph, second sentence: We clarify that the citation to "PX1, pages 65-67" refers to Dr. Seshadri's records. As discussed above, Dr. Manatt's records are not in evidence.

2. Page 2, last paragraph, last complete sentence states, "On February 21, 2019, Dr. Chang noted Petitioner's neck pain since the July 30, 2018 accident (PX1, page 93)." However, this citation refers to Dr. Vitello's February 21, 2019 Section 12 examination report (*T.194*). Dr. Chang first saw Petitioner on July 25, 2019, so it is impossible for Dr. Chang to have noted anything on February 21, 2019 (five months earlier). We, therefore, strike this sentence.

3. Page 2, last paragraph, second to last complete sentence states, "Dr. Chang noted Petitioner's symptoms were exacerbated after the July 15, 2019 motor vehicle accident." We could not find any record of Dr. Chang that states that Petitioner's symptoms were exacerbated by the July 15, 2019 MVC. In fact, Dr. Chang's records don't appear to mention the MVC at all, which is one of the reasons why Dr. Chang's causation opinions are not persuasive. We strike this sentence.

4. Page 3, second paragraph, last sentence states, "Subsequent to the surgery and therapy, Petitioner underwent cervical epidural injections with Dr. Chang…." We strike "Dr. Chang" and replace it with "Dr. Gastevski" because, although Petitioner testified that the injections were performed by Dr. Chang, they were actually performed by Dr. Gastevski. *Px3, T.387-391*.

5. Page 4, second full paragraph, third sentence indicates that Petitioner's Functional Capacity Evaluation was "done on May 25, 2023." However, we strike "2023" and replace it with "2022."

6. Page 10, second paragraph, second sentence states, "Petitioner was examined by his primary care physician, Dr. William Tan." We again note that there is no record of

Dr. Tan in evidence and it is unclear whether Petitioner saw Dr. Tan or Dr. Manatt on July 31, 2018.

All else is affirmed and adopted.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed January 10, 2024 is hereby affirmed and adopted with the clarifications and corrections noted 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.

Pursuant to §19(f)(2) of the Act, Respondent is not required to file an appeal bond in this case. 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.

August 7, 2024

/s/ *Maria E. Portela*

/s/ *Amylee H. Simonovich*

/s/ *Kathryn A. Doerries*

SE/
O: 7/9/24
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ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	18WC033530
Case Name	Edward McClendon v. School District 149
Consolidated Cases	21WC006943
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	24
Decision Issued By	Jacqueline Hickey, Arbitrator

Petitioner Attorney	Richard Victor
Respondent Attorney	Jeffrey Rusin

DATE FILED: 1/10/2024

THE INTEREST RATE FOR THE WEEK OF JANUARY 9, 2024 5.03%

/s/ Jacqueline Hickey, Arbitrator

Signature

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Edward McClendon
Employee/Petitioner
v.
School District 149
Employer/Respondent

Case # **18** WC **033530**

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 **Jacqueline Hickey**, Arbitrator of the Commission, in the city of **Chicago**, on **7/28/23**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On **7/30/18**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

Petitioner's current condition of ill-being ***is*** causally related to the accident, for the left shoulder only.

In the year preceding the injury, Petitioner earned $**28,080.00**; the average weekly wage was $**540.00**.

On the date of accident, Petitioner was **47** years of age, ***married*** with **2** dependent children.

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

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

Respondent shall be given a credit of $**6,846.46** for TTD, $**0** for TPD, $**0** for maintenance, and $**0** for other benefits, for a total credit of $**6,846.46**.

Respondent is entitled to a credit of $**10,975.55** under Section 8(j) of the Act.

ORDER

Causation
The Arbitrator finds that petitioner sustained a work-related accident to the left shoulder as a result of the 7/30/18 accident. The Arbitrator finds that the petitioner failed to prove that his condition of ill-being related to the cervical spine, lumbar spine and right shoulder/arm are causally related to the accident date of 7/30/18. Benefits are hereby denied for the cervical spine, lumbar spine, right shoulder/arm and/or any other claimed injuries. *See Attached Rider to Decisions*.

Medical Benefits
As noted above, the Arbitrator awards all reasonable and related medical bills for the left shoulder from 7/30/18 through January 26, 2021. All other medical bills unrelated to the left shoulder are not causally related and not the responsibility of the Respondent. Respondent shall pay reasonable and necessary medical services of $5,796.94 to Premier Orthopaedic & Hand Center, as provided in Sections 8(a) and 8.2 of the Act. *See Attached Rider to Decisions*.

Temporary Total Disability
Respondent shall pay Petitioner temporary total disability benefits of $360.00/week for 20 3/7 weeks, commencing 2/17/20 through 7/9/20, as provided in Section 8(b) of the Act. Respondent shall be given a TTD credit of $6,846.46 for TTD paid from 2/17/20 through 6/28/20.

Permanent Partial Disability
The Arbitrator finds that Petitioner presented sufficient evidence to order an award of permanency for the left shoulder stemming from the July 30, 2018 accident. Based upon the PPD factors, the Arbitrator finds that petitioner sustained permanency to the left shoulder in the amount of 15% loss of use of man as a whole. The Arbitrator makes no permanency award for petitioner's cervical spine and lumbar spine.

Respondent shall pay Petitioner permanent partial disability benefits of $324.00/week for 75 weeks because the injuries sustained caused 15% loss of use of the person as a whole as provided in Section 8(d)2 of the Act. *See Attached Rider to Decisions*.

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.

Jacqueline C. Hickey

_____ **JANUARY 10, 2024**

Signature of Arbitrator

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

ILLINOIS WORKERS' COMPENSATION COMMISSION

Edward McClendon,	)	
	)	
Petitioner,	)	
	)	
v.	)	
	)	Case No. **18 WC 33530**
School District 149,	)	Consolidated w/ **21 WC 6943**
	)	
	)	
Respondent.	)	

RIDER TO DECISIONS

This consolidated matter proceeded to hearing on July 28, 2023, in Chicago, Illinois before Arbitrator Jacqueline Hickey on the Parties' Request for Hearing. Issues in dispute for Case No. 18WC033530 include: causation, medical bills, TTD, and nature & extent. See Arbitrator's Exhibit "Ax" 1. Issues in dispute for Case No. 21WC006943 include: accident, causation, medical bills, TTD, and nature & extent. See Arbitrator's Exhibit "Ax" 2. This Rider is applicable to both decisions rendered, as listed above.

FINDINGS OF FACT

Background

Petitioner testified that he has worked as a custodian for Respondent since 2016. Petitioner testified that prior to July 30, 2018, he had pain in his left shoulder, although he could not recall being seen for the left shoulder at Ingalls Memorial Hospital in 2016.

Work Accident on July 30, 2018

Petitioner testified that on July 30, 2018, he was moving furniture from one side of the building to the other, when he had pain in his left shoulder, neck and lower back. Petitioner sought treatment with his primary care physician, Dr. Savio Manatt, and was referred to Premier Orthopaedics and Hand Center, coming under the care of Dr. Venkat Seshadri on August 3, 2018 (PX1, pages 65-67). Petitioner continued to treat with Dr. Seshadri following the July 30, 2018 accident through January 26, 2021. Petitioner testified that he did not receive treatment for his alleged neck injury that occurred on July 30, 2018, for about one year due to the significant pain and treatment to his left shoulder, which resulted in two shoulder surgeries. Petitioner testified that the physician was initially concentrating on his left shoulder condition and did not worry about his neck.

Medical Treatment

Petitioner had an MRI of the left shoulder on August 9, 2018, which showed a full thickness tear of the supraspinatus tendon (PX1, pages 89-90). On October 9, 2018, Dr. Seshadri performed an arthroscopy and rotator cuff repair, subacromial decompression and debridement. The additional diagnosis was biceps tenodesis (PX1 Pages 85-86). Petitioner had another left shoulder MRI on February 1, 2019, which showed post-surgical changes (PX1, page 88). Petitioner then underwent physical therapy from November 12, 2018 through August 13, 2019 (PX1, pages 33-41, 100-105). Petitioner had a subsequent left shoulder MRI on December 18, 2019, again showing post-surgical changes (PX1, pages 57-58).

MVC July 15, 2019

Petitioner testified he had a motor vehicle accident on July 15, 2019, in which he temporarily aggravated his left shoulder and neck and for which he was seen that day at Advocate South Suburban Hospital emergency room. Petitioner testified that his symptoms after the motor vehicle accident were about the same as they were prior. Petitioner testified that the motor vehicle accident did not worsen or increase his pain and/or problems in the left shoulder or neck. Petitioner testified that other than the emergency room visit, he did not have any other treatment following the motor vehicle accident. Petitioner testified that other than the motor vehicle accident, he had no other accidents to the left shoulder or neck outside of the two work accidents on 7/30/18 and 2/2/21. Petitioner denied any prior problems and/or symptoms in the left shoulder or neck prior to July of 2018 and did not remember reporting left shoulder issues at Ingalls Hospital in 2016.

Dr. Chang- Narrative Report

On September 15, 2019, Dr. Chang authored a narrative report, in which he opined that Petitioner's ongoing neck pain and radiating right arm pain and lower back pain were directly related to the July 30, 2018 accident (PX4, pages 1-2). Dr. Chang interpreted Petitioner's July 23, 2019 MRI as a large herniated disc at C3-4, and a disc herniation at C4-5 causing neural impingement, and a small herniated disc at C5-6. Dr. Chang diagnosed chronic right C4-C5 radiculopathy secondary to the disc herniations and chronic L5 radiculopathy for which he ordered a lumbar MRI. On August 6, 2019, Dr. Chang diagnosed following the MRI, lumbar stenosis directly related to the work injury, and prescribed cervical epidural injections for the cervical disc pathology (PX3). Petitioner testified that he eventually stopped treating with Dr. Chang and was referred to a pain management physician at the same office as orthopedic Dr. Seshadri for ongoing treatment of his neck.

Medical Treatment post MVC

Petitioner testified that on July 23, 2019, he underwent an MRI of his neck and then officially began treating for his neck with Dr. Chang on July 25, 2019. The Arbitrator notes this was the first treatment specifically for Petitioner's neck, just ten days after the motor vehicle collision. Thereafter, Petitioner was referred to Dr. Chang by Dr. Manatt for his ongoing neck pain. The cervical MRI on July 23, 2019, showed cervical disc protrusions at C3-4 C4-5, C5-6 (PX1, page 87). Dr. Chang noted Petitioner's symptoms were exacerbated after the July 15, 2019 motor vehicle accident. On February 21, 2019, Dr. Chang noted Petitioner's neck pain since the July 30, 2018 accident (PX1, page 93). Petitioner testified that in the days after the July 15, 2019 motor

vehicle accident, his left shoulder and neck pain felt the same as since the July 30, 2018 accident and no worse following the July 15, 2019 motor vehicle accident.

Petitioner testified that he also began treating with Dr. Gastevski in April of 2020 for his neck. Petitioner testified that he underwent a variety of cervical epidural injections with Dr. Gastevski and that the injections did not provide any significant relief.

Due to ongoing issues and post-surgical changes, on February 17, 2020, Dr. Seshadri performed a second left shoulder arthroscopy and extensive debridement for adhesive capsulitis and bursitis (PX2, pages 61-62; PX5, pages 2-3). Petitioner also testified, in relationship to his left shoulder work injury from 2018, that he last treated with Dr. Seshadri on January 26, 2021. Petitioner underwent physical therapy from November 22, 2019, prior to the surgery, including for his lower back, through March 9, 2020 (PX2, pages 37-56). Subsequent to the surgery and therapy, Petitioner underwent cervical epidural injections with Dr. Chang on May 11, 2020, June 29, 2020, August 17, 2020 and October 26, 2020 (PX3, pages 16-21).

Dr. Seshadri again referred Petitioner for his neck pain to Dr. Gastevski at Premier Orthopaedics and Hand Center and was seen on November 24, 2020. Petitioner continued to see Dr. Gastevski through January 26, 2021, at which time he also had right shoulder pain for which he had an MRI on February 5, 2021, which showed tenodesis of the supraspinatus (PX6, pages 67-69, and 168-170). Petitioner testified he is not claiming the right shoulder issues as it related to his two workers' compensation cases. Petitioner was released to return to full duty work by Dr. Seshadri on January 26, 2021 for the left shoulder.

Time off work

Petitioner provided testimony in relationship to the payments he received following his July 2018 work accident. Petitioner testified that for a majority of the time, he was paid his full salary from the employer, but there were gaps in which he did not receive full salary. Petitioner testified that he did receive TTD benefits from February of 2020 through approximately June of 2020. Petitioner testified that he was off work and received TTD from February 17, 2020 through June 28, 2020, and returned to work on July 10, 2020. Petitioner testified he was off work and received salary from February 3, 2021 through September 3, 2021.

Second Work Accident on February 2, 2021

Petitioner admitted that he was released to return to full duty work by Dr. Seshadri on January 26, 2021 and did work until he sustained his next accident about a week or so later, on February 2, 2021, when he re-injured and re-aggravated his neck and left shoulder. On February 2, 2021, Petitioner testified he was shoveling snow by hand with a co-worker as the snow blower was not working. After a break, the plowing service plowed the snow up to 4 feet on the walkway, which he had to clear when the plowing service did not return, as Respondent school was serving meals to students. Petitioner testified the snow was heavy and wet, he was using a lot of force, standing up and bending down, moving the snow with a shovel for about one hour. Petitioner testified that his left shoulder, neck and back pain became worse following this activity. Petitioner returned to Dr. Seshadri on February 9, 2021, who noted the left shoulder symptoms following shoveling snow at work. Dr. Seshadri placed restrictions on work (PX6, pages 70-72). Petitioner testified

following February 9, 2021 visit, he did not see Dr. Seshadri for further treatment for the left shoulder.

Petitioner testified that his subsequent treatment concentrated on his neck and back conditions. Petitioner saw Dr. Gastevski on February 16, 2021, who noted Petitioner's new cervical injury on February 2, 2021 (PX6, pages 73-74). Dr. Gastevski prescribed a spinal cord stimulator due to the February 2, 2021 injury (PX6, pages 75-76). Dr. Gastevski continued to prescribe the spinal cord stimulator as the cervical epidural injections provided only temporary relief (PX6, pages 82-83). Petitioner testified he separately sought a second opinion and treatment with Dr. Tyndall at Lakeshore Bone and Joint Institute on July 21, 2021. Dr. Tyndall noted Petitioner's neck and back pain since the February 2, 2021 accident and prescribed cervical lumbar MRIs. The cervical MRI of July 23, 2021 showed similar results to the prior MRI of large herniated disc at C3-4, C4-5, C5-6. The August 27, 2021 lumbar MRI showed degenerative disc disease and bulging at L4-5. Dr. Tyndall testified these findings were consistent with Petitioner's symptoms. On November 29, 2021, Dr. Tyndall prescribed a two-level cervical fusion, a lumbar epidural injection, and then to follow a lumbar fusion at C4-5. The lumbar epidural injection was done on December 15, 2021. Dr. Tyndall referred Petitioner to therapy at Athletico from August 25, 2021 to November 22, 2021 (PX9). Dr. Tyndall testified that Petitioner's cervical and lumbar conditions and need for surgery were related to the February 2, 2021 accident. Dr. Tyndall also testified that Petitioner did not need nor would benefit from a spinal cord stimulator (PX8, pages 14-81 and PX11, pages 6-28, and 32).

Petitioner testified that he returned to Dr. Gastevski for treatment as he wished to proceed with the spinal cord stimulator. Petitioner had a trial spinal cord stimulator done on February 28, 2022 and the permanent spinal cord stimulator was implanted on March 11, 2022 at Advocate South Suburban Hospital (PX6, pages 104-106, 160-161; PX7, pages 81-204, including 117). Dr. Gastevski ordered an FCE which was done on May 25, 2023. Petitioner testified he used his best effort, despite the ongoing neck pain. The FCE report opined that the results were consistent with a light duty restriction involving up to 25 pounds lifting and 10 pounds overhead (PX9). On June 2, 2022, Dr. Gastevski discharged Petitioner with permanent restrictions per the FCE (PX6, page 142).

Petitioner's Current Condition

Petitioner testified that the two work injuries from July of 2018 and February of 2021 caused symptoms to the low back, shoulder, and neck. Petitioner testified that he had difficulty performing activities of daily living and had difficulty carrying groceries and lifting overhead. Petitioner testified that subsequent to June 2, 2022 he has performed side jobs through his own company, E&J Company, and since his brother and another worker assist, the work does not involve heavy labor. He is paid in cash about once a month for this work. Petitioner testified he does not do heavy household chores. Petitioner testified he continues to experience left shoulder, neck and back pain from the work injuries of July 30, 2018 and February 2, 2021, when lifting, carrying objects, overhead work and putting his left arm behind his back. Petitioner testified that this spinal cord stimulator is what has helped him most with his pain, as prescription medications provider little relief. Petitioner testified that he had not had any treatment with Dr. Seshadri since February 9, 2021 but had recently returned sometime in May of 2023 for symptoms concerning his unrelated right elbow.

Cross Examination of Petitioner

On cross examination, Petitioner testified that on 7/30/18, he sustained an acute injury to the left shoulder and neck as a result of moving furniture. Petitioner also testified that he had previously denied any prior left shoulder problems. When asked about prior left shoulder complaints and treatment back in March of 2016, petitioner claimed that he did not recall said treatment.

Petitioner testified as to the accident report (Rx. 4) that he completed in association with his 7/30/18 work accident. Petitioner testified that he completed the form about a week after the alleged accident. Petitioner confirmed that the accident report did not list any injuries to the neck and solely specified pain in the left shoulder and groin. Petitioner testified that he did not recall having any groin symptoms but admitted that the form was signed by him and his supervisor. Petitioner also confirmed that on July 10, 2019, he was released to return to full duty work at MMI by Dr. Seshadri. Petitioner admitted that from July 2018 through July 10, 2019 he did not undergo any specific treatment for his neck. Petitioner testified that upon his release by Dr. Seshadri in July of 2019, there were no referrals to treat with Dr. Chang or any other orthopedic physician for his neck. Petitioner testified that he did report neck complaints but did not undergo any formal treatment for the same until July 2019.

Petitioner testified that he was involved in a motor vehicle collision on 7/15/19. Petitioner testified that after the motor vehicle collision he was taken to the emergency room. He testified that he was a restrained driver and was hit on the driver's side and had a gradual onset of neck and upper back pain. Petitioner also reported some tingling in the right arm since the accident. Petitioner underwent a CT scan of the neck, which revealed potential disc herniations from C3 through C6. It was noted that Dr. Chang was contacted by the emergency room and requested to provide treatment recommendations. Petitioner was recommended by Dr. Chang to undergo an MRI of the neck and was then given a referral to treat with an orthopedic physician. Petitioner did confirm that after the motor vehicle accident, he underwent an MRI of the neck on July 23, 2019 and ultimately began treating with Dr. Chang for his neck on July 25, 2019. Petitioner confirmed that prior to the motor vehicle accident, he did not receive any medical care or treatment for the neck, but after the motor vehicle accident, he began receiving regular and consistent care and treatment for the neck.

Petitioner also testified to undergoing an MRI of the low back in August of 2019 following the motor vehicle accident. Petitioner admitted that he did not have any low back problems after the July 30, 2018 work accident. Petitioner did admit to having a prior history of low back symptoms.

Petitioner confirmed that he underwent an independent medical examination with Dr. Wehner in October of 2019. Petitioner confirmed that he provided a history to Dr. Wehner of performing various side job work under the remodeling company of "E&J Company". Petitioner testified that E&J is his own remodeling business that he runs with his wife. Petitioner admitted to performing various remodeling and side jobs under his own company. Petitioner testified that they would perform various home projects, but he would make other workers do the heavy work while he supervised. Petitioner also admitted to going to Prairie State University to try to get a certificate in HVAC classes. Petitioner testified that he did undergo some schooling but never completed it.

Petitioner testified that he continued to have symptomatology in the left shoulder and underwent a left shoulder debridement procedure, in February of 2020. Petitioner testified that he was still undergoing treatment with Dr. Chang during this time, but as of March 17, 2020, he did not treat with Dr. Chang any further.

Petitioner testified that after he stopped treating with Dr. Chang, he was given a referral to treat with a pain medicine physician, Dr. Gastevski. Petitioner began treating with Dr. Gastevski in April of 2020. Petitioner testified that he underwent four epidural injections into the C6-C7 level by Dr. Gastevski. Petitioner testified that Dr. Gastevski recommended Petitioner pursue a cervical spinal cord stimulator due to the lack of improvement from the cervical injections.

Petitioner confirmed that he was previously discharged from care and released to return to full duty work by Dr. Seshadri, his left shoulder doctor, in January of 2021. Petitioner confirmed that he did return to work until he sustained a new work accident on February 2, 2021 when he was shoveling snow. Petitioner again testified that he had one visit with Dr. Seshadri in relationship to the left shoulder following the second work accident. Petitioner was also given an injection into the left shoulder and did not follow up with Dr. Seshadri for any left shoulder treatment after February 9, 2021.

Petitioner testified that in February of 2021, he followed up with Dr. Gastevski. He reported that he had a reinjury from the shoveling incident and all of his prior pain complaints had returned. Petitioner testified that Dr. Gastevski recommended a spinal cord stimulator in February of 2021.

Thereafter, Petitioner testified as to his treatment with Dr. Tyndall. Petitioner confirmed that he was not referred by any physician to treat with Dr. Tyndall. Rather, a friend recommended Dr. Tyndall for a second opinion. Petitioner acknowledged that he chose to treat with Dr. Tyndall instead of going back to his prior orthopedic physician, Dr. Chang. Petitioner testified that he first saw Dr. Tyndall five months after his alleged "reinjury" at work in February of 2021.

Petitioner confirmed that during his treatment with Dr. Tyndall through November of 2021, he continued to report neck and low back symptoms and underwent physical therapy for the same. Petitioner testified that his neck and low back symptoms were the result of his injury in February of 2021. Petitioner testified that he did not have any complaints and/or treatment for the left shoulder during this period of time. There were no documented work restrictions or limitations in relationship to the left shoulder.

Petitioner also testified as to his independent medical examination with Dr. Deutsch in February of 2022. Petitioner testified that he provided Dr. Deutsch with an honest and accurate assessment of his symptoms and injuries.

Petitioner then testified as to his ongoing treatment with Dr. Gastevski after his discharge from care with Dr. Tyndall. Petitioner testified that Dr. Gastevski recommended a spinal cord stimulator. Petitioner testified that he underwent a spinal cord stimulator implant on March 11, 2022. Petitioner testified that following the spinal cord stimulator surgery, he continued to have symptoms in the low back and was ultimately given a referral for the FCE. Petitioner confirmed

that the FCE was prescribed by Dr. Gastevski in relationship to his ongoing cervical and lumbar symptomatology. Petitioner testified that he was given permanent work restrictions by Dr. Gastevski on June 2, 2022 pursuant to the FCE.

Petitioner did clarify on redirect examination that he did receive TTD benefits from February 17, 2020 through June 28, 2020. Petitioner testified that he did work light duty from July 10, 2019 up to the date of his surgery on February 17, 2020. Petitioner testified that he also worked full duty from July 10, 2020 up until February 2, 2021.

CONCLUSIONS OF LAW

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

To obtain compensation under the Act, Petitioner has the burden of proving, by a preponderance of the evidence, all of the elements of his claim *O'Dette v. Industrial Comm'n*, 79 Ill. 2d 249, 253 (1980) including that there is some causal relationship between his employment and his injury. *Caterpillar Tractor Co. v. Industrial Comm'n*, 129 Ill. 2d 52, 63 (1989) It is well established that the Act is a humane law of remedial nature and is to be liberally construed to effect the purpose of the Act - that the burdens of caring for the casualties of industry should be borne by industry and not by the individuals whose misfortunes arise out of the industry, nor by the public. *Shell Oil v. Industrial Comm'n,* 2 Ill.2nd 590, 603 (1954).

Decisions of an arbitrator shall be based exclusively on the evidence in the record of the proceeding and material that has been officially noticed. 820 ILCS 305/1.1(e). Credibility is the quality of a witness which renders his evidence worthy of belief. The Arbitrator, whose province it is to evaluate witness credibility, evaluates the demeanor of the witness and any external inconsistencies with his/her testimony. Where a claimant's testimony is inconsistent with his/her actual behavior and conduct, the Commission has held that an award cannot stand. *McDonald v. Industrial Commission,* 39 Ill. 2d 396 (1968); *Swift v. Industrial Commission,* 52 Ill. 2d 490 (1972). The Arbitrator, as the trier of fact in this case, has the responsibility to observe the witnesses testify, judge their credibility, and determine how much weight to afford their testimony and the other evidence presented. *Walker v. Chicago Housing Authority*, 2015 IL App (1st) 133788, ¶ 47.

It is the function of the Commission to judge the credibility of the witnesses and to resolve conflicts in the medical evidence and assign weight to witness testimony. *O'Dette v. Industrial Commission,* 79 Ill.2d 249, 253, 403 N.E.2d 221, 223 (1980); *Hosteny v. Workers' Compensation Commission,* 397 Ill. App. 3d 665, 674 (2009). Internal inconsistencies in a claimant's testimony, as well as conflicts between the claimant's testimony and medical records, may be taken to indicate unreliability. *Gilbert v. Martin & Bayley/Hucks,* 08 ILWC 004187 (2010).

For the case at hand, the Arbitrator observed Petitioner during the hearing and finds him to be a credible witness with regards to the left shoulder injury. However, with regards to the neck and low back injuries, the timeline of treatment, specifically the lack of treatment to the neck until after the intervening and unrelated July 2019 motor vehicle collision, deems the petitioner's

testimony not entirely reliable for the cervical and lumbar spine injures. Overall, there appear to be inconsistencies in Petitioner's testimony as well within the record and the histories he provided to the physicians. That said, Petitioner does not appear to be a sophisticated individual and these inconsistencies in his testimony/the record are not attributed to be an intentional attempt to mislead the Arbitrator. Instead, Petitioner appears to merely be a poor historian.

The Arbitrator further finds Dr. Tyndall (deposition testimony), Dr. Chang (narrative report), Dr. Gastevski (medical records), Dr. Seshadri (medical records), Dr. Vitello (IME reports), Dr. Wehner (IME reports), Mr. Castronovo, PT/DPT/MTC (FCE review) and finally Dr. Deutsch (IME deposition testimony), to be overall credible witnesses, and specifically finds the treating physicians to be persuasive in their opinions as it relates to the left shoulder injury. However, the Arbitrator finds the IME doctors, as a whole, and specifically Dr. Deutsch, to be more persuasive in their medical opinions regarding causation for the alleged cervical and lumbar injuries because it appears they collectively had more information at their disposal to review and consider. This includes these IME doctors having prior medical records and knowledge of the intervening July 2019 motor vehicle collision as well, as further explained below.

18WC033530- Conclusions of Law

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

To obtain compensation under the Act, a claimant must prove that some act or phase of his employment was a causative factor in his ensuing injuries. It is not necessary to prove that the employment was the sole causative factor or even that it was the principal causative factor, but only that it was a causative factor. *Tolbert v. Ill. Workers' Comp. Comm'n*, 2014 IL App (4th) 130523WC, ¶ 1, 11 N.E.3d 453. A work-related injury need not be the sole or principal causative factor, as long as it was *a* causative factor in the resulting condition of ill-being. Even if the claimant had a preexisting degenerative condition which made him more vulnerable to injury, recovery for an accidental injury will not be denied as long as he can show that his employment was also a causative factor. Thus, a claimant may establish a causal connection in such cases if he can show that a work-related injury played a role in aggravating his preexisting condition. *Sisbro, Inc. v. Industrial Comm'n,* 207 Ill. 2d 193, 205, 797 N.E.2d 665, 278 Ill. Dec. 70 (2003). "A chain of events which demonstrates a previous condition of good health, an accident, and a subsequent injury resulting in disability may be sufficient circumstantial evidence to prove a causal nexus between the accident and the employee's injury." *International Harvester v. Industrial Com.*, 93 Ill. 2d 59, 63 442 N.E.2d 908 (1982). A chain of events suggesting a causal connection may suffice to prove causation. *Consolidation Coal Co. v. Industrial Comm'n*, 265 Ill. App. 3d 830, 839 (1994). Prior good health followed by a change immediately following the accident allows an inference that a subsequent condition of ill-being is the result of the accident. *Navistar International Transportation Co. v. Industrial Comm'n*, 315 Ill. App. 3d 1197, 1205 (2000).

Left Shoulder:

The Arbitrator notes that accident is not in dispute for case number 18WC033530. Regarding causation, the Arbitrator finds that petitioner sustained an injury to the left shoulder on or about 7/30/18 at work for Respondent, School District 149. Specifically, the Arbitrator finds that petitioner aggravated his left shoulder on 7/30/18. Although the Arbitrator questions the reliability of petitioner's testimony regarding whether he sustained an acute trauma and injury to his cervical spine as well on 7/30/18. See "cervical spine" section below for further analysis.

Petitioner testified at trial that he sustained an acute, traumatic injury to the left shoulder and neck on 7/30/18, but the Arbitrator does not find petitioner's testimony entirely credible based upon the record and all of the evidence submitted at trial. This includes extensive medical records, narrative reports, IME reports and both treater and IME doctor testimony via deposition. The Arbitrator notes that pursuant the Accident report completed by the petitioner, he reported a gradual onset of symptoms to the left shoulder and groin. The Arbitrator notes that the petitioner did NOT report any neck symptoms on the accident report, in either portion of the report when asked (Rx. 4).

The Arbitrator notes that although the petitioner denied any prior injuries or problems to the left shoulder predating the 7/30/18 incident, the medical evidence clearly documents prior treatment and positive diagnostic findings for the left shoulder from Ingalls Memorial Hospital dating back to March of 2016 (Rx. 5). The "Ortho/Neuro Evaluation -OPT" dated 3/14/16 documents under patient complaint: "Pt reports not doing much with the left shld right now. Pt stated he has unbearable pain in the left shld with strenuous activities such as lifting and moving of the shld. Cold air makes the pain worse as well. Not moving the arm reduced the pain, but does not eliminate it." (Rx5 p. 4). During the left shoulder palpation, it was noted that Petitioner had tenderness in the left supraspinatus muscle belly and rotator cuff tendon insertion region and at the left biceps. Id. There was also noted popping of the left shoulder joint and ROM issues. Id. Further review of the Ingalls records document a prior diagnosis of full thickness tear of the left shoulder rotator cuff, recommendation for physical therapy and completion of the same, as well as pain medications and injections in January and February of 2016 (Rx. 5). The medical information described above is from treatment documented by and with Dr. Kishan Chand MD at Ingalls Memorial Hospital. See Rx5. Dr. Chand's medical notes also document "Pt has developed some left sided cervical pain since development of the rotator cuff tear." (Rx5 p. 5) Thus based on the above, it appears clear to the Arbitrator that petitioner had a preexisting condition in the left shoulder prior to the 7/30/18 work incident, as well as reported prior cervical issues as well.

Further, the Arbitrator highlights petitioner's initial medical visit on 7/31/18 following the alleged 7/30/18 work accident (Px. 1). Petitioner was examined by his primary care physician, Dr. William Tan. The Arbitrator notes that Petitioner stated that his left shoulder had been bothering him for several months now. He denied any specific trauma, but the pain affected him daily and caused generalized headaches. He did not take any medication for his pain. On examination, petitioner did not have any abnormalities in the neck, but did complain of some anterior left shoulder pain brought on by abduction and external rotation. Petitioner was given a referral to follow up with Dr. Seshadri, an orthopedic physician, for his shoulder pain.

The record as a whole show that petitioner sought regular and consistent medical care in relationship to his left shoulder after the 7/30/18 work accident, from August of 2018 through July 10, 2019 with Dr. Seshadri. In addition, the Arbitrator notes that due to ongoing issues and post-surgical changes seen by the treating surgeon, on February 17, 2020 Dr. Seshadri performed a second left shoulder arthroscopy and extensive debridement for adhesive capsulitis and bursitis (PX2, pages 61-62; PX5, pages 2-3). Petitioner underwent physical therapy from November 22, 2019, prior to the surgery, through March 9, 2020, post second shoulder surgery (PX2, pages 37-56). Petitioner testified and the medical records confirms that in relationship to his left shoulder work injury, that he began treatment with Dr. Seshadri in July/August 2018 and he last treated with Dr. Seshadri on January 26, 2021.

The Arbitrator notes that there was no evidence presented that Petitioner worked anything but full duty for Respondent prior to the 7/30/18 work accident. The Arbitrator relies on the credible and persuasive medical opinions of the treating physician, Dr. Seshadri, and the treating records as it relates to the left shoulder. The Arbitrator finds Petitioner, despite working full duty, clearly had a prior left shoulder injury. Therefore the Arbitrator finds that Petitioner aggravated his left shoulder at work on 7/30/18 when he was moving furniture as a part of his job duties. Petitioner promptly reported the injury, promptly sought out care, and was taken off of work for the left

shoulder injury. This left shoulder aggravation injury was significant enough to cause a change in Petitioner's left shoulder subjective symptoms and necessitate treatment with an orthopedic surgeon. The Arbitrator believes Petitioner testimony that he injured his left shoulder while moving furniture and notes Petitioner is not the best historian, finding nonetheless an aggravation to left shoulder injury occurred on 7/30/18 at work.

The Arbitrator finds that the left shoulder treatment from 7/30/18 through 1/26/21 was reasonable, necessary and related, including petitioner's left shoulder surgeries on 10/9/18 and 2/17/20, AND all preoperative and post operative related care. The Arbitrator notes that Dr. Seshadri authorized the petitioner to return to work full duty as it relates to the left shoulder on July 10, 2019 (following the first left shoulder surgery) and petitioner did return to work full duty, prior to the MVC on 7/15/19. See below for further discussion.

Cervical Spine & other alleged injuries:

The Arbitrator finds it significant that from 8/3/18 through 7/10/19, during petitioner's treatment with Dr. Seshadri, petitioner did not complain of neck pain or receive any treatment or diagnoses in relationship to his cervical spine. Petitioner admitted that prior to 7/15/19, he did not receive any medical treatment for his neck and was not recommend or ordered to have any diagnostic scans or orthopedic visits with Dr. Chang prior to his unrelated and intervening motor vehicle accident on 7/15/19.

On July 15, 2019, petitioner testified that he was involved in a motor vehicle accident and sustained injuries to his left shoulder, neck and low back. The Arbitrator notes that petitioner was examined at the emergency room of South Suburban Hospital immediately after the car accident on July 15, 2019, (Rx. 6). The Arbitrator notes that petitioner presented with neck and bilateral shoulder complaints after getting struck on the driver's side. The ER records note under history of present illness:

"The patient presents with 48M with PMHx migraines, HLD presents C/o neck and upper back pain s/p MVC that occurred this morning. Pt was a restrained driver. Sts the car was hit on the driver's side of the vehicle with minimal damage. There was no intrusion into the vehicle or airbag deployment. Pt did not hit his head or have LOC. He was ambulatory at the scene. Sts she had gradual onset of neck and upper back pain throughout the day. Sts he is currently being treated for neck issues with right side radicular sx. Pt notes tingling to his right arm since the accident, this is similar to previously but more constant than normal. Sts he has posterior head pain as well. Denies weakness, low back pain, chest pain, shortness of breath, heady injury, LOC, dizziness, nausea or vomiting, vision changes or any other symptoms, injuries or complaints. PT is not on anticoagulants." (Rx6, p. 37).

The ER diagnosis listed "musculoskeletal pain, MVC, radicular pain and DDD cervical. (Rx6, p. 39). At the ER, Petitioner underwent a CT scan of the neck which revealed disc herniations from C3-C6 (Rx. 6). The Arbitrator notes that the ER records document a recommendation for a cervical spine MRI and a referral to Dr. Chang, a spine specialist, after the ER visit. The Arbitrator notes that 7/15/19 was the first documented treatment that petitioner received for the neck after the alleged 7/30/18 accident. Additionally, the CT scan from 7/15/19 documenting disc herniations was the first diagnostic scan of the neck after the work accident of 7/30/18.

Dr. Chang- treating physician

The Arbitrator notes that it is not until the MVC on 7/15/19 that petitioner appears to initiate ad or seek out care and treatment for the neck and undergoes treatment with his cervical spine physician, Dr. Chang. The Arbitrator also questions the veracity and persuasiveness of Dr. Chang's causation opinions as they are based upon incomplete and inaccurate information reported to him by the petitioner. Petitioner was first examined by Dr. Chang on 7/25/19, just 10 days after his MVA (Px3 & Px4). Prior to 7/25/19, petitioner did not appear to report neck complaints nor seek medical treatment for his neck. On 7/25/19, Petitioner presented with complaints of neck and low back pain. Petitioner reported a one-year history of neck pain radiating into the right arm and low back. Petitioner stated that in the past two months he has noticed radiating pain into the right leg, causing his right leg to feel very heavy and numb. Petitioner stated that he had difficulty walking because of these symptoms. Petitioner reported that his symptoms started in August of 2018 when moving furniture at school. He stated that he initially had neck pain radiating to the left shoulder. Based upon the physical examination findings and diagnostics, Dr. Chang diagnosed petitioner with herniated discs in the neck, and also recommended a lumbar spine MRI given his symptoms.

The Arbitrator notes that there is no mention of the motor vehicle accident even though petitioner was directly referred to Dr. Chang from the emergency room on the date he treated status post his MVA on 7/15/19. The Arbitrator questions petitioner's history as provided to Dr. Chang. The Arbitrator notes that petitioner reported zero complaints of neck pain prior to the 7/15/19 MVA and received no treatment for the neck or even low back prior to the MVA on 7/15/19. The history provided to Dr. Chang is inconsistent with all of the prior medical records from July 2018 until July 2019. The Arbitrator finds that petitioner's history to Dr. Chang was inaccurate. Based on the above, the Arbitrator finds that any treatment for and/or diagnoses of the neck/cervical spine and/or lumbar spine are not related to the 7/30/18 work accident. The Arbitrator further finds the opinions of Dr. Chang from his 9/15/19 narrative report to lack persuasion in regard to causation for the cervical and lumbar spine. The Arbitrator finds that Dr. Chang's opinions are based upon incomplete and inaccurate information. Dr. Chang's opinions are based upon a presumption that petitioner has had ongoing neck and low back pain since July 20, 2018. This is clearly erroneous. Dr. Chang did not have the opportunity to review any medical records or documentation prior to July 25, 2019, other than the MRI. If these items had been provided to Dr. Chang, he would have been made aware that petitioner did not voice any complaints to the neck or low back between July of 2018 and July of 2019. Further, for reasons unknown, petitioner did not make Dr. Chang aware of the MVA from 7/15/19 which, to the Arbitrator, was clearly a causative factor of petitioner's newly developed neck and low back pain. Thus, based upon the medical evidence and testimony and timeline of treatment/events, the Arbitrator does not find the opinions of Dr. Chang as persuasive in regard to causation for the cervical and lumbar spine (See Px. 3).

The Arbitrator finds it significant that petitioner went almost 1 year without any treatment or reported problems to the neck, until his MVC, and immediately thereafter (specifically received ER and CT scan on the day of the MVC) petitioner began receiving treatment and documenting neck complaints. The Arbitrator finds that petitioner's cervical and lumbar spine issues stem from the MVC, and not the work injury on 7/30/18 as he claimed at trial.

The Arbitrator also finds the MVC accident on 7/15/19 as significant based upon the physical therapy records from Premier Orthopedic and Hand Center (Px. 1, 3). The Arbitrator notes that all physical therapy treatment prior to 7/15/19 documented an accident date on 7/30/18. However, all treatment after July of 2019 documents neck and radicular symptoms stemming from a "date of injury" on 7/15/19, the date of the motor vehicle accident (Px. 1). It appears that even some of the treaters' physical therapy records document the 7/15/19 motor vehicle accident as the cause of petitioner's newly developed neck and upper extremity radicular complaints.

IME- Dr. Wehner's Opinions

The Arbitrator finds the opinions of Dr. Wehner to be persuasive in regard to causation for the cervical and lumbar spine (Rx. 2). Dr. Wehner's initial evaluation on October 22, 2019 highlighted petitioner's initial left shoulder complaints stemming from the alleged work injury on 7/30/18. At the time of the evaluation, Petitioner stated that he cannot go back to work because of his symptoms to both arms. Petitioner denied neck pain prior to the work accident. He did state that he had back pain years ago due to a history of scoliosis, but he never had symptoms going down the right leg. Petitioner stated that he had a motor vehicle accident approximately one month prior to the IME. He was hit on the front right side and was taken to Advocate South Suburban Hospital where he was evaluated for neck pain. Petitioner reported performing side jobs doing remodeling under the name of E & J, which is his own company. He stated that he did a project over the weekend where they installed a water tank, but someone else did all of the heavy work. Petitioner also noted that his nephew paints while he supervises.

The Arbitrator notes that Dr. Wehner was provided with the entirety of petitioner's medical treatment records from 7/30/18 up to the date of the IME. Petitioner had been released to full duty work related to the left shoulder by Dr. Seshadri on July 10, 2019. Dr. Wehner noted that petitioner did not report a specific injury on July 30, 2018. He reported that he had increased symptoms due to moving furniture throughout the course of a day. Petitioner's initial complaint was left shoulder pain. There was no indication of any cervical spine injury producing any right arm radicular pain complaints from the injury and documented in the initial treating records. Petitioner also had an intervening injury with a significant motor vehicle accident which showed pathology at C3 through C5 with associated degenerative conditions. Dr. Wehner opined in her report that the activities on July 30, 2018 did not cause petitioner's current complaints.

In regard to petitioner's neck and lumbar pain complaints, Dr. Wehner opined that the neck and lumbar spine complaints are not causally related to the July 30, 2018 accident. Lastly, Dr. Wehner opined that petitioner did not require any additional diagnostic or therapy treatment as it relates to the July 30, 2018 accident. Petitioner underwent a course of surgery and physical therapy for the left shoulder and has since been released to return to full duty work. It was noted that petitioner's neck complaints were likely trapezial pain complaints and resolved with treatment to the left shoulder. Petitioner was authorized to return to full duty work and did not require any additional medical treatment for his cervical or lumbar conditions that would be causally related to the July 30, 2018 event. Dr. Wehner opined that petitioner had been released full duty by Dr. Seshadri and had reached MMI in regards to the July 30, 2018 accident (Rx. 2). The Arbitrator notes that Dr. Wehner drafted subsequent reports in 2020 and 2021 in which her opinions as to causation did not change. Dr. Wehner had the opportunity to review all of the pertinent medical records and have a complete picture of petitioner's medical care and treatment.

Dr. Wehner consistently opined that petitioner's alleged neck and low back complaints were NOT causally related to the 2018 injury, nor the February 2021 accidents (Rx. 2).

IME Dr. Deutsch's opinions

The Arbitrator finds the opinions of Dr. Deutsch to be persuasive and consistent with the prior opinions from Dr. Vitello and Dr. Wehner based upon the medical facts and evidence in this claim (Rx. 3). The Arbitrator again acknowledges the significance of Dr. Deutsch's opinions based upon the totality of the medical evidence and documentation provided. All of the Respondent IME physicians were provided with all of the relevant medical records associated with the claim (Rx. 3).

The Arbitrator noted that Dr. Deutsch found 5 out of 5 positive Waddell signs during his evaluation of the petitioner (similar to the evaluation performed by Dr. Wehner). Dr. Deutsch testified that 3 out of 5 Waddell's signs are indicative of symptom exaggeration, and petitioner hit all 5 (Rx. 3). The Arbitrator noted that Dr. Deutsch opined that there was no mechanism of injury for the cervical spine, in relationship to the 7/30/18 accident or the 2/2/21 accident. Dr. Deutsch noted that petitioner did not start treating for the neck until a year after the July 2018 work accident. Dr. Deutsch found no objective findings of any injury on imaging (Rx. 3). Dr. Deutsch also opined that the 2/2/21 accident showed no new symptoms or real mechanism of injury and petitioner's ongoing subjective complaints were inconsistent with the objective findings (Rx. 3).

Dr. Deutsch opined that petitioner would not benefit from any medical treatment to the neck in relationship to either 2018 or 2021 work accidents. Dr. Deutsch also agreed with Dr. Tyndall (treater) and Dr. Wehner (IME) that a spinal cord stimulator ("SCS") was <u>not</u> reasonable, necessary or related (Rx. 3).

The Arbitrator found the opinions of Dr. Deutsch to be persuasive in illustrating that the SCS was not reasonable because it really did not improve petitioner's functional status and the FCE that petitioner underwent was highlighted by self-limiting behavior and exaggerated findings consistent with those reported by Dr. Deutsch.

The Arbitrator finds Dr. Deutsch's opinions as supportive of the totality of the medical evidence and testimony in that the 2018 work accident was not a competent mechanism of injury for the cervical spine. Dr. Deutsch noted that there were no objective findings of the cervical spine on imaging to support a work injury. Dr. Deutsch noted that petitioner only began to complain of neck pain after the MVC and after being released from medical care shortly before the MVC in July of 2019. Dr. Deutsch confirmed that petitioner did not treat for his neck for a year after the 2018 injury and the objective findings were insignificant in the neck.

Dr. Tyndall Deposition (Px. 7)

The Arbitrator finds the opinions of the second opinion treater, Dr. Tyndall, to be less persuasive than the opinions of Dr. Deutsch as to causation. The Arbitrator finds that the opinions of Dr. Tyndall are based on insufficient evidence and understanding, as well as incomplete records/petitioner history. The Arbitrator notes that Dr. Tyndall had zero knowledge of any prior injury from July of 2018 and/or any understanding or knowledge of petitioner's cervical spine

complaints prior to the alleged second accident in February of 2021. Dr. Tyndall admits that he first examined the petitioner about 5 months after the alleged accident in February of 2021. Dr. Tyndall did not review any medical records or documentation prior to his initial visit of the petitioner in July of 2021. Dr. Tyndall testified that it was his opinion that petitioner's complaints and MRI findings were the result of the February 2021 accident, and not related to anything prior. Dr. Tyndall's opinions are based solely on petitioner's "history" and allegation that his neck complaints were exacerbated by the work injury in February of 2021. Dr. Tyndall's opinions are based upon limited and incomplete information and documentation.

The Arbitrator notes that on cross examination, Dr. Tyndall admitted to having zero knowledge or information regarding petitioner's medical treatment or care prior to July of 2021. Dr. Tyndall testified that the only knowledge of petitioner's treatment and injury was based upon the information reported to him by the petitioner in July of 2021. Dr. Tyndall had no knowledge of any treatment that petitioner underwent between February and July of 2021. The Arbitrator also questions Dr. Tyndall's understanding of the work accident itself from February 2021. Dr. Tyndall admitted that he had no idea what actually happened during the alleged accident in February of 2021. Dr. Tyndall admitted that he had no understanding of the mechanism of injury, only that petitioner reported he sustained an accident on 2/2/21. Dr. Tyndall did not even know that petitioner's alleged accident was related to shoveling snow.

The Arbitrator does not find Dr. Tyndall's opinions to be persuasive considering his lack of understanding and knowledge of any alleged mechanism of injury. Dr. Tyndall's opinions are based solely upon petitioner's report of a work injury (no specific mechanism of injury) and petitioner's subjective reporting of neck pain. Dr. Tyndall admitted that he had no understanding of whether or not the alleged work injury caused a specific injury to the neck. Dr. Tyndall's understanding of the injury is based solely on the report from the petitioner that he sustained some sort of accident in February of 2021 that aggravated his neck pain. Dr. Tyndall admitted that his opinions as to causation could change if petitioner's MRI findings in July of 2021 were similar to the MRI findings dating back to 2019. Dr. Tyndall opined that the only way his opinions would change if the *prior* MRI scans are similar to the scans in 2021. Additionally, the Arbitrator finds Dr. Tyndall's testimony significant in regard to the lumbar spine allegations. Dr. Tyndall admitted that petitioner first alleged lumbar spine complaints in August of 2021, which is approximately 5 months post the alleged second work incident. Dr. Tyndall recommended an MRI of the lumbar spine due to the newly alleged complaints. Dr. Tyndall admitted that he had no opinion as to whether the lumbar spine complaints are related to the February 2021 alleged accident. Dr. Tyndall opined that the treatment recommendations for the lumbar spine are NOT causally related to the February 2021 accident.

After review of the medical evidence and testimony, the Arbitrator puts little weight and/or significance as to the opinions rendered by Dr. Tyndall. The Arbitrator finds the opinions to be insufficient and based upon incomplete knowledge and evidence. The opinions of Dr. Tyndall as to causation for the cervical spine, do not persuade the Arbitrator.

Respondent Witness- FCE Analysis by Joe Castronovo

The Arbitrator notes that the petitioner was recommended to undergo an FCE on 5/25/22 at the recommendation of Dr. Gastevski. The Arbitrator notes that Dr. Gastevski recommended

petitioner undergo the FCE due to the alleged ongoing limitations in the neck and low back. The Arbitrator notes that Dr. Gastevski was not recommending the FCE in relationship to the previously accepted left shoulder condition. The Arbitrator notes that petitioner did not receive any medical treatment for the left shoulder since 2/9/21. The Arbitrator notes that petitioner did not report any symptoms and/or problems related to the left shoulder since February 9, 2021. The Arbitrator notes that any limitations/restrictions documented within the FCE from 5/25/22 were in relationship to the disputed neck and low back.

Petitioner argues that the FCE from 5/25/22 was valid and provided permanent work restrictions precluding his ability to return to work as a custodian due to his neck and low back limitations. However, the Arbitrator finds the narrative report from Mr. Castronovo persuasive in establishing the limitations and inaccuracies of the FCE (Rx. 9). The Arbitrator notes that Mr. Castronovo's report highlights inaccuracies related to the validity testing performed effectively illustrating that lack of full effort and/or validity of the FCE results. Further, the report highlights petitioner's exaggerated presentation of his suggested impairments (Rx. 9). Based upon Mr. Castronovo's analysis, the Arbitrator finds the FCE to be an invalid representation of petitioner's functional capabilities. Id. The Arbitrator finds though that the FCE is overall irrelevant as the cervical spine and lumbar spine are not causally related to the 7/30/18 work accident and therefore any restrictions for the same are not considered by the arbitrator in determining causation, permanency, etc.

SUMMARY

The Arbitrator finds that petitioner's cervical spine, lumbar spine and right shoulder condition are not causally related to the 7/30/18 work accident. In addition to the persuasive opinions of Dr.'s Vitello, Wehner and Deutsch, the Arbitrator finds that not only did petitioner fail to receive any medical treatment or document any complaints of neck pain for almost an entire year from July 2018 until July of 2019, but the Arbitrator also finds that the MVC on 7/15/19 was an intervening incident that caused, aggravated or accelerated petitioner's cervical spine, lumbar spine and right upper extremity condition.

For all the documented reasons above, the Arbitrator finds that petitioner failed to present sufficient evidence to establish that his alleged cervical spine condition, lumbar spine condition and right upper extremity condition were causally related to the 7/30/18 work injury. Accordingly, all medical, TTD, and permanency associated with the cervical spine, lumbar spine condition, and right shoulder condition are hereby denied.

Based upon the totality of the medical evidence and testimony, the Arbitrator finds that the petitioner sustained a compensable aggravation injury to the left shoulder on or about 7/30/18. The Arbitrator finds that the petitioner underwent reasonable and related treatment to the left shoulder through the date of his discharge on January 26, 2021.

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

The Arbitrator adopts her findings of fact and conclusions of law contained above and incorporates them by reference as though fully set forth herein.

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

Under Section 8(a) of the Act, a claimant is entitled to recover reasonable medical expenses that are causally related to the accident and that are determined to be required to diagnose, relieve, or cure the effects of a claimant's injury. The claimant has the burden of proving that the medical services were necessary, and the expenses incurred were reasonable. *City of Chicago v. Illinois Workers' Compensation Comm'n* 409 Ill. App. 3d 258, 267 (1st Dist., 2011). Based upon the Arbitrator's finding with respect to casual connection, reasonable and necessary treatment for the left shoulder was prescribed and provided by Dr. Seshadri, including preoperative and post operative medical care as well.

Petitioner's medical bills are in dispute. As noted above, the Arbitrator awards all reasonable and related medical bills for the left shoulder from 7/30/18 through January 26, 2021 (last date of service for left shoulder). See Px12. All other medical bills unrelated to the left shoulder are not causally related and not the responsibility of the Respondent. This is supported by Petitioner's medical records and the opinions of Dr. Seshadri. The Arbitrator finds that the medical opinions and treatment plans set forth in the medical records from Dr. Seshadri are credible and reasonable for his work-related left shoulder injury.

As such, the Arbitrator orders Respondent to pay Petitioner directly for the following outstanding medical services, pursuant to the Medical Fee Schedule and Sections 8(a) and 8.2 of the Act: (*See also Perez v. Illinois Workers' Compensation Comm'n,* 2018 IL App (2d) 170086WC, ¶ 17, 96 N.E.3d 524.)

- **Premier Orthopaedic & Hand Center $5,796.94 outstanding and awarded** (DOS 8/3/18-3/13/20) *See Px1, p.23 and Px2 p..36*
    - Premier Orthopedics bills from 2/3/21 through 3/11/22 are for cervical spine treatment and are not awarded
- **Advocate South Suburban Hospital $0 awarded** (2022 unrelated cervical spine treatment) *See Px7, pg. 4*
- **Athletico Physical Therapy $0 awarded** (2021 unrelated cervical spine treatment) *See Px9, p 1-3*

The parties stipulated that Respondent is entitled to a credit under Section 8(j) of the Act of $10,975.55. (*See Px10)*

Issue K, whether Petitioner is entitled to temporary total disability benefits, the Arbitrator finds as follows:

The Arbitrator adopts her findings of fact and conclusions of law contained above and incorporates them by reference as though fully set forth herein.

A claimant is temporarily totally disabled from the time an injury incapacitates him from work until such time as he is as far recovered or restored as the permanent character of his injury will permit. *Westin Hotel v. Indus. Comm'n*, 372 Ill.App.3d 527, 542 (1st Dist. 2007). In determining whether a claimant remains entitled to receiving TTD benefits, the primary consideration is whether the claimant's condition has stabilized and whether she is capable of a return to the workforce. *Interstate Scaffolding, Inc. v. Illinois Workers' Comp. Comm'n*, 236 Ill.2d 132, 148 (2010). Once an injured employee's physical condition stabilizes, she is no longer eligible for TTD benefits. *Archer Daniels Midland Co. v. Indus. Comm'n*, 138 Ill.2d 107, 118 (1990). To be entitled to TTD benefits, it is the claimant's burden to prove not only that he did not work but also that he was unable to work. *Holocker v. Illinois Workers' Compensation Comm'n,* 2017 IL App (3d) 16036WC, P35 (3rd Dist., 2017). The fundamental purpose of the Act is to provide injured workers with financial protection until they can return to the work force. Id. When determining whether an employee is entitled to TTD benefits, the test is whether the employee remains temporarily totally disable as a result of a work-related injury and whether the employee is capable of returning to the work force. Id. The touchstone for determining whether claimant is entitled to TTD is whether the claimant's conditions had stabilized to the extent that they are able to reenter the workforce. Id. at P40.

It is a well-settled principle that when a claimant seeks TTD benefits, the dispositive inquiry is whether the claimant's condition has stabilized, i.e., whether the claimant has reached maximum medical improvement. *Westin Hotel v. Industrial Comm'n*, 372 Ill.App.3d 527, 542, 310 Ill.Dec. 18, 865 N.E.2d 342 (2007); *Land & Lakes Co. v. Industrial Comm'n*, 359 Ill.App.3d 582, 594, 296 Ill.Dec. 26, 834 N.E.2d 583 (2005); *F & B Manufacturing Co. v. Industrial Comm'n*, 325 Ill.App.3d 527, 531, 259 Ill.Dec. 173, 758 N.E.2d 18 (2001). See also *Archer Daniels Midland Co. v. Industrial Comm'n*, 138 Ill.2d 107, 118, 149 Ill.Dec. 253, 561 N.E.2d 623 (1990) (TTD compensation is provided for in section 8(b) of the Workers' Compensation Act, which provides, "[W]eekly compensation * * * shall be paid * * * as long as the total temporary incapacity lasts," which this court has interpreted to mean that an employee is temporarily totally incapacitated from the time an injury incapacitates him for work until such time as he is as far recovered or restored as the permanent character of his injury will permit).

Having found Petitioner sustained a compensable condition of ill-being relating to his left shoulder, arising out of in in the course and scope of his employment on July 30, 2018 and that his condition of ill-being for the left shoulder is causally related to this work accident, any corresponding periods of temporary total disability incurred for the left shoulder injury would be the responsibility of Respondent. TTD covering periods of time off work solely for the cervical and lumbar spine conditions are not awarded.

Respondent shall pay Petitioner temporary total disability benefits of $360.00/week for 20 3/7 weeks, commencing 2/17/20 through 7/9/20, as provided in Section 8(b) of the Act.

Respondent shall be given a TTD credit of $6,846.46 for TTD paid from 2/17/20 through 6/28/20.

Issue (L) what is the nature of Petitioner's injury, the Arbitrator finds as follows:

The Arbitrator adopts her findings of fact and conclusions of law contained above and incorporates them by reference as though fully set forth herein.

In determining PPD benefits, Section 8.1b(b) of the Act directs the Commission to consider: "(i) the reported level of impairment pursuant to subsection (a); (ii) the occupation of the injured employee; (iii) the age of the employee at the time of the injury; (iv) the employee's future earning capacity; and (v) evidence of disability corroborated by the treating medical records." 820 ILCS 305/8.1b(b); *Con-Way Freight, Inc. v. Illinois Workers' Compensation Comm'n,* 2016 IL App (1st) 152576WC, ¶ 22, 67 N.E.3d 959. "No single enumerated factor shall be the sole determinant of disability." 820 ILCS 305/8.1b(b). "None of the factors set forth in section 8.1b is to be the sole determinant of the claimant's disability." *Corn Belt Energy Corp. v. Illinois Workers' Compensation Comm'n*, 2016 IL App (3d) 150311WC, ¶ 49.

Pursuant to subsection (i), Respondent obtained multiple independent medical evaluation(s), including evaluations with Dr. Vitello and Dr. Wehner. Dr. Vitello provided an opinion in October of 2022 indicating that petitioner was capable of returning to full duty work and does not require any medical treatment for the left shoulder. Dr. Vitello opined that petitioner reached MMI. Accordingly, Dr. Vitello provided an impairment rating of 9% left upper extremity impairment, or 5% whole person impairment. Dr. Vitello did not provide an impairment rating for the cervical spine, and he determined it was not a causally related injury. The Arbitrator gives some weight to this factor.

With regard to subsection (ii), the Arbitrator notes that petitioner was employed as a Custodian. This was a demanding physical labor position; however Petitioner was released to return to full duty work as it relates to his left shoulder injury in July 2019. The Arbitrator also notes that as of the date of trial, petitioner testified that he owns and operates his own remodeling company and performs various home repairs and remodeling activities. This new company and his new role/job is also physical which Petitioner testified he is able to do with the help of his employees. The Arbitrator gives some weight to this factor.

With regard to subsection (iii), petitioner was 47 years of age at the time of the accident. Petitioner is currently working and not near retirement age. The Arbitrator gives little weight to this factor.

With regard to subsection (iv), the employee's future earning capacity, the petitioner was released to return to full duty work at MMI in July 2019. Petitioner has not treated for his left shoulder since February of 2021 and was never given any permanent restrictions for the left shoulder. The Arbitrator finds that petitioner was capable of returning to full duty work as it pertains to the left shoulder and has started his own home remodeling business. Petitioner performs the work himself but also has helpers. The Arbitrator gives moderate weight to this factor.

With regard to subsection (v), evidence of disability corroborated by the treating medical records, the Arbitrator finds that petitioner sustained a work accident that resulted in two shoulder surgeries. Petitioner testified he does not do heavy household chores. Petitioner testified he continues to experience left shoulder, neck and back pain from the work injuries of July 30, 2018 and February 2, 2021, when lifting, carrying objects, overhead work and putting his left arm behind his back. There were permanent restrictions given as it pertains to the cervical and lumbar spine, however the Arbitrator does not rely on the FCE or restrictions after finding no causation for either cervical or lumbar spine condition. The Arbitrator notes that Petitioner has not sought any medical treatment for the shoulder since February of 2021 and continues to work at and for his own home remodeling construction company. Therefore, the Arbitrator gives moderate weight to this factor.

Based upon the above factors, and the record taken as a whole, the Arbitrator finds that petitioner sustained permanent partial disability to the extent of 15% loss of use of man as a whole. Respondent shall pay Petitioner permanent partial disability benefits of $324.00/week for 75 weeks because the injuries sustained caused 15% loss of use of the person as a whole as provided in Section 8(d)2 of the Act.

For the reasons stated above, Petitioner is entitled to an award of benefits under The Illinois Workers' Compensation Act consistent with the findings herein.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	20WC002844
Case Name	Antoinette Dortch v. Chicago Transit Authority
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	24IWCC0377
Number of Pages of Decision	14
Decision Issued By	Amylee Simonovich, Commissioner

Petitioner Attorney	Haris Huskic
Respondent Attorney	Barrett Long

DATE FILED: 8/7/2024

/s/ Amylee Simonovich, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

ANTOINETTE DORTCH,

Petitioner,

vs. NO: 20 WC 02844

CHICAGO TRANSIT AUTHORITY,

Respondent.

DECISION AND OPINION ON REVIEW

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

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed July 20, 2023 is hereby affirmed and adopted.

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

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

The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

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

August 7, 2024

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AHS/ldm
051

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

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	20WC002844
Case Name	Antoinette Dortch v. Chicago Transit Authority
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	11
Decision Issued By	Nina Mariano, Arbitrator

Petitioner Attorney	Haris Huskic
Respondent Attorney	Laura Hartin

DATE FILED: 7/20/2023

/s/Nina Mariano; Arbitrator

Signature

THE INTEREST RATE FOR THE WEEEK OF JULY 18, 2023 5.25%

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Antoinette Dortch
Employee/Petitioner

v.

Chicago Transit Authority
Employer/Respondent

Case # **20** WC **002844**

Consolidated cases: _____

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Nina Mariano**, Arbitrator of the Commission, in the city of **Chicago**, on **2/21/2023**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On **12/20/2019**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $**65,777.40**; the average weekly wage was $**1,264.95**.

On the date of accident, Petitioner was **54** years of age, ***single*** with **0** dependent children.

Petitioner ***N/A*** received all reasonable and necessary medical services.

Respondent ***N/A*** 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**.

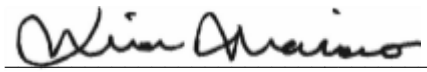
Respondent is entitled to a credit of $**0** under Section 8(j) of the Act.

ORDER

BECAUSE THE ARBITRATOR FINDS PETITIONER FAILED TO ESTABLISH ACCIDENT OR CAUSAL CONNECTION, ALL TTD, PPD AND MEDICAL BENEFITS ARE DENIED.

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

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



Signature of Arbitrator

July 20, 2023

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

ILLINOIS WORKERS' COMPENSATION COMMISSION

Antoinette Dortch,	)	
	)	
Petitioner	)	
v.	)	Case No. 20 WC 002844
	)	
Chicago Transit Authority,	)	
	)	
Respondent.	)	

FINDINGS OF FACT

The case was heard by the Honorable Nina Mariano, Arbitrator of the Workers' Compensation Commission, in the city of Chicago, on February 21, 2023. After hearing the proofs and reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues below and includes those findings in this document.

Antoinette Dortch (hereinafter "Petitioner") testified that she was employed as a Money Handler I at the Chicago Transit Authority (hereinafter "Respondent") on December 20, 2019. (Tr. 9). As of the date of hearing, Petitioner had worked for Respondent for 24 years. (Tr. 8). She started working for the Respondent on September 1, 1994 in the Treasury Department. Id. Petitioner testified that she worked full time, 40 hours a week. (Tr. 9). Petitioner is single with no dependents. (Tr. 7). She is left-handed. (Tr. 8) Petitioner is a high school graduate. She attended 2 years at University of Illinois at Chicago, then 1 year at DePaul University. Id.

As a Money Handler, Petitioner processes currency for both the train and bus systems for the CTA. (Tr. 9-10). From 2014 on when the rail side treasury department closed, Money Handlers pulled at least 90 metal cash cans that hold both paper and coin currency. (Tr. 11) These cash cans are dumped into containers and transported to headquarters to be sorted and recorded. She sorts and stacks paper bills, then runs them through machine that counts bills. Then Petitioner records the totals. Petitioner batches and bands bills, then stacks them into bricks of 10, then filled into bags of 1600 bills. These bags are weighed and stitched closed with an electric sewing machine to be transported to Bank of America.

(Tr. 10-11).

Petitioner also needs to pull out non-US currency and damaged bills. Coin currency also is run through a coin sorter. Totals need to be recorded, batched, and transported to the bank. Damaged currency regularly causes jams. Petitioner then needs to pull out coins and remove the jam/damaged coins or materials that are not coins. (Tr. 13). Petitioner reports that she also drives a forklift and may have to lift up to 80 pounds in the bags of cash (which is reported to weigh up to 75 pounds per the Money Handler Position Description-Rx 1). (Tr. 12-13). Petitioner reports that she can always ask her coworkers for help in lifting anything heavy. Petitioner also testified that as a part of her work she does data entry to record the amounts and weights of the currency. She uses a desktop, mouse, keyboard, as well as handwritten records. (Tr. 25-26). Petitioner testified that she also takes 2 15-minute breaks, as well as a half hour lunch break. (Tr. 27). Petitioner drives her personal car to work. (Tr. 26). Petitioner described a variety of different tasks that require the use of her hands at work. The only discrepancy between Petitioner's report of her job duties and Respondent's Position Description (Rx 1), is the dispute about the cash cans weighing 75 or 80 pounds.

Petitioner's first date of treatment included in the medical records was on December 27, 2019, with Dr. Phillip Nigro at Primary Healthcare Associates. (Px 2). There Petitioner reported 10 out of 10 pain in the [non-dominant] right hand and 4 out of 10 pain in the [dominant] left hand. She reported numbness, throbbing, and achy pain in her hand and wrists for years. Petitioner reported and testified at trial that she had a past medical history of arthritis and hypertension. Dr. Nigro did not provide a causation opinion, but noted there was no specific injury, but "unknown if work related because she does repetitive motion working there 24 years". (Px 2). However, at trial, Petitioner testified that she was "informed by the doctor that the wrist issues might be related to" her work since she had been doing "repetitive motions while working for the CTA over the past 24 years." (Tr. 15). Petitioner reported that she had previously tried splints and oral medication. Petitioner testified that she bought over the counter splints but saw a doctor for the medication. She was unsure when this happened and what medication she was given. (Tr. 24-25). Records of this prior treatment were not entered into evidence.

Petitioner next saw Dr. Al-Saraf at Concentra on January 15, 2020. (Px 1). Petitioner reported symptoms of numbness and tingling in both hands. Dr. Al-Saraf did not provide a causation opinion connecting Petitioner's condition with her work activities. The treatment note indicates that he discussed possible causes and a possible diagnosis of carpal tunnel syndrome with Petitioner. Dr. Al-Saraf recommended use of a brace and analgesics and treatment with orthopedics. (Px 1).

Petitioner underwent an MRI of the cervical spine on January 17, 2020, which was compared to a 2006 scan. The MRI revealed: 1) Post-surgical changes status post discectomy and spinal fusion at C4-C5 with persistent central canal stenosis, mild to moderate mass effect of the spinal cord is initially seen at C3-C4 and C5-C6; 2) Multilevel mild to moderate bilateral neural foraminal narrowing, finding most significant at C6-C7; and 3) Multilevel degenerative disc and joint disease, progressed from prior study in 2006. (Px 4). Petitioner also underwent an EMG/NCS on January 17, 2020, which was reviewed by Dr. Eric Ericson. (Px 2, 3) Petitioner reported worsening hand symptoms over the past year, and right-handed weakness. Petitioner reported that her right-hand symptoms were worse than her left-hand symptoms. Id. Petitioner was diagnosed with bilateral carpal tunnel syndrome with moderate to severe findings on the right side and mild findings on the left side. There was no evidence of cervical radiculopathy contributing. Id. No causation opinion was provided by Dr. Ericson.

Petitioner also treated with Dr. Sandra McGowan on January 17, 2020. (Px 5). There, Petitioner reported that she was having increasing carpal tunnel syndrome symptoms in her right hand and had been off work since January 10th. Petitioner reported that she works for the CTA and handles coins. Dr. McGowan noted that Petitioner had an MRI of the cervical spine and an EMG/NCS. The EMG reportedly shows severe carpal tunnel syndrome in the right hand and mild carpal tunnel in the left hand. Petitioner reported that she wakes up with her hand numb all the time. Petitioner was diagnosed with right sided carpal tunnel syndrome, hypertension, cervical disc disorder with radiculopathy. Dr. McGowan filled out Petitioner's FMLA forms on this visit. (Px 5). Petitioner filled out an Injured on Duty paperwork on January 20, 2020, where she reported that her possible carpal tunnel syndrome was a result of picking up dollar bills over time. (Rx 2).

On January 31, 2020, Petitioner returned to Dr. Nigro at Primary Healthcare Association. (Px 2). There, Petitioner complained of 7 out of 10 pain in her bilateral wrists, and numbness and tingling her hands for months. Objective tests showed positive Durkan's and Phalen's tests. An EMG shows moderate to severe right-hand carpal tunnel and mild left-hand carpal tunnel. A Cervical MRI revealed moderate stenosis at C5-6 and mass effect at C4-5. Petitioner's past medical history of arthritis and hypertension was noted. It was also noted that Petitioner was 54 years old and had an elevated BMI of 39.1. Petitioner was recommended to continue the night splinting for the left wrist and get a right wrist release. (Px 2).

On February 20, 2020, Petitioner returned to Dr. Kusuma, where Petitioner reported neck pain starting years ago, which has worsened. Petitioner had a prior C4-5 ACDF with moderate spinal

stenosis. An MRI revealed prior C4-5 ACDF with moderate stenosis and worsening disc degeneration. Petitioner was diagnosed with cervicalgia, right cervical radiculopathy. (Px 2). No causation opinion was provided by Dr. Kusuma.

On April 16, 2020, Dr. Sandra McGowan filled out Reed group paperwork for FMLA. (Px 5). Dr. McGowan noted that Petitioner had been treating with her since January 10, 2020. Dr. McGowan noted that Petitioner was treating for a carpal tunnel syndrome condition that was not related to her employment. Petitioner was noted to be unable to work from January 27, 2020, through January 31, 2020. (Px 5).

On May 18, 2020, Petitioner underwent a right wrist carpal tunnel release. On July 8, 2020, Petitioner noted pain of 2 to 5 out of 10. Petitioner was released to work full duty as of July 8, 2020. (Px 2). Petitioner testified that she successfully returned to work and is working without accommodation. Petitioner testified that she sometimes wears braces to help with lifting and stabilizing her hands. She has some pain, tingling, and numbness when working. Petitioner does not report any ongoing issues around the house or outside of work. (Tr. 22-24).

Petitioner's last treatment note is with Dr. McGowan on November 13, 2020. Petitioner noted that her pain and tingling had resolved, but she still had some stiffness. She also reported occasional pain across her shoulders. On this date, Petitioner was noted to have a BMI of 41. 3 and high blood pressure. (Px 5).

CONCLUSIONS OF LAW

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

Decisions of an arbitrator shall be based exclusively on the evidence in the record of the proceeding and material that has been officially noticed. 820 ILCS 305/1.1(e). Credibility is the quality of a witness which renders his evidence worthy of belief. The Arbitrator, whose province it is to evaluate witness credibility, evaluates the demeanor of the witness and any external inconsistencies with his/her testimony. Where a claimant's testimony is inconsistent with his/her actual behavior and conduct, the Commission has held that an award cannot stand. McDonald v. Industrial Commission, 39 Ill. 2d 396 (1968); Swift v. Industrial Commission, 52 Ill. 2d 490 (1972).

It is the function of the Commission to judge the credibility of the witnesses and to resolve conflicts in the medical evidence and assign weight to witness testimony. O'Dette v. Industrial Commission, 79 Ill.2d 249, 253, 403 N.E.2d 221, 223 (1980); Hosteny v. Workers' Compensation Commission, 397 Ill. App. 3d 665, 674 (2009). Internal inconsistencies in a claimant's testimony, as

well as conflicts between the claimant's testimony and medical records, may be taken to indicate unreliability. Gilbert v. Martin & Bayley/Hucks, 08 ILWC 004187 (2010).

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

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

The Arbitrator initially notes that a claimant has the burden of proving all of his or her case by a preponderance of the evidence. Chicago Rotoprint v Industrial Comm'n, 157 Ill.App.3d 996, 509 N.E.2d 1330 (1987). Liability cannot rest upon imagination, speculation or conjecture. Petitioner is not claiming any injury as a result of a fall or trauma. Rather, Petitioner claims that the repetitive nature of her job duties that require forceful flexion, including operating coin and paper money counting machines, remove foreign/damaged money or non-currency items, batch bills into stacks/bricks/bundles, transfers money to bins and bags, weights and records amounts and weights, and inputs data. Petitioner uses a computer, keyboard, mouse, handwriting, sewing machine and forklift at work. Petitioner alleges all these activities caused an injury over time that manifested itself on December 20, 2019. An employee seeking benefits for gradual injury due to repetitive trauma must meet the same standards of proof as a Petitioner alleging a single, definable accident. Williams v Industrial Comm'n, 244 Ill.App.3d 204, 614 N.E.2d 177 (1993). Petitioner has failed in her burden because she did not describe a particular trauma that caused the onset of symptoms, nor did she provide any medical evidence that repetitive tasks associated with her job were the cause of her condition.

Petitioner alleges that she suffered repetitive trauma at work, which manifested itself on December 20, 2019. Petitioner was unsure when she first began experiencing symptoms in her hands. On the first date of treatment, she had been having symptoms for years and had already been prescribed medication and recommended for braces. Petitioner reported to her doctors that she was no longer able to work after January 10, 2020. Petitioner did not provide any testimony or evidence that suggested any specific actions caused acute pain in her hands. Of the large variety of activities Petitioner performed, no one activity or job duty was noted to be particularly difficult or painful. There are no treatment notes that reflect Petitioner's symptoms being caused or aggravated by her work duties. There are no treatment notes that reflect Petitioner having more difficulty at work than at night, or while at home. In fact, Petitioner reported difficulties at night, while sleeping. Additionally, Petitioner testified that she is left-

handed, presumably performing more of her work activities with her left hand. However, Petitioner's medical records and testimony establish that she was having more issues with her right hand. Based on Petitioner's EMG, Petitioner was diagnosed with moderate to severe right-handed carpal tunnel syndrome and only mild left-handed carpal tunnel syndrome. Petitioner was recommended and underwent a right sided carpal tunnel release. Petitioner was only given night splints for her left-hand dominant side and was able to return to work with no significant medical intervention.

Arbitrator finds that Petitioner's accident did not arise out of or in the course of her employment with Respondent.

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

The Arbitrator adopts her conclusions with respect to the findings that this alleged accident did not arise out of Petitioner's employment (see Section A, supra).

Courts have held that "it is the function of the Commission to decide questions of fact and causation, to judge the credibility of the witnesses, and to resolve conflicting medical evidence." O'Dette v. Industrial Comm'n., 79 Ill.2d 249, 253 (1980). Moreover, "where medical testimony is conflicting, it is for the Commission to determine which testimony is to be accepted." McLean Trucking Co. v. Industrial Comm'n., 72 Ill.2d 350 (1978). It is also "the Commission's function to resolve disputed questions of fact, including those of causal connection." Proctor Community Hospital v. Industrial Comm'n., 41 Ill.2d 537 (1969). Courts have also pronounced that an "employee must prove that some act or phase of the employment was a causative factor in the ensuing injury. He need not prove it was the sole causative factor nor even that it was the principal causative factor, but only that it was a causative factor in the resulting injury." Republic Steel Corp. v. Industrial Comm'n., 26 Ill.2d 32, 45 (1962).

Petitioner's condition of ill-being is not causally related to the injury; Petitioner has failed from lack of any medical evidence to meet her burden of proof that her bilateral carpal tunnel syndrome was related to her employment duties. Petitioner's treatment records do not indicate that her injury was work related. The only individual on record as believing there is or could be a connection between Petitioner and her work activities, is Petitioner herself.

Next, Petitioner points to Westinghouse Electric Co. v. Industrial Comm'n, 64 Ill 2d 244 (1976) and Nunn v. Industrial Comm'n, 157 Ill. App. 3d 470 (1987) to establish that medical testimony is not

necessary to establish a causal connection between the work activities and a claimants' disability. These cases together do not show a single instance of a repetitive trauma case being established without a medical expert finding causal connection between work activities and a claimant's condition. In Westinghouse Electric, a plumber suffered a fall, an acute injury, not a repetitive injury. The dispute between the parties was if Petitioner could establish this particular injury was the disabling event, in the context of chronic injuries and multiple falls.

In Nunn v. Industrial Comm'n, a claimant who had previously undergone back surgeries, alleged that for 7 months she was exceeding her 20 pound lifting restrictions, resulting in a repetitive trauma claim. Similar to the instant case, the medical records reported on the claimant's belief of a connection between her current condition and work activities. Much like the instant case, this opinion was not supported by any opinion by any medical expert. "The Commission is not precluded from finding against claimant on the issue of causation of her disability where claimant and the employer choose not to offer medical opinions on the issue. (See Steiner v. Industrial Com. (1984), 101 Ill.2d 257, 461 N.E.2d 1363.)" Nunn v. Industrial Commission, 157 Ill. App. 3d 470, 478 (Ill. App. Ct. 1987). "Where the question is one within the knowledge of experts only and not within the common knowledge of laypersons, expert testimony is necessary to show that claimant's work activities caused the condition complained of. (Interlake Steel Co. v. Industrial Com. (1985), 136 Ill. App.3d 740, 483 N.E.2d 979.)" Nunn v. Industrial Commission, 157 Ill. App. 3d 470, 478 (Ill. App. Ct. 1987).

Petitioner asserts that because a layperson can understand Petitioner's activities, medical expert opinions are not required to find a causal connection. This ignores the reality of carpal tunnel syndrome, where certain risk factors and degeneration may be the underlying cause of the condition.

In the instant case, Petitioner did not provide a single medical opinion connecting Petitioner's current condition to her work duties. Dr. Nigro noted Petitioner performed repetitive motion, but stated it was "unknown" if the Petitioner's condition was work related. Dr Ericson, Dr. Al-Saraf, and Dr. Kusuma provided no comment on the cause of Petitioner's carpal tunnel syndrome. The only treating doctor to weigh in on causation was Dr. McGowan, who indicated her condition was not connected to work. On April 16, 2020, Dr, McGowan filled out Petitioner's FMLA paperwork and checked not employment related on the paperwork. (Px 5).

Next, Petitioner asserts that Peabody Coal Co v. Industrial Comm'n, 213 Ill. App.3d 64 (1991), stands for the proposition that a causal connection can be established by a chain of events, including claimant's ability to perform job duties before the date of accident and inability to perform the duties

following the date of accident. The Peabody case involves a miner who had a prior back surgery, returned to work and was able to continue working, then had a subsequent acute injury, after which he could not return to work. In Peabody, the claimant also provided medical expert opinion that claimant's inability to work was not a natural degenerative process or the result of a prior claim, but of the acute back injury at issue. Peabody never suggests that a Petitioner may point to their condition 20 years prior, to establish that their current condition is related to repetitive trauma at work. Nor does it establish that causal connection in a repetitive trauma case can be found in the absence or in opposition to expert medical opinions. Petitioner suggests that causal connection can be established because she did not have carpal tunnel syndrome symptoms before she became a money handler, 20 years ago. This disregards the nature of degenerative conditions as well as the risk factors for developing carpal tunnel syndrome.

Arbitrator finds that Petitioner's bilateral carpal tunnel conditions are not causally related to her employment.

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

The Arbitrator adopts her conclusions with respect to the findings that this alleged accident did not arise out of Petitioner's employment and was not casually connected to Petitioner's employment. (see Section A and B, supra). The issue of medical services is moot because Petitioner's type of injury did not arise out of her employment, nor is her condition causally connected to the incident.

K. What amount of compensation is due for temporary total disability?

The Arbitrator adopts her conclusions with respect to the findings that this alleged accident did not arise out of Petitioner's employment and Petitioner's current condition is not causally connected. (see Section A and B, supra). Petitioner is not awarded any TTD benefits.

L. What is the nature and extent of Petitioner's injury?

The Arbitrator adopts her conclusions with respect to the findings that this alleged accident did not arise out of Petitioner's employment and Petitioner's current condition is not causally connected. (see Section A and B, supra) and for those reasons finds that Petitioner is not permanently and partially disabled.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC006943
Case Name	Edward McClendon v. School District 149
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	24IWCC0378
Number of Pages of Decision	22
Decision Issued By	Maria Portela, Commissioner

Petitioner Attorney	Richard Victor
Respondent Attorney	Jeffrey Rusin

DATE FILED: 8/7/2024

/s/Maria Portela, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

EDWARD McCLENDON,

Petitioner,

vs. NO: 21WC006943

SCHOOL DIST. 149,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Petitioner herein and notice given to all parties, the Commission, after considering the issues of causation, medical expenses, temporary total disability and nature and extent, and being advised of the facts and law, affirms and adopts, with the following changes and corrections, the Decision of the Arbitrator, which is attached hereto and made a part hereof.

We correct the following clerical and scrivener errors:

1. Page 1, last paragraph, second sentence: We clarify that the citation to "PX1, pages 65-67" refers to Dr. Seshadri's records and note that Dr. Manatt's records are not in evidence.

2. Page 2, last paragraph, last complete sentence states, "On February 21, 2019, Dr. Chang noted Petitioner's neck pain since the July 30, 2018 accident (PX1, page 93)." However, this citation refers to Dr. Vitello's February 21, 2019 Section 12 examination report (*T.194*). Dr. Chang first saw Petitioner on July 25, 2019, so it is impossible for Dr. Chang to have noted anything on February 21, 2019 (five months earlier). We, therefore, strike this sentence.

3. Page 2, last paragraph, second to last complete sentence states, "Dr. Chang noted Petitioner's symptoms were exacerbated after the July 15, 2019 motor vehicle accident." We could not find any record of Dr. Chang that states that Petitioner's symptoms were exacerbated by the July 15, 2019 MVC. In fact, Dr. Chang's records don't appear to mention the MVC at all, which is one of the reasons why Dr. Chang's causation opinions are not persuasive. We strike this sentence.

4. Page 3, second paragraph, last sentence states, "Subsequent to the surgery and therapy, Petitioner underwent cervical epidural injections with Dr. Chang…." We strike "Dr. Chang" and replace it with "Dr. Gastevski" because, although Petitioner testified that the injections were performed by Dr. Chang, they were actually performed by Dr. Gastevski. *Px3, T.387-391*.

5. Page 4, second full paragraph, third sentence indicates that Petitioner's Functional Capacity Evaluation was "done on May 25, 2023." However, we strike "2023" and replace it with "2022."

All else is affirmed and adopted.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed January 10, 2024 is hereby affirmed and adopted with the clarifications and corrections noted 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.

Pursuant to §19(f)(2) of the Act, Respondent is not required to file an appeal bond in this case. 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.

August 7, 2024

/s/ *Maria E. Portela*

/s/ *Amylee H. Simonovich*

/s/ *Kathryn A. Doerries*

SE/
O: 7/9/24
49

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC006943
Case Name	Edward McClendon v. School District 149
Consolidated Cases	18WC033530
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	19
Decision Issued By	Jacqueline Hickey, Arbitrator

Petitioner Attorney	Richard Victor
Respondent Attorney	Jeffrey Rusin

DATE FILED: 1/10/2024

THE INTEREST RATE FOR THE WEEK OF JANUARY 9, 2024 5.03%

/s/ Jacqueline Hickey, Arbitrator

Signature

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Edward McClendon Case # **21 WC 006943**

Employee/Petitioner

v.

School District 149
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 **Hickey**, Arbitrator of the Commission, in the city of **Chicago**, on **7/28/2023.** After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On **2/2/2021,** Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

Petitioner's current condition of ill-being ***is not*** causally related to the accident, as it relates to the cervical spine and lumbar spine.

In the year preceding the injury, Petitioner earned $**28,080.00,** the average weekly wage was $**540.00**.

On the date of accident, Petitioner was **49** years of age, ***single*** with **2** dependent children.

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

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

Respondent shall be given a credit of $**0.00** for TTD, $**0** for TPD, $**0** for maintenance, and $**0.00** for other benefits, for a total credit of $**0.00**

Respondent is entitled to a credit of $**1,131.60** under Section 8(j) of the Act.

ORDER

Causation

The Arbitrator finds that petitioner failed to present sufficient evidence to prove that his current condition of ill-being for his cervical spine and lumbar spine are causally related to the accident date on or about 2/2/21. However, the Arbitrator finds that Petitioner did aggravate the prior left shoulder condition on 2/2/21. *See Attached Rider to Decisions*.

Medical Benefits

As noted above, the Arbitrator found that Petitioner failed to present sufficient evidence proving causation for his alleged injuries to the cervical spine and lumbar spine on 2/2/21 and therefore the medical treatment and bills (plus liens) related to the lumbar spine and cervical spine are hereby denied. The Arbitrator further finds that Petitioner did sustain a temporary aggravation of the left shoulder and only awards the medical treatment for said left shoulder as ordered by Dr. Seshadri, through 2/11/21. All other medical bills are hereby denied.

Temporary Total Disability

TTD benefits are hereby denied, based on the above. Respondent shall pay Petitioner temporary total disability benefits of $360.00/week for 0 weeks, commencing 9/4/21 through 6/2/22 as provided in Section 8(b) of the Act.

Permanent Partial Disability

The Arbitrator finds that Petitioner presented sufficient evidence to order an award of permanency for the left shoulder injury which was aggravated on 2/2/21. Based upon the PPD factors, the Arbitrator makes a finding of permanency to the left shoulder in the amount of 2% loss of use of man as a whole. The Arbitrator makes no permanency award for petitioner's alleged cervical spine and lumbar spine injuries. Respondent shall pay Petitioner permanent partial disability benefits of $324.00/week for 10 weeks because the injuries sustained caused 2% loss of use of the person as a whole as provided in Section 8(d)2 of the Act. *See Attached Rider to Decisions*.

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.

Jacqueline C. Hickey

Signature of Arbitrator

JANUARY 10, 2024

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

ILLINOIS WORKERS' COMPENSATION COMMISSION

Edward McClendon,	)	
	)	
Petitioner,	)	
	)	
v.	)	
	)	Case No. **18 WC 33530**
School District 149,	)	Consolidated w/ **21 WC 6943**
	)	
	)	
Respondent.	)	

RIDER TO DECISIONS

This consolidated matter proceeded to hearing on July 28, 2023, in Chicago, Illinois before Arbitrator Jacqueline Hickey on the Parties' Request for Hearing. Issues in dispute for Case No. 18WC033530 include: causation, medical bills, TTD, and nature & extent. See Arbitrator's Exhibit "Ax" 1. Issues in dispute for Case No. 21WC006943 include: accident, causation, medical bills, TTD, and nature & extent. See Arbitrator's Exhibit "Ax" 2. This Rider is applicable to both decisions rendered, as listed above.

FINDINGS OF FACT

Background

Petitioner testified that he has worked as a custodian for Respondent since 2016. Petitioner testified that prior to July 30, 2018, he had pain in his left shoulder, although he could not recall being seen for the left shoulder at Ingalls Memorial Hospital in 2016.

Work Accident on July 30, 2018

Petitioner testified that on July 30, 2018, he was moving furniture from one side of the building to the other, when he had pain in his left shoulder, neck and lower back. Petitioner sought treatment with his primary care physician, Dr. Savio Manatt, and was referred to Premier Orthopaedics and Hand Center, coming under the care of Dr. Venkat Seshadri on August 3, 2018 (PX1, pages 65-67). Petitioner continued to treat with Dr. Seshadri following the July 30, 2018 accident through January 26, 2021. Petitioner testified that he did not receive treatment for his alleged neck injury that occurred on July 30, 2018, for about one year due to the significant pain and treatment to his left shoulder, which resulted in two shoulder surgeries. Petitioner testified that the physician was initially concentrating on his left shoulder condition and did not worry about his neck.

Medical Treatment

Petitioner had an MRI of the left shoulder on August 9, 2018, which showed a full thickness tear of the supraspinatus tendon (PX1, pages 89-90). On October 9, 2018, Dr. Seshadri performed an arthroscopy and rotator cuff repair, subacromial decompression and debridement. The additional diagnosis was biceps tenodesis (PX1 Pages 85-86). Petitioner had another left shoulder MRI on February 1, 2019, which showed post-surgical changes (PX1, page 88). Petitioner then underwent physical therapy from November 12, 2018 through August 13, 2019 (PX1, pages 33-41, 100-105). Petitioner had a subsequent left shoulder MRI on December 18, 2019, again showing post-surgical changes (PX1, pages 57-58).

MVC July 15, 2019

Petitioner testified he had a motor vehicle accident on July 15, 2019, in which he temporarily aggravated his left shoulder and neck and for which he was seen that day at Advocate South Suburban Hospital emergency room. Petitioner testified that his symptoms after the motor vehicle accident were about the same as they were prior. Petitioner testified that the motor vehicle accident did not worsen or increase his pain and/or problems in the left shoulder or neck. Petitioner testified that other than the emergency room visit, he did not have any other treatment following the motor vehicle accident. Petitioner testified that other than the motor vehicle accident, he had no other accidents to the left shoulder or neck outside of the two work accidents on 7/30/18 and 2/2/21. Petitioner denied any prior problems and/or symptoms in the left shoulder or neck prior to July of 2018 and did not remember reporting left shoulder issues at Ingalls Hospital in 2016.

Dr. Chang- Narrative Report

On September 15, 2019, Dr. Chang authored a narrative report, in which he opined that Petitioner's ongoing neck pain and radiating right arm pain and lower back pain were directly related to the July 30, 2018 accident (PX4, pages 1-2). Dr. Chang interpreted Petitioner's July 23, 2019 MRI as a large herniated disc at C3-4, and a disc herniation at C4-5 causing neural impingement, and a small herniated disc at C5-6. Dr. Chang diagnosed chronic right C4-C5 radiculopathy secondary to the disc herniations and chronic L5 radiculopathy for which he ordered a lumbar MRI. On August 6, 2019, Dr. Chang diagnosed following the MRI, lumbar stenosis directly related to the work injury, and prescribed cervical epidural injections for the cervical disc pathology (PX3). Petitioner testified that he eventually stopped treating with Dr. Chang and was referred to a pain management physician at the same office as orthopedic Dr. Seshadri for ongoing treatment of his neck.

Medical Treatment post MVC

Petitioner testified that on July 23, 2019, he underwent an MRI of his neck and then officially began treating for his neck with Dr. Chang on July 25, 2019. The Arbitrator notes this was the first treatment specifically for Petitioner's neck, just ten days after the motor vehicle collision. Thereafter, Petitioner was referred to Dr. Chang by Dr. Manatt for his ongoing neck pain. The cervical MRI on July 23, 2019, showed cervical disc protrusions at C3-4 C4-5, C5-6 (PX1, page 87). Dr. Chang noted Petitioner's symptoms were exacerbated after the July 15, 2019 motor vehicle accident. On February 21, 2019, Dr. Chang noted Petitioner's neck pain since the July 30, 2018 accident (PX1, page 93). Petitioner testified that in the days after the July 15, 2019 motor

vehicle accident, his left shoulder and neck pain felt the same as since the July 30, 2018 accident and no worse following the July 15, 2019 motor vehicle accident.

Petitioner testified that he also began treating with Dr. Gastevski in April of 2020 for his neck. Petitioner testified that he underwent a variety of cervical epidural injections with Dr. Gastevski and that the injections did not provide any significant relief.

Due to ongoing issues and post-surgical changes, on February 17, 2020, Dr. Seshadri performed a second left shoulder arthroscopy and extensive debridement for adhesive capsulitis and bursitis (PX2, pages 61-62; PX5, pages 2-3). Petitioner also testified, in relationship to his left shoulder work injury from 2018, that he last treated with Dr. Seshadri on January 26, 2021. Petitioner underwent physical therapy from November 22, 2019, prior to the surgery, including for his lower back, through March 9, 2020 (PX2, pages 37-56). Subsequent to the surgery and therapy, Petitioner underwent cervical epidural injections with Dr. Chang on May 11, 2020, June 29, 2020, August 17, 2020 and October 26, 2020 (PX3, pages 16-21).

Dr. Seshadri again referred Petitioner for his neck pain to Dr. Gastevski at Premier Orthopaedics and Hand Center and was seen on November 24, 2020. Petitioner continued to see Dr. Gastevski through January 26, 2021, at which time he also had right shoulder pain for which he had an MRI on February 5, 2021, which showed tenodesis of the supraspinatus (PX6, pages 67-69, and 168-170). Petitioner testified he is not claiming the right shoulder issues as it related to his two workers' compensation cases. Petitioner was released to return to full duty work by Dr. Seshadri on January 26, 2021 for the left shoulder.

Time off work

Petitioner provided testimony in relationship to the payments he received following his July 2018 work accident. Petitioner testified that for a majority of the time, he was paid his full salary from the employer, but there were gaps in which he did not receive full salary. Petitioner testified that he did receive TTD benefits from February of 2020 through approximately June of 2020. Petitioner testified that he was off work and received TTD from February 17, 2020 through June 28, 2020, and returned to work on July 10, 2020. Petitioner testified he was off work and received salary from February 3, 2021 through September 3, 2021.

Second Work Accident on February 2, 2021

Petitioner admitted that he was released to return to full duty work by Dr. Seshadri on January 26, 2021 and did work until he sustained his next accident about a week or so later, on February 2, 2021, when he re-injured and re-aggravated his neck and left shoulder. On February 2, 2021, Petitioner testified he was shoveling snow by hand with a co-worker as the snow blower was not working. After a break, the plowing service plowed the snow up to 4 feet on the walkway, which he had to clear when the plowing service did not return, as Respondent school was serving meals to students. Petitioner testified the snow was heavy and wet, he was using a lot of force, standing up and bending down, moving the snow with a shovel for about one hour. Petitioner testified that his left shoulder, neck and back pain became worse following this activity. Petitioner returned to Dr. Seshadri on February 9, 2021, who noted the left shoulder symptoms following shoveling snow at work. Dr. Seshadri placed restrictions on work (PX6, pages 70-72). Petitioner testified

following February 9, 2021 visit, he did not see Dr. Seshadri for further treatment for the left shoulder.

Petitioner testified that his subsequent treatment concentrated on his neck and back conditions. Petitioner saw Dr. Gastevski on February 16, 2021, who noted Petitioner's new cervical injury on February 2, 2021 (PX6, pages 73-74). Dr. Gastevski prescribed a spinal cord stimulator due to the February 2, 2021 injury (PX6, pages 75-76). Dr. Gastevski continued to prescribe the spinal cord stimulator as the cervical epidural injections provided only temporary relief (PX6, pages 82-83). Petitioner testified he separately sought a second opinion and treatment with Dr. Tyndall at Lakeshore Bone and Joint Institute on July 21, 2021. Dr. Tyndall noted Petitioner's neck and back pain since the February 2, 2021 accident and prescribed cervical lumbar MRIs. The cervical MRI of July 23, 2021 showed similar results to the prior MRI of large herniated disc at C3-4, C4-5, C5-6. The August 27, 2021 lumbar MRI showed degenerative disc disease and bulging at L4-5. Dr. Tyndall testified these findings were consistent with Petitioner's symptoms. On November 29, 2021, Dr. Tyndall prescribed a two-level cervical fusion, a lumbar epidural injection, and then to follow a lumbar fusion at C4-5. The lumbar epidural injection was done on December 15, 2021. Dr. Tyndall referred Petitioner to therapy at Athletico from August 25, 2021 to November 22, 2021 (PX9). Dr. Tyndall testified that Petitioner's cervical and lumbar conditions and need for surgery were related to the February 2, 2021 accident. Dr. Tyndall also testified that Petitioner did not need nor would benefit from a spinal cord stimulator (PX8, pages 14-81 and PX11, pages 6-28, and 32).

Petitioner testified that he returned to Dr. Gastevski for treatment as he wished to proceed with the spinal cord stimulator. Petitioner had a trial spinal cord stimulator done on February 28, 2022 and the permanent spinal cord stimulator was implanted on March 11, 2022 at Advocate South Suburban Hospital (PX6, pages 104-106, 160-161; PX7, pages 81-204, including 117). Dr. Gastevski ordered an FCE which was done on May 25, 2023. Petitioner testified he used his best effort, despite the ongoing neck pain. The FCE report opined that the results were consistent with a light duty restriction involving up to 25 pounds lifting and 10 pounds overhead (PX9). On June 2, 2022, Dr. Gastevski discharged Petitioner with permanent restrictions per the FCE (PX6, page 142).

Petitioner's Current Condition

Petitioner testified that the two work injuries from July of 2018 and February of 2021 caused symptoms to the low back, shoulder, and neck. Petitioner testified that he had difficulty performing activities of daily living and had difficulty carrying groceries and lifting overhead. Petitioner testified that subsequent to June 2, 2022 he has performed side jobs through his own company, E&J Company, and since his brother and another worker assist, the work does not involve heavy labor. He is paid in cash about once a month for this work. Petitioner testified he does not do heavy household chores. Petitioner testified he continues to experience left shoulder, neck and back pain from the work injuries of July 30, 2018 and February 2, 2021, when lifting, carrying objects, overhead work and putting his left arm behind his back. Petitioner testified that this spinal cord stimulator is what has helped him most with his pain, as prescription medications provider little relief. Petitioner testified that he had not had any treatment with Dr. Seshadri since February 9, 2021 but had recently returned sometime in May of 2023 for symptoms concerning his unrelated right elbow.

Cross Examination of Petitioner

On cross examination, Petitioner testified that on 7/30/18, he sustained an acute injury to the left shoulder and neck as a result of moving furniture. Petitioner also testified that he had previously denied any prior left shoulder problems. When asked about prior left shoulder complaints and treatment back in March of 2016, petitioner claimed that he did not recall said treatment.

Petitioner testified as to the accident report (Rx. 4) that he completed in association with his 7/30/18 work accident. Petitioner testified that he completed the form about a week after the alleged accident. Petitioner confirmed that the accident report did not list any injuries to the neck and solely specified pain in the left shoulder and groin. Petitioner testified that he did not recall having any groin symptoms but admitted that the form was signed by him and his supervisor. Petitioner also confirmed that on July 10, 2019, he was released to return to full duty work at MMI by Dr. Seshadri. Petitioner admitted that from July 2018 through July 10, 2019 he did not undergo any specific treatment for his neck. Petitioner testified that upon his release by Dr. Seshadri in July of 2019, there were no referrals to treat with Dr. Chang or any other orthopedic physician for his neck. Petitioner testified that he did report neck complaints but did not undergo any formal treatment for the same until July 2019.

Petitioner testified that he was involved in a motor vehicle collision on 7/15/19. Petitioner testified that after the motor vehicle collision he was taken to the emergency room. He testified that he was a restrained driver and was hit on the driver's side and had a gradual onset of neck and upper back pain. Petitioner also reported some tingling in the right arm since the accident. Petitioner underwent a CT scan of the neck, which revealed potential disc herniations from C3 through C6. It was noted that Dr. Chang was contacted by the emergency room and requested to provide treatment recommendations. Petitioner was recommended by Dr. Chang to undergo an MRI of the neck and was then given a referral to treat with an orthopedic physician. Petitioner did confirm that after the motor vehicle accident, he underwent an MRI of the neck on July 23, 2019 and ultimately began treating with Dr. Chang for his neck on July 25, 2019. Petitioner confirmed that prior to the motor vehicle accident, he did not receive any medical care or treatment for the neck, but after the motor vehicle accident, he began receiving regular and consistent care and treatment for the neck.

Petitioner also testified to undergoing an MRI of the low back in August of 2019 following the motor vehicle accident. Petitioner admitted that he did not have any low back problems after the July 30, 2018 work accident. Petitioner did admit to having a prior history of low back symptoms.

Petitioner confirmed that he underwent an independent medical examination with Dr. Wehner in October of 2019. Petitioner confirmed that he provided a history to Dr. Wehner of performing various side job work under the remodeling company of "E&J Company". Petitioner testified that E&J is his own remodeling business that he runs with his wife. Petitioner admitted to performing various remodeling and side jobs under his own company. Petitioner testified that they would perform various home projects, but he would make other workers do the heavy work while he supervised. Petitioner also admitted to going to Prairie State University to try to get a certificate in HVAC classes. Petitioner testified that he did undergo some schooling but never completed it.

Petitioner testified that he continued to have symptomatology in the left shoulder and underwent a left shoulder debridement procedure, in February of 2020. Petitioner testified that he was still undergoing treatment with Dr. Chang during this time, but as of March 17, 2020, he did not treat with Dr. Chang any further.

Petitioner testified that after he stopped treating with Dr. Chang, he was given a referral to treat with a pain medicine physician, Dr. Gastevski. Petitioner began treating with Dr. Gastevski in April of 2020. Petitioner testified that he underwent four epidural injections into the C6-C7 level by Dr. Gastevski. Petitioner testified that Dr. Gastevski recommended Petitioner pursue a cervical spinal cord stimulator due to the lack of improvement from the cervical injections.

Petitioner confirmed that he was previously discharged from care and released to return to full duty work by Dr. Seshadri, his left shoulder doctor, in January of 2021. Petitioner confirmed that he did return to work until he sustained a new work accident on February 2, 2021 when he was shoveling snow. Petitioner again testified that he had one visit with Dr. Seshadri in relationship to the left shoulder following the second work accident. Petitioner was also given an injection into the left shoulder and did not follow up with Dr. Seshadri for any left shoulder treatment after February 9, 2021.

Petitioner testified that in February of 2021, he followed up with Dr. Gastevski. He reported that he had a reinjury from the shoveling incident and all of his prior pain complaints had returned. Petitioner testified that Dr. Gastevski recommended a spinal cord stimulator in February of 2021.

Thereafter, Petitioner testified as to his treatment with Dr. Tyndall. Petitioner confirmed that he was not referred by any physician to treat with Dr. Tyndall. Rather, a friend recommended Dr. Tyndall for a second opinion. Petitioner acknowledged that he chose to treat with Dr. Tyndall instead of going back to his prior orthopedic physician, Dr. Chang. Petitioner testified that he first saw Dr. Tyndall five months after his alleged "reinjury" at work in February of 2021.

Petitioner confirmed that during his treatment with Dr. Tyndall through November of 2021, he continued to report neck and low back symptoms and underwent physical therapy for the same. Petitioner testified that his neck and low back symptoms were the result of his injury in February of 2021. Petitioner testified that he did not have any complaints and/or treatment for the left shoulder during this period of time. There were no documented work restrictions or limitations in relationship to the left shoulder.

Petitioner also testified as to his independent medical examination with Dr. Deutsch in February of 2022. Petitioner testified that he provided Dr. Deutsch with an honest and accurate assessment of his symptoms and injuries.

Petitioner then testified as to his ongoing treatment with Dr. Gastevski after his discharge from care with Dr. Tyndall. Petitioner testified that Dr. Gastevski recommended a spinal cord stimulator. Petitioner testified that he underwent a spinal cord stimulator implant on March 11, 2022. Petitioner testified that following the spinal cord stimulator surgery, he continued to have symptoms in the low back and was ultimately given a referral for the FCE. Petitioner confirmed

that the FCE was prescribed by Dr. Gastevski in relationship to his ongoing cervical and lumbar symptomatology. Petitioner testified that he was given permanent work restrictions by Dr. Gastevski on June 2, 2022 pursuant to the FCE.

Petitioner did clarify on redirect examination that he did receive TTD benefits from February 17, 2020 through June 28, 2020. Petitioner testified that he did work light duty from July 10, 2019 up to the date of his surgery on February 17, 2020. Petitioner testified that he also worked full duty from July 10, 2020 up until February 2, 2021.

CONCLUSIONS OF LAW

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

To obtain compensation under the Act, Petitioner has the burden of proving, by a preponderance of the evidence, all of the elements of his claim *O'Dette v. Industrial Comm'n*, 79 Ill. 2d 249, 253 (1980) including that there is some causal relationship between his employment and his injury. *Caterpillar Tractor Co. v. Industrial Comm'n*, 129 Ill. 2d 52, 63 (1989) It is well established that the Act is a humane law of remedial nature and is to be liberally construed to effect the purpose of the Act - that the burdens of caring for the casualties of industry should be borne by industry and not by the individuals whose misfortunes arise out of the industry, nor by the public. *Shell Oil v. Industrial Comm'n,* 2 Ill.2nd 590, 603 (1954).

Decisions of an arbitrator shall be based exclusively on the evidence in the record of the proceeding and material that has been officially noticed. 820 ILCS 305/1.1(e). Credibility is the quality of a witness which renders his evidence worthy of belief. The Arbitrator, whose province it is to evaluate witness credibility, evaluates the demeanor of the witness and any external inconsistencies with his/her testimony. Where a claimant's testimony is inconsistent with his/her actual behavior and conduct, the Commission has held that an award cannot stand. *McDonald v. Industrial Commission,* 39 Ill. 2d 396 (1968); *Swift v. Industrial Commission,* 52 Ill. 2d 490 (1972). The Arbitrator, as the trier of fact in this case, has the responsibility to observe the witnesses testify, judge their credibility, and determine how much weight to afford their testimony and the other evidence presented. *Walker v. Chicago Housing Authority*, 2015 IL App (1st) 133788, ¶ 47.

It is the function of the Commission to judge the credibility of the witnesses and to resolve conflicts in the medical evidence and assign weight to witness testimony. *O'Dette v. Industrial Commission,* 79 Ill.2d 249, 253, 403 N.E.2d 221, 223 (1980); *Hosteny v. Workers' Compensation Commission,* 397 Ill. App. 3d 665, 674 (2009). Internal inconsistencies in a claimant's testimony, as well as conflicts between the claimant's testimony and medical records, may be taken to indicate unreliability. *Gilbert v. Martin & Bayley/Hucks,* 08 ILWC 004187 (2010).

For the case at hand, the Arbitrator observed Petitioner during the hearing and finds him to be a credible witness with regards to the left shoulder injury. However, with regards to the neck and low back injuries, the timeline of treatment, specifically the lack of treatment to the neck until after the intervening and unrelated July 2019 motor vehicle collision, deems the petitioner's

testimony not entirely reliable for the cervical and lumbar spine injures. Overall, there appear to be inconsistencies in Petitioner's testimony as well within the record and the histories he provided to the physicians. That said, Petitioner does not appear to be a sophisticated individual and these inconsistencies in his testimony/the record are not attributed to be an intentional attempt to mislead the Arbitrator. Instead, Petitioner appears to merely be a poor historian.

The Arbitrator further finds Dr. Tyndall (deposition testimony), Dr. Chang (narrative report), Dr. Gastevski (medical records), Dr. Seshadri (medical records), Dr. Vitello (IME reports), Dr. Wehner (IME reports), Mr. Castronovo, PT/DPT/MTC (FCE review) and finally Dr. Deutsch (IME deposition testimony), to be overall credible witnesses, and specifically finds the treating physicians to be persuasive in their opinions as it relates to the left shoulder injury. However, the Arbitrator finds the IME doctors, as a whole, and specifically Dr. Deutsch, to be more persuasive in their medical opinions regarding causation for the alleged cervical and lumbar injuries because it appears they collectively had more information at their disposal to review and consider. This includes these IME doctors having prior medical records and knowledge of the intervening July 2019 motor vehicle collision as well, as further explained below.

21 WC 06943- Conclusions of Law

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

See above for credibility analysis for all witnesses and the supporting case law for each issue in dispute. The Arbitrator adopts her findings of fact and conclusions of law contained above and incorporates them by reference as though fully set forth herein.

While the parties do not dispute the accident for case number 18WC033530 (date of accident 7/30/18), the Arbitrator notes that accident is in dispute for the 2/2/21 alleged work incident.

Petitioner admitted that he was released to return to full duty work by Dr. Seshadri for his left shoulder on January 26, 2021 and did work until he sustained his next alleged work accident about a week or so later, on February 2, 2021. On 2/2/21, Petitioner testified he re-injured and re-aggravated his neck, back and left shoulder. On February 2, 2021, Petitioner testified he was shoveling snow by hand with a co-worker as the snow blower was not working. After a break, the plowing service plowed the snow up to 4 feet on the walkway, which he had to clear when the plowing service did not return. Petitioner testified the snow was heavy and wet, he was using a lot of force, standing up and bending down, moving the snow with a shovel for about one hour. Petitioner testified that his left shoulder, neck and back pain became worse following this activity. Petitioner returned to Dr. Seshadri on February 9, 2021, who noted the left shoulder symptoms following shoveling snow at work. Dr. Seshadri placed restrictions on work (PX6, pages 70-72). Petitioner testified following February 9, 2021 visit, he did not see Dr. Seshadri for further treatment for the left shoulder.

The Arbitrator finds petitioner's testimony to be truthful in that he sustained a work accident to his left shoulder on 2/2/21 while shoveling snow at his school. The mechanism of injury, shoveling for some time, while using a post operative (two surgeries), left shoulder is believed by the Arbitrator to have caused the aggravation. The history in the initial treating records support an accident occurred at work. The Arbitrator finds that petitioner reported an aggravation of his preexisting left shoulder, neck, and low back pain. The Arbitrator finds that petitioner sought one visit with Dr. Seshadri on February 9, 2021 following the 2/2/21 alleged accident. The Arbitrator notes that petitioner "reinjured" his left shoulder as a result of the shoveling incident. Petitioner underwent an injection at the 2/9/21 visit, and subsequently underwent an updated MRI of the left shoulder on 2/11/21. The Arbitrator notes that the MRI did not show any new abnormalities or acute pathology related to the 2/2/21 incident.

The Arbitrator notes, and the petitioner confirmed during testimony that he did not seek any additional medical treatment for the left shoulder after February 2021. The Arbitrator notes that petitioner has not undergone any additional medical treatment or therapy related to the left shoulder since February of 2021. The Arbitrator notes that petitioner does not have any work restrictions or limitations for the left shoulder in relationship to the 7/30/18 or 2/2/21 work accidents. The Arbitrator notes that the IME doctors appear to focus on the lack of mechanism of injury for the cervical and lumbar spines but not the left shoulder.

Overall, the Arbitrator finds that the 2/2/21 incident did occur at work for Respondent, as petitioner testified to, and that it caused an exacerbation of petitioner's prior left shoulder injury which resolved shortly after, based on Petitioner's testimony and lack of further treatment. The Arbitrator finds that Petitioner has put forth enough evidence to prove he sustained solely a left shoulder injury on 2/2/21 that arose out of and was in the course of his employment with School District 149, where he worked as a custodian. Petitioner was performing his job duties, consisting of snow shoveling, at the school in fulfillment of his role as a school custodian. The Arbitrator finds that Petitioner proven an accident occurred, however causation for the additional cervical and back injuries on said DOA of 2/2/21 will be discussed further below.

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

See above for credibility analysis for all witnesses and the supporting case law for each issue in dispute. The Arbitrator adopts her findings of fact and conclusions of law contained above and incorporates them by reference as though fully set forth herein.

Having found that Petitioner sustained a work accident on 2/2/21, the Arbitrator notes Petitioner claims he sustained injuries to his left shoulder, neck and back. Petitioner denied the right arm/shoulder was related to the 2/2/21 work incident and therefore the Arbitrator will not further address the right arm/shoulder in this decision. The Arbitrator finds Petitioner sustained an aggravation to the left shoulder injury on 2/2/21 but failed to prove that his claimed condition(s) of ill-being for the cervical spine and lumbar spine are causally related to the 2/2/21 work incident. The Arbitrator's findings as to causation regarding petitioner's cervical spine and lumbar spine are also supported by the prior rationale and opinion(s) above related to the alleged 7/30/18 accident and claim number 18WC33530, in addition to the analysis below.

The Arbitrator notes that petitioner reported an aggravation of his preexisting neck and low back pain as a result of the 2/2/21 incident. The Arbitrator noted that petitioner initially treated with Dr. Gastevski, who continued to recommend a spinal cord stimulator, which was recommended prior to the 2/2/21 alleged accident. The Arbitrator finds the opinions of Dr. Deutsch to be persuasive and consistent with the prior opinions from Dr. Vitello and Dr. Wehner based upon the medical facts and evidence in this claim (Rx. 3). The Arbitrator again highlighted the significance of Dr. Deutsch's opinions based upon the totality of the medical evidence and documentation provided. Unlike any of petitioner's examining physicians and narrative reports, all of the Respondent IME physicians were provided with all of the relevant medical records associated with the claim (Rx. 3).

The Arbitrator noted that Dr. Deutsch opined that there was no mechanism of injury for the cervical spine, in relationship to the 7/30/18 accident or the 2/2/21 accident. Dr. Deutsch found no objective findings of any injury on imaging (Rx. 3). Dr. Deutsch also opined that the 2/2/21 accident showed no new symptoms or real mechanism of injury and petitioner's ongoing subjective complaints were inconsistent with the objective findings (Rx. 3). Dr. Deutsch opined that petitioner would not benefit from any medical treatment to the neck in relationship to either 2018 or 2021 accident. Even if the Arbitrator was persuaded that there was a competent mechanism of injury to cause the cervical and lumbar spine injuries on 2/2/21, this would be an

aggravation of prior injury that appear to occur in the motor vehicle collision. The neck injuries are not related or attributed to either work accident in 2018 or 2021. Further, even if the cervical spine was deeded related, the treatment involving the spinal cord stimulator was not reasonable or effective. Dr. Deutsch agreed with second opinion doctor and treater, Dr. Tyndall, and IME Dr. Wehner that a spinal cord stimulator ("SCS") was not reasonable, necessary, or related (Rx. 3). The Arbitrator found the opinions of Dr. Deutsch to be persuasive in illustrating that the SCS was not reasonable because it did not appear to improve petitioner's functional status.

The Arbitrator finds Dr. Deutsch's opinions as supportive of the totality of the medical evidence and testimony in that the 2018 and 2021 accidents were not a competent mechanism of injury for the cervical spine and lumbar spine injuries as claimed by Petitioner. Dr. Deutsch noted that there were no objective findings of the cervical spine on imaging to support a work injury.

The Arbitrator finds the opinions of Dr. Tyndall to be less persuasive than the opinions of Dr. Deutsch as to causation. The Arbitrator finds that the opinions of Dr. Tyndall are based on insufficient evidence and understanding and no fault of the doctor. The Arbitrator notes that Dr. Tyndall had no knowledge of any prior injury from July of 2018 and/or any understanding or knowledge of petitioner's cervical spine complaints prior to the alleged second accident in February of 2021. Dr. Tyndall admits that he first examined the petitioner about 5 months after the alleged accident in February of 2021. Dr. Tyndall did not review any medical records or documentation prior to his initial visit of the petitioner in July of 2021. He was also not provided additional prior records or prior medical history by Petitioner giving all of petitioner's recent medical history. Dr. Tyndall testified that it was his opinion that petitioner's complaints and MRI findings were the result of the February 2021 accident, and not related to anything prior. Dr. Tyndall's opinions are based solely on petitioner's "history" and allegation that his neck complaints were exacerbated by the work injury in February of 2021. On cross examination, Dr. Tyndall admitted to having zero knowledge or information regarding petitioner's medical treatment or care prior to July of 2021. Dr. Tyndall testified that the only knowledge of petitioner's treatment and injury was based upon the information reported to him by the petitioner in July of 2021. Dr. Tyndall had no knowledge of any treatment that petitioner underwent between February and July of 2021. The Arbitrator finds that Dr. Tyndall's opinions are based upon limited and incomplete information and documentation.

The Arbitrator also questions Dr. Tyndall's understanding of the work accident itself from February 2021. Dr. Tyndall testified that he had no idea what actually happened during the alleged accident in February of 2021. Dr. Tyndall admitted that he had no understanding of the mechanism of injury, only that petitioner reported he sustained an accident on 2/2/21. The Arbitrator finds Dr. Tyndall's opinions to be questionable at best considering his lack of understanding and knowledge of any alleged mechanism of injury. Dr. Tyndall's opinions are based solely upon petitioner's report of a work injury (no specific mechanism of injury) and his subjective reporting of neck pain. Dr. Tyndall admitted that he had no understanding of whether or not the alleged work injury caused a specific injury to the neck. Additionally, the Arbitrator finds Dr. Tyndall's testimony unhelpful in regard to the lumbar spine allegations. Dr. Tyndall admitted that petitioner first alleged lumbar spine complaints in August of 2021. Dr. Tyndall recommended an MRI of the lumbar spine due to the newly alleged complaints. Dr. Tyndall admitted that he had no opinion as to whether the lumbar spine complaints are related to the

February 2021 alleged work accident. Dr. Tyndall opined that the treatment recommendations for the lumbar spine are NOT causally related to the February 2021 accident (Pg 23). Therefore, the Arbitrator does not rely on the opinions of the second opinion treater, Dr. Tyndall, for either the cervical spine or lumbar spine injuries as alleged by Petitioner.

Based upon the totality of the medical evidence and testimony, the Arbitrator finds that petitioner's cervical spine, lumbar spine and right shoulder condition are not causally related to the 2/2/21work accident. The Arbitrator's finding is supported by the expert opinions from Dr.'s Vitello, Wehner and Deutsch. The Arbitrator finds the opinions of Dr. Wehner and Dr. Deutsch persuasive as they were able to review and analyze all of the medical records.

Overall, the opinions presented by the petitioner (treating physicians), in terms of causation, lack persuasiveness as they are based upon incomplete, inaccurate, and inconsistent evidence. Dr. Tyndall's opinions lack persuasiveness as Dr. Tyndall had no knowledge or information regarding the accident itself and how it specifically took place. Dr. Tyndall's opinions are based solely on petitioner's reports that he sustained some sort of accident in February of 2021 and had neck pain thereafter. The Arbitrator cannot therefore rely on the opinions of Dr. Tyndall.

In conclusion, the Arbitrator finds Petitioner sustained an aggravation to the left shoulder injury on 2/2/21 but failed to prove that his claimed condition(s) of ill-being for the cervical spine and lumbar spine are causally related to the 2/2/21 work incident. Accordingly, all benefits for medical, TTD, and permanency associated with the cervical spine or lumbar spine condition are hereby denied.

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

The Arbitrator adopts her findings of fact and conclusions of law contained above and incorporates them by reference as though fully set forth herein. See above for credibility analysis for all witnesses and the supporting case law for each issue in dispute.

Pursuant to the Arbitrator's holding as to causation, the Arbitrator finds that Respondent is liable only for petitioner's 2/9/21 visit with Dr. Seshadri and the MRI of the left shoulder on 2/11/21. This treatment is for the left shoulder only. This treatment including the injection was at Premier Orthopaedics & Hand Center and Accelerated Open MRI and is considered the only related and awarded medical care (See Px1, Px2, Px6, Px10, Px12). These are the sole bills awarded by the Arbitrator, to be paid pursuant to the medical fee schedule.

The Arbitrator finds that any treatment for any other body parts other than the left shoulder are not causally related and Respondent is not liable for said bills (plus liens) claimed by Petitioner. Respondent shall be given a credit for all previously issued medical payments. Respondent is entitled to a credit under Section 8(j) of the Act of $1,131.60 (See Px10).

Issue K, whether Petitioner is entitled to temporary total disability benefits, the Arbitrator finds as follows:

The Arbitrator adopts her findings of fact and conclusions of law contained above and incorporates them by reference as though fully set forth herein. See above for credibility analysis for all witnesses and the supporting case law for each issue in dispute.

Pursuant to the Arbitrator's holding as to causation and having found Petitioner did not sustain a compensable condition of ill-being relating to his cervical spine and lumbar spine, arising out of and in the course and scope of his employment with respondent on 2/2/21, any corresponding periods of temporary total disability incurred are not the responsibility of Respondent. Petitioner claims TTD entitlement from 9/4/21 through 6/2/22. The TTD covering periods of time off work are solely for the cervical and lumbar spine conditions are hereby not awarded to Petitioner. This time off of work as ordered by his treating physicians, corresponds solely to the cervical spine and lumbar spine injuries which are not causally related to the 2/2/21 work accident. Petitioner completed care for the aggravated left shoulder injury in February 2021. Therefore, TTD benefits are hereby denied.

Respondent shall pay Petitioner temporary total disability benefits of $360.00/week for **0 weeks**, commencing 9/4/21 through 6/2/22 as provided in Section 8(b) of the Act.

Issue (L) what is the nature of Petitioner's injury, the Arbitrator finds as follows:

The Arbitrator adopts her findings of fact and conclusions of law contained above and incorporates them by reference as though fully set forth herein.

The Arbitrator finds that the 2/2/21 work accident caused an exacerbation of Petitioner's preexisting left shoulder condition, which was initially injured at work for Respondent on 7/30/18. See above. The Arbitrator finds that petitioner failed to present sufficient evidence that his condition of ill-being related to the cervical spine and lumbar spine are causally related to the 2/2/21 accident. Based upon the aggravation and quick resolution of petitioner's prior left shoulder condition, Petitioner's current work at his new remodeling company and the analysis below, the Arbitrator awards 2% loss of use of a person as a whole in relationship to the 2/2/21 accident. See 8.1 b(b) analysis below.

In determining PPD benefits, Section 8.1b(b) of the Act directs the Commission to consider: "(i) the reported level of impairment pursuant to subsection (a); (ii) the occupation of the injured employee; (iii) the age of the employee at the time of the injury; (iv) the employee's future earning capacity; and (v) evidence of disability corroborated by the treating medical records." 820 ILCS 305/8.1b(b); *Con-Way Freight, Inc. v. Illinois Workers' Compensation Comm'n,* 2016 IL App (1st) 152576WC, ¶ 22, 67 N.E.3d 959. "No single enumerated factor shall be the sole determinant of disability." 820 ILCS 305/8.1b(b). "None of the factors set forth in section 8.1b is to be the sole determinant of the claimant's disability." *Corn Belt Energy Corp. v. Illinois Workers' Compensation Comm'n*, 2016 IL App (3d) 150311WC, ¶ 49.

Pursuant to subsection (i), the AMA rating, Respondent obtained multiple independent medical evaluation(s), including evaluations with Dr. Vitello and Dr. Wehner. Dr. Vitello provided an opinion in October of 2022 indicating that petitioner was capable of returning to full duty work and does not require any medical treatment for the left shoulder. Dr. Vitello opined that petitioner reached MMI. Accordingly, Dr. Vitello provided an impairment rating of 9% left upper extremity impairment, or 5% whole person impairment in relationship to the 2018 injury and prior surgeries. There was no impairment or causally related injury to the cervical spine. The doctor gave no impairment or permanency related to the 2021 accident. The Arbitrator therefore assigns no weight to this factor.

With regard to subsection (ii), the Arbitrator notes that petitioner was employed as a Custodian for respondent at the time of the 2/2/21 work accident. Petitioner was released to return to full duty work as it relates to his left shoulder injury. Subsequent to the second work accident, the Arbitrator notes that petitioner started and now operates his own remodeling company and performs various home remodeling/repair activities. The Arbitrator therefore assigns some weight to this factor.

With regard to subsection (iii), petitioner was 47 years of age at the time of the accident and was capable of returning to full duty work without restrictions for the left shoulder. The Arbitrator therefore assigns little weight to this factor.

With regard to subsection (iv), Petitioner's future earning capacity, the petitioner was released to return to full duty work at MMI for the left shoulder. Petitioner has not treated for his left shoulder since February of 2021 and was never given restrictions for the left shoulder. The Arbitrator finds that petitioner was capable of returning to full duty work. While Petitioner claims permanent restrictions for the cervical and lumbar spine, and puts forth FCE evidence for said restrictions, any possible work restrictions would be unrelated to the 2/2/21 work accident and are not considered by the Arbitrator in making a permanency determination. The sole related injury is the aggravation of the left shoulder which underwent two surgical repairs prior to this date of accident of 2/2/21. Following this aggravating injury while shoveling, Petitioner underwent one follow up with his shoulder surgeon, an injection, and follow up MRI. Petitioner started his remodeling company which he works at with his brother. He himself performs repair and remodeling activity but testified he does not perform heavy labor. It is not clear from the evidence what monetary amount Petitioner specifically earns but he is paid once per month in cash. No additional wage or tax documents were submitted into evidence. In addition, as it pertains to the related left shoulder injury, Petitioner would be capable of returning to any job full duty, including to his prior role as a custodian for Respondent, as there are no permanent restrictions from the treating surgeon or IME physicians that are currently recommended. The Arbitrator therefore assigns moderate weight to this factor.

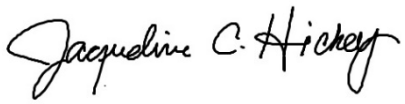
With regard to subsection (v), evidence of disability corroborated by the treating medical records, Petitioner testified he does not do heavy household chores. Petitioner testified he continues to experience left shoulder, neck and back pain from the work injuries of July 30, 2018 and February 2, 2021, when lifting, carrying objects, overhead work and putting his left arm behind his back. The Arbitrator finds that petitioner does not have any permanent restrictions attributed to the left shoulder and the FCE was ordered by the treating physician addressing the unrelated neck and

back injuries. Further, even if the Arbitrator was convinced that these neck and back injuries were causally related, it appears that during the FCE Petitioner may not have put forth full efforts based on the review from Respondent expert, Mr. Castronovo. Therefore, the FCE restrictions are not relied on and the Arbitrator views this as a left shoulder post operative injury that aggravated on 2/2/21. Petitioner has not sought treatment for the left shoulder since February of 2021. Petitioner again claims other injuries to the neck and back but the Arbitrator has already made the determination that these conditions are not causally related to the work accident on 2/2/21. Any treatment to the neck, low back or right arm is not causally related to the 2/2/21 accident and therefore any alleged permanent restrictions for the same would not be considered in determining permanency. The Arbitrator therefore assigns moderate weight to this factor.

Based upon the above factors, and the record taken as a whole, the Arbitrator finds that petitioner sustained permanent partial disability to the extent of 2% loss of use of man as a whole in relationship to the 2/2/21 alleged accident date. Respondent shall pay Petitioner permanent partial disability benefits of $324.00/week for 10 weeks because the injuries sustained caused 2% loss of use of the person as a whole as provided in Section 8(d)2 of the Act.

For the reasons stated above, Petitioner is entitled to an award of benefits under The Illinois Workers' Compensation Act consistent with the findings herein.

It is so ordered:



Jacqueline C. Hickey
Arbitrator

January 9, 2024
Date

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	18WC033258
Case Name	Pamela Rissman v. Illinois State Toll Highway Authority
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	24IWCC0379
Number of Pages of Decision	11
Decision Issued By	Amylee Simonovich, Commissioner

Petitioner Attorney	Kenneth Lubinski
Respondent Attorney	Karen Haarsgaard

DATE FILED: 8/7/2024

/s/ Amylee Simonovich, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

PAMELA RISSMAN,

Petitioner,

vs. NO: 18 WC 33258

ILLINOIS STATE TOLL HIGHWAY AUTHORITY,

Respondent.

DECISION AND OPINION ON REVIEW

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

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed January 30, 2023 is hereby affirmed and adopted.

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

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

The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

The bond requirement in Section 19(f)(2) is applicable only when "the Commission shall have entered an award for the payment of money." *820 ILCS 305/19(f)(2).* Based upon the denial of compensation herein, no bond is set by the Commission.

August 7, 2024
o073024
AHS/ldm
051

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

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	18WC033258
Case Name	Pamela Rissman v. Illinois State Tollway Highway Authority
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	8
Decision Issued By	Gerald Granada, Arbitrator

Petitioner Attorney	Kenneth Lubinski
Respondent Attorney	Karen Haarsgaard

DATE FILED: 1/30/2023

THE INTEREST RATE FOR THE WEEK OF JANUARY 24, 2023 4.68%

/s/Gerald Granada, Arbitrator

Signature

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Pamela Rissman
Employee/Petitioner

v.

Illinois State Tollway Highway Authority
Employer/Respondent

Case # **18** WC **033258**

Consolidated cases: **N/A**

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Gerald Granada**, Arbitrator of the Commission, in the city of **Wheaton**, on **12/28/22**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On **8/24/17**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $**68,494.40**; the average weekly wage was $**1,317.20**.

On the date of accident, Petitioner was **55** years of age, ***married*** with **0** dependent children.

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

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

Respondent shall be given a credit for any benefits it may have paid under the Act.

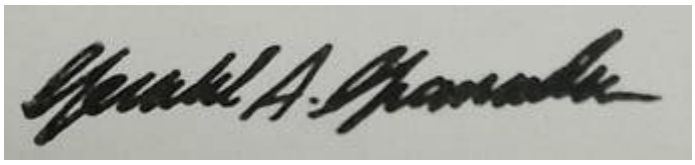
Respondent is entitled to a credit of $**11,024.00** for medical benefits and salary continuation for lost time claimed under Section 8(j) of the Act.

ORDER

Petitioner failed to meet her burden of proof on the issue of accident. Therefore all benefits are denied.

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

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



Signature of Arbitrator Gerald Granada

JANUARY 30, 2023

FINDINGS OF FACT

This case involves Petitioner Pamela Rissman, who alleges to have sustained injuries while working for Respondent Illinois State Tollway Highway Authority on August 24, 2017. Respondent disputes Petitioner's claim, with the issues being: 1) accident; 2) notice; 3) causation; 4) medical expenses; 5) TTD; and 6) nature and extent. Petitioner alleges a hearing loss claim under Section 8(e)(16) of the Act.

Petitioner's Testimony

Petitioner testified that she began working for Respondent on January 22, 2002, having worked as a dispatcher from January 2002 to August or September 2017. She transferred to the traffic center before she retired in July 2022, moved to Wisconsin and began working at Fleet Farm. Her job duties as a dispatcher were to take calls that come in on the waiting screen, and dispatch troopers that are on patrol, if there is an accident, a disabled vehicle or other emergency. She would also take calls from citizens, as well as Illinois State Troopers. Petitioner used a headset which she wore over her right ear, that had a mouthpiece that came down, so she would be able to hear people talking and respond. She used a regular handheld phone on her left ear to make outgoing calls. She worked eight hours a day, and sometimes worked overtime. She estimated that she used the phone on her left ear about 50% of the time. She further described a "tone out", which was a high-pitched sound in her right ear that notified troopers on the radio channel there was something important to say. She estimated that she received 1000 calls a day and a third of these were tone outs. This tone lasted 3 to 5 seconds, which she compared to a sensor for profanity on television. She also compared it to a dentist drill. She conducted alarm testing once per month to check the alarms for the Tollway plazas, and she would hear this alarm in her left ear, for 5 to 6 hours a day to complete this task. The alarm would last a couple of seconds, and she compared it to a fire alarm. She stated that she was able to control her headset and would turn the volume up high so she wouldn't miss any traffic.

Petitioner testified that in August 2017, she went to see Dr. Hubbard as she was having a hard time hearing and her husband and children were having to repeat things. At around that time, she was suspended at work for being inattentive to her job duties. On September 14, 2017, she was referred to Dr. Oke, who recommended hearing aids. She further testified that Dr. Oke went to her employer to observe her workstation to determine whether the hearing aids were compatible. The hearing aids were based on Bluetooth, because of that, a decision was made to transfer her to the traffic center. Petitioner testified thereafter she came under the care of Dr. Mulder, who continued to check her hearing, but she has not seen anyone relative to her hearing loss since June 2021. She testified her present symptoms include loud ringing in her head, turning up the TV as she can't hear everything, and that she did not wear hearing aids before August 2017. Petitioner was shown exhibit number 10, which is compilation of medical bills, and stated that all the medical bills were paid through her group health insurance funded by the Respondent.

During cross exam, Petitioner testified about various medical visits at Dryer Medical Clinic, to which she provided her understanding of the visits. She also acknowledged having seen Dr. Horwitz pursuant to the request of the Respondent. Petitioner testified that she did some general Internet searching regarding Meniere's disease, and her understanding of same was ringing in ears. She testified that she continued to have this symptom through the present time. Prior to her suspension, she did not remember ever discussing any hearing issues with anyone at the Respondent. She never discussed her comparison of the Respondent's alarm system with a dental drill or fire alarm with anyone at the Respondent or any of her physicians. Petitioner testified that she could not silence the alarm system, but the supervisor could. She testified that she did not know the number of alarms she tested per year, and she did not always know when the alarm was going to sound, because the supervisor in the plaza

would call the main operator and ask them to set it off. She did acknowledge that she pulled the phone away from her ear as soon as the alarm sounded. Petitioner testified that she lost time from work between August 25, 2017, and September 14, 2017, and she was paid continued salary during that period of time. She acknowledged that her group health through Respondent paid her medical bills.

Testimony of Tom Andruscavage, Supervisor

Mr. Andruscavage testified that he was employed by the Respondent for 25 ½ years, was familiar with the Petitioner, and had worked with her until sometime in 2017 when she transferred to the traffic center. He had worked in the position described as a dispatcher and is very familiar with the requirements of the job. He testified that each operator had the ability to adjust the volume control fed into the earpiece for their comfort and that it would not be difficult to adjust the volume of the call if a particular call came in louder. He disagreed with Petitioner's description of the tone being as loud as a dentist drill - he did not believe it was that loud and described that a dispatcher could control the length of the tone. Mr. Andruscavage testified that total service calls in a day for the entire unit would be 300 to 400 calls and disagreed with Petitioner's testimony as to her personally taking that many calls. He testified that every dispatcher had the ability to silence the alarm system – which was not as loud as a fire alarm as per Petitioner's description. He stated that when it was done by the service center, they let the plazas handle that, as they have a track sheet on the screen to make sure that it was received from each site that they are in working order. He also stated that when doing the testing, he always turned his head away, as he can acknowledge the radio alarm on the screen. Mr. Andruscavage stated that as Petitioner's supervisor, the only time he was made aware of her having difficulties hearing, was at her disciplinary meeting.

Advocate Medical Group (Petitioner's Exhibit 3)

On August 24, 2017, Petitioner saw an audiologist for audiometric evaluation due to decreased hearing sensitivity. She had known high-frequency hearing loss accompanied by tinnitus with a reported history of Meniere's disease. She was recommended a trial with Binaural amplification and referred to an ENT. On December 29, 2017, Petitioner was seen by Dr. Puls, noting she had pain in her right ear. Dr. Puls noted Petitioner might possibly have fluid in her ear and she was offered pain control medication. On April 20, 2018, she was seen by Dr. Richard Kersch, noting that she has a many year history of progressive hearing loss and wears hearing aids. She worked as a radio dispatcher until recently, and she has some tinnitus but denies any significant vertigo. Exam demonstrated a severe bilateral sensorineural hearing loss, with excellent speech discrimination. He noted it was progressive with history of significant noise exposure. He agreed with the need for hearing aids and recommended a repeat evaluation and audiogram the following year. On May 18, 2018, Petitioner was seen by Dr. Stepanek, who noted that her Celebrex was stopped due to possible cause of her hearing loss, and that she was looking for other medical options for her pain and arthritis.

Occupational Medicine Clinic (Petitioner's Exhibit 4)

Petitioner was seen on April 11, 2018, noting that she had been exposed to tone and panic alarms at work and lost hearing. Current medications included Celebrex, Wellbutrin, Singular and Albuterol. She stated that she first noticed hearing loss about *four years ago,* which worsened. She started wearing hearing aids and had been taking multiple medications including Celebrex. She was recommended to stop taking Celebrex, as part of the audio questionnaire. It also notes that her father had sustained hearing loss and worked in a factory.

Dr. Oke (Petitioner's Exhibit 5)

Dr. Oke evaluated the Petitioner on September 6, 2017, for appropriate setting of her hearing aids. Dr. Oke traveled on September 14, 2017, to fit her hearing aids as soon as possible. She was given notes on how to make these adaptable for her employment. On November 28, 2017, she went to the Tollway pursuant to a meeting of the American with Disabilities Act, and having determined the level of the equipment, modifications were made with how her hearing aids would work with her equipment. Another meeting took place January 24, 2018, but Petitioner forgot to wear her hearing aids, and therefore, another meeting had to be set. On January 26, 2018, Petitioner reported that she plugged into her phone system and was not receiving any audio. A new cord was suggested. Another phone call took place on January 26, 2018, and on February 8, 2018, an appropriate headset was ordered noted that the last headset was appropriately receiving audio signal from the radio, however without further explanation, Dr. Oke indicated that it was determined that she was not going to be successful in her ability to perform this task without risk of making errors.

Dr. Oke evidence deposition (Petitioner's Exhibit 8)

Dr. Oke testified via evidence deposition on April 17, 2020, indicating that her profession included dispensing hearing aids. Dr. Oke testified that Petitioner had a sensorineural hearing loss, which is loss that occurs in the inner ear, as opposed to the outer or middle section, or more specifically, the cochlea. She testified this type of hearing loss can be caused by noise, ototoxic medication, genetics, as well as aging. She testified to audiograms which were completed April 3, 2014, August 24, 2017, April 11, 2018, April 19, 2018, as well as July 23, 2019. Dr. Oke testified that the hearing loss of April 3, 2014, pursuant to the audiogram, was normal at the 1000 and 2000 levels, but was not tested at the 3000 level. She testified that the hearing in both the right and left ear through the 2000 level were normal. With respect to the August 24, 2017, hearing audiogram, again, there was no testing at the 3000 level. She had some increased hearing loss according to this at the 1000 and 2000 level. With respect to the April 19, 2018 audiogram, again, the 3000 level was not tested. Dr. Oke testified she did not test the decibel level at the Petitioner's employment. (PX. 8 at page 28) Dr. Oke testified she did not review any outside medical records other than the prior audiograms. She testified that Meniere's disease was an overproduction of endolymphs in the cochlea that can cause dizziness, ringing in the ears and fluctuation of hearing loss and she did not know whether Petitioner had ever been diagnosed with same. (PX 8 at P.30) She further testified that if someone were to state Ms. Rissman's hearing loss was due to Meniere's disease, she would not disagree with that. (PX8 at P.32) She went on to testify that the hearing loss which Ms. Rissman demonstrates is characteristic of Meniere's disease. She reported ringing in both ears, and findings on audiograms, would also be characteristic of Meniere's disease. Dr. Oke referenced a 2011 NIOSH study regarding reducing hazards for call center operators. Said the evaluations were completed in 1997 and 2007, long before Petitioner began experiencing hearing loss in this case, and there was no testimony as to how this applied to Respondent. A separate NIOSH study was completed called Occupational Noise exposure, dated June 1998, again, predating Claimant's employment, as well as her alleged hearing loss exposure. There is no information suggesting Respondent was examined or considered as a part of same but nonetheless, despite not having tested decibel level, not having heard the totals herself, Dr. Oke testified that the hearing loss experienced by Ms. Rissman "could potentially" be caused by her current job position as a dispatcher. (PX 8 at P. 61) Dr. Oke testified that ototoxins could be a factor in hearing loss, but she was uncertain as to whether Lasix and hydrochlorothiazide would be included. (PX 8 at P.69). Dr. Oke testified that she fitted her with two different hearing aids, and that she did not feel comfortable with the second headset. Petitioner stated it was not amplifying enough to the degree should be able to do her position without harm. Dr. Oke conceded she had no way to independently corroborate that. (PX 8 at P.75-76)

Dr. Mulder Evidence Deposition (Petitioner's Exhibit 9)

Dr. Mulder testified via evidence deposition on April 13, 2022. Dr. Mulder is an otolaryngologist, licensed to practice in the State of Illinois, and presently practices at the Dryer Medical Clinic. Petitioner came to see her in 2020 about sinus issues, but as well as hearing loss and a deviated septum. Petitioner later saw Dr. Mulder in 2021 for a history of vertigo and dizziness as well as chronic sinusitis. (PX 9 at 9) Dr. Mulder testified Meniere's disease is a diagnosis of exclusion, that another physician treated her for same, but that she personally could not state with certainty whether or not the Petitioner had this disease. She testified she had no measurements of the noise levels Petitioner was exposed to at work, and for occupational exposure, frequencies make a difference. Dr. Mulder was shown a chart with matching decibel levels to various items, and she indicated "these are all generalities obviously because different noises are different decibel levels, but as a generality these are appropriate ranges." (PX 9 at 20) An audiogram was completed in association with her visit of January 30, 2020, and Dr. Mulder testified her speech reception thresholds were at 40 dB, which did not make sense as her speech discrimination level was 100%. She noted she can hear at the mild to moderate hearing loss very well, and then the loss is moderate to profound. Another hearing test was done in June 2021, with improvement. Dr. Mulder testified that the fluctuating hearing loss leaned more towards Meniere's disease. (PX 9 at 29)

Dreyer Clinic (Respondent's Exhibit One)

Petitioner was seen on September 29, 2005, for non-specific complaints of dizziness which according to Dr. Palmer, could be vertigo. On January 17, 2007, Petitioner underwent an audiogram with abnormal hearing loss at high frequencies and was seen by Dr. Loebach due to ringing in her ears. On January 18, 2007, she was seen by Dr. Palmer for headaches associated with tinnitus. On January 30, 2007, she was seen by Dr. Loebach for mild otitis externa of the left ear with swelling. Petitioner was seen at Dreyer Clinic on November 28, 2011, with complaints of vertigo. On January 19, 2012, Petitioner was seen by APN Mercado with complaints of hearing issue which the physician related to eustachian tube dysfunction. On March 26, 2012, Petitioner underwent an audiogram demonstrating low frequency left mild sensorineural hearing loss with mild to severe mixed hearing loss at the higher frequencies, and mild to moderate hearing loss at high frequency on the right. PA Veras diagnosed her with eustachian tube dysfunction and serous otitis media. PA Veras saw her again on April 24, 2012, at which time she had popping in both ears, little improvement with hearing, cerumen was removed, and she was recommended to consider a PE tube placement in the left ear. On May 21, 2012, she described her left hearing as improved but muffled. On August 27, 2012, Petitioner was again seen by Dr. Veras with increased ringing in her ears which began after an episode of otitis media; an MRI was planned. On October 8, 2012, Petitioner was evaluated by Dr. Jagasia for complaints of vertigo, fluctuating hearing loss and tinnitus for which he diagnosed Meniere's disease and recommended hydrochlorothiazide. This medication was refilled by Dr. Harnack for her Meniere's disease. On March 29, 2013, Petitioner advised Dr. Jagasia the vertigo resolved. She had continued tinnitus complaints at the September 30, 2013, visit. On October 2, 2013, additional cerumen was removed from both ears. The following day Dr. Spanik recommended she follow up with the ENT for chronic vertigo. Petitioner saw Dr. Jagasia on April 3, 2014, for a clogged sensation in her ears, tinnitus and pain. She underwent another audiogram on April 3, 2014, which demonstrated mild to severe sensorineural loss at the higher levels. On December 28, 2014, Petitioner presented with mucosal edema and rhinorrhea and was diagnosed with bacterial sinusitis. She was seen by Dr. Jagasia on April 16, 2016, for nasal congestion. Petitioner contacted the clinic on October 17, 2016, due to ear popping since a flight on October 10, 2016. On September 3, 2019, Dr. Palmer noted Petitioner was being treated by Dr. Jagasia for Meniere's disease with Meclizine and Antivert with improvement.

Dr. Horwitz IME report and Evidence Deposition (Respondent's Exhibits 5 & 6)

Dr. Horwitz testified via evidence deposition on June 15, 2020. He conducted a Section 12 exam of Petitioner on July 23, 2019. Dr. Horwitz is an otolaryngologist with 42 years' experience. An audiogram was completed on that same date, and per Dr.Horwitz, due to the inconsistency between her pure tones and speech reception, she was re-tested and her scores improved. (RX 5 at 15) He testified the hearing loss was symmetrical, with speech reception at 35 decibels and speech discrimination 96-100 percent. (*Id.*) Dr. Horwitz testified that most noise induced hearing loss occurs within the first 12 years, if not before and per her audiogram, Petitioner did not have hearing loss then. (RX 5 at 20) Dr. Horwitz testified that it was hard to explain why her hearing loss improved from 2017 to 2019, but it could be the audiologist, malingering or actual improvement as individuals with Meniere's disease have fluctuating hearing loss. (RX 5 at 21-22) Dr. Horwitz testified that the hearing loss pattern of Petitioner is consistent with Meniere's disease. (RX 5 at 24) Dr. Horwitz testified that her hearing loss was not related to her job duties, as the noise was of very short duration, even slight movement away from the noise substantially decreases the decibel level. He opined that Petitioner's symptoms associated with her hearing loss were consistent with Meniere's disease, that the onset of her symptoms was not within the first 12 years of employ and that her audiogram was not consistent with noise induced hearing loss. Dr. Horwitz testified that there is a period of recovery between loud bursts of noise any permanent damage. (RX 5 at 72)

CONCLUSIONS OF LAW

1. Regarding the issue of accident, the Arbitrator finds that the Petitioner has failed to meet her burden of proof. In support of this finding, the Arbitrator relies on the live witness testimony, the medical evidence and the testimony of the experts. Petitioner is claiming bilateral hearing loss from her exposure to noise while working for Respondent as a dispatcher. Essentially, Petitioner is claiming loss of hearing in her right ear from wearing a headset that covered only her right ear, and loss of hearing in her left ear from using her telephone and listening to alarm testing. Section 8(e)16 of the Act requires a Petitioner claiming hearing loss to prove sound level exposures at specific decibel levels for a specific duration – e.g. 90 decibels for 8 hours per day; 92 decibels for 6 hours per day; 95 decibels for 4 hours per day; etc. Other than Petitioner's lay testimony comparing the sounds she heard at work to a dentist drill or a fire alarm, there was no evidence of any sound exposure measurements taken at Petitioner's work. Petitioner's experts both testified that they took no measurements of the noise levels at Petitioner's work, nor did they have such information when forming their opinions. Furthermore, the Petitioner's personal description of the sound levels and the duration she may have been exposed to those sounds at work were disputed by her co-workers/supervisor, Mr. Andruscavage. The evidence simply fails to prove sound level exposure as required by the Act. While it may be arguable that the Petitioner has had some hearing loss, it not enough to simply allege industrial noise exposure without any objective testing or measurement of the sound levels and the duration of sound exposure at the workplace. As such, the Arbitrator concludes that the Petitioner has failed to meet her burden of proving she sustained a hearing loss accident in this case.

2. Consistent with the Arbitrator's finding regarding the issue of accident, all other issues are rendered moot.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC009518
Case Name	Juan O'Campo v. Quality Labor Services
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	24IWCC0380
Number of Pages of Decision	16
Decision Issued By	Marc Parker, Commissioner

Petitioner Attorney	David Bawcum
Respondent Attorney	Tina DiBenedetto

DATE FILED: 8/8/2024

/s/Marc Parker, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF LAKE)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Juan O'Campo,

Petitioner,

vs. NO: 21 WC 009518

Quality Labor Services,

Respondent.

DECISION AND OPINION ON REVIEW

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

For the reasons that follow, the Commission modifies the Arbitrator's decision to award medical expenses for Petitioner's emergency room treatment and subsequent hospital admission from January 11 through January 13, 2022, because Petitioner failed to prove this treatment was causally related to his work accident.

On January 11, 2022, Petitioner presented to the emergency room with a history of closed head injury in 2019 with left facial droop, numbness, headache on the left side and in the occipital region. (RX5 at 462). The medical records indicate these were new symptoms which began the previous night. (RX5 at 462). Tests conducted in the emergency room including a CT of the head/brain, MRI of the brain, and a CT angiogram of the head/neck were normal. Following tests and treatment in the emergency room, Petitioner was admitted to the hospital for observation and further evaluation/treatment of his left-sided facial droop, likely Bell's palsy**.** (RX5 at 462).

Petitioner admitted no evidence his Bell's palsy was causally related to the work accident. Despite his testimony he was evaluated by a neurologist who linked his ongoing symptoms and hospital admission to the work accident, Petitioner failed to submit any medical records or opinions supporting his testimony. Conversely, Respondent's Section 12 examiner, Dr. Jerry Bauer, opined

Petitioner's Bell's palsy and hospital admission from January 11 through 13, 2022, was unrelated to the work accident. (RX2 at 374).

The Commission further notes the Arbitrator failed to award §8(j) credit totaling $3,024.46 for medical expenses paid by Respondent's group carrier and outlined in Respondent's Exhibit 9. Respondent shall be given a credit for these medical expenses and shall hold Petitioner harmless from any claims by any provider for the services for which Respondent is receiving this credit. All else is affirmed and adopted.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed November 6, 2023, is modified as stated herein.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent is not liable for medical expenses for the emergency room treatment and hospital admission from January 11 through January 13, 2022.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall receive a credit for paid medical expenses totaling $3,024.46 and shall hold Petitioner harmless from any claims by any provider for the services for which Respondent is receiving this credit, as provided in §8(j) of the Act.

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

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

Bond for removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $12,800.00. 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.

August 8, 2024

MP: ns
o 6/20/24
68

/s/ *Marc Parker*
Marc Parker

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC009518
Case Name	Juan O'Campo v. Quality Labor Services
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	13
Decision Issued By	Paul Seal, Arbitrator

Petitioner Attorney	David Bawcum
Respondent Attorney	Daniel J Levato

DATE FILED: 11/6/2023

THE INTEREST RATE FOR THE WEEK OF OCTOBER 31, 2023 5.32%

/s/ Paul Seal, Arbitrator

Signature

STATE OF ILLINOIS)
)SS.
COUNTY OF LAKE)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Juan O'Campo
Employee/Petitioner

v.

Quality Labor Services
Employer/Respondent

Case # **21 WC 9518**

Consolidated cases: **N/A**

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **ARBITRATOR SEAL**, Arbitrator of the Commission, in the city of **WAUKEGAN, IL**, on **August 16, 2023**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On the date of accident, **December 30, 2020**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned **$20, 753.85;** the average weekly wage was **$399.11**

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

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

ORDER

Respondent shall pay the following reasonable, necessary, related medical bills, pursuant to the medical fee schedule as provided in Sections 8(a) and 8.2 of the Act: Vista Corporate Health in the amount of $3,256.02, Vista Imaging Associates in the amount of $161.00, American Center for Spine and Neuro in the amount of $800.00, App. Of Illinois in the amount of $1,946.00, Dr. Sean Salehi in the amount of $525.00, and Vista Medical Center in the amount of $43,865.60.

Respondent shall pay Petitioner permanent partial disability benefits of $306.67.00/week for 37.5 weeks, because the injuries sustained caused 7.5% loss of the person as a whole, as provided in Section 8(d)2 of the Act.

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

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

NOVEMBER 6, 2023

Signature of Arbitrator

FINDINGS OF FACTS

On December 30, 2020, Petitioner, **Juan O'Campo** ("Petitioner"), was employed by the Respondent, **Quality Labor Services** ("Respondent"), a staffing agency that places or staffs employees at other businesses. On such date, Petitioner was working on behalf of Respondent at a company called the Arcoa Group, a recycling plant located in Waukegan, Illinois. Petitioner had worked at the recycling plant for approximately two years as an assembly line worker.

On that date of the accident, Petitioner was assembling a piece of equipment when he lost his balance and fell backward, striking the back of his head on a metal table. Petitioner described the impact of the fall as hard. Petitioner testified that even though he did not lose consciousness, he had immediate head pain with headaches, dizziness and blurred vision.

The same day as the accident, Petitioner was told to go and get checked out at Vista Corporate Health located in Waukegan, Illinois. At Vista Corporate Health, Petitioner reported that he had fallen backwards at work and hit his posterior skull on the corner of a metal table. Petitioner reported head pain, nausea, dizziness, blurry vision and confusion. Petitioner also reported neck soreness, but denied any midline neck pain. On exam, Petitioner had a 1 centimeter abrasion and a 1.5 centimeter cut on his posterior scalp. CT imaging of Petitioner's head was negative for hemorrhaging or fracture. Petitioner was diagnosed at Vista Corporate Health by Jessica Tarragano, PA-C., with a head contusion, head injury and post concussive syndrome. Petitioner was advised to take Tylenol and to follow up on January 4, 2021. Petitioner was also ordered off work for two days until January 2, 2021, at which time he could return to work with sedentary restrictions, a 15-minute break every two hours, no driving or operating machinery, ground level work only and no climbing (Petitioner's Ex. #1).

Petitioner followed up at Vista Corporate Health on January 4, 2021 and January 11, 2021, with continued headaches with forgetfulness, dizziness and nausea. Petitioner also reported neck pain that he described as "mild" but aggravated with turning his neck lateral. Petitioner was again diagnosed with a head injury and post concussive syndrome and was given the same prior work restrictions of sedentary work, a 15-minute break every two hours, no driving, no operating machinery, ground level work only and no climbing. Petitioner was then referred to go and see a neurologist (Petitioner's Ex. #1).

Petitioner testified that because of increased neck pain, he scheduled a consultation with a Dr. Juan Alzate, a neurosurgeon at the American Center for Spine & Neurosurgery in Libertyville, Illinois. At his initial consultation with Dr. Alzate on February 8, 2021, Petitioner reported a history of a fall at work with injury of his cervical spine and hip. Petitioner reported persistent dizziness, headaches and neck pain. After reviewing a CT scan of Petitioner's brain that was normal, Dr. Alzate felt that Petitioner had post-concussion syndrome that has been more persistent than normal and that he may also have neck trauma. Dr. Alzate ordered Petitioner to undergo MRI's of both his brain and cervical spine and continued Petitioner's work restrictions (Petitioner's Ex. #2).

Pursuant to Dr. Alzate's recommendation, Petitioner underwent an MRI of his brain and cervical spine on February 19, 2021 at the Libertyville Imaging Center. Following those scans, Petitioner followed up with Dr. Alzate on March 8, 2021. Dr. Alzate's impression of the brain MRI was that it was basically normal and that the cervical MRI showed multiple levels of disc osteophyte complex. Based on his examination of Petitioner, Dr. Alzate diagnosed Petitioner with post-concussion syndrome that did not require surgical intervention and referred Petitioner to a psychiatrist for further evaluation and management (Petitioner's Ex. #2).

Petitioner testified that despite Dr. Alzate's recommendation, Respondent refused to authorize or pay for any additional medical treatment. Instead, Petitioner was scheduled by Respondent to be evaluated by Dr. Jerry Bauer from the Center of Brain and Spine Surgery for a Section 12 examination.

On July 14, 2021, Petition presented to Dr. Bauer for a Section 12 examination. According to Dr. Bauer, Petitioner presented with complaints of dizziness when he bends over and pain in the back of his head when he lifts and carries things. Petitioner also complained of occasional numbness in the back of his neck extending to his trapezius area, along with pain from his neck radiating down to his back. Upon exam of Petitioner's cervical spine, Dr. Bauer noted tenderness in the midline, paracervical and trapezius muscles along with tenderness over the occiput. Dr. Bauer's exam of Petitioner was otherwise normal. Dr. Bauer also reviewed some of Petitioner's medical records, including imaging of his cervical and lumbar spine which predated the accident in this case (Respondent's Ex# 1).

With respect to Petitioner's neck, Dr. Bauer diagnosed Petitioner with neck pain and degenerative disc disease. Dr. Bauer opined that the degenerative changes found in Petitioner's cervical spine were unrelated to his December 30, 2020, accident in this case, citing a prior 2018 motor vehicle crash that Petitioner was involved in after which he saw and treated with a chiropractor and underwent an Xray scan of his cervical spine (Respondent Ex.# 1).

With respect to Petitioner's head injury, Dr. Bauer diagnosed Petitioner with a closed head injury that he opined was causally related to Petitioner's December 30, 2020, work accident (Respondent Ex.# 1).

Dr. Bauer concluded that Petitioner had reached maximum medical improvement for his neck following Petitioner's March 8, 2021, visit with Dr. Alzate and for his head injury on

December 30, 2020, that all of Petitioner's medical treatment up to his last visit with Dr. Alzate was reasonable and necessary and that no further medical treatment was necessary for either condition (Respondent Ex.# 1).

Following Petitioner's Section 12 exam, Petitioner testified that Respondent refused to pay for any additional medical care and treatment for his neck or head injury. As a result, Petitioner sought a second opinion with a Dr. Sean Salehi, a neurosurgeon with Neurological Surgery and Spine Surgery, S.C. Petitioner testified that one of the reasons that he went and saw Dr. Salehi was because his office agreed to see him without having health insurance.

Petitioner presented to Dr. Salehi for an initial evaluation on October 4, 2021. At that visit, Petitioner presented with complaints of head and neck pain that started after his work accident on December 30, 2020. Petitioner had specific complaints of pain in the back of his head along with neck pain that goes to the interscapular region. Petitioner also had further complaints of dizziness when driving with occasional forgetfulness. On exam, Dr. Salehi noted diffuse cervical and suboccipital tenderness with diminished range of motion in his neck. Dr. Salehi also reviewed the February 19, 2021, MRI of Petitioner's cervical spine which he interpreted as showing mild stenosis at C3-C4 and C4-C5, due to a congenitally small spinal canal and bulging discs. Dr. Salehi also noted that Petitioner's cervical MRI showed a small central herniated disc at C6-C7 with no neural compression. Based on the totality of his exam, Dr. Salehi diagnosed Petitioner with spondylosis in his cervical spine and postconussional syndrome as a result of his work accident. Dr. Salehi notes that Petitioner was not a surgical candidate for his neck injury and recommended physical therapy and pain management for treatment. For Petitioner's post-concussion syndrome, Dr. Salehi referred Petitioner to go and see a neurologist (Petitioner's Ex. # 3).

Petitioner testified at trial that Respondent refused to pay for or authorize any of Dr. Salehi's recommended treatment. Petitioner testified that because he could not afford to pay for Dr. Salehi's' recommended treatment out of his own pocket, that he did not undergo any physical therapy or pain management treatment, nor was he able to go and see a neurologist.

On January 11, 2022, Petitioner presented to the Emergency Room at Vista Medical Center in Waukegan. According to Petitioner he presented to the emergency room that day because of increased head pain and headaches. According to the Vista records, Petitioner presented with a history of a head injury at work in 2019, and had specific complaints of a left sided headache and facial drop. Petitioner reported some numbness and tingling of his posterior occipital scalp with a headache along the left posterior scalp. At the emergency room, Petitioner was ordered to undergo and head and brain CT, which were interpreted as normal. In addition to lab tests, Petitioner underwent a CT of his head and neck, a brain MRI, as well as a chest Xray, all of which came back as unremarkable. Petitioner was then admitted overnight to Vista Medical Center for further evaluation. According to Petitioner, after his admission to Vista Medical Center, he incidentally found out that he tested positive for COVID-19 (Petitioner's Ex. #4).

The following day on January 12, 2022, Petitioner was evaluated at Vista Medical Center by a Dr. Gailina Simkin, a neurologist, who diagnosed Petitioner with a Neurological Deficiency with evidence of Bells' palsy. Dr. Simkin recommended continued current management with steroids and acyclovir. Petition was discharged from Vista Medical Center on January 13, 2022, with instructions to follow up with a neurologist (Petitioner's Ex. #4).

Petitioner testified that he did follow up with a neurologist after his discharge from Vista. However, Petitioner could not recall the neurologist's name and did not provide any records reflecting that visit or treatment.

Respondent submitted into evidence an addendum, dated September 16, 2022, from Dr. Bauer supplementing his initial Section 12 report. According to the addendum, Dr. Bauer reviewed Petitioner's medical records from Dr. Salehi, his emergency room records from Vista Medical Center and chiropractic records from a Dr. Wilfredo Chevere. In his report, Dr. Bauer highlighted Petitioner's chiropractic treatment with Dr. Chevere following Petitioner's prior 2018, motor vehicle crash, whereat Petitioner treated for both back and neck pain from February 1, 2018 through April 9, 2018. Based on his review of Petitioner's additional records, Dr. Bauer opined that he disagreed with Dr. Salehi's recommended treatment of physical therapy and pain management and his referral to a neurologist. Dr. Bauer again concluded that Petitioner reached maximum medical improvement for his neck following Petitioner's March 8, 2021, visit with Dr. Alzate and for his head injury on December 30, 2020, and that any treatment related to those injuries after those dates was not causally related to his work accident (Respondent Ex. # 2).

Regarding Petitioner's chiropractic treatment in 2018, Petitioner testified at trial that back in 2018, he was involved in a motor vehicle crash where he was riding in another vehicle as a passenger. According to Petitioner, following that 2018 motor vehicle crash, he treated with Dr. Wilfredo Chevere, a chiropractor, from February 1, 2018 through April 9, 2018, for both neck and back pain. During that two-month period, aside from chiropractic care, Petitioner was never ordered to undergo any additional MRI imaging of his neck, physical therapy, injections or referred to any type of spine specialist. Petitioner testified that after two months of chiropractic

treatment, he was released with no further neck problems or pain and remained pain free until the accident in this case, almost three years later.

At trial, Petitioner testified that he continues to suffer from frequent head pain and daily headaches in the back of his head. Petitioner further testified that because he has not been able to afford any additional treatment, he has simply learned to deal with the pain. Since working for the Respondent, Petitioner has been working maintenance at a golf course. Petitioner testified that while his frequent head pain and daily headaches do not prevent him from performing his job duties at the golf course, he has on occasion had to miss work or leave work early because of his head pain.

CONCLUSIONS OF LAW

As it relates to issue (F), is Petitioner's current condition of ill-being casually related to the injury, the Arbitrator concludes as follows:

Petitioner alleges that he sustained a concussion from a head injury resulting in post-concussion syndrome along with spondylosis in his cervical spine as a result of the December 30, 2020, accident. Respondent agrees that Petitioner sustained a head injury, but disputes that his cervical spondylosis is related based on Dr. Bauer's Section 12 report wherein he opines that the degenerative changes found in Petitioner's cervical spine were unrelated to the accident in this case. In support of his opinion, Dr. Bauer points to the 2018 prior motor vehicle crash that Petitioner was involved in and his subsequent chiropractor treatment for neck pain.

However, in the Petitioner's medical records after the 2018, motor vehicle crash, there is no evidence to support that the Petitioner was ever diagnosed with or treated for spondylosis or any degenerative changes in his cervical spine. In fact, after that 2018 crash, Petitioner underwent an Xray of his cervical spine, dated February 27, 2018, wherein the radiologist's

impression was an unremarkable radiographic examination with no findings of any degeneration or spondylosis (Respondent's Exhibit #4).

Coupled with Petitioner's testimony that after his 2018 motor vehicle crash, he only had two months of minimal chiropractic treatment and had been pain free for almost three years until the accident in this case, the Arbitrator finds that in addition to the Petitioner's concussion from his head injury resulting in post-concussion syndrome and Petitioner's spondylosis in his cervical spine is casually related to the December 30, 2020, accident.

As it relates to issue (J), whether the medical services that were provided to Petitioner were reasonable and necessary, the Arbitrator concludes as follows:

Under Section 8(a) of the Act, a claimant is entitled to recover reasonable medical expenses, the incurrence of which are causally related to an accident arising out of and in the scope of employment and which are necessary to diagnose, relieve, or cure the effects of the claimant's injury. *Absolute Cleaning/SVMBL v. Ill. Workers' Compensation Comm'n,* 409 Ill.App.3d 463, 470 (4th Dist. 2011).

In light of the Arbitrator's above findings with respect to Casual Connection, the Arbitrator finds that following medical services rendered (as set forth in Petitioner's Exhibit #5) were reasonable and necessary in Petitioner's care and treatment relative to his accident of December 30, 2020:

Vista Corporate Health	12/30/20, 1/4/21, 1/11/21	$3,256.02
Vista Imaging Associates	12/30/20	$161.00
American Center for Spine and Neuro	2/8/21 & 3/8/21	$800.00

Dr. Sean Salehi	10/4/21	$525.00
Vista Medical Center East	1/11/22-1/12/22	$43,865.60
App of Illinois	1/13/22	$1,946.00
Waukegan Clinic Corp	1/12/22	$569.00
	Totals	**$51,122.62**

Therefore, Respondent shall pay Petitioner an amount equal to the outstanding medical bills for all reasonable, necessary and related medical services rendered by the aforementioned medical providers as set forth in Petitioner's Exhibit #5, pursuant to the fee schedule or lessor negotiated rates. Specifically, Respondent is liable for the medical bills from Vista Corporate Health in the amount of $3,256.02, Vista Imaging Associates in the amount of $161.00, American Center for Spine and Neuro in the amount of $800.00, App. of Illinois in the amount of $1,946.00, Dr. Sean Salehi in the amount of $525.00 and Vista Medical Center in the amount of $43,865.60.

As it relates to issue (O), regarding the nature and extent of Petitioner's injury, the Arbitrator concludes finds as follows:

In applying the five factors in Section 8.1(b) of the Illinois Workers' Compensation Act, the Arbitrator finds as follows:

1. As to the AMA impairment rating, the Arbitrator notes that neither the Petitioner nor the Respondent admitted an AMA impairment rating into evidence in this case. As such, the Arbitrator gives this factor no weight.

2. As to the Petitioner's occupation, at trial, Petitioner testified that that he was working as an assembly line worker at a recycling plant on the date of the accident. Petitioner

testified that his job duties included disassembling products to be recycled. Petitioner testified that he currently works as a maintenance worker at a golf course in Waukegan, Illinois. Petitioner testified at trial that while his frequent head pain and daily headaches do not prevent him from performing his job duties at the golf course, he has on occasion had to miss work or leave work early because of his head pain. The Arbitrator gives this factor greater weight.

3. As to the Petitioner's age, the Petitioner was 39 years old at the time of his December 30, 2020, injuries. The Arbitrator gives this factor some weight.

4. As to the Petitioner's future earning capacity, the Arbitrator finds that the Petitioner's future earning capacity has not been diminished given the Petitioner's testimony that he is currently gainfully employed and has been since the date of accident and that that aside from frequent head pain and daily headaches, that he has no limitations in performing his current work for his employer. The Arbitrator gives this factor less weight.

5. As to the evidence of disability in the medical records, the Arbitrator notes that as a result of the work incident on December 30, 2020, Petitioner sustained a concussion from his head injury resulting in post-concussion syndrome along with spondylosis in his cervical spine. According to Petitioner's trial testimony and his medical records, Petitioner continues to have frequent head pain and daily headaches that he testified he has simply learned to deal with. The Arbitrator gives this factor some weight.

Based on all of the above, the Arbitrator finds that as a result of the December 30, 2020, work accident, Petitioner has sustained a loss of use, person as a whole, of 7.5% under Section 8(d)(2) relative to his concussion from his head injury resulting in post-concussion syndrome along with spondylosis in his cervical spine concussion. Respondent shall pay Petitioner permanent partial disability benefits of $306.67.00/week for 37.5 weeks.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	18WC006549
Case Name	Jose J Sanchez v. Candlewood Suites
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	24IWCC0381
Number of Pages of Decision	4
Decision Issued By	Carolyn Doherty, Commissioner

Petitioner Attorney	Leonardo Morales
Respondent Attorney	Ryan Dezonno

DATE FILED: 8/8/2024

/s/Carolyn Doherty, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF KANE)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

JOSE J. SANCHEZ,

Petitioner,

vs. NO: 18 WC 6549

CANDLEWOOD SUITES,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issue of jurisdiction and being advised of the facts and law, reverses the Decision of the Arbitrator, and vacates the reinstatement of this case.

I. FINDINGS OF FACT

On March 5, 2018, Petitioner filed an Application for Adjustment of Claim alleging he sustained injuries while at work on February 12, 2018. On July 14, 2023, Arbitrator Granada dismissed the case for want of prosecution. On July 26, 2023, Petitioner filed a Petition to Reinstate the case. The Petition for Reinstatement was set for hearing on September 14, 2023 at 1 p.m.

On September 14, 2023, Arbitrator Granada denied the Petition to Reinstate at 1:15 p.m. after Petitioner's attorney failed to appear virtually. The parties were notified of the denial that same day via CompFile. Rather than filing a Petition for Review of the Arbitrator's denial of the requested reinstatement, Petitioner's attorney filed a second Petition to Reinstate on September 14, 2023. A Petition for Review regarding the denied reinstatement was never filed by Petitioner.

On January 26, 2024, Petitioner's second Petition to Reinstate was heard by Arbitrator Hegarty and a transcript was made of the hearing. During the proceedings, Petitioner argued that he was late to appear on the first Petition to Reinstate due to technical difficulties and that Arbitrator Hegarty had discretion to reinstate the case based upon Petitioner's second Petition to Reinstate. Respondent objected to the reinstatement, arguing that upon Arbitrator Granada's denial of the first requested reinstatement the Arbitrator lost jurisdiction and that Petitioner's

proper recourse was to file a Petition for Review within 30 days thereafter. Arbitrator Hegarty granted the reinstatement on January 26, 2024.

Respondent filed a timely Petition for Review regarding the reinstatement of the case and filed a Statement of Exceptions in support of its position. Petitioner neither filed a response to Respondent's Statement of Exception nor appeared for oral argument before the Commission.

II. CONCLUSIONS OF LAW

Respondent's Petition for Review requests the Commission reverse Arbitrator Hegarty's Decision to grant Petitioner's second Petition to Reinstate, arguing Arbitrator Hegarty lacked jurisdiction to reinstate the case pursuant to Section 19(b). The Commission notes that Petitioner did not file a response to Respondent's Statement of Exceptions nor appeared for oral argument before the Commission. After reviewing the entirety of the evidence, the Commission reverses the Arbitrator's Decision and vacates the reinstatement.

Section 19(b) of the Act states that unless a petition for review is filed by either party within 30 days after the receipt by such party of the copy of the decision and notification of time when filed . . . then the decision shall become the decision of the Commission and in the absence of fraud shall be conclusive. *See* 820 ILCS 305/19 (b).

The Commission observes that Arbitrator Granada dismissed this case for want of prosecution on July 14, 2023. Thereafter, on July 26, 2023, Petitioner filed a timely Petition to Reinstate, which was set for hearing on September 14, 2023. On September 14, 2023, Arbitrator Granada denied the Petition to Reinstate because Petitioner's attorney failed to appear. After Arbitrator Granada denied the reinstatement of the case on September 14, 2023, Petitioner had 30 days to file a Petition for Review in order to properly bring the denied Petition for Reinstatement before the Commission. The Commission observes that Petitioner has not filed a review of Arbitrator Granada's Decision to deny reinstatement and that the 30-day limit in which to file said review has lapsed.

In this case, rather than filing a timely Petition for Review regarding the denied reinstatement, Petitioner incorrectly filed a second Petition to Reinstate. The second Petition to Reinstate was granted on January 26, 2024 by Arbitrator Hegarty. The Commission finds that the Arbitrator did not have jurisdiction to grant the second Petition to Reinstate because the denial of the first Petition to Reinstate became a final order of the Commission following Petitioner's failure to file a timely Petition for Review.

Therefore, based on the totality of the evidence on the record, the Commission reverses the Arbitrator's Decision to grant the second Petition to Reinstate and vacates the reinstatement.

IT IS THEREFORE ORDERED BY THE COMMISSION that Arbitrator Hegarty's Decision to grant the second Petition to Reinstate is reversed and the reinstatement of this case is vacated.

No bond is required for removal of this cause to Circuit Court. The party commencing the

proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

August 8, 2024
o: 07/25/24
CMD/jjm
045

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

/s/ *Marc Parker*
Marc Parker

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	19WC027192
Case Name	Sarah Rediger v. Knight - Swift Transportation
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b) Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	24IWCC0382
Number of Pages of Decision	20
Decision Issued By	Marc Parker, Commissioner

Petitioner Attorney	Giambattista Patti
Respondent Attorney	Tricia Bellich, Daniel Flores

DATE FILED: 8/8/2024

/s/Marc Parker, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF PEORIA)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Sarah Rediger

Petitioner,

vs. NO: 19 WC 027192

Knight-Swift Transportation,

Respondent.

DECISION AND OPINION ON REVIEW

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

Although outlined in the body of the Arbitrator's decision, the Order did not include an award for prospective medical treatment and vocational rehabilitation. The Commission clarifies the Arbitrator's decision and orders prospective medical care for Petitioner's left shoulder and complex regional pain syndrome. Specifically, Petitioner is awarded the prospective medical care prescribed by Dr. Crock of intravenous lidocaine infusions, pregabalin, and hydroxychloroquine and a left capsular release and all reasonable and necessary attendant care as prescribed by Dr. Aleem. Petitioner is also awarded vocational rehabilitation.

All else is affirmed and adopted.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed May 15, 2023, is clarified as stated herein.

IT IS FURTHER ORDERED BY THE COMMISSION that this case be remanded to the Arbitrator for further proceedings consistent with this Decision, but only after the latter of

expiration of the time for filing a written request for Summons to the Circuit Court has expired without the filing of such a written request, or after the time of completion of any judicial proceedings, if such a written request has been filed.

IT IS FURTHER ORDERED BY THE COMMISSION that Petitioner is awarded the prospective medical treatment prescribed by Dr. Crock of intravenous lidocaine infusions, pregabalin, and hydroxychloroquine and a left capsular release and all reasonable and necessary attendant care as prescribed by Dr. Aleem pursuant to Sections 8 and 8.2 of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Petitioner is awarded vocational rehabilitation.

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

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

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

August 8, 2024

MP: ns
o 7/11/24
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/s/ *Marc Parker*
Marc Parker

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	19WC027192
Case Name	Sarah Rediger v. Knight - Swift Transportation
Consolidated Cases	
Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	17
Decision Issued By	Bradley Gillespie, Arbitrator

Petitioner Attorney	Giambattista Patti
Respondent Attorney	Tricia Bellich, Daniel Flores

DATE FILED: 5/15/2023

THE INTEREST RATE FOR THE WEEK OF MAY 9, 2023 4.89%

/s/ Bradley Gillespie, Arbitrator

Signature

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

Sarah Rediger
Employee/Petitioner

v.

Knight-Swift Transportation
Employer/Respondent

Case # **19** WC **027192**

Consolidated cases: _____

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Bradley Gillespie**, Arbitrator of the Commission, in the city of **Peoria**, on **April 6, 2023**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On the date of accident, **2/6/2019**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $**37,129.67**; the average weekly wage was $**714.03**.

On the date of accident, Petitioner was **44** years of age, ***single*** with **0** dependent children.

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

Respondent shall be given a credit of $**0** for TTD, $**0** for TPD, $**0** for maintenance, and $**36,551.29** for other benefits, for a total credit of $**36,551.29**.

Respondent is entitled to a credit of $**36,551.29 plus medical benefits paid as stipulated** under Section 8(j) of the Act.

ORDER

- Illinois Jurisdiction is appropriate and this matter is properly before the Illinois Worker's Compensation Commission.
- Respondent shall pay temporary total disability benefits from March 9, 2019, through April 6, 2023, at her TTD rate of **$475.97**. **212 1/7** weeks multiplied by $**475.97** equals $**100, 973.61**.
- Respondent shall pay the unpaid medical expenses of $**42, 883.59** set out in Petitioner's Exhibit 38 pursuant to the Illinois medical fee schedule as provided in Sections 8(a) and 8.2 of the Act.
- Respondent is entitled a credit of $**36,551.29** under 8(j) of the Act for group disability benefits as shown above. (*See also* PX #38) Respondent shall hold Petitioner harmless for the lien interest claimed for said benefits.
- Penalties under Section 19(k) are found to be appropriate. No evidence was presented at Arbitration that a written demand for benefits under Section 8(a) or 8(b) of the Act. Therefore, the request for penalties under Section 19(l) are denied. Wherefore, penalties in the amount of 50% of the compensation awarded herein are hereby awarded. 50% of $**100,973.61** TTD award equals $**50,486.80** and 50% of $**42,883.59** in medical awarded equals $**21,441.80.** The total of penalties awarded under 19(k) is $**50,486.80** + $**21,441.80** = $**71,928.60**. Attorney fees under Section 16 are awarded in the amount of 20% of the outstanding benefits awarded. 20% of the $**100,973.61** outstanding TTD equals $**20,194.72** and 20% of the $**42,883.59** in outstanding medical equaling $**8,576.72** are awarded. $**20, 194.72** + $**8,476.72** = $**28,771.44** under Section 16.

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

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

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

Bradley D. Gillespie

Signature of Arbitrator

MAY 15, 2023

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION
19(b) ARBITRATION DECISION

SARAH REDIGER,	)	
	)	
Employee/Petitioner,	)	
	)	
v.	)	**Case # 19 WC 027192**
	)	
KNIGHT-SWIFT TRANSPORTATION,	)	
	)	
Employer/Respondent.	)	

19(b) DECISION OF ABRITRATOR

On or about September 18, 2019, Sara Rediger [hereinafter "Petitioner"] filed an Application for Adjustment of Claim alleging injuries to her left shoulder and neck while pulling down to break a seal on a trailer while working for Knight Swift Transport [hereinafter "Respondent"]. (Arb. Ex. 1A). Petitioner filed a Petition for Penalties and Attorney Fees Pursuant to Sections 16, 19(k) and 19(l) that was submitted as Arb. Ex. 1B. This matter proceeded to hearing on April 6, 2023, in Peoria, Illinois. (Arb. Ex. 1). The following issues were in dispute at arbitration:

- Earnings/Average Weekly Wage;
- Medical Expenses;
- Temporary Total Disability Benefits;
- Jurisdiction;
- Vocational Rehabilitation; and
- Prospective Medical

FINDINGS OF FACT

At the time of the hearing in this matter, Petitioner testified that she was 48-years-old, single and had no dependent children. (Tr. p. 12) She testified that she was employed by Respondent on February 6, 2019. (Tr. p. 13) Petitioner testified that she had worked for Respondent since December 16, 2014. *Id.* She stated that she was an over the road truck driver and mentor for other women drivers. *Id.*

After completing driving school in Peoria, Petitioner contacted Respondent about a position as a truck driver. (Tr. p. 14) She was looking for a company that hired Illinois drivers that would allow her to bring her dog with her to work. *Id.* Respondent advised they do allow pets and hire Illinois drivers. *Id.* Petitioner was advised a recruiter would call to explain the hiring process. *Id*. Petitioner was contacted by Hannah Krontiris who explained Respondent has a terminal in Joliet, where training would take place, but orientation would take place in Indianapolis. (Tr. p. 15) Orientation involved a physical, drug test, background check and other paperwork. *Id.*

Petitioner was informed she would be working out of Chicago, but explained the terminal was in Joliet. (Tr. pp. 15-16) Petitioner explained she was hired to be on the "Chicago" team and the trucks reflected Chicago, Illinois as their home terminal and had an Illinois fleet number. (Tr. pp. 16, 29) Petitioner underwent training in Joliet. (Tr. p. 18) She explained that she met a Chicago driver, and she went with him in his truck and ran a dedicated route with him for a month. *Id.* She alternated driving duties with him as she practiced driving, backing up and learning the job. *Id.*

Petitioner testified that her home terminal was Joliet. (T. 19) On December 16, 2014, Petitioner was hired and filled out Illinois state income tax withholding documents but did not complete Indiana income tax withholding documents. (T. 19, *see also* PX #2) Petitioner further testified she never paid Indiana state taxes. *Id.*

Petitioner identified what was marked as Petitioner's Exhibit 1 as the "Knight Transportation Driver's Agreement to Designate Appropriate State for Workers' Compensation and/or Unemployment Insurance". (Tr. p. 20) The document was signed by Petitioner and her recruiter Ms. Krontiris. (PX #1) It stated, "I was recruited and hired in the location indicated above." The location listed on that document was Joliet, Illinois. (See PX #1) Petitioner testified the document reflected her understanding and belief that she was recruited and hired in Illinois. (Tr. p. 21) Moreover, the document goes on to state as follows:

> " As a result of the above, I agree that my employment with Knight Transportation, Inc. and its subsidiaries is primarily located in the State indicated by me above and that the Worker's [sic] Compensation Act or related laws of said State as well as rules/statutes governing Unemployment Insurance for said State will apply if I suffer a work-related illness or injury or claim Unemployment benefits."
> (PX #1)

Petitioner described her home terminal as a gated facility on 3301 Mound Road which required badge access to enter. (Tr. p. 22) She indicated that she received her assignments via computer and telephone. (Tr. pp. 22-23) Petitioner testified that she more often than not received her assignments while in Illinois. (Tr. p. 23) She parked her truck at home most of the time because she lived a distance away from the terminal in Joliet. *Id.* Petitioner testified that when she received an assignment, if she did not already have a trailer, she would have to retrieve a trailer from the yard in Joliet, a distribution center, or an empty trailer might be waiting. (Tr. p. 24) On other occasions, she would pick up a loaded trailer to deliver. *Id.* More often than not, Petitioner would pick up a trailer in Illinois if she was leaving from home. *Id.* Petitioner testified that she would go out and do trips then return home. *Id.* Petitioner testified that at the end of 2018, she drove a dedicated route from Joliet to Indianapolis where all her assignments began and ended in Illinois. (Tr. pp. 25-26)

Petitioner testified that her CDL was issued by the State of Illinois. (Tr. p. 28) She testified that the truck she was assigned had a fleet number on it reflecting that it was identified as a Chicago truck. (Tr. pp. 28-29) Petitioner described the Joliet terminal as having one mechanic on staff who was permanently assigned to the Joliet terminal and would perform minor services and repairs on the trucks. (Tr. p. 30) The facility was maintained by Respondent and used by Respondent's drivers

for the driver's lounge, showers, and laundry services. *Id.* Respondent's drivers had access to the Joliet terminal 24 hours a day but had to badge into the facility. (Tr. p. 31)

On February 6, 2019, Petitioner was unloading a trailer in Pennsylvania which required her to open the doors. (Tr. p. 32) She had to break a plastic seal to open the doors. *Id.* Petitioner testified that the plastic seals were usually very easy to break by pulling down with one finger. *Id.* On this occasion, however, the seal did not break, so she yanked down with her body weight, and it broke. (T. 32-33) Petitioner felt immediate pain in her left shoulder. *Id.*

Petitioner testified that she did not immediately report the injury because she thought she might have pulled a muscle. (Tr. p. 33) She kept working but her symptoms persisted. (Tr. pp. 33-34) She testified she told dispatch over the next few days and eventually met with Jay Blakey on February 25, 2019. *Id.* Petitioner said her shoulder bothered her so much she was struggling to sleep and drive. (T. 34) Petitioner asked to see a Knight doctor before completing all of the paperwork for workers' compensation. (Tr. p. 35) On February 26, 2019, she saw Dr. Nancy Sherman who suspected Petitioner's problems were coming from her neck and referred her to her primary care provider for steroids. *Id.*

Petitioner went to OSF PromptCare in Morton on March 9, 2019, because the steroids provided some initial relief, but her "hand stopped working" and she felt she lost strength and could not grip. (Tr. p. 36) Licensed Nurse Practitioner Laine Theis ordered an x-ray and held Petitioner off work. (Tr. pp. 36-37, *See also* PX #4 p. 1) Petitioner testified she still delivered the load the next day because no one else was available to do it. (Tr. p. 37)

While Petitioner was off work, she was paid short term disability benefits. (Tr. pp. 73-38) Petitioner was advised to process her medical treatment through her group health insurance and not to go through workers' compensation. (Tr. p. 38)

Petitioner sought treatment at Midwest Orthopedics because it was a walk-in clinic, and she would be seen by an orthopedic doctor immediately. (T. 38-39) She was seen by Dr. Brad Roberts on March 11, 2019, and he ordered an MRI which was performed on March 25, 2019. (Tr. p. 39, *see also* PX #5 & PX #6) The films revealed a partially torn rotator cuff. (Tr. p. 39, *See* PX #6) Petitioner began physical therapy, but it did not provide relief, so Dr. Roberts gave her an injection and ordered an MRI of her cervical spine which was performed on May 14, 2019. (Tr. p. 40, PX #5, p. 8 & PX #8) The films showed a broad-based bulging disc at C3-4 with disc height at C3-4 and C5-6, disc displacement with moderately severe foraminal stenosis with contact of the exiting nerve root. (*See* PX #8)

Petitioner underwent epidural steroid injections with Dr. Robbye Bell and continued physical therapy at Professional Therapy Services. (PX #9 & PX #10) Dr. Bell referred Petitioner to Dr. O'Leary but she chose to treat with Dr. Dzung Dinh. (PX #12 & PX #13)

Petitioner first saw Dr. Dinh on August 12, 2019. (Tr. p. 41 & PX #13) Dr. Dinh recommended cervical fusion at C5-6 and C6-7 which was performed on October 10, 2019. (*See* PX #13 & PX #14) Petitioner testified she quit smoking prior to surgery to improve her chances for a positive outcome. (Tr. p. 42) Following surgery, she experienced paralysis of the vocal cord

which required surgical intervention performed by Dr. Sandra Ettema on February 25, 2020 (See PX #17 and PX #19)

Following Dr. Dinh's cervical fusion, Petitioner's symptoms improved. (Tr. p. 42) The numbness and tingling she had experienced had resolved, but her left shoulder pain persisted. *Id.* Dr. Dinh then referred Petitioner to Dr. Miguel Ramirez. (Tr. p. 43) Dr. Ramirez recommended surgery and performed an arthroscopic rotator cuff repair on May 7, 2020. (Tr. p. 43, PX #18 & PX #19) Petitioner testified that she continued to receive disability benefits.(Tr. pp. 43-44)

Petitioner testified that prior to her February 6, 2019, work accident, she never had left shoulder problems. (Tr. p. 44) The left shoulder pain she experienced following her work accident was the same pain that persisted following her cervical fusion. (Tr. pp. 44-45) She underwent shoulder surgery with Dr. Ramirez to address the symptoms caused by her work accident. (Tr. p. 45)

Following her shoulder surgery, Petitioner's pain changed, and she noticed her arm felt different. (Tr. p. 46) Upon reporting this to Dr. Ramirez, he ordered an EMG and ordered physical therapy at ATI Physical Therapy. (Tr. p. 46 & PX #18) Dr. Ramirez also referred Petitioner back to Dr. Dinh who confirmed Petitioner's symptoms were not related to her cervical spine. (PX #13) Due to her ongoing complaints, her physical therapist referred her to Pain Management at OSF Center for Health where she was seen by Dr. Ramsin Benyamin. (*See* PX #26). Dr. Benyamin suspected complex regional pain syndrome and referred Petitioner to Dr. Aleem at Washington University. (PX #26)

Petitioner saw Dr. Aleem on January 29, 2021, and provided a consistent history of accident and treatment. (PX #29)) Dr. Aleem recommended shoulder surgery but wanted to confirm Petitioner's complex regional pain syndrome was stable. *Id.*

Dr. Aleem referred Petitioner for evaluation and treatment for complex regional pain syndrome (CRPS) at Washington University where she came under the care of Dr. Laura Crock. (Tr. p. 48 & PX #31)Petitioner testified that her current treatment includes physical therapy and lidocaine injections. (Tr. p. 49) Her treatment is overseen by Dr. Crock, and she wishes to continue treatment and would like to proceed with shoulder surgery if cleared. (Tr. p. 49)

Petitioner hopes surgery will improve her range of motion and reports difficulty dressing herself and fixing her hair. (Tr. p. 50)

Petitioner began seeing a psychologist, Dr. Kerrie Armstrong, for anxiety and depression following her work accident. (Tr. p. 50) As her treatment progressed, she required a pain psychologist, so Dr. Armstrong referred her to Dr. Dennis McManus. (T. 51 & PX #33) Petitioner currently undergoes treatment with Dr. McManus in conjunction with Washington University in St. Louis. (Tr. p. 51)

While Petitioner has not been released to go back to work and does not believe she could work as a truck driver, she would like to return to some sort of gainful employment. (Tr. p. 52) She testified she is willing to undergo vocational rehabilitation training and has performed her own job search. (Tr. pp. 52-53)

Petitioner is in chronic pain and acknowledges some days are better than others. (Tr. p. 53) She started getting migraines which she never had before her work accident. *Id.* When she flies, she must fly handicapped because she cannot place her luggage in the overhead compartment. (Tr. pp. 52-54) She cannot put on a swimsuit, and she cannot even close her car door with her left arm. (Tr. p. 54) Some days her left arm burns and others it swells to the point she cannot get a shirt over it. *Id.* Her current treatment has mixed success but does provide some relief. *Id.* Petitioner testified that she has qualified for Social Security Disability. *Id.*

Petitioner testified that she received bonuses which were tied to her performance in relation to miles and for working over holidays. (Tr. p. 55)

Trial Testimony of Stephen McLeod

Mr. Stephen McLeod testified on behalf of Respondent. (Tr. pp. 59-88) He testified he works for Respondent as a Reginal safety director and while not familiar with Petitioner, he is familiar with her case. (Tr. pp. 60-61) At the time of Petitioner's work accident, he was involved with a different team and did not work with Petitioner. (Tr. p. 61) Mr. McLeod worked out of the Indianapolis terminal and testified Joliet was not a terminal, but a "yard". (Tr. pp. 63-64) He explained Joliet did not have staff members but acknowledged there was a mechanic on site which he did not believe that was enough employees to consider Joliet a "terminal". (Tr. p. 64 and 83-84)

Mr. McLeod confirmed Ms. Krontiris recruited Petitioner and he knows Ms. Krontiris personally, though he did not know her at the time of Petitioner's recruitment and hiring. (Tr. p. 67) When asked what being part of the Chicago team meant, Mr. McLeod stated, " Essentially, the recruiters divide up the country geographically. So, Hannah Krontiris would have been assigned to recruit any candidate who lives and is interested in being a prospective driver for Knight out of the State of Illinois." (Tr. p. 68) Mr. McLeod explained the hiring process and testified that the onboarding for Illinois drivers took place in Indianapolis. (Tr. p. 70) Mr. McLeod identified Ms. Krontiris' signature on Petitioner's Exhibit 1 and confirmed the document states the home terminal is Joliet, Illinois. (Tr. pp. 87-88) He also confirmed Petitioner's Exhibit 1 was titled "Knight Transportation Driver's Agreement to Designate Appropriate State for Workers' Compensation and/or Unemployment Insurance" and confirmed Petitioner was recruited and hired in Illinois. (Tr. p. 88)

Deposition Testimony of Dr. Dinh

Dr. Dinh testified on August 22, 2022. He opined the mechanism of injury reported by Petitioner could cause or aggravate Petitioner's underlying pathology. (PX #36 pg. 10). Dr. Dinh testified that at the time of his first visit with Petitioner, she was not working, and he did not see how she could return to work. (*Id.* at p. 12) Dr. Dinh testified he performed a discectomy and fusion and there is a causal connection to Petitioner's work accident. (*Id*. at p. 15) As a result of surgery, Petitioner suffered a paralyzed vocal cord which required surgical intervention but overall, Petitioner did well postoperatively. Post operative imaging showed a cracked graft, but it did not affect the rest of the graft. (*Id*. at pp. 16-17)

Petitioner's left shoulder pain she reported before her fusion persisted, so Dr. Dinh referred her to Dr. Ramirez. After Petitioner complained of ongoing left shoulder pain following surgery with Dr. Ramirez, Dr. Dinh reviewed an MRI dated January 5, 2021, and confirmed Petitioner needed no further treatment of her cervical spine and is at MMI without restrictions. (PX #36 pp. 19-21) Dr. Dinh testified all treatment was reasonable and necessary to alleviate Petitioner's work-related condition. (*Id*. at p. 20)

Dr. Chabot's Independent Medical Examination

Petitioner was examined by Dr. Michael Chabot on March 17, 2022, at the behest of Respondent. (*See* RX #3) Petitioner provided a consistent history of accident, treatment and symptoms. (RX #3 p. 1) Dr. Chabot reviewed Petitioner's past medical records detailing her treatment following her work accident and performed a physical examination. (RX #3 pp.1-8) He diagnosed Petitioner with a cervical strain and CRPS. (RX #3 p. 10) Dr. Chabot confirmed Petitioner's symptoms are causally related to her work accident and the treatment she received on her cervical spine was reasonable and necessary. *Id.* He believed Petitioner's cervical condition would be at MMI pending a CT scan to confirm solid bridging fusion at C5-6 and C6-7. *Id.* Regarding Petitioner's cervical spine, Dr. Chabot opined that there is no reason which she could not return to work full duty, but he believed her limitations were associated with her adhesive capsulitis and complex regional pain syndrome which would prevent her from returning to her prior employment. *Id.*

Dr. Paletta's Independent Medical Examination

On February 16, 2022, Dr. Paletta of the Orthopedic Center of St. Louis performed a physical examination and evaluation of Petitioner. (RX #4). On physical examination, Petitioner had limited range of motion and pain at the end range of motion in all planes. (RX #4 at p. 9).

In addition to performing a physical examination, Dr. Paletta reviewed Petitioner's prior treatment records. (RX #4 pp. 1-8). He also reviewed Petitioner's left shoulder x-rays, pre-operative March 15, 2019 left shoulder MRI and post-operative left shoulder MRI. (RX #4 p. 9) Based on Petitioner's subjective history, treatment notes and physical examination, Dr. Paletta assessed:

1) Post-operative adhesive capsulitis, status post rotator cuff repair
2) No evidence of recurrent rotator cuff tear or failed repair
3) History of complex regional pain syndrome, resolving.

(RX #4 p. 10)

Dr. Paletta found that Petitioner's left shoulder condition was not causally related to the 2/6/19 work accident. (RX #4 p. 10) Petitioner's left shoulder conditions, AC joint arthritis and rotator cuff tendinopathy were pre-existing in nature, as the plain x-rays and MRI scans showed no evidence of acute injury but rather chronic, degenerative changes. *Id.* Dr. Paletta opined that Petitioner's work accident did not aggravate or accelerate those conditions, given the mechanism of injury, MRI findings and nature of Petitioner's pain complaints when she initially presented following the work accident. *Id*. Dr. Paletta opined that Petitioner's left shoulder adhesive

capsulitis and complex regional pain syndrome were complications from and causally related to Petitioner's May 7, 2020, rotator cuff repair. *Id.* He indicated that the May 7, 2020, rotator cuff repair was not reasonable or necessary as related to any work accident. (RX #4 p. 10).

Dr. Paletta found that Petitioner was not at MMI. (RX #4 p. 11). He recommended an additional arthroscopy, lysis of adhesions and capsular release once Petitioner's pain symptoms have resolved. *Id.* Dr. Paletta opined that the prospective treatment recommended, as well as Petitioner's ongoing work restrictions, are causally related to her May 7, 2020, shoulder surgery. (*Id.*). He felt that there was no evidence of any injury causally related to the February 6, 2019, work accident. (*Id.*).

Deposition Testimony of Dr. Aleem

Dr. Alexander Aleem's deposition testimony was taken on March 17, 2023. (PX #37) He is a board-certified orthopedic surgeon specializing in shoulder and elbow treatment. (PX #37 p. 5) Dr. Aleem saw Petitioner on January 29, 2021. Petitioner provided a consistent history of accident and treatment. (*Id.* at p. 7) Dr. Aleem performed a physical examination during which he noticed allodynia consistent with CRPS. (*Id*. at p. 8) He was concerned Petitioner had developed CRPS following rotator cuff surgery. Dr. Aleem noted Petitioner's mechanism of injury caused a traction injury which could cause or aggravate a shoulder injury. (PX #37 p. 9) Petitioner described her current symptoms which Dr. Aleem explained matched what is commonly reported after shoulder surgery which can cause CRPS. (*Id.* at p.10) Dr. Aleem testified that CRPS can develop following shoulder surgery, and it can "certainly" occur because of a traction injury. *Id*. He testified Petitioner's treatment had been reasonable and necessary. His findings from his physical examination were consistent with a traction injury. (*Id*. at p. 12) Petitioner showed no marked pain behaviors of note. *Id*. Dr. Aleem reviewed the March 25, 2019, MRI report and opined that a traction injury could aggravate rotator cuff symptomology and cause increased inflammation which would require treatment. (PX #37 pp. 14-15) He opined that Petitioner's injury likely caused an aggravation of her left shoulder that prevented her from being able to work. (*Id*. at p.15)

Dr. Aleem diagnosed Petitioner with adhesive capsulitis and CRPS. (PX #37 p. 15) He opined this diagnosis was the result of interventions from that injury, including the rotator cuff surgery. (*Id*. at p. 16) He further opined her treatment leading up to her rotator cuff surgery was reasonable and necessary. Dr. Aleem believes that Petitioner would benefit from a capsular release to address her adhesive capsulitis, but her CRPS is a contraindication and does not believe Petitioner can work as a truck driver. (Id. At 17-19) He does not expect Petitioner to improve without surgery and surgery is on hold until her CRPS improves (Id. At 20)

IME of Dr. George Paletta

Petitioner was examined by Dr. George Paletta on March 16, 2022, at the behest of Respondent. Petitioner provided a consistent history of accident, treatment and symptoms. Dr. Paletta reviewed Petitioner's past medical records detailing her treatment following her work accident and performed a physical examination. He diagnosed Petitioner with post-operative adhesive capsulitis and CRPS. He did not believe her left shoulder condition was casually related to her work accident because her symptoms were cervical in nature. Dr. Paletta further opined

Petitioner's pathology pre-existed her work accident and he did not believe her work accident aggravated her condition. He opined Petitioner had not reached MMI and cannot work full duty. He does not believe the treatment she received is related but would defer to pain management for treatment of her CRPS.

Deposition Testimony of Dr. Crock

Dr. Laura Crock is a physician and research scientist at Washington University. She is board certified in both anesthesia and pain management. Dr. Crock first saw Petitioner on May 20, 2021. Petitioner had initially been referred to Dr. Gruba, but due to insurance issues, Petitioner was referred to her. (PX 35 pg. 7) Petitioner provided a complete history of accident, treatment, and symptoms and Dr. Crock reviewed Petitioner's treatment records. Upon physical examination, Dr. Crock noted decreased range of motion, shooting, stabbing, aching, heavy, tender, tiring sickening, cramping and hot and burning pain that was rated an 8 out of 10. (Id. At 9) Petitioner also reported inconsistent temperature asymmetry at the time and left arm swelling with nail changes. (Id. At 9-10) Dr. Crock testified Petitioner showed appropriate pain behaviors and the subjective complaints were confirmed by the objective evidence.

Dr. Crock was asked whether Petitioner's current symptoms could be explained as ongoing cervical complaints, she explained Petitioner's current symptoms are not consistent with ongoing cervical pain. The physical examination led her to conclude Petitioner had Complex Regional Pain Syndrome ("CRPS") and there was no clear other explanation for her symptoms. (PX #35 p. 15) She further opined that Petitioner's CRPS is related to her work accident because her pain and symptoms followed the injury and surgeries. (*Id*. at pp. 15-16) Dr. Crock testified the records show Petitioner developed cervical radiculopathy and shoulder pain following her work accident and underwent appropriate treatment. (*Id*. at pp. 17-18)

Dr. Crock described patients like Petitioner are treated with medications, injections, physical therapy, and pain psychologists. Sometimes surgery can be offered to relieve pain, but currently surgery is not being recommended. (PX #35 p. 20) Petitioner is currently getting IV lidocaine infusions which provide two to three weeks of relief and she's taking hydroxychloroquine and pregabalin. *Id*.

Dr. Crock believes Petitioner is at MMI but would still benefit from treatment. (PX #35 p. 20) While there is hope for improvement, she does not believe Petitioner would be capable of working as a truck driver in her current condition and would consider an FCE to determine her current work capabilities. (Id. at pp. 21-22) Dr. Crock testified that Petitioner would benefit from a stellate ganglion block but given her history of vocal cord paralysis, there is a risk of the vocal cord closing rendering Petitioner unable to breathe. (*Id*. at pp. 44-45)

CONCLUSIONS OF LAW

In Support of the Arbitrator's Decision regarding (A), was Respondent operating under and subject to the jurisdiction of the Illinois Workers' Compensation Act, the Arbitrator finds as follows:

The Arbitrator incorporates by reference the Findings of Fact as set forth in the paragraphs above. The Illinois Workers' Compensation Act covers persons and the services of another under any contract of hire, express, implied, or written. The State of Illinois will assume jurisdiction of the following three situations: (1) A person whose employment is outside the State of Illinois where the contract of hire is made within the state of Illinois, (2) persons whose employment results in injuries within the State of Illinois, and (3) persons whose employment is principally localized within the State of Illinois regardless of the place of accident or the place where the contract for hire was made. 820 Ill. Comp. Stat. Ann. 305/1(b)(2)

In this case, Respondent acknowledged Illinois jurisdiction as seen in Petitioner's Exhibit 1. Petitioner testified she was recruited by Hannah Krontiris. Respondent's witness Mr. McLeod confirmed Ms. Krontiris' signature appears on the document. Furthermore, the document is titled "Knight Transportation Driver's Agreement to Designate Appropriate State for Workers' Compensation and/or Unemployment Insurance" [hereinafter the "Agreement"]. (*See* PX #1) The Agreement explicitly states Petitioner was recruited and hired in Illinois and her home terminal is in Illinois. (PX #1) Along with establishing the contract for hire was made in Illinois, this document also confirms Petitioner was principally localized in Illinois by confirming Petitioner was trained in Illinois and dispatched out of Illinois. *Id.* The Agreement also confirms that while Petitioner may drive outside of Illinois, she often drives on the roads within the state of her home terminal which was identified as Illinois. *Id.* The Agreement confirms Respondent's intent to be bound by the Illinois Workers' Compensation Act as well as Illinois Unemployment benefits. *Id.*

Petitioner believed she was hired in Illinois. (Tr. p. 27) When she was recruited, she informed Ms. Krontiris she held a CDL in Illinois and was informed she would be working out of Illinois (Tr. p. 15) The source of Petitioner's renumeration was Illinois, as shown by the fact she never paid Indiana taxes but had Illinois income tax withheld. (Tr. p. 19) Petitioner provided unrebutted testimony that she received most of her assignments in Illinois. (Tr. p. 26) She would usually pick up her trailer in Illinois, her truck was parked in Illinois, and she would always return to Illinois when she finished her out-of-state assignment. (Tr. p. 24) Before her work accident, she drove a dedicated route that began and ended in Illinois. (Tr. p. 25) Moreover, Respondent's witness, Mr. McLeod stated, " Essentially, the recruiters divide up the country geographically. So, Hannah Krontiris would have been assigned to recruit any candidate who lives and is interested in being a prospective driver for Knight out of the State of Illinois." (Tr. p. 68)

Therefore, based on the foregoing, the Arbitrator finds and concludes that Respondent was operating under and subject to the jurisdiction of the Illinois Workers' Compensation Commission.

In Support of the Arbitrator's Decision regarding (F), Is Petitioner's current condition of ill-being causally related to the injury, the Arbitrator finds and concludes as follows:

The Arbitrator incorporates by reference the Findings of Fact and Conclusions of Law set forth in the foregoing paragraphs. The law holds that an accidental injury need not be the sole causative factor, nor even the primary causative factor, as long as it is ***a*** causative factor in the resulting condition of ill-being. *Sisbro, inc. v. Industrial Comm'n*, 207 Ill.2d 193, 205, 797 N.E.2d

665, 672-673. [Emphasis added]. "Petitioner need only show that some act or phase of employment was a causative factor of the resulting injury." *Fierke v. Industrial Comm'n*, 93 Ill.2d 59, 442 N.E.2d 908 (1982).

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

Petitioner testified credibly to her complaints and the Arbitrator notes that she has been under medical treatment since her accident and every medical provider to have seen her since has recorded her consistent symptoms.

Considering the objective and subjective evidence, the Arbitrator concludes that Petitioner's current conditions of ill-being are causally related to her injury of February 6, 2019, based upon a "chain of events" analysis. *Pulliam*, 77 Ill. 2d 469, 397 N.E.2d 834 (1979); *Gano,* 260 Ill.App.3d 92, 631 N.E.2d 724 (1994); *International Harvester*, 93 Ill.2d 59, 442 N.E.2d 908 (1982). Specifically, the Arbitrator concludes that Petitioner's neck, shoulder, and complex regional pain syndrome are causally related to her work accident.

There is no legitimate dispute whether Petitioner's cervical condition, CRPS, and need for treatment were necessitated by her February 6, 2019, work accident. Petitioner provided unrebutted testimony that, prior to her work accident, she was able to work her full duty position and without restrictions. Dr. Chabot agreed with Dr. Dinh, that Petitioner injured her cervical spine on February 6, 2019. Dr. Dinh provided unrebutted testimony that Petitioner's surgery was causally related to her work accident.

Dr. Crock's opinion that Petitioner's CRPS and need for treatment are causally related to her work accident is entirely unrebutted.

Dr. Aleem's opinion that Petitioner's work accident caused a traction injury requiring treatment is supported by the evidence and more persuasive than Dr. Paletta's opinion that Petitioner's work accident did not aggravate her shoulder condition. Dr. Aleem pointed out that the evidence shows Petitioner was able to work full duty without restrictions prior to her work accident and that changed as a result of the accident. Dr. Paletta's opinions are not supported by the facts admitted in evidence.

Therefore, the Arbitrator finds and concludes that Petitioner's present condition of ill-being with respect to her left shoulder, neck, and CRPS are causally related to her work injury of February 6, 2019.

In Support of the Arbitrator's Decision regarding (G), What were the Petitioner's earnings, the Arbitrator finds and concludes as follows:

While there was somewhat limited testimony surrounding earnings, Petitioner's uncontradicted testimony was that she was paid for mileage, she was paid bonuses for working holidays, and there were additional bonuses for hitting certain tiers of mileage. She testified that her pay was based upon performance. The various types of pay including payouts for vacation pay are shown in Respondent's Exhibit #5. The Arbitrator finds and concludes that Petitioner's earnings for the year preceding the accident were $37, 129.67 and her average weekly wages was $714.03. To reach this calculation, all wages earned during the 52 weeks prior to the accident were included based upon Petitioner's unrebutted testimony that all of the wages were based upon performance.

In Support of the Arbitrator's Decision regarding (J), Were the medical services provided to Petitioner reasonable and necessary, the Arbitrator finds and concludes as follows:

In Support of the Arbitrator's Decision regarding (K), Is Petitioner entitled to any prospective medical care, the Arbitrator finds and concludes as follows:

The Arbitrator incorporates by reference the Findings of Fact and Conclusions of Law presented in the preceding paragraphs. The right to be compensated for medical costs associated with work-related injuries is at the very heart of the Workers' Compensation Act. *Hagene v. Derek Polling Center*, 388 Ill. App. 3d 390, 902 N.E. 2d 1269 (5th Dist. 2009). The purpose of the Act is to place on industry the burdens of caring for the casualties of industry instead of placing this burden on the public or on the individuals whose misfortunes arise out of the industry. *Shell Oil v. Industrial Commission*, 2 Ill. 2d 590, 119 N.E. 2d 224 (1954).

Upon establishing causal connection and the reasonableness and necessity of recommended medical treatment, employers are responsible for necessary prospective medical care by their employees. *Plantation Mfg. Co. v. Indus. Comm'n*, 294 Ill.App.3d 705, 691 N.E.2d. 13 (1997) This includes treatment to diagnose, relieve, or cure the effects of claimant's injury. *F&B Mfg. Co. v. Indus. Comm'n*, 325 Ill.App. 3d 527, 758 N.E.2d 19 (2001).

Based upon the above findings as to causal connection, the Arbitrator finds and concludes, Petitioner's medical treatment has been reasonable and necessary to treat her work-related injuries. Petitioner's treating physicians testified credibly that her medical treatment had been reasonable and necessary to treat her work injuries. There was no testimony that Petitioner's medical treatment was unreasonable or unnecessary. Therefore, Respondent shall therefore pay the expenses in Petitioner's Exhibit 38 pursuant to the Illinois medical fee schedule as provided in Sections 8(a) and 8.2 of the Act. Pursuant to the stipulations of the parties, Respondent shall be given credit for any and all medical bills previously paid and credit for any and all medical bills paid through its group medical plan under Section 8(j) of the Act.

The Arbitrator further finds Petitioner is entitled to receive ongoing medical care recommended by Dr. Crock related to Complex Regional Pain Syndrome and a capsular release as recommended by Dr. Aleem in the event Petitioner is medically cleared. Therefore, Petitioner is entitled to prospective medical care as described by Dr. Crock. Dr. Crock's testimony is unrebutted and supported by the evidence.

In Support of the Arbitrator's Decision regarding (L), What temporary benefits are in dispute, the Arbitrator finds and concludes as follows:

The Arbitrator hereby incorporates by reference the Findings of Fact and Conclusions of Law as stated in the foregoing paragraphs. Petitioner claims entitlement to temporary total disability benefits from March 9, 2019, through April 6, 2023, representing 212-1/7 weeks. Petitioner has been off work since March 9, 2019, when Ms. Theis placed her off work. (Tr. pp. 36-37, *See also* PX #4 p. 1) Petitioner testified that she has remained off work since. All of Petitioner's treating doctors, as well as the Respondent's Section 12 examiners agree Petitioner is not able to work as a truck driver.

Therefore, Respondent shall pay Petitioner temporary total disability benefits for the period between March 9, 2019, through April 6, 2023, representing 212-1/7 weeks pursuant to Section 8(b) of the Act.

This award shall in no instance be a bar to further hearing and determination of any additional amount of medical benefits or compensation for a temporary or permanent disability if any.

In Support of the Arbitrator's Decision regarding (M), Should Penalties or Attorney Fees be imposed on Respondent, the Arbitrator finds and concludes as follows:

The Arbitrator incorporates by reference the Findings of Fact and Conclusions of Law set forth in the foregoing paragraphs. The Arbitrator finds and concludes Petitioner's claim to be compensable and penalties and fees shall be imposed upon Respondent. The Arbitrator observes that Respondent delayed benefits without reasonable justification based on their claim that Petitioner was not hired in Illinois and this claim is not subject to Illinois jurisdiction. Respondent's contention that Petitioner was not hired or recruited in Illinois is directly contradicted by their own internal documentation. This leads the Arbitrator to conclude Respondent's argument was not made in good faith and represents unreasonable and vexatious delay.

The Arbitrator finds that Respondent disputed jurisdiction despite their own internal documentation confirming contract for hire was in Illinois and Petitioner's employment was principally localized in Illinois.

Therefore, Respondent shall pay penalties pursuant to Section 19(k) as it unreasonably and vexatiously asserted a defense which did not present a real controversy. No evidence was presented at Arbitration which established that a written demand for payment of benefits under Section 8(a) or 8(b) of the Act, therefore, penalties under 19(l) are not awarded. Section 16 attorney fees are awarded for 20% of the amount of outstanding benefits awarded.

In Support of the Arbitrator's Decision regarding (O), Is Petitioner entitled to vocational rehabilitation, the Arbitrator finds and concludes as follows:

In *National Tea*, the court recognized several factors to consider in determining whether rehabilitation is appropriate. Factors favoring rehabilitation include: (1) the employee has sustained an injury which caused a reduction in earning power and there is evidence rehabilitation

will increase his earning capacity; (2) the employee is likely to lose job security due to his injury; and (3) the employee is likely to obtain employment upon completion of rehabilitation training. Factors mitigating against rehabilitation include: (1) the employee has unsuccessfully undergone similar treatment in the past; (2) the employee has received training under a prior rehabilitation program which would enable him to resume employment; (3) the employee is not "trainable" due to age, education, training, and occupation; and (4) the employee has sufficient skills to obtain employment without further training or education. Other factors the court considered relevant were the relative costs and benefits to be derived from the program; the employee's work-life expectancy; his ability and motivation to undertake the program; and his prospects for recovering work capacity through medical rehabilitation or other means. *National Tea Company v. Industrial Comm'n* (1983), 97 Ill.2d at 432-33, 73 Ill.Dec. 575, 454 N.E.2d 672.
In this case,

In this case, Petitioner's unrebutted testimony establishes she sustained an injury which caused a reduction in earning power and she was not able to return to her previous employment due to her work injury. Petitioner's physicians agree that she in not able to return to her former employment. Petitioner testified she would like to work and is willing to work in some capacity. Petitioner's Exhibit 39 clearly establishes Petitioner engaged in a diligent job search yet remains unemployed.

Therefore, the Arbitrator finds and concludes that vocational rehabilitation is appropriate, and Respondent shall authorize and pay for vocational rehabilitation or training pursuant to Section 8(a) of the Act.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC011278
Case Name	Joy Davis v. City of Edwardsville
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	24IWCC0383
Number of Pages of Decision	27
Decision Issued By	Marc Parker, Commissioner, Christopher Harris, Commissioner

Petitioner Attorney	Thomas Rich
Respondent Attorney	Andrew Keefe

DATE FILED: 8/9/2024

/s/Marc Parker, Commissioner

Signature

DISSENT

/s/Christopher Harris, Commissioner

Signature

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Joy Davis,

Petitioner,

vs. NO: 21 WC 11278

City of Edwardsville,
Respondent.

DECISION AND OPINION ON REVIEW

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

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed February 15, 2023, is hereby affirmed and adopted.

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

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

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

AUGUST 9, 2024

/s/ *Marc Parker*
Marc Parker

MP:yl
o 7/11/24
68

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

DISSENT

I respectfully dissent from the Majority Decision and find that Petitioner lacked credibility and failed to prove by the preponderance of the evidence that her current condition of ill-being is causally related to the March 23, 2021 work accident.

Petitioner and her treating surgeon, Dr. Gornet, primarily relied on a chain of events theory in support of causation, the grounds of which I find are insufficiently supported by the evidence. Petitioner had significant prior history related to her cervical spine, including six years' worth of treatment and tests for cervical radiculopathy with disc protrusion or herniation. The last chiropractic visit was approximately two-and-a-half weeks prior to the work accident. Following the work accident, Petitioner declined treatment at the scene (except for an ice pack for her head) and reported to her colleagues a couple days later that she had minimal symptoms comprising a small headache and sore back, but was otherwise "fine", "not injured" and "ok." (Pet. Ex. 12). Petitioner did not seek treatment until about a month after the accident during which time she continued to work without restrictions and admitted to going camping and sleeping on an uncomfortable bed that caused her radicular pain.

When Petitioner first sought treatment after the work accident on April 19, 2021, she reported to her providers that she had experienced immediate right-sided neck pain that radiated down her right arm after the accident. Petitioner did not testify as such, the accident/witness reports completed within two days of the accident did not corroborate this, and on that same date, Petitioner reported to a different physician that she had had neck and thoracic pain for four months while denying any injury or radicular pain. It is further noted that Petitioner was not truthful during her Section 12 examination with Dr. Bernardi. She provided several inconsistent statements to Dr. Bernardi including that she had sought treatment within 48 hours of the accident, and she specifically denied having any prior problems with her neck or seeing a doctor or chiropractor for any neck problems. At arbitration, Petitioner admitted to making these statements to Dr. Bernardi and testified that the treatment was related to knots in her shoulder blades and not her neck. The

medical records stated otherwise and based on the evidence thus far, Petitioner is beyond a poor historian with her credibility significantly undermined as to her overall condition following the work accident.

I further find Dr. Bernardi's opinions more persuasive in this claim. He not only noted the discrepancy between what Petitioner had reported to him and what the medical records stated, but he also reviewed the imaging before and after the work accident and indicated that they were essentially the same. Dr. Gornet agreed as much, but for clinical symptoms, which was based upon Petitioner's oral history. Dr. Gornet conceded that if Petitioner's history regarding her symptoms was not accurate, his opinion regarding causation could change.

In total, I find that Petitioner's lack of credibility compromises the integrity of her claim, as well as the fact that she essentially had the same diagnoses, positive findings and MRI findings before and after the work accident, and Dr. Bernardi had testified that sleeping in the wrong position could also be a competent mechanism of injury. For these reasons, I do not find that Petitioner's reported cervical symptoms and her physical condition for which she sought treatment for are causally related to the March 23, 2021 work accident. I therefore dissent.

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC011278
Case Name	Joy Davis v. City of Edwardsville
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	23
Decision Issued By	Linda Cantrell, Arbitrator

Petitioner Attorney	Thomas Rich
Respondent Attorney	Andrew Keefe

DATE FILED: 2/15/2023

THE INTEREST RATE FOR THE WEEK OF FEBRUARY 15, 2023 4.84%

/s/Linda Cantrell, Arbitrator

Signature

STATE OF ILLINOIS)
)SS.
COUNTY OF JEFFERSON)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

JOY DAVIS
Employee/Petitioner

v.

CITY OF EDWARDSVILLE
Employer/Respondent

Case # **21** WC **011278**

Consolidated cases: _____

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Linda J. Cantrell**, Arbitrator of the Commission, in the city of **Mt. Vernon**, on **November 30, 2022**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On **March 23, 2021**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $**79,342.33**; the average weekly wage was $**1,525.81**.

On the date of accident, Petitioner was **50** years of age, ***single*** with **0** dependent child(ren).

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

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

Respondent shall be given a credit of **$0** for TTD, $**0** for TPD, $**0** for maintenance, and **$35,617.04** for public employee disability benefits paid, credit for any and all nonoccupational indemnity disability benefits paid, if any, and credit for all medical expenses previously paid, pursuant to the stipulation of the parties.

Respondent is entitled to a credit of **TBD and any and all benefits paid** under Section 8(j) of the Act.

ORDER

Respondent shall pay the medical expenses contained in Petitioner's Group Exhibit 1, pursuant to the Illinois medical fee schedule, as provided in Sections 8(a) and 8.2 of the Act. Pursuant to the stipulation of the parties, Respondent shall receive a credit for any and all medical expenses paid through its group medical plan under Section 8(j) of the Act. Respondent shall hold Petitioner harmless from all claims or liabilities made by the group medical plan to the extent of such 8(j) credit. The Arbitrator further finds there is no evidence of overpayment of medical expenses contained in the record.

Respondent shall pay Petitioner temporary total disability benefits of $**1,017.21**/week commencing **5/25/21** through **9/13/21**, representing **16** weeks, under Section 8(b) of the Act. Pursuant to the stipulation of the parties, Respondent shall receive credit for public employee disability benefits paid in the amount of $35,617.04, and credit for any and all nonoccupational indemnity disability benefits paid, if any.

Respondent shall pay Petitioner permanent partial disability benefits of $**871.73 (Max rate)**/week for a period of **125** weeks, as provided in Section **8(d)2** of the Act, because the injuries sustained caused **25%** loss of Petitioner's body as a whole.

Respondent shall pay Petitioner compensation that has accrued from **5/26/22** through **11/30/22**, and shall pay the remainder of the award, if any, in weekly payments.

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

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

FEBRUARY 15, 2023

Arbitrator Linda J. Cantrell

STATE OF ILLINOIS)
) SS
COUNTY OF JEFFERSON)

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

JOY DAVIS,	)	
	)	
Employee/Petitioner,	)	
	)	
v.	)	Case No.: 21-WC-011278
	)	
CITY OF EDWARDSVILLE,	)	
	)	
Employer/Respondent.	)	

FINDINGS OF FACT

This claim came before Arbitrator Linda J. Cantrell for trial in Mt. Vernon on November 30, 2022 on all issues. The parties stipulate that Petitioner sustained accidental injuries on 3/23/21 that arose out of and in the course of her employment with Respondent. Respondent disputes liability for medical bills and claims an overpayment of medical expenses. The parties stipulate that Respondent is entitled to a credit for any and all medical bills paid through its group medical plan under Section 8(j) of the Act. Petitioner claims entitlement to temporary total disability benefits from 5/25/21 through 9/13/21, representing 15-6/7 weeks. Respondent disputes liability for TTD benefits. The parties stipulate that Respondent is entitled to a credit of $35,617.04 in public employee disability benefits paid and any and all nonoccupational indemnity disability benefits paid. The issues in dispute are causal connection, medical bills, temporary total disability benefits, the reasonableness and necessity of treatment, overpayment of medical expenses, and the nature and extent of Petitioner's injuries.

TESTIMONY

Petitioner was 50 years old, single, with no dependent children at the time of accident. Petitioner has been employed by Respondent for 26 years as a police officer. She has held the position of school resource officer and D.A.R.E. officer/instructor for 15 years, which she performs nine months a year. As a middle school resource officer Petitioner deals with fights and various security issues with children 11 to 13 years of age. Petitioner testified she intervenes in a fight at least once a year. She has an office within the middle school but spends the majority of her day walking the school's premises. She testified that the other three months of the year she performs patrol duties.

Petitioner testified that on 3/23/21 she was participating in a bi-annual training scenario when she was walking backwards, tripped, and fell. She struck the back of her head on concrete pavement and sustained injuries to her head, neck, and back. Petitioner testified that the bi-

annual training was held in the fall and spring and lasted 12-hours per day, for a total of 24 hours of training per year.

Petitioner admitted she had a history of prior neck and back pain. She underwent general chiropractic treatment for "knots" along her shoulder blades. She testified that her prior symptoms were very different than the symptoms she experienced after the work accident. She stated it felt like someone punched her in the middle of her back after the accident, with radiating pain down her arm that was debilitating. She stated her symptoms gradually developed over a 3 to 4-week period. She testified she did not have any neck or back pain just prior to the accident that same day, she had never taken off work or was placed on light duty work for neck or back pain, and she was working full duty when the accident occurred.

Petitioner testified she went to Dr. Eavenson at Multicare Specialists a few weeks following the accident. She stated she did not make an appointment right away because she thought her pain would go away and she was not one to go to doctors. She stated her pain increased to the point she could not sleep or sit for long periods without excruciating pain. Dr. Eavenson placed Petitioner on light duty restrictions which Respondent accommodated. Petitioner underwent physical therapy and chiropractic care that did not improve her symptoms. Petitioner underwent a cervical injection by Dr. Helen Blake that did not provide relief. A cervical MRI was performed, and Petitioner was referred to Dr. Gornet. Petitioner underwent a two-level cervical disc replacement on 5/25/21. Just prior to surgery Petitioner felt constant pain in the middle of her back, she could not breathe without pain, she had tingling/numbness in her hand, and headaches. Petitioner testified that surgery improved her symptoms. She underwent post-operative physical therapy and was released to full duty work on 11/1/21. Petitioner has worked full duty since being released and was placed at MMI on 5/26/22.

Petitioner testified she still has occasional achiness in the middle of her back with certain activities. She testified that sitting/driving for long periods causes achiness in her hands and arm. She experiences occasional Charley horses in her neck and has decreased range of motion. She stated she cannot perform physical exercises like she used to without achiness in her mid-back. She has loss of strength and can no longer do push-ups. She cannot do planks without increased neck and mid-back pain. She is worried she will not be able to perform her physical job duties as a police officer. She stated she is currently performing security at a middle school, but when she returns to patrol this summer, she is concerned she will not be able to perform. Petitioner testified that this causes her to be depressed. She testified that wearing her vest while working causes achiness in her mid-back. She takes frequent breaks when doing computer work. She works patrol during the summer and sitting/driving for long periods increase her symptoms.

Petitioner takes Aleve and Ibuprofen three to five times per week for her symptoms. Petitioner experiences achiness after playing golf. She owns a screen printing and embroidery business, and she limits her time with that activity because pulling on the screens, doing artwork, and accounting causes her symptoms to increase. Petitioner is a photographer and sitting at a computer causes increased pain. Petitioner testified she hopes her condition improves but she has succumbed to her symptoms being permanent. She has considered retiring due to her injuries.

On cross-examination, Petitioner admitted to receiving chiropractic manipulations and therapy to her neck prior to the accident. She stated her primary care doctor is also located in Dr. Eavenson's facility. She admitted she underwent a cervical MRI on 2/11/20. She agreed that the history stated in the MRI report was correct, that she had neck pain and limited range of motion, she was involved in a motor vehicle accident 15 years ago, she had bilateral arm pain for two years, and numbness in her left hand. She does not recall if she underwent a cervical MRI at the time of the motor vehicle accident 15 years prior. Petitioner testified she would not dispute what is stated in her prior medical records because she did not write them. She stated she only treated with Dr. Eavenson for knots in her shoulder blades.

Petitioner agreed she had a bump on the back of her head and tightness in her neck and upper back following the work accident. She stated that Sergeant Breihan witnessed her accident and she told him later that day that she was okay. She stated the only treatment she received immediately following the accident was an ice pack for the back of her head and she did not seek medical treatment until approximately four weeks later. Petitioner testified she continued to work full duty following the accident until 4/19/21, but experienced daily pain. Petitioner testified she may have spoken to her sergeant about her ongoing symptoms between the date of accident and 4/19/21, but she has no documentation evidencing such communication.

Petitioner admitted she went camping between the date of accident and 4/19/21. She admitted she reported she slept on an uncomfortable bed and had radicular pain down her arm. Petitioner agreed she received neck treatment at Multicare Specialists from February 2021 through 3/4/21 for knots in her shoulder blades. She did not dispute that she reported a pain level of 4/10 during that period. She stated she cancelled her appointment on 3/11/21.

Petitioner testified that the cervical MRI she underwent in February 2020 was related to the knots in her shoulder blades and not due to a work accident. She was not referred to a spine specialist following the 2020 MRI. She stated her pain was so bad she could not turn her head. She agreed she told Section 12 examiner Dr. Bernardi she did not have any treatment for her neck prior to the work accident. She testified she thought that may have been inaccurate after she left the appointment due to her prior chiropractic treatment. She did tell Dr. Bernardi she received chiropractic treatment for low back pain and elbow tendonitis. She did not dispute that her prior medical records reveal complaints of bilateral upper extremity symptoms, including numbness and tingling into her fingertips. Petitioner denied experiencing numbness and tingling in the weeks leading up to her work accident and believed the symptoms occurred prior to the 2020 cervical MRI. She stated the symptoms down her arm were different after the work accident in that she had achiness all the way down her arm and not just in her fingers. She admitted she underwent an EMG/NCS prior to 3/23/21.

Petitioner testified that when she presented to Dr. Eavenson on 4/19/21, she was also seen by her primary care physician Dr. Priebe. Petitioner stated she likes to go fly fishing and camping in a camper. Petitioner agreed she remained off work following surgery until 9/13/21. She did not provide Dr. Gornet with any of her records from Multicare Specialists.

MEDICAL HISTORY

Medical records from Multicare Specialists dated 4/21/15 through 3/11/21 were admitted into evidence. (RX2) On 4/21/15, Petitioner reported left-sided neck pain that radiated to her shoulder blade. She reported an onset date of late 2014 and her pain previously radiated into her right shoulder blade. Work restrictions were imposed. On 4/27/15, it was noted Petitioner had tenderness in the left trapezius. On 5/4/15, Petitioner had left-sided tenderness in the medial scapular border, levator scapular, and left cervical paraspinals. She returned on 11/12/15 with left-sided neck pain into the left scapula. She rated her pain 7/10. Petitioner was diagnosed with a cervical strain and cervical radiculitis and was prescribed a muscle relaxer. On 11/23/15, Petitioner reported a neck injury at work while restraining an adolescent. She reported pain of 7-8/10. She was diagnosed with a cervical disc protrusion and an MRI was ordered. Petitioner continued treatment through 12/1/15.

On 9/22/16, Petitioner reported neck pain, tingling in the fourth and fifth digits of both hands, bilateral elbow pain, with no recent injury. She was diagnosed with a cervical disc herniation and placed on work restrictions. An EMG/NCS and cervical MRI were recommended. It was noted that Petitioner had a cervical MRI many years ago that revealed a bulging disc. Her medical physician documented similar symptoms and diagnosis. Cervical x-rays were interpreted to reveal degenerative disc disease and foraminal encroachment on the right at C5-6. On 9/26/16, Petitioner reported a lot of numbness in her hands. She was diagnosed with a cervical disc herniation. Petitioner received five chiropractic treatments for her neck in September 2016.

On 2/3/20, Petitioner returned for treatment for left thumb pain and achiness in her left bicep and over her left trapezius. It was noted she presented post-operatively for her left hand. Diagnosis included a protrusion of a cervical disc and radiculitis. Dr. Eavenson recommended an MRI and EMG/NCS as he suspected Petitioner's neck might be contributing to her thumb pain since she did not have relief from hand surgery. A cervical MRI was performed on 2/11/20 and revealed congenital narrowing of the spine and spondylosis causing moderate central canal stenosis at C5-6 and mild central canal stenosis at C6-7, a mass effect on the anterior margin of the cervical spine was noted; degenerative disc disease and facet arthropathy were present causing significant foraminal stenosis at C3-4 on the left and C5-6 bilaterally. (PX4) The MRI report indicated Petitioner had neck pain and limited range of motion; was in a motor vehicle accident 15 years prior; had bilateral arm pain for two years; and numbness in her left hand. She returned to Multicare Specialists on 2/11/20 and reported continued pain from her neck, into both elbows and thumbs. She had a positive cervical compression and distraction test on 2/13/20. Work restrictions were continued, and she received additional treatment on 3/5/20.

On 2/22/21, Petitioner returned to Multicare Specialists and reported a gradual onset of neck and mid back pain occurring for a week and a half. She had tenderness over her cervical paraspinals and upper trapezius muscles with trigger points. She rated her pain 4/10 and denied any trauma or injury. Diagnosis included a cervical disc protrusion. Therapy, chiropractic manipulation, and dry needling were ordered. She had a positive distraction test and decreased right cervical rotation. On 2/25/21, Petitioner reported the right side of her neck felt great after dry needling, but the left side was tight. She reported continued right-sided neck pain on 3/1/21. On 3/2/21, Petitioner pain was jumping from side to side and her trapezius muscles were sore.

On 3/4/21, Petitioner reported she was feeling great after use of a massager tool and dry needling. She had decreased lateral flexion on the right. Petitioner was instructed to continue home therapy and exercises. She was instructed to return in one week. Petitioner cancelled the appointment on 3/11/21 because she was feeling good.

Following Petitioner's work accident on 3/23/21, she completed and signed an Employee Accident report on 3/24/21. (PX12) Petitioner reported she was running backward during a training scenario while being chased and tripped and fell backwards on 3/23/21. The form indicates that Petitioner immediately reported the injury to her supervisor. She reported she sustained a bump on the back of her head and tightness in her neck and upper back. Petitioner stated that Sergeant Breihan and Officer Dietz witnessed the accident.

On 3/24/21, Sergeant Breihan completed a memo documenting Petitioner was attempting to back up during a training scenario and fell to the ground. (PX12) He stated Petitioner fell without support and struck the back of her head and back. Sergeant Breihan stated Petitioner was immediately assessed on scene and she declined treatment, but shortly thereafter Petitioner visited the Edwardsville Fire Department to obtain an ice pack for her head. He stated that Petitioner remained in training but was removed from use of force scenarios that would put her injury at risk. Sergeant Breihan stated he remained in contact with Petitioner throughout the evening and she reported she had a small headache and a sore back from the fall.

On 3/25/21, Officer Dietz completed a memo documenting a consistent history of injury. (PX12) Officer Dietz noted the ground where Petitioner fell was flat and clear of debris. He observed Petitioner strike her head on the ground. He immediately went to her aid and Petitioner reported she was fine and uninjured. Office Dietz stated he spoke with Petitioner that evening and she reported she was okay.

On 4/19/21, Petitioner presented to Dr. Mark Eavenson at Multicare Specialists. (PX3, p. 45-46) Petitioner reported right-sided neck pain that radiated to her right arm and hand due to a recent fall at work. Petitioner reported a consistent history of injury. She stated she immediately felt pain in the right side of her neck and down her right arm. She described it as a burning sensation, then numbness. She described her pain as constant since the fall. Dr. Eavenson noted Petitioner had neck pain on and off in the past. He noted her previous EMG/NCS on 2/19/20 that revealed no evidence of cervical radiculopathy that she is now experiencing. He noted her prior neck pain was focal and relieved with conservative treatment. He noted she underwent a left elbow surgery in 2017 by Dr. Paletta and a left hand arthroplasty with flexor carpi radialis transfer in 2019.

Dr. Eavenson's physical examination revealed a positive Spurling's and compression test at C6 on the right, positive distraction test, limited left rotation of the cervical spine, decreased motor strength in the right arm compared to the left, tenderness to palpation along the right medial scapular border, and trigger points along the right trapezius. Cervical spine x-rays revealed loss of cervical lordosis, well maintained disc spaces, reduced flexion and extension, and foraminal encroachment at C2-3 on the right. Dr. Eavenson noted a cervical MRI performed on 2/11/20 that correlated with radicular symptoms of the left upper extremity at C4 and C6 nerve root distribution and right upper extremity C6 nerve root distribution. He noted the

EMG/NCS of Petitioner's upper extremities performed on 2/19/20 that were not impressive for active radiculopathy. Dr. Eavenson's impressions were cervical disc protrusion with right upper extremity radiculitis. He recommended chiropractic manipulation of the cervical spine, a cervical MRI, physical therapy, and a home exercise program. He noted that Petitioner was scheduled to see her primary care physician Dr. David Priebe that day and he requested she be cleared from a cardiac standpoint to make sure her thoracic discomfort was not cardiac related.

Petitioner saw her primary care physician Dr. Priebe at Multicare Specialists the same day. (PX3, p. 47-48) His note states Petitioner presented with "back issues", and she was currently treating with Dr. Eavenson. He noted Petitioner had neck and thoracic pain for 4 months. She denied injury or radicular symptoms. She is icing and applying heat at home. Physical examination of Petitioner's cervical spine was normal. Cervical x-rays were noted to reveal mild degenerative disc disease at C5-6 and reversal of lordosis. Dr. Priebe assessed cervical disc disease and neck pain. He recommended ice/heat, continued physical therapy and chiropractic care, and Ibuprofen.

Also on 4/19/21, Petitioner treated with Physical Therapist Corey Voss. (PX3, p. 44) She noted Petitioner had pain in her upper back that extended into her lower neck and down her right upper extremity. Petitioner reported her symptoms were the result of a fall at work and provided a consistent history of injury. Petitioner reported she felt immediate right-sided neck pain and pain into her right arm. She stated the pain was constant and burning. She reported she went on vacation and slept in a different bed, and it made her pain worse. She stated she could not lift anything without pain in her right arm or walk a half of a mile without excruciating pain. She rated her pain 9/10. Physical examination revealed tenderness to palpation over the cervical paraspinals and upper trapezius muscles, greater on the right, as well as her right rhomboid and thoracic paraspinal areas with muscle tightness. She had decreased active range of motion in her cervical spine and decreased strength in the right arm compared to the left. She had a positive cervical compression and distraction test and positive Valsalva. Petitioner was assessed with what appeared to be cervical disc protrusion with right upper extremity radiculitis. PT Voxx recommended electric stimulation and ultrasound, followed by manual mobilization and stretching techniques, three times per week for four weeks.

Petitioner continued to follow up with Multicare Specialists for physical therapy and chiropractic treatment throughout the following week. She underwent a cervical MRI on 4/22/21 that was interpreted as showing a broad-based disc protrusion resulting in mild to moderate central stenosis at C5-6, a right foraminal disc protrusion with bilateral hypertrophy resulting in moderate to severe bilateral neural foraminal stenosis at C5-6, and bilateral mild to moderate stenosis at C6-7. (PX4)

Petitioner returned to Dr. Eavenson the same day who reviewed the MRI and diagnosed multi-level disc involvement with a new finding of a cervical foraminal herniation at C5-6 on the right. Dr. Eavenson opined that Petitioner's symptoms were consistent with the MRI findings and referred her to Dr. Gornet for evaluation. Dr. Eavenson prescribed light duty restrictions of no lifting greater than 5 pounds, no repetitive bending, and no pushing, pulling, or climbing. She recommended continued therapy. (PX3, p. 40)

Petitioner continued therapy with Multicare Specialists through April 2021 without change in her symptoms. On 5/3/21, Dr. Eavenson noted he had sent Petitioner's 2020 and 2021 MRIs to Dr. Gornet. He noted that Dr. Gornet believed there were changes in comparison and recommended an epidural steroid injection at C5 on the right. Petitioner was ordered to continue physical therapy and light duty work without prisoner contact. Petitioner underwent five additional therapy sessions with persistent neck pain that radiated down her right arm.

On 5/12/21, Petitioner presented to Dr. Rebecca Dunn, D.M.D. with complaints of soreness and pressure on her lower right jaw. (PX11) Dr. Dunn noted Petitioner had fallen at work and fell back and hit her head. She noted teeth #30 and 31 had some pain to bite and inflamed PDL space due to trauma. Dr. Dunn adjusted and equilibrated Petitioner's bite that provided relief. Dr. Dunn anticipated the inflammation would resolve but advised Petitioner to return if the pressure returned. She recommended she use warm compresses, massage the Masseter muscle to help it heal and relax, and wear her mouth guard to relieve pressure.

On 5/13/21, Petitioner presented to Dr. Helen Blake. (PX5) Dr. Blake noted a consistent history of injury and Petitioner had pain that radiated into her fourth and fifth fingers which resulted in significant right arm weakness. Dr. Blake noted Petitioner had a previous cervical spine MRI in 2020 that revealed degenerative findings and that her symptoms leading up to that MRI had resolved prior to her work injury and she was working full duty. Physical examination revealed severe pain with cervical extension and flexion, significant tenderness throughout the cervical paravertebral musculature, and movement of her neck reproduced symtpoms radiating down her right arm into her fourth digit. Dr. Blake performed an epidural steroid injection at C6-7 and her post-injection pain was 1/10. Dr. Blake opined that Petitioner's accident seemed to have aggravated her neck pain and radicular symptoms. She opined that if Petitioner's relief was temporary, she would require a surgical consultation.

On 5/17/21, Petitioner returned to Dr. Eavenson and reported the injection provided relief for 24 hours and the pain returned. She continued to have right-sided neck pain and intermittent numbness in the fourth and fifth digits of her right hand. Dr. Eavenson recommended she continue physical therapy.

On 5/21/21, Petitioner was examined by Dr. Matthew Gornet. (PX6) Dr. Gornet took her history, noting she was referred by Dr. Eavenson for complaints of pain between the shoulder blades, right trapezius, right shoulder, and right upper arm to the elbow, with tingling into her fingers. He noted her current problem began on 3/23/21, at least in its level of severity, and reviewed her medical treatment to date. He noted the injection provided about two days of relief before her pain returned. Petitioner admitted to some prior neck pain and routine maintenance care by Dr. Eavenson, but reported she was always able to work full duty without restrictions and anticipate in vigorous exercises such as the training program. He noted Petitioner felt her current symptoms were very different and life changing after the accident. Her symptoms were constant and worsened with reaching, pulling, and lifting.

Physical examination revealed pain into Petitioner's upper back that radiated to her right scapula, trapezius, shoulder, and down her right arm to her elbow. Motor exam revealed decreased biceps, wrist dorsiflexion, and volar flexion on the right at 4/5, and decreased

sensation in her fingertip distribution. X-rays revealed some mild loss of disc height at C5-6. Dr. Gornet reviewed the April 2021 MRI, which he found was of moderate quality, and appreciated disc herniations at C5-6 and subtly at C6-7. He reviewed the February 2020 MRI which he noted disc pathology at both levels, but given the overall quality, found it difficult to compare. Dr. Gornet believed Petitioner aggravated her underlying condition when she fell and hit her head. He stated that an injury such as this could easily aggravate and cause an inflammatory state in her previous disc pathology that makes her more symptomatic. He noted that prior to the work accident Petitioner was able to participate in vigorous activities and now her quality of life had changed. He found she had failed conservative treatment and recommended a new MRI, CT scan, and surgical intervention. Dr. Gornet opined that Petitioner's current symptoms and requirement for treatment were causally related to her accident of 3/23/21. He continued her light duty restrictions.

Petitioner underwent a new MRI and CT scan the same day. (PX7, 8) The radiologist interpreted the CT scan as showing a broad-based protrusion at C5-6 resulting in bilateral foraminal stenosis, lateral recess protrusions at C6-7 resulting in no stenosis, and left-sided facet arthropathy at C3-4. The radiologist interpreted the MRI as showing a right paracentral and left foraminal protrusion at C5-6 and a right foraminal and left lateral recess at C6-7.

Petitioner followed up with Dr. Gornet the same day and he found the CT scan showed moderate left-sided foraminal narrowing secondary to facet encroachment at C3-4 and C5-6, and the MRI showed a large right-sided herniation at C5-6, a smaller protrusion at C6-7, and a possible subtle protrusion at C3-4. Dr. Gornet recommended surgery.

On 5/25/21, Dr. Gornet performed a disc replacement C5-6 and C6-7. (PX6, 9) Intraoperative findings confirmed a midline central annular tear at C6-7 which propagated to the back to the posterior annulus with a right-sided significant tear and a small central herniation, and a central annular tear, central herniation, as well as a right-sided herniation.

On 6/7/21, Petitioner reported to Dr. Gornet she felt a significant difference in her pain and symptoms following surgery. She continued to have some mild radicular pain on her right, but it was improving. He recommended she transition into a soft collar at night, hard collar during the day, and could remove the collar to drive. She was kept off work.

On 7/8/21, Dr. Gornet noted Petitioner continued to do well. She was advised to begin walking and weaning off the collar. She was continued off work.

On 9/9/21, Dr. Gornet noted Petitioner was very pleased with the surgical result. Examination showed 5/5 strength in all groups. A CT scan was performed and revealed no evidence of lucency or significant subsidence. Dr. Gornet placed her on light duty restrictions with a five-pound lifting limit. He referred her to Dr. Eavenson for six weeks of upper extremity strengthening. She was to be released to full duty without restrictions beginning 11/1/21.

Petitioner resumed therapy and chiropractic treatment at MultiCare Specialists in September 2021. (PX3)

On 10/5/21, Petitioner was examined by Dr. Robert Bernardi pursuant to Section 12 of the Act. (RX1) Petitioner reported to Dr. Bernardi she sustained an injury at work on 3/23/21 while participating in a training exercise. She reported she fell backwards, her shoulders hit the pavement and her head snapped backwards. She reported she did not have neck pain but developed a knot on the back of her head for which she applied ice that day. Petitioner denied having any prior history of significant or sustained neck pain. She reported she had never seen a medical doctor or chiropractor with symptoms referable to her cervical spine. She reported she had treated with a chiropractor for low back pain and tendinitis in her elbow. Petitioner reported she sought treatment at Multicare Specialists 48 hours after the work accident and began receiving physical therapy and chiropractic care. She reported she underwent an MRI a week later and was referred to Dr. Gornet. Petitioner reported she was not having neck pain prior to surgery, but a pinching sensation between her shoulder blades and radiating pain down her arm with an unknown distribution. Petitioner reported she did great following surgery but had continued arm pain and achiness between her shoulder blades.

Dr. Bernardi reviewed medical records, three cervical MRIs, and a cervical CT scan. He also viewed and intraoperative video. Following physical exam, Dr. Bernardi diagnosed C5-6 degenerative disc disease; left C4 and bilateral C6 degenerative foraminal stenosis; C5-6 degenerative central stenosis; neck and right arm pain of uncertain origin; and status post C5-6 and C6-7 disc replacements.

Dr. Bernardi stated he could not conclude that Petitioner's neck symptoms for which she initially sought treatment on 4/19/21 and surgery on 5/25/21 were causally related to the work accident. He stated, "there are simply too many pieces to the puzzle that did not fit together". Dr. Bernardi did not find Petitioner truthful about her past medical history. Review of records revealed Petitioner treated for neck problems twice in 2015, in 2016, in 2020, which included a cervical MRI, and again in 2021 with the last of her visits less than three weeks before her work accident. He further noted that her records reflected she had neck issues long before 2015. He concluded she had a rather significant prior history of neck pain predating her work incident. Dr. Bernardi identified pre-accident records identifying reported symptoms to Petitioner's bilateral upper extremities. He took issue with Dr. Eavenson's 4/19/21 office note and raised questions concerning the contents. Dr. Bernardi explained that the findings on the three MRI studies were essentially identical, one of which was taken a year prior to the work accident. He concluded the work accident did not produce any new medical condition nor did it aggravate a pre-existing, significantly (intermittent) symptomatic condition. Dr. Bernardi explained why Petitioner's reported timeline was not corroborated by the accident reports or medical records, as she did not seek treatment until four weeks after the injury.

Dr. Bernardi opined Petitioner had a fairly significant history of neck pain, an absence of any new findings on her post-accident MRI, and jarring inconsistencies in her history/records, which did not allow him to conclude her neck symptoms and need for treatment, including surgery, were work-related. He noted concurrent physical therapy and chiropractic treatment were excessive. He opined the updated MRI performed in April 2021 might well have been reasonable if there was true evidence of radicular symptoms – which he questioned. He opined there was no reason for another MRI a month later. He opined the CT scan was reasonable only to the extent Dr. Gornet intended to perform cervical disc replacement surgery. Dr. Bernardi

explained why Petitioner's reported symptom distribution did not match the findings on radiographic studies. He explained why the intraoperative video from the neck surgery was for showmanship and not impressive. Dr. Bernardi did not believe any work restrictions imposed were causally related to the work accident.

On 12/9/21, Petitioner returned to Dr. Gornet and reported she continued to do well. Dr. Gornet reviewed Dr. Bernardi's report and noted he did not comment on whether or not a fall and striking her head could aggravate an underlying condition. He found this particularly curious given the fact Dr. Bernardi has previously found that trauma, even "trivial", could aggravate an underlying condition of foraminal stenosis. Dr. Gornet found Petitioner had an excellent result and continued to work full duty. Petitioner was scheduled to return in May 2022.

On 5/26/22, Petitioner returned to Dr. Gornet's office and reported the surgery made a dramatic difference in her quality of life. CT scans showed excellent positioning of her devices, with mild to moderate residual stenosis at C6-7 due to endplate spurring. Petitioner continued to work full duty without restrictions. She was placed at MMI and released from care.

Dr. Matthew Gornet testified by way of deposition on 2/3/22. (PX13). Dr. Gornet is a board-certified orthopedic surgeon whose practice is devoted to spine surgery. Upon examination, Dr. Gornet appreciated irritation of the C6 and C7 nerve roots on the right with possible spinal cord irritation or subtle nerve root irritation. Dr. Gornet testified the mechanism of injury Petitioner reported was significant and fairly classic of a cervical disc injury. He took x-rays and reviewed the 2020 and 2021 MRIs. He found both MRIs showed disc pathology at C5-6 and C6-7 but did not feel they were comparable due to quality. He noted Petitioner had an injection that provided only two days of relief. Dr. Gornet ordered a new CT scan that showed left-sided foraminal narrowing at C3-4 and subtly at C5-6, and a new MRI that revealed a large herniation at C5-6, a smaller component at C6-7, and a possible subtle protrusion at C3-4. He testified he could clearly visualize the disc herniations on both sides.

Dr. Gornet opined Petitioner aggravated her pre-existing cervical spine condition when she fell and struck her head, and the accident caused her current level of symptoms and need for surgery. He found no indication that Petitioner was on course for surgery prior to the accident. He noted that Petitioner's last visit with Dr. Eavenson prior to the accident indicated she was doing well, and she cancelled her next appointment. Dr. Gornet noted Petitioner was working full duty until the accident changed her clinical course, at which time her symptoms became refractory, she did not recover, and required surgery.

Dr. Gornet testified that the surgery he performed was causally related to the accident of 3/23/21 and it made a dramatic difference in her pain and symptoms, with some mild residual radicular pain on the right side which was improving. He testified that surgery was required to prevent permanent nerve damage and Petitioner had fairly significant motor weakness. Dr. Gornet disagreed with Dr. Bernardi's opinions and noted Petitioner was forthright about her prior treatment and symptoms. He noted Dr. Bernardi did not comment on the fact Petitioner was working full duty without restrictions and doing well just prior to her accident with no indication she was a surgical candidate or required further treatment. He noted Dr. Bernardi questioned

whether Petitioner actually had cervical radiculopathy; however, Dr. Gornet's examination and Petitioner's pain diagram clearly showed one-sided irritation.

On cross-examination, Dr. Gornet confirmed he did not review records predating Petitioner's 4/19/21 visit to Multicare Specialists. He did not review any accident reports or witness statements concerning the work accident. Dr. Gornet testified he does not typically move quickly with surgery, but this case was different to prevent permanent nerve damage. He agreed he did not review the 5/25/21 MRI report with the radiologist before performing surgery. Dr. Gornet confirmed Petitioner's reported pain level on 5/21/22 was identical to what she reported at Multicare Specialists on 2/22/21. He stated that if Petitioner's history was not factually correct his causation opinion might change. He had no way of reconciling the history contained in Dr. Bernardi's report or why Petitioner would tell him something different. Dr. Gornet testified he could not state to a reasonable degree of medical certainty there was any anatomical changes on the three MRI studies, but that Petitioner's symptoms changed from the time she underwent the first MRI to the second MRI. He was not aware Petitioner had work restrictions imposed in 2015 for cervical issues. Dr. Gornet testified that annular tears can calm down and become asymptomatic with time. He testified that he has seen plenty of Cardinal baseball players with annular tears who do not require surgery. Dr. Gornet testified it was his belief Petitioner aggravated an underlying condition and did not opine about new pathology.

Dr. Robert Bernardi testified by way of deposition on 3/11/22. (RX1) Dr. Bernardi is a board-certified neurosurgeon. His testimony was consistent with his Section 12 report. Dr. Bernardi testified that the history portion of his report came from Petitioner, which he compared to her medical records. He testified that Petitioner's oral history was not consistent with her records, and she told him she never had problems with her neck before. He testified that the 4/22/21 MRI was identical to her pre-accident MRI dated 2/11/20. He testified that the 5/21/21 MRI may have shown a very minor disc bulge at C6-7 that was so small it may have been the difference in the film resolution and was of clinical insignificance. He further stated that the very minor disc bulge at C6-7, if one was present at all, was mostly on the left and Petitioner's symptoms were on the right side. Dr. Bernardi opined he was absolutely confident Petitioner did not suffer an acute injury to her neck when she slipped and fell as the changes were present on her pre- and post-accident MRIs. He testified that Petitioner did not seek medical treatment until a month after her fall, and the delay between a trauma and the onset of pain is measured in hours and maybe a day, nots days, and certainly not a week.

Dr. Bernardi testified that a person can rupture a disc by coughing, sneezing, or any ordinary activity. He testified that the vast majority of people have no idea what caused their condition and that sleeping on a different bed can result in increased neck pain and radicular symptoms. Dr. Bernardi testified that Petitioner's history of prior neck treatment would not be considered "maintenance care." He did not believe the work incident aggravated her pre-existing condition. He acknowledged that an incident such as the one Petitioner described on 3/23/21 could aggravate a pre-existing condition, but it did not in her case. He opined that the surgery performed by Dr. Gornet would not be reasonable and necessary if she did not have true radicular symptoms.

On cross-examination, Dr. Bernardi agreed Petitioner documented in her accident report she experienced neck stiffness following the incident. He testified that the fact Petitioner did not disclose her prior treatment history is of no consequence because he reviewed her prior records. Dr. Bernardi testified he had significant doubt whether Petitioner had radiculopathy prior to surgery. He agreed that Petitioner treated with Multicare Specialists on five occasions from 4/21/15 through 5/4/15 for left-sided neck pain extending into her left shoulder blade. He agreed that she returned in November 2015 and underwent eight treatments for left-sided neck and periscapular pain. She returned to Multicare Specialists nine months later in September 2016 and received five treatments within a one-week period. Dr. Bernardi agreed there are no records of treatment from September 2016 through February 2020 when she presented with severe pain in her thumb. He agreed that Petitioner did not return again until 3/4/21 with neck and back pain with symptoms in her upper extremities. He agreed Petitioner responded well to treatment and cancelled her last follow-up appointment on 3/11/21 because she felt much better. Dr. Bernardi agreed Petitioner had not been restricted from work for any conditions since 2015. He agreed Petitioner was working full duty at the time of her work accident and she had no recommendations for cervical surgery prior to the accident.

Dr. Bernardi did not examine Petitioner prior to her two-level disc replacement. He testified that Petitioner's neurological deficit was genuine, but he could not reproduce it. He agreed that he tried to reproduce it after Petitioner already underwent surgery. He agreed that the resolution of Petitioner's decreased fingertip sensation following surgery could be evidence of a neurological deficit, but he stated there are things other than spinal pathology that could have caused it. Dr. Bernardi testified he could not opine within a reasonable degree of medical certainty that Petitioner did not have radicular symptoms prior to surgery. He could not opine within a reasonable degree of medical certainty that Petitioner was not a surgical candidate because he did not examine her prior to surgery. He stated that if Petitioner had radiculopathy, then she was a surgical candidate. He agreed that based on a review of Petitioner's medical records, her condition improved with surgery. He agreed any trauma, including the accident Petitioner described, could aggravate preexisting degenerative stenosis.

Dr. Mark Eavenson testified by way of deposition on 3/2/22. (PX14) Dr. Eavenson is a licensed chiropractic physician and recently retired after 33 years. Dr. Eavenson testified that Petitioner had been his patient since 4/21/15. He testified that the last time he saw Petitioner prior to her work accident was on 3/4/21 and he provided chiropractic and physical therapy treatment six times between 2/22/21 and 3/4/21. He testified that on 3/4/21 Petitioner felt great, had used a massager at home, and felt the dry needling therapy the day before helped significantly. He agreed that Petitioner cancelled her appointment for 3/11/21 because of her improvement.

Dr. Eavenson testified he examined Petitioner on 4/19/21 following her work accident. She reported an immediate onset of neck pain and pain down her right arm. He noted she was working full duty at the time. He testified the MRI he ordered showed a right-sided disc herniation at C5-6 causing pain down her right arm. It is his practice to refer patients to a surgeon if they have positive MRI findings. He testified he previously referred Petitioner to surgeons for her elbow and hand, but never for any neck or back symptoms. Dr. Eavenson testified that prior to Petitioner's work accident, she had neck and arm pain with painful elbows.

He found her prior radiculitis was on her left side and never right-sided. Prior to her accident, he felt his treatment improved her symptoms. Dr. Eavenson testified he was in the operating room when Petitioner's two-level disc replacement was performed, and she immediately reported improvement.

Dr. Eavenson diagnosed Petitioner with a cervical disc herniation at C5-6, a small herniation at C3-4, and right upper extremity radiculitis with weakness. He opined that when Petitioner fell and struck the back of her head it caused an annular tear that was found intraoperatively. He opined that Petitioner herniated her disc on the right as a result of the accident. He testified that Petitioner had not contacted him about any issues related to her cervical spine since she was released in October 2021. He opined that the treatment Petitioner received, including his referral to Dr. Gornet, was causally related to her work injury. He testified he would defer to Dr. Gornet in terms of diagnosis and causation opinions.

On cross-examination, Dr. Eavenson testified he attends all of his patient's surgeries as he is also a registered nurse. He acknowledged Petitioner received chiropractic and medical treatment two weeks prior to her accident. He agreed nerve conduction studies are notoriously inaccurate for reaching a diagnosis of cervical radiculopathy. He refers all of his patients to Dr. Gornet if surgery is indicated. Dr. Eavenson agreed that Petitioner had a cervical disc herniation in September 2016. He testified that Petitioner did not have a work-related or personal injury when she underwent the cervical MRI in February 2020 and he did not refer her to a surgeon despite positive MRI findings, which he stated was his practice. He did not review accident reports from the 3/23/21 event. He testified that sleeping on your neck wrong or in a funny position can cause neck pain and radicular symptoms. He acknowledged the history contained on the 4/22/21 cervical MRI documented a motor vehicle accident 15 years prior with complaints of diminished range of motion with intermittent neck and bilateral upper arm pain over the last two years. Dr. Eavenson testified he drives to Dr. Gornet's office with MRI films for review and agrees with Dr. Gornet's interpretation of the studies. He testified that workers comp should not have been billed for chiropractic manipulations post-surgery.

Dr. Eavenson testified he would classify an injury as recent if it was within six weeks of a patient's appointment, which is why he classified Petitioner's injury as such. Dr. Eavenson testified that Petitioner never reported headaches until after her work accident. He testified that Petitioner always reported improvement following treatment in 2015, 2016, 2020, and 2021 prior to her work accident. He stated that prior to her work accident, Petitioner's symptoms would switch from the right to left which he related to muscle spasms.

CONCLUSIONS OF LAW

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

Causal connection between accident and claimant's condition may be established by chain of events including claimant's ability to perform manual duties before accident, decreased ability to still perform immediately after accident, and other circumstantial evidence. *Pulliam Masonry v. Indus. Comm'n*, 77 Ill. 2d 469, 397 N.E.2d 834 (1979).

When a preexisting condition is present, a claimant must show that "a work-related accidental injury aggravated or accelerated the preexisting [condition] such that the employee's current condition of ill-being can be said to have been causally connected to the work-related injury and not simply the result of a normal degenerative process of the preexisting condition." *St. Elizabeth's Hospital v. Workers' Comp. Comm'n*, 371 Ill. App. 3d 882, 888, 864 N.E.2d 266, 272 (2007). Accidental injury need only be a causative factor in the resulting condition of ill-being. *Sisbro, Inc. v. Indus. Comm'n*, 207 Ill. 2d 193, 205, 797 N.E.2d 665, 673 (2003) (emphasis added). Even when a preexisting condition exists, recovery may be had if a claimant's employment is a causative factor in his or her current condition of ill-being. *Sisbro, Inc. v. Indus. Comm'n*, 207 Ill. 2d 193, 797 N.E.2d 665 (2003). Allowing a claimant to recover under such circumstances is a corollary of the principle that employment need not be the sole or primary cause of a claimant's condition. *Land & Lakes Co. v. Indus. Comm'n*, 359 Ill. App. 3d 582, 834 N.E.2d 583 (2005). Employers are to take their employees as they find them. *A.C.& S. v. Industrial Comm'n*, 304 Ill. App. 3d 875, 710 N.E.2d 837 (1999) citing *General Electric Co. v. Industrial Comm'n*, 89 Ill. 2d 432, 434, 433 N.E.2d 671, 672 (1982). The law is clear that if a preexisting condition is aggravated, exacerbated, or accelerated by an accidental injury, the employee is entitled to benefits. *Rock Road Constr. v. Indus. Comm'n*, 227 N.E.2d 65, 67-68 (Ill. 1967), 37 Ill. 2d 123; see also *Illinois Valley Irrigation, Inc. v. Indus. Comm'n*, 66 Ill. 2d 234, 362 N.E.2d 339 (1977).

In *Schroeder v. Illinois Workers' Comp. Comm'n*, Claimant was employed as a truck driver and had a lengthy history of back trouble. *Schroeder v. Illinois Workers' Comp. Comm'n*, 2017 IL App (4th) 160192WC, 79 N.E.3d 833. She had back surgeries in 2009 and 2011 and suffered from fibromyalgia for which she received SSD benefits in 2010. She returned to work for Respondent after a "long hiatus" in May 2013. A few months prior to returning to work Claimant sought treatment for her back problem and reported she "had a lot of pain" and numbness in her feet. Claimant's physician considered a third low back surgery in March 2013 which she declined. She returned to work on 5/30/13. At the time of her re-hire, Claimant remained under the care of her physician for fibromyalgia and ADHD and had driving restrictions due to the medication she was taking which Respondent accommodated. Outside of the driving restrictions, Claimant had no restrictions and was able to complete her job duties prior to her work injury. Claimant sustained a work-related injury on 12/19/13 when she slipped and fell on icy pavement. She returned to her treating physician with complaints of "having a lot of back pain" and reported that her left leg was "not feeling well." She was placed off work and underwent surgery in April 2014.

In *Schroeder*, although Claimant declined surgery prior to her work injury, she was "getting along acceptably well until the work accident" and was unable to resume her employment following the accident. The Arbitrator found in favor of the employer and concluded that Claimant's current condition of ill-being was not related to her accident based on: 1) her "long history of severe degenerative disc disease" and her physician's concern about "the evolving and substantial breakdown at L5-S1"; 2) the lack of any objective testing to confirm there was a change in Claimant's condition following the accident; and 3) that the surgery performed after the accident was the same surgery recommend before the accident. The

Commission reversed, noting Claimant was able to do her job prior to the injury and that Claimant's case should not be denied merely because of the existence of a preexisting condition. The Circuit Court overturned the Commission's award of benefits, and the matter was appealed to the Appellate Court. The Appellate Court reinstated the Commission's award of benefits noting, "Typically, causation presents a question of fact . . . This conflict bears heavily on which expert's opinion should be accepted". The Appellate Court noted that it was only appropriate to reverse the Commission's decision when the opposite conclusion was clearly apparent, and it could not say such was the case given the facts of the case. Relying on *Sisbro*, the Appellate Court determined that the "absence of changes in objective testing" was irrelevant or "lack[ed] significance" and did not point to an opposite conclusion when there was a clear factual basis in the record for the Commission to determine that causal connection existed. It likewise noted that the lack of any significant change in the nature and severity of Claimant's subjective complaints did not establish that a conclusion opposite the Commission's was apparent. The Court stated: such evidence merely creates a conflict with her ability to work before the accident and her inability to work following the accident. It is undeniable that Claimant had a significant back condition before the accident; it is also undeniable that her ability to work completely deteriorated after the accident. We certainly cannot say that her consistent reports of pain were required to be given more weight than changes in her ability to work. In any event, it was for the Commission to resolve such conflicts in the evidence. None of them are so significant that we could disregard the evidence supporting the Commission's decision and say that it was against the manifest weight of the evidence."

The Appellate Court noted that the fact the record showed Claimant's surgery was accelerated also supported the Commission's award of benefits. It pointed out that where an accident *accelerates* the need for surgery, a claimant may recover under the Act. Claimant's physician testified that the accident "prompted us to move in a surgical direction" and that it "made proceeding with surgery more appropriate, more viable." This supports an inference that the accident accelerated the need for surgery. Claimant was able to work full duty before the accident after declining surgery and she quickly decided to undergo surgery after the accident supports a similar inference.

In the present case, it is undeniable Petitioner had a prior history of neck pain for which she underwent chiropractic treatment and diagnostic studies, including a cervical MRI and an EMG/NCS in February 2020. Petitioner treated with Dr. Eavenson from April through December 2015 for left-sided neck and shoulder blade pain. He ordered a cervical MRI in November 2015; however, the record does not reflect that the study was performed. Nevertheless, Dr. Eavenson diagnosed a cervical disc protrusion. Petitioner did not receive treatment for the next ten months and followed up with Dr. Eavenson in September 2016 for complaints of neck pain into her bilateral hands and elbows, with a lot of numbness in her hands. Dr. Eavenson noted a cervical MRI was performed many years ago that resulted in a diagnosis of a disc bulge. X-rays performed in September 2016 showed degenerative disc disease and foraminal encroachment on the right at C5-6. Dr. Eavenson ordered a cervical MRI and an EMG/NCS; however, the record does not reflect that these studies were performed. Nevertheless, Dr. Eavenosn diagnosed a cervical disc herniation. Petitioner received five chiropractic treatments in September 2016.

Petitioner did not receive treat again for over three years. She returned to Dr. Eavenson on 2/3/20 with pain in her left thumb, bicep, and trapezius. Petitioner underwent a cervical MRI on 2/11/20 that revealed congenital narrowing of the spine and spondylosis causing moderate central canal stenosis at C5-6 and mild central canal stenosis at C6-7, a mass effect on the anterior margin of the cervical spine; degenerative disc disease and facet arthropathy causing significant foraminal stenosis at C3-4 on the left and C5-6 bilaterally. (PX4) An EMG/NCS was performed on 2/19/20 that revealed no evidence of radiculopathy.

Petitioner did not treat again for one year when she reported to Dr. Eavenson on 2/22/21 with a gradual onset of neck and mid-back pain over one and a half weeks without trauma. She had tenderness over her cervical paraspinals and upper trapezius muscles with trigger points. Dr. Eavenson continued to diagnose a cervical disc protrusion and ordered physical therapy, chiropractic manipulation, and dry needling. Petitioner received treatment through 3/4/21 and cancelled her appointment on 3/11/21 because "she felt great". While Petitioner treated in March 2021, Dr. Eavenson noted Petitioner's pain was jumping from side to side and she had pain in her trapezius muscles. He noted Petitioner's symptoms in her right neck were improved, with some tightness in the left side.

The Arbitrator finds Petitioner's testimony credible, though she is a poor historian. Petitioner testified repeatedly that she attributed her prior symptoms and treatment to knots along her shoulder blade. She stated the pain was so bad she could not turn her head. Petitioner denied a prior cervical condition when examined by Section 12 examiner Dr. Bernardi. Petitioner testified that after leaving Dr. Bernardi's office she thought she should have mentioned her prior chiropractic treatment, but she only treated with Dr. Eavenson for the knots in her shoulder blade. She testified that her prior symptoms were very different than the symptoms she experienced after the work accident. She stated it felt like someone punched her in the middle of her back after the accident, with radiating pain down her arm that was debilitating. Dr. Bernardi testified he did not believe Petitioner intended to mislead or lie to him about her prior treatment. He testified that whether Petitioner was truthful or not was of no consequence as he reviewed the history in her prior medical records.

It is undeniable Petitioner was working full duty without restrictions at the time of her accident on 3/23/21. Petitioner had no surgical recommendations or referrals to a specialist for her cervical condition prior to the work accident. Dr. Eavenson testified that Petitioner required much different treatment for her neck following her work accident. Despite having undergone a cervical MRI in February 2020, Dr. Eavenson ordered another cervical MRI after Petitioner's work accident and immediately referred her for a surgical consultation with Dr. Gornet. He testified that after Petitioner's cervical MRI in 2020, he did not refer Petitioner to a spine specialist. Dr. Eavenson and Petitioner testified that each time she presented for chiropractic treatment prior to the work accident, her symptoms always improved. Additionally, Petitioner testified her neck symptoms were very different following her work accident and she had pain performing her job duties. Although Petitioner could not recall she was previously given light duty restrictions in 2015 and 2016, there is no evidence Petitioner worked under those restrictions or that she took off work for cervical issues. Similarly, there is no evidence Petitioner underwent the cervical MRIs or EMG/NCS that were ordered in 2015 and 2016.

The Arbitrator is persuaded by the opinions of Petitioner's treating physicians, Dr. Gornet and Dr. Eavenson. Dr. Eavenson had been Petitioner's treating physician for six years at the time the work accident occurred. He personally treated Petitioner for all of her prior chiropractic needs and found her symptoms following the work accident were causally related to her fall. Dr. Gornet believed at a very minimum, Petitioner's condition was aggravated by the work accident based on her history, mechanism of injury, physical examination, and objective findings. Dr. Gornet testified he could not properly compare the 2020 and 2021 MRIs due to the poor quality of the earlier scan. He appreciated irritation of the C6 and C7 nerve roots on the right with possible spinal cord irritation or subtle nerve root irritation. Dr. Gornet testified the mechanism of injury of falling and striking the back of her head was significant and fairly classic of a cervical disc injury, which caused her current level of symptoms and need for surgery. He found no indication that Petitioner was on course for surgery prior to the accident. He noted that Petitioner's last visit with Dr. Eavenson prior to the accident indicated she was doing well, and she cancelled her next appointment. Dr. Gornet noted Petitioner was working full duty until the accident changed her clinical course, at which time her symptoms became refractory, she did not recover, and required surgery.

Petitioner testified and Dr. Gornet noted she had a dramatic improvement in her pain and symptoms following surgery. Dr. Bernardi testified he could not reproduce Petitioner's symptoms upon examination and admitted he examined Petitioner after she underwent surgery. He admitted he could not testify to Petitioner's radicular symptoms prior to surgery, as he did not evaluate her prior to that date. Dr. Bernardi also admitted that the mechanism of injury Petitioner suffered could aggravate an underlying pre-existing condition such as Petitioner's.

Based on the objective and subjective evidence, the Arbitrator finds that Petitioner's current condition of ill-being is causally connected to the work accident of 3/23/21.

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

Issue (O): Overpayment of medical expenses.

Based on the Arbitrator's finding as to causal connection, and Petitioner's significant improvement following surgery, the Arbitrator finds that Petitioner's medical services were reasonable and necessary. Respondent shall pay the medical expenses contained in Petitioner's Group Exhibit 1, pursuant to the Illinois medical fee schedule, as provided in Sections 8(a) and 8.2 of the Act. Pursuant to the stipulation of the parties, Respondent shall receive a credit for any and all medical expenses paid through its group medical plan under Section 8(j) of the Act. Respondent shall hold Petitioner harmless from all claims or liabilities made by the group medical plan to the extent of such 8(j) credit. The Arbitrator further finds there is no evidence of overpayment of medical expenses contained in the record.

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

Petitioner claims entitlement to temporary total disability benefits for the period 5/25/21 through 9/13/21. On 5/25/21, Petitioner underwent a two-level disc replacement at C5-6 and C6-

7. She remained off work until Dr. Gornet released her with light duty restrictions on 9/9/21. Petitioner testified she remained off work through 9/13/21.

The Arbitrator finds Petitioner is entitled to temporary total disability benefits for the period 5/25/21 through 9/13/21, representing 16 weeks, under Section 8(b) of the Act. Pursuant to the stipulation of the parties, Respondent shall receive credit for public employee disability benefits paid in the amount of $35,617.04, and credit for any and all nonoccupational indemnity disability benefits paid, if any.

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

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

(i) **Level of Impairment**: Neither Party submitted an AMA impairment rating. Therefore, the Arbitrator places no weight on this factor.

(ii) **Occupation**: Petitioner was placed at MMI without restrictions on 5/26/22. She continues to work for Respondent as a school resource officer, D.A.R.E. officer, and patrol officer. Petitioner testified she has achiness in her neck and upper extremities while performing certain job duties. She has mid-back pain when wearing a vest at work. Although she is concerned she will not be physically fit to perform her duties as a patrol officer this summer, there is no indication in the record that Petitioner's injuries have affected her ability to perform full duty work in her pre-accident positions. The Arbitrator places some weight on this factor.

(iii) **Age**: Petitioner was 50 years old at the time of accident. She will have to live and work with her disabilities for an extended period of time. The Arbitrator places some weight on this factor.

(iv) **Earning Capacity**: There is no evidence of reduced earning capacity contained in the record. The Arbitrator places some weight on this factor.

(v) **Disability**: As a result of the work accident, Petitioner underwent a two-level disc replacement at C5-6 and C6-7. Petitioner testified she continues to experience symptoms in her neck, arms, and hands when sitting for long periods of time and increased activity. Many activities cause achiness in her neck including driving, sleeping, golf, camping, fishing, and screen printing. She stated her range of motion has not returned to 100%. She has loss of strength and can no longer do push-ups. She cannot do planks without increased neck and mid-back pain. Petitioner continues to take Ibuprofen and Aleve three to five times per week. The Arbitrator places greater weight on this factor.

Based upon the foregoing factors, the Arbitrator finds that Petitioner sustained permanent partial disability to the extent of 25% loss of the person as a whole, under Section 8(d)2 of the Act.

Respondent shall pay Petitioner compensation that has accrued from 5/26/22 through 11/30/22, and shall pay the remainder of the award, if any, in weekly payments.

Arbitrator Linda J. Cantrell DATED:

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	20WC011328
Case Name	Jose Obispo v. Flexicorps
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	24IWCC0384
Number of Pages of Decision	23
Decision Issued By	Kathryn Doerries, Commissioner

Petitioner Attorney	John Budin
Respondent Attorney	Daniel J Levato

DATE FILED: 8/9/2024

/s/Kathryn Doerries, Commissioner

Signature

24IWCC0384

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

JOSE OBISPO,

Petitioner,

vs. NO: 20 WC 011328

FLEXICORPS,

Respondent.

DECISION AND OPINION ON REVIEW

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

The Commission corrects a scrivener's error in the Arbitrator's decision, in the Disputed Issues section on page 1, and checks the box for issue M, nature and extent of injury.

The Commission corrects a scrivener's error in the Arbitrator's decision, in the Findings section, in the first sentence on page 2, and strikes the year "2091" and replaces it with "2019."

The Commission modifies page 5 after the first sentence in the second paragraph, and hereby strikes the remainder of the second paragraph and strikes the third paragraph.

The Commission modifies the Arbitrator's decision, striking any and all references to "company clinic" and "company physician" and "Respondent's industrial clinic," and replaces said references with "Physicians Immediate Care."

The Commission further modifies the Arbitrator's decision in the second and sixth paragraphs on page 14, to clarify that Dr. Deutsch did review MRI images as they were attached

to his report.

The Commission modifies page 15, second paragraph, second sentence, and strikes "Deutsch" and replaces it with "Levi" so that the sentence reads as follows: Dr. Levi states, "there is no herniated disc when clearly he has it on MRI and he has the symptoms. We sent him to work on a sedentary job and he should continue to do so."

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $302.67 per week for a period of 2-6/7 weeks, that being the period of temporary total incapacity for work under §8(b) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $272.40 per week for a period of 4.175 weeks as provided in §8(e)11 of the Act, for the reason that the injuries sustained caused the 2.5% loss of the left foot, and the sum of $272.40 per week for a period of 50 weeks as provided in §8(d)2 of the Act, for the reason that the injuries sustained caused the 10% loss of the person as a whole.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $1,118.00 to City of Chicago -EMS, $510.00 to Specialists in Medical Imaging, and $3,168.77 to Orthopedic and Rehabilitation Centers, for medical expenses as provided under §8(a) and §8.2 of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall be given a credit for paid TTD benefits in the amount of $2,637.73 but not to be credited against the unpaid TTD awarded.

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

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

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $20,518.77. 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.

AUGUST 9, 2024

KAD/swj
O 6/11/24
42

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

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	20WC011328
Case Name	Jose Obispo v. Flexicorps
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	20
Decision Issued By	Joseph Amarilio, Arbitrator

Petitioner Attorney	John Budin
Respondent Attorney	Daniel J Levato

DATE FILED: 8/24/2023

THE INTEREST RATE FOR THE WEEK OF AUGUST 22, 2023 5.29%

/s/ Joseph Amarilio, Arbitrator

Signature

24IWCC0384

STATE OF ILLINOIS)
)SS.
COUNTY OF COOK)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

JOSE OBISPO
Employee/Petitioner

v.

FLEXICORPS
Employer/Respondent

Case # **20** WC **011328**

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Joseph Amarilio**, Arbitrator of the Commission, in the city of **Chicago**, on **May 23, 2023**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On the date of accident, **August 15, 2091**, 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 to his ***low back and left foot/ankle is*** causally related to the accident

In the year preceding the injury, Petitioner earned $**27,040.00**; the average weekly wage was $**454.00**.

On the date of accident, Petitioner was **40** 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 has paid $**18,367.04** in medical treatment to date.

Respondent shall be given a credit of $**2,637.73** for TTD, $**0** for TPD, $**0** for maintenance, and $**0** for other benefits, for a total credit of $**2,637.73** but not to be credited against the unpaid TTD awarded. See attachment to Arbitration Decision.

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

ORDER

Respondent shall pay Petitioner temporary partial disability benefits of $302.67 per week for 2-6/7th weeks, commencing 12/27/2019 through 01/15/2020, as provided in Section 8(a) of the Act.

Respondent shall pay reasonable and necessary medical services, pursuant to the medical fee schedule, of $1,118.00 to City of Chicago - EMS, $510.00 to Specialists in Medical Imaging, and $3,168.76 to Orthopaedic & Rehabilitation Centers, as provided in Sections 8(a) and 8.2 of the Act.

Respondent shall pay Petitioner permanent partial disability benefits of $272.40 per week for 4.175 weeks, because the injuries sustained caused the 2.5% loss of the left foot, as provided in Section 8(e) 11 of the Act and Respondent shall pay Petitioner permanent partial disability benefits of $272.40 per week for 50 weeks, because the injuries sustained caused the 10% 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.

/s/ *Joseph D. Amarilio*

Signature of Arbitrator

AUGUST 24, 2023

ICArbDec19(b)

ATTACHMENT TO ARBITRATION DECISION

JOSE OBISPO v. FLEXICORPS 20 WC 011328

FINDINGS OF FACT AND CONCLUSIONS OF LAW

I. PROCEDURAL HISTORY

Mr. Jose Obispo (Petitioner), by and through his attorney, filed an Application for Adjustment of Claim for benefits under the Workers' Compensation Act (Act) (820 ILCS 305/1 *et seq.* (West 2014)). Petitioner alleged that he sustained an accidental injury on August 15, 2019 while employed by Flexicorps (Respondent"). A hearing was held on May 23, 2023 on the disputed issues and proofs were closed. The following four (4) issues are in dispute: 1. Whether Petitioner's current condition of ill-being is causally connected to his injury; 2. Whether Respondent is liable for unpaid medical bills; 3. Whether Petitioner is entitled to temporary total disability (TTD) benefits; and, 4. The nature and extent of the injury. The parties mutually requested a written decision, including findings of fact and conclusions of law pursuant to the Act. (Arb. X 1)

II. FINDINGS OF FACT

Accident and Treatment Summary

The parties stipulated that Petitioner sustained an accident that arose out of and in the course of his employment Respondent, a staffing company, on August 15, 2019. Petitioner testified through an interpreter. Petitioner began working at Apollo Plastics on October 5, 2015. He still works there. (Tr. 11). Apollo Plastics makes automobile interior parts such as dashboards and side panels. (Tr.13). Petitioner testified that on August 15, 2019, while at Apollo Plastic's warehouse [the borrowing employer], he was injured when he fell off a ladder while looking for material. (Tr. 20-21). Petitioner said he fell from the top "step" of the ladder so that he could reach the material he was searching for. (Tr. 21-22). Petitioner fell because the ladder got pushed backwards, causing him to fall forward, and land on his right side, lower back, and ankle. (Tr. 21-22). Petitioner testified that he was lying face up, looking at the ceiling when he landed from his fall. (Tr. 23). [*See also* photograph of the approximately 8-foot-tall step ladder (PX 8, p. 3)].

On August 15, 2019, an ambulance arrived at the Apollo Plastic's warehouse to transport Petitioner to the hospital. Petitioner was conversational and oriented lying on his back when the ambulance arrived. Petitioner reported to the ambulance crew that he fell approximately 4.5 feet off a ladder, landed on his back, and had lower back pain without any other complaints. Petitioner denied any loss of consciousness, headache, or visual disturbances and was transferred to the hospital. (Px1, p.2).

On August 15, 2019, Petitioner presented to the Emergency Room at AMITA Health complaining of back pain after a fall at work. (Px2, p.7). Petitioner stated he fell forwards through a ladder with the front lower ribs hitting the ladder and he hit his lower back on the ground. Petitioner reported the ladder was 4.5

feet tall. Petitioner denied headaches and neck pain. Petitioner stated he was unable to get up and walk due to severe pain in his lower back and left foot. It was noted Petitioner had a limping gait due to the pain in his left ankle. (Px2, p. 7-8). X-rays were taken of Petitioner's left leg, left foot, chest, and lumbar spine all of which were negative. (Px2, p. 8-12). Petitioner was discharged the same day and diagnosed with rib pain, lumbosacral pain, and a left ankle sprain. (Px2, p. 13-14).

On August 16, 2019, Petitioner reported to Physicians Immediate Care, the company clinic, stating he fell from a ladder at work and continued to have back pain and left ankle pain. (Px3, p. 2). Petitioner also reported having rib pain that hurt when he took deep breaths. *Id.* Petitioner was diagnosed with low back pain, cramping and spasms in the lumbar spine, and left ankle pain. *Id*; (Px3, p.5, 7). Petitioner was given work restrictions of no climbing ladders, lifting or pushing/pulling above 15 pounds. (Px3, p.5, 7).

On August 21, 2019, Petitioner followed up with Physicians Immediate Care complaining of constant middle and lower back pain. He described the pain as dull and aching. Petitioner reported joint pain, muscle pain, and numbness and tingling. Petitioner introduced in evidence a photograph of the ladder. (Px3, p.19). *(See* PX 8, p. 3) It was a rolling step ladder with 5 steps. *Id.* Petitioner reported that he was standing on the handlebars located above the top step, there are handlebars trying to reach an item when he fell off. (See PX 8, p. 3 "X") *Id.* Petitioner stated he had increased tailbone pain and no other improvements. *Id.* Petitioner reported numbness in the back of his left leg. *Id.* Petitioner was given work restrictions of no climbing ladders, lifting, or pushing/pulling above 15 pounds. (Px3, p.24).

On August 28, 2019, Petitioner followed up with Physicians Immediate care complaining of mid-back and lower back pain. (Px3, p.37). Petitioner stated his left ankle was starting to feel better but is sore at the end of the day. *Id.* Petitioner stated his back pain has slightly improved but not by much. *Id.* It was noted that Petitioner did not complain of any numbness or tingling in his left leg. *Id.* Petitioner was given the same restrictions and referred to physical therapy. (Px3, p.41).

On September 10, 2019, upon referral from physician's assistant Ms. Breanna Kellogg of Physicians Immediate Care, Petitioner presented to Team Rehabilitation for an initial evaluation for physical therapy. Petitioner said he was on a ladder with wheels on it looking for materials at work when he was injured. Petitioner stated he thought the ladder was locked but it was not. *Id.* He stated he reached for some material, lost his balance and fell off the ladder. Petitioner stated he fell backwards and slid down the stairs of the ladder. Petitioner reported back pain with intermittent numbness and tingling down his left leg which is brought on by sitting and standing for long periods of time. His being overweight was listed as a comorbidity. Straight leg raise was listed at 60 degrees on the right and 40 degrees on the left. It was noted that Petitioner works in a warehouse with auto parts. He needs to be able to lift and carry up to 50lbs., needs to climb ladders and be able to bend, crouch and stand. He presented with elevated pan levels which is preventing him from being able to tolerate standing and sitting for long periods of time. He demonstrated decreased strength in the hip stabilizers, which place greater stress on the back with lifting and carrying objects at work. (Px4 p.5-6).

On September 11, 2019, Petitioner followed up with Physicians Immediate Care stating he went to his initial evaluation for physical therapy visit the prior day and was still sore from it. (Px,4, p.5). Petitioner stated he noticed he had some tingling in his midback when lifting objects. *Id.* Petitioner indicated he was wearing a back brace at all times. *Id*. The same work restrictions were given and recommended to continue with physical therapy. (Px3, p. 58).

On September 12, 2019, MedRisk Managed Physical Medicine authorized 12 physical therapy visits. (Px.3, p. 65)

A separate job description from the employer and the borrowing employer was provided to the Team Rehabilitation. Petitioner was required to frequently lift up to 25 lbs. and occasionally up to 55 lbs. (Px3, p 71) He was required to push and pull up to 100 lbs., frequently bend, twist/turn, frequently reach above shoulder and outward, .and frequently stand and walk. (Px3 p. 66) Petitioner was required to frequently to stoop, kneel, crouch and crawl. (Px3, p. 71)

Petitioner received physician therapy at Team Rehabilitation from September 12, 2019 through October 25, 2019. The medical record abruptly ends after 12 visits without a discharge note or a final evaluation. It appears that only 12 visits were authorized, and therapy ceased without explanation although physical therapy goals had not been reached and nor did the therapist opine that Petitioner was able to return to work. (Px3, p. 50) However, when compared with the records of Physicians Immediate Care, it is clear that the claims adjuster refused to or neglected to authorize the company clinic physician's request for additional physical therapy at Team Rehabilitation at that time. (Px4, Px3) It appears that physical therapy was subsequently authorized by October 31, 2019 at Orthopedic and Rehabilitation Center.

A physical therapy progress summary dated October 22, 2019, Team Rehabilitation reflects that Petitioner received physical therapy 3 times per week for 4 weeks and attended all scheduled visits. It was further noted that Petitioner continued to be limited in the clinic by pain, which was preventing him from being able to lift and carry objects and which is preventing him from being able to work, sit drive and sleep. His complaints were consistent when recorded by the therapist but it not all visits recorded subjective complaints or physical limitations. However, the summary noted that his low back pain remained steady for the 12-week period of 2/10, increased 5/10 with lifting, Heal pain 2/10, increases to 4/10 with prolonged weight bearing. (Px3, p. 49-50)

On October 7, 2019, Petitioner presented to Physicians Immediate Care and complained of constant midback and lower back pain. (Px3, p.82). Petitioner complained of occasional pain in his back that would go down his left leg. *Id.* Petitioner was given the same work restrictions and recommended to continue with physical therapy. (Px3, p.87).

On October 16, 2019, Petitioner went to Hawthorne Works Medical Imaging for an MRI of his lumber spine which revealed the following:

- Transitional anatomy at the lumbosacral junction, designated as a partially sacralized L5;
- Mild lower lumbar spondylosis and facet arthrosis. Borderline L4-L5 spinal canal narrowing due to disc bulge with annular tear, disc desiccation, narrowing of the thecal sac and a mild edema at the interspinous articulation.
- Mild L3-L4 disc bulge without significant spinal stenosis; and
- Mild left L3-L4 and bilateral L4-L5 neural foraminal encroachment.
- Mild left L3-L4 decrease in disc height, decreased signal intensity consistent with disc desiccation.
- Mild left L3-L4 2 mm synovial cyst anterior to the left facet joint.

(Px3, p.121-122, Px5, p.2-3).

On October 21, 2019, Petitioner went to Physicians Immediate Care and complained he still had issues with his lower back and tingling going down his left leg without any particular weakness. (Px3, p.104). Petitioner was given the same work restrictions and instructed to continue with physical therapy. (Px3, p.109).

On October 22, 2019, a physical therapy evaluation summary completed by the Team Rehabilitation physical therapist noted limited range of motion and tenderness to bilateral paraspinals, left greater than right; pain reported in the left gluteus medius. The physical therapist opined that Petitioner partially met

independence with home exercise program and partially met ambulation and standing time which did not permit him unlimited activities of daily living and work. Petitioner had not met the long-term goals of the ability to carry weight with weights from 21to 40 lbs. independently in order to complete his job requirements. He had not met a return-to-work ability to create a push force of weight ranging from 41-50 lbs. independently to complete work requirements, nor able to climb ladders at work. (Px3, p. 50). The summary further reflects that Petitioner received physical therapy 3 times per week for 4 weeks and attended all scheduled visits. It was further recorded by the therapist that Petitioner continued to be limited in the clinic by pain, which was preventing him from being able to lift and carry objects and which is preventing him from being able to work, sit drive and sleep. His complaints were consistent when recorded by the therapist but it not all visits recorded subjective complaints or physical limitations. The summary noted that his low back pain remained steady for the 12-week period of 2/10, increased 5/10 with lifting, heal pain 2/10, increases to 4/10 with prolonged weight bearing. (Px3, p. 49-50)

On October 28, 2019, Petitioner went to Orthopedic and Rehabilitation Center for an initial evaluation. (Px3, p.129). Petitioner reported he fell from a ladder at about 8 ft high and landed on his left side. *Id.* Petitioner reported the medication was not sufficient as he was still in a lot of pain that radiated down to his left leg and foot. (Px3, p.130). Petitioner had a positive straight leg raise on the left. *Id.* It was noted Petitioner tip toed with his left foot due to pain. *Id.* Dr. Levi stated the MRI showed nerve root compression. *Id.* Petitioner was taken off work completely. *Id*; (Px6, p.5).

On October 31, 2019, Petitioner presented to Orthopedic and Rehabilitation Center for physical therapy. Petitioner stated he lost his balance at work and fell from a ladder. *Id*. Petitioner complained of 1/10 pain and 6/10 pain with movement. (Px6, p.6). Petitioner continued receiving physical therapy until January 8, 2020 wherein Petitioner reported radiating pain from his lower back to his left foot and his pain level in January was 3/10. (Px6, p.79, 82)

On November 18, 2019, Petitioner followed up with Dr. Levi and reported he still had back pain and pain in the gluteal region down to the posterior aspect of his thigh but was getting better Petitioner had decrease in pain because he was not working and doing physical therapy. *Id.* Petitioner stated when he gets out of the car, he has to lift left leg with his hands. (Px6, p.27). Petitioner was diagnosed with herniated lumbar discs at L4-L5 and L5-S1. *Id.* Petitioner was authorized off work completely. (Px6, p.32).

On December 16, 2019, Petitioner followed up with Orthopedic Rehabilitations Centers and Petitioner reported less pain but still had pain in his lumbar spine and gluteal region. (Px6, p.65). Petitioner was taken off work completely through the next appointment. (Px6, p.66).

December 23, 2019 Respondent's Section 12 Medical Examination Harel Deutsch, MD

On December 23, 2019, Petitioner appeared before Harel Deutsch, MD, for a Section 12 Independent Medical Examination. Petitioner reported to Dr. Deutsch that his work-injury occurred when he was going up a ladder and lost his balance, grabbed a machine, and fell from a height of 8 feet. Dr. Deutsch noted the discrepancy in Petitioner's story and the ER records that indicate Petitioner reported falling from a height of about 4.5 feet. *Id*. Petitioner further reported that he fell on his back when the injury occurred. (Rx1, p.1). Petitioner reported his job to be a material handler in a factory and the job description reviewed by Dr. Deutsch indicated Petitioner would be required to lift 50lbs. occasionally. (Rx1, p.2). Dr. Deutsch reviewed all available medical and imaging. (Rx1, p.1-2). Dr. Deutsch then performed a physical examination on Petitioner and noted him to be 5'5" and 220lbs., which Dr. Deutsch described as obese. (Rx1, p.3). Dr. Deutsch noted inconsistent effort from Petitioner in his motor examination; Petitioner also complained of numbness in his lower back and back of both thighs during motor examination. *Id*. Petitioner had a negative spurling test and no pain to light palpation on cervical examination. *Id*. Petitioner had no tenderness to

palpation or pain with passive movement of the shoulder on thoracic examination. *Id*. Petitioner had a negative straight leg test and tenderness to very light palpation diffusely on lumbar examination. *Id*. Petitioner was positive for all five Waddell signs during his physical examination. (Rx1, p. 4). Dr. Deutsch then provided his assessment in the form of responses to interrogatories regarding the examination. (Rx1, p. 4). Dr. Deutsch provided that Petitioner's diagnosis for the August 15, 2019, work injury was a lumbar contusion/strain that has since resolved. *Id*. Dr. Deutsch supported this diagnosis with pointing out Petitioner was positive for all 5 Waddell signs, Petitioner's current complaints and symptoms were consistent with symptom exaggeration, and Petitioner reported 1/10 back pain in physical therapy which is consistent with a resolved lumbar strain. Dr. Deutsch further opined that Petitioner's MRI showed mild degenerative findings and disagreed with Dr. Levi's opinion that it showed herniated discs. *Id*. Dr. Deutsch concluded that medical treatment to this point had been necessary and work restrictions following the injury were causally related, but Petitioner has now reached maximum medical improvement, does not need further treatment, and can return to work without restrictions. (Rx1, p.4-5).

On January 8, 2020, Petitioner followed up with physical therapy and reported radiating pain from his lower back to his left foot. (Px6, p.82). On January 13, 2020, Petitioner followed up with Orthopedic and Rehabilitation Centers and was given work restrictions of no bending, climbing and no ladders. Petitioner was restricted to sedentary duty only. Dr. Levi felt placing Petitioner at maximum medical improvement was, "ridiculous." Petitioner had left gluteal pain, and numbness in the toes. *Id.* It was noted Petitioner had returned to work in a light duty role. .Dr. Levi focused on the 2 herniated discs for why Petitioner should have 10lb. restriction. (Px3, p.134).

On February 19, 2020, Petitioner followed up with Dr Levi at Orthopedic and Rehabilitation Centers stating he is doing better and rates his pain at a 2/10 but can reach a 5/10 with certain movements or sitting too long. (Px3, p.137). Dr. Levi continued to disagree with the Dr. Deutsch and say there is a herniated disc. (Px3, p.138). Dr. Levi placed him on 10lb. restrictions at work. *Id*; (Px6, p.92). On April 1, 2020, Petitioner followed up with Orthopedic and Rehabilitation Centers/Dr. Levi stating he is doing better with pain at a 4/10 that can go up to 6/10. (Px3, p.142). Dr. Levi placed him on 10lb. restrictions and initiated teletherapy. (Px3, p.142); (Px6, p.96).

Due to the pandemic, on April 6, 2020, Petitioner commenced physical therapy via Televisit with an initial evaluation by Orthopedic and Rehabilitation Centers. Petitioner received physical therapy (PT) from October 31, 2019 through January 8, 2020. The therapist recorded a history of a work injury on August 15, 2019 when Petitioner fell off a ladder at work while. Petitioner complained of losing balance when he walks and gluteal pain radiating to his lower leg which was constant. Petitioner also had pain radiating into his gluteal region down to his left ankle. (Px6, p.97). On April 8, 202, Petitioner followed up with PT Televisit and stated his pain is at a 3/10. (Px6, p.103). On April 10, 2020, Petitioner followed up with PT Televisit and reported compliance with his HEP. Petitioner reported his pain varies from 2-6/10 and is worse with prolonged sitting. (Px6, p.106). On April 13, 2020, Petitioner followed up with PT Televisit and stated since performing the exercises on Friday and throughout the weekend, he no longer experiences the pain along his buttocks which prior to Friday was constant. (Px6, p.109). Petitioner stated he continued to experience pain along the hell of the left foot which was constant and pinching in his back. *Id.* On April 15, 2020 Petitioner followed up with PT Televisit with complaints of mid-back and buttocks pain yesterday and it is currently at a 3/10. (Px6, p.112). Petitioner reported being pain free after the session. (Px6, p.113). On April 17, 2020, Petitioner followed up with PT Televisit and stated his pain resolves following exercise performance but after walking about 20-30 minutes, it will start to experience pain along his buttocks. (Px6, p.115).On April 20, 2020, Petitioner followed up with PT Televisit and reported increased pain and some N/T along his back experienced after sitting in a recliner at his uncle's house on Friday. (Px6, p.118). As soon as he got up and sat in a different chair, it went away. *Id.* Petitioner's buttocks pain was a 3-4/10. *Id.* Petitioner reported no pain in his lumbar/mid back. (Px6, p.119). On April 22, 2020, Petitioner followed up

with PT Televisit after just waking up and reported pain along the buttocks areas at a 2/10 but no pain in the mid-back. (Px6, p.121). Petitioner noted some discomfort in the mid-back, though, at 2/10. *Id.* On April 24, 2020, Petitioner followed up with a PT Televisit and complained of 2/10 pain with prolonged sitting on a low chair. Petitioner stated he was not working and only driving short distances to the grocery store and carrying light things. (Px6, p.124). On April 27, 2020, Petitioner followed up with a physical therapy Televisit and described his pain over the weekend was at 2-4/10. (Px6, p.127). Petitioner would continue with PT via Televisit as a COVID precaution. *Id.* Petitioner reported minimal to no discomfort along gluteal region and no back pain following the session. (Px6, p.129). On April 29, 2020 Petitioner followed up with PT Televisit reporting the same symptoms and 2-3/10 pain along the mid-back and gluteal region. (Px6, p.130). On May 4, 2020, Petitioner followed up with a PT Televisit stating he has knee and ankle pain. (Px6, p.133).

On May 5, 2020, Petitioner went to Orthopaedic and Rehabilitation Center for a telehealth video call complaining of lower back pain. (Px3, p.147). Petitioner stated he was feeling better with therapy and medications and felt he could return to work once work opens. (Px3, p.147-148). Petitioner was released to full duty without restrictions. (Px3, p.148-149); (Px6, p.139).

Petitioner's Testimony

Direct Examination

Petitioner testified that prior to the August 15, 2019, injury, he was working six days a week at Apollo Plastics as a material handler. (Tr. 12-13). Material handler, according to Petitioner, required moving material from different lines, taking note of what was completed, and assembling boxes. (Tr. 13). Petitioner was a material handler from 2015 until his August 15, 2019, injury. *Id*. When Petitioner returned to work following the August 15, 2019, injury, he was assigned to work at Apollo Plastics as a machine operator; Petitioner was then laid off due to the Covid-19 pandemic and promoted to a supervisor role in July 2020 when the shop re-opened. (Tr. 13-14). Petitioner continues to work at Apollo Plastics as a supervisor, a role which included a raise in pay. (Tr. 14).

Petitioner testified that he had never injured his low back prior to the August 15, 2019, injury and has not had a low back injury since. (Tr. 16-17). Petitioner testified that he never had pain going down his left leg prior to the August 15, 2019, injury. (Tr. 17-18).

Petitioner testified that on August 15, 2019, while at Apollo Plastic's warehouse, Petitioner was injured when he fell off a ladder while looking for material. (Tr. 20-21). Petitioner indicated falling from the top "step" of the ladder so that he could reach the material he was searching for. (Tr. 21-22). Petitioner described the fall as happening because the ladder got pushed backwards, causing him to fall forward, and land on his right side, lower back, and ankle. (Tr. 21-22). Petitioner testified that he was laying face up, looking at the ceiling when he landed from his fall. (Tr. 23).

Petitioner testified that when he arrived to the emergency room on August 15, 2019, he had pain in his lower back and ankle. (Tr. 23-24). Petitioner stated the pain in his left ankle travels down his left leg from his back. Petitioner testified to still having this radiating pain today. (Tr. 24).

Petitioner testified that he has gained weight since the August 15, 2019 injury, and attributes the weight gain to the injury. Petitioner claims to have gone from a size 38-inch pants waist to size 42 inch. Petitioner further alleged going from an extra-large to 3XL sized shirt. (Tr. 28).

Petitioner testified he was released from Resurrection Hospital the same day he was admitted. (Tr. 29). Petitioner then began treating at Physicians Immediate Care after his injury and through about October 21, 2019. *Id*. Petitioner was sent to Team Rehabilitation following discharge from Physicians Immediate Care. (Tr. 30). Respondent then sent Petitioner to see Dr. Roberto Levi so that Dr. Levi could interpret the results of the MRI. *Id*. Dr. Levi stopped seeing Petitioner due to having his own surgery and Petitioner was seen by Dr. Levi's son thereafter. (Tr. 31). All treatment with both Dr. Levi's occurred at their facility named Orthopaedic & Rehabilitation Centers. *Id*. Petitioner testified that his treatment there helped and mostly consisted of therapy sessions and anti-inflammatory medication. (Tr. 31-32).

Petitioner testified that his back pain over the last few months is "slightly bad" and he feels pain radiating from his back to his left ankle. Petitioner stated he cannot lift over 20lbs. due to his back but that he does not need to lift at work, his only lifting occurs at home. (Tr. 35). Petitioner testified his pain is with him 24/7 and still performs some of the therapeutic exercises he was taught. (Tr. 36-37). Petitioner then testified that Labor Solutions, who took over for Respondent Flexicorps, offers health insurance but he cannot afford it. (Tr. 37-38). Petitioner does not treat for his conditions because he doesn't have insurance and cannot afford to. Petitioner can, however, "do an honest day's worth of work." (Tr. 39).

Cross-Examination

Petitioner testified that he was injured when standing on the handlebar of the moving step ladder. (Tr. 44). Petitioner did receive safety training from Apollo Plastics which include proper lifting and how to avoid getting injured. (Tr. 45). Petitioner then changes his story that the handlebar is indeed a step rather than a handlebar. *Id*. Petitioner testified that on the day of the injury he decided to use the ladder on wheels rather than the taller, non-wheeled ladder because he could not get through the machines in the area he was searching for material. (Tr. 46).

Petitioner testified he did not know how long it took for the ambulance to pick him up following the accident because, "I was still shook from the impact." (Tr. 47). Petitioner again alleged he fell 8 feet. *Id*. Petitioner then testified that he "never said 4 and 1/2 feet," when describing the fall despite what the records say. (Tr. 47-48). Petitioner then testified he may have had a little dizziness following the injury but the main thing he remembered was intense pain. (Tr. 48). Petitioner further testified he did not recall what hospital he was taken to. (Tr. 49).

Petitioner testified that he does not remember telling the hospital that he fell 4 and 1/2 feet, but he does remember undergoing x-rays. (Tr. 50-51). Petitioner did not remember reporting that his pain was improving while at the hospital despite what the medical records indicate. (Tr. 51).

Petitioner testified that he would have told the doctor at Physician's Immediate Care that he fell from the handlebar/top step. (Tr. 53). Petitioner then testified that he remembers being weighed at his first visit with Dr. Levi. (Tr. 54). Petitioner testified that he remembers the ambulance workers from the day he fell not weighing him. (Tr. 56). Petitioner again testified that he fell 8 feet as opposed to 4 and 1/2 feet off the ladder the day of the injury. (Tr. 58).

On cross-examination, Petitioner testified that he fell face forward when the injury occurred. (Tr. 58). Petitioner claims to have shifted sometime in the air but only remembers hitting the ground and feeling pain. (Tr. 58-59).

Petitioner did not recall the date of his visit with Dr. Deutsch but did remember that he attended one. (Tr. 59). Petitioner recalled that he was sent to see Dr. Deutsch. Petitioner alleges he returned to work around January 15, 2020, after seeing Dr. Deutsch. Petitioner returned to work because he reached out to

them since his savings were running out. He does not recall who sent him back to work. Petitioner worked full 40-hour weeks when he returned. (Tr. 60-61).

Re-Direct Examination

Petitioner testified that he still takes pain medications in the morning and afternoon. Petitioner has some trouble sleeping that he did not have prior to the August 15, 2019, injury. Petitioner attributed the sleeping problems partially to the back injury and partially to his weight gain. (Tr. 66-67).

Further Cross-Examination

Petitioner is still employed at Apollo Plastics and was promoted following the injury because he knew how to operate the machinery. (Tr. 69). His employment at Apollo Plastics is now through Labor Solutions rather than Flexicorps. (Tr. 70).

III. CONCLUSIONS OF LAW

The Arbitrator adopts the above Findings of Fact in support of the Conclusions of Law set forth below. Section 1(b)3(d) of the Act provides that, in order to obtain compensation under the Act, the employee bears the burden of showing, by a preponderance of the evidence, that he or she has sustained accidental injuries arising out of and in the course of the employment. *820 ILCS 305/1(b)3(d)*. To obtain compensation under the Act, Petitioner has the burden of proving, by a preponderance of the evidence, all of the elements of his claim *O'Dette v. Industrial Comm'n*, 79 Ill. 2d 249, 253 (1980) including that there is some causal relationship between his employment and his injury. *Caterpillar Tractor Co. v. Industrial Comm'n*, 129 Ill. 2d 52, 63 (1989) It is well established that the Act is a humane law of remedial nature and is to be liberally construed to effect the purpose of the Act - that the burdens of caring for the casualties of industry should be borne by industry and not by the individuals whose misfortunes arise out of the industry, nor by the public. *Shell Oil v. Industrial Comm'n,* 2 Ill.2nd 590, 603 (1954).

Decisions of an arbitrator shall be based exclusively on the evidence in the record of the proceeding and material that has been officially noticed. 820 ILCS 305/1.1(e). The Arbitrator, as the trier of fact in this case, has the responsibility to observe the witnesses testify, judge their credibility, and determine how much weight to afford their testimony and the other evidence presented. *Walker v. Chicago Housing Authority*, 2015 IL App (1st) 133788, ¶ 47. Credibility is the quality of a witness which renders his evidence worthy of belief. The Arbitrator, whose province it is to evaluate witness credibility, evaluates the demeanor of the witness and any external inconsistencies with his/her testimony. Where a claimant's testimony is inconsistent with his/her actual behavior and conduct, the Commission has held that an award cannot stand. *McDonald v. Industrial Commission,* 39 Ill. 2d 396 (1968); *Swift v. Industrial Commission,* 52 Ill. 2d 490 (1972). It is the function of the Commission to judge the credibility of the witnesses and to resolve conflicts in the medical evidence and assign weight to witness testimony. *O'Dette v. Industrial Commission,* 79 Ill.2d 249, 253 (1980); *Hosteny v. Workers' Compensation Commission,* 397 Ill. App. 3d 665, 674 (2009). Internal inconsistencies in a claimant's testimony, as well as conflicts between the claimant's testimony and medical records, may be taken to indicate unreliability. *Gilbert v. Martin & Bayley/Hucks,* 08 ILWC 004187 (2010).

CREDIBITY FINDING: In the case at bar, the Arbitrator observed Petitioner during the hearing and finds him to be a credible witness. The Arbitrator compared Petitioner's testimony with the totality of the evidence submitted and did not find any material contradictions that would deem the witness unreliable. The Arbitrator finds Petitioner's testimony to be straight forward, truthful, and consistent with the record as a whole. It is clear from reading the company clinic records that facts pertaining to the accident were lost in translation. The company physician specifically noted the lack of clarity of Petitioner's vocabulary in that he used stairs and steps as though the same word. Petitioner does not appear to be a sophisticated individual and any inconsistencies in his testimony are not attributed to an attempt to deceive the finder of fact.

Petitioner's material and relevant testimony as to accident is consistently corroborated by the medical records. Petitioner fell off a large step ladder and injured his back and left ankle. The discrepancy as to whether Petitioner fell 4 and ½ feet or 8 feet is not material. Petitioner fell at least 4 and ½ feet. The top of the ladder is eight feet, the step that he fell from was 4 and ½ feet. In reviewing Petitioner's testimony, it appears that he was initially 8 feet of the ground, lost his balance, fell forward against the 8 foot step ladder sticking his ribs against the step ladder, and then slid down the ladder a few feet and then falling about 4 and 1/2 feet of the ground.

Despite being treated by the emergency room personnel, the medical providers at the company clinic, and Roberto Levi, an orthopedic surgeon selected by the company clinic, and the physical therapist at Team Rehabilitation referred to by the company clinic, no material inconsistencies were noted upon physical examination until Dr. Deutsch examination. Dr. Deutsch's findings and opinions are inconsistent with all the other treating medical providers. Dr. Deutsch alleged unpersuasively that he found inconsistencies. Dr. Deutsch ignored or failed to persuasively explain away the positive MRI findings. Dr. Levi opined and that Petitioner's subjective complaints are supported by and consistent with the objective findings. The Arbitrator agrees. The Arbitrator is not persuaded by Respondent's allegation that Petitioner's testimony and his statements made to Dr. Deutsch were inconsistent, and, therefore, not credible nor because a number of the physical therapy sessions did not record findings or complaints. The Arbitrator notes that the physical therapist summary for each period recorded the objective findings and Petitioner's complaints of pain and clearly stated what progress was achieved and not achieved. The Arbitrator finds that the medical records corroborate Petitioner's testimony. Unlike Dr. Deutsch, the company clinic physician and health providers, the company selected physical therapy facility, Roberto Levi, M.D. and Gabriel Levi, M.D., the company clinic referred orthopedic surgeons, did not find the inconsistencies alleged by Dr. Deutsch and in fact, Dr. Roberto Levi, after reviewing Dr. Deutsch's report, specifically disagreed with the findings and opinions of Dr. Deutsch.

WITH RESPECT TO ISSUE (F), IS THE PETITIONER'S PRESENT CONDITION OF ILL-BEING CAUSALLY RELATED TO THE INJURY, THE ARBITRATOR FINDS AS FOLLOWS:

"In a workers' compensation case, the claimant has the burden of proving, by a preponderance of the evidence, all of the elements of his claim." R & D Thiel v. Illinois Workers' Compensation Comm'n, 398 Ill. App. 3d 858, 867 (2010). "'[A] preexisting condition does not prevent recovery under the Act if that condition was aggravated or accelerated by the claimant's employment.'" *Absolute Cleaning/SVMBL v. Illinois Workers' Compensation Comm'n*, 409 Ill. App. 3d 463, 470, (2011), quoting *Caterpillar Tractor*

Co. v. Industrial Comm'n, 92 Ill. 2d 30, 36, (1982). Further, "[e]very natural consequence that flows from an injury that arose out of and in the course of the claimant's employment is compensable unless caused by an independent intervening accident that breaks the chain of causation between a work-related injury and an ensuing disability or injury." *Vogel v. Ill. Workers' Comp. Comm'n*, 354 Ill. App. 3d 780 (2005).

"That other incidents, whether work-related or not, may have aggravated the claimant's condition is irrelevant." *Vogel,* 354 Ill. App. 3d at 786. To obtain compensation under the Act, a claimant must prove that some act or phase of his employment was a causative factor in his ensuing injuries. A work-related injury need not be the sole or principal causative factor, as long as it was *a* causative factor in the resulting condition of ill-being. "A chain of events which demonstrates a previous condition of good health, an accident, and a subsequent injury resulting in disability may be sufficient circumstantial evidence to prove a causal nexus between the accident and the employee's injury*." International Harvester v. Industrial Com.,* 93 Ill. 2d 59 (1982). "In a workers' compensation case, the claimant has the burden of proving, by a preponderance of the evidence, all of the elements of his claim." R & D Thiel v. Illinois Workers' Compensation Comm'n, 398 Ill. App. 3d 858, 867 (2010). "'[A] preexisting condition does not prevent recovery under the Act if that condition was aggravated or accelerated by the claimant's employment.'" *Absolute Cleaning/SVMBL v. Illinois Workers' Compensation Comm'n*, 409 Ill. App. 3d 463, 470, (2011), quoting *Caterpillar Tractor Co. v. Industrial Comm'n*, 92 Ill. 2d 30, 36, (1982). Further, "[e]very natural consequence that flows from an injury that arose out of and in the course of the claimant's employment is compensable unless caused by an independent intervening accident that breaks the chain of causation between a work-related injury and an ensuing disability or injury." *Vogel v. Ill. Workers' Comp. Comm'n*, 354 Ill. App. 3d 780 (2005). "That other incidents, whether work-related or not, may have aggravated the claimant's condition is irrelevant." *Vogel,* 354 Ill. App. 3d at 786.

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

In *Price v. Industrial Comm'n*, 278 Ill. App. 3d 848, 853-54 (1996), the Appellate Court considered the applicability of this principle to a case involving a preexisting condition and reasoned as follows: "The employer also contends that the facts of the present case do not support the Commission's 'chain of events' analysis because [the claimant] had a preexisting condition. The employer cites no authority for the proposition that a 'chain of events' analysis cannot be used to demonstrate the aggravation of a preexisting injury, nor do we see any logical reason why it should not. The rationale justifying the use of the 'chain of events' analysis to demonstrate the existence of an injury would also support its use to demonstrate an aggravation of a preexisting injury." *Walquist Farm Partnership v. IWCC*, (January 11, 2021) This is a Rule 23 Illinois Appellate Court decision and cited for its persuasiveness, but not as precedent.

Respondent stipulated that Petitioner suffered an accident arising out of and in the course of his employment. However, Respondent disputes that Petitioner's current medical issues are causally related to

the work accident. For the reasons stated below and based on the record as whole, the Arbitrator finds that Petitioner's conditions of ill-being to his left foot and back are causally related to his work accident.

After his accident, the paramedics noted that Petitioner complained that his low back pain prevented him from being able to lay flat on his back during transport. (Px1, p. 1). Upon arrival at Resurrection Hospital the emergency room physician ordered x-rays of petitioner's left ankle, left pelvis, chest, left leg and lumbar spine. (Px2, pp. 14-16). The emergency room physician returned petitioner to "light work" due to his back, ankle pain, and rib pain from the fall. (Px2, p.36).

The following day, August 16, 2019, Petitioner went to Respondent's industrial clinic, Physicians Immediate Care, Chicago, Illinois. This was the only time he saw an actual medical doctor at the clinic. The rest of his visits were with a physician's assistant. The initial diagnosis was low back pain, cramps and spasms, and pain in his left ankle and joints of the left foot. He was given three different pain medications and told to stay off work. (Px3, p.5).

On August 21, 2019, the physician's assistant noted numbness and tingling complaints from Petitioner. (Px3, pp. 19, 33). The numbness and tingling in his down to his left foot and big toe is still present. (Tr. pp. 41-43)

The company clinic referred Petitioner to Team Rehabilitation where he engaged in physical therapy from September 9, 2019, through October 25, 2019. (Px4). The physical therapist noted his complaints of numbness and tingling down his left leg, "which is brought on by sitting and standing for long periods of time". (Px4, p. 5). The physical therapist also noted Petitioner's complaints of, "unable to fall asleep, will take up to 1 ½ hours to fall asleep. Limit to one hour of driving. Limited to 15 pounds of lifting." These restrictions and sleep disturbances are still present today. During the September 11, 2019, follow-up at the clinic it was noted that Jose complained of numbness and tingling. (Px3, p.54). The physical therapist at Team Rehabilitation noted Petitioner's continuing complaints of sleep disturbances due to pain. (See Px4, September 16, 2019, note. p. 9, September 24, 2019, note, p. 16, October 1, 2019, note, p. 25, October 7, 2019, note, p. 35).

Due to his continued left leg radiculopathy the physician's assistant ordered an MRI on the lumbar spine. (Px3 October 7, 2019, progress note, p. 82). The MRI was performed October 16, 2019, at Hawthorne Works Medical Imaging. The MRI notes pathology including an annular tear at L4-5. Petitioner continued to complain of low back pain as well as numbness/tingling and pain in his left leg. (Px3. p. 104, October 21, 2019, progress note). The company clinic then referred petitioner to Orthopedic Surgeon, Roberto Levi of Orthopaedic and Rehabilitation Centers, Chicago, Illinois for treatment and to evaluate the MRI. (See, Px3 October 21, 2019, progress note, P. 107). Petitioner continued physical therapy at Team Rehabilitation, which continued to note sleep disturbances due to pain, limited driving, and lifting no more than 15 pounds. Throughout his treatment at Team Rehabilitation petitioner's pain scale was 2/10 through 6/10. There is no indication, of any kind, from any medical provider that Jose was exaggerating his symptoms, malingering, or seeking any type of secondary gain.

On October 28, 2019, petitioner underwent a thorough examination by Roberto E. Levi, M.D. an orthopedic surgeon at Orthopaedic and Rehabilitation Centers. Dr. Levi found a clear causal connection of petitioner's injuries and symptoms to his fall of August 15, 2019. (Px6, p. 3). At the initial visit, Dr. Levi noted Petitioner had been treated with Medrol Dosepak for a week without relief. Jose was taking extra strength Tylenol and Flexeril for his symptoms. Dr. Levi noted the left leg radiculopathy with symptoms of numbness, tingling and pain. Jose was wearing his lumbar brace, as well as his left ankle brace. The examination revealed a positive straight leg test on the left . Dr. Levi also reviewed the MRI films and determined Petitioner had herniated discs at L4-5 and L5-S1, which were "compressing" the nerve roots at

those levels. He prescribed Fexmid, Neurontin, Mobic, Prilosec, and Ultram. He noted that Jose was continuing to have sleep disturbances due to his symptoms. (Px6, p. 3).

Throughout his visits with Dr. Levi Petitioner remained on the medications originally prescribed by Dr. Levi. Petitioner continued to have a positive straight leg test on the left side and ongoing problems with his daily living activities, such as getting into a car without pain - Jose had to lift his left leg when entering a car. He continued treating with Dr. Levi with evaluations on December 16, 2019, and January 13, 2020. He continued with physical therapy at Orthopaedic and Rehabilitation Centers.

On December 23,2019, Petitioner saw Harel Deutsch, M.D. at Respondent's request for an examination pursuant to Section 12 of the Act while still treating with Orthopaedic and Rehabilitation Centers. Dr. Deutsch concluded that Petitioner had suffered a resolved lumbar strain. He returned Petitioner to work without any restrictions. Dr. Deutsch referred to the MRI report. It is unclear if he actually reviewed the MRI Scans. He did state he reviewed a lumbar MRI which showed mild degenerative changes but then goes on to quote from the report. He did not state that he personally reviewed the actual MRI films, nor did he refer to any specific MRI scans. Dr. Deutsch did not state whether he agreed or disagreed with the radiologist but rather quoted a portion of the report. Dr. Deutsch discontinued any further medical treatment for Petitioner's work-related injuries. Dr. Deutsch believed petitioner could return to his old job as a material handler, which required him to lift 50 pounds regularly. As noted previously, the Arbitrator is not persuaded by the findings and opinions of Dr. Deutsch.

Dr. Roberto Levi saw Petitioner on January 13, 2020, for a follow up. Dr. Levi strongly disagreed with the findings and opinions of Dr. Deutsch. He explained his reasons in detail. Dr. Levi cautioned that a person with two herniated discs should not be lifting 50 pounds. He also noted that Jose had returned to work because he was threatened with being terminated if he did not. Dr Levi noted the Respondent ignored Dr. Deutsch's fully duty release and provided Petitioner with light duty work. (Px6, p. 86) .

Petitioner testified that when he returned to work on January 16, 2020, he was promoted to the job of machine operator. No heavy lifting was involved. When he returned to work at Apollo Plastics in July, 2020 after the COVID layoff, Petitioner was promoted to supervisor of the machine operators, which does not require him to lift anything heavy like before the accident. (Tr. pp. 14- 15). At the hearing Jose was granted permission by the Arbitrator to sit and stand during his testimony. (Tt. P.17.)

Petitioner continued treating with Orthopaedic and Rehabilitation Centers but switched orthopedic surgeons in February, 2020 because Dr. Roberto Levi underwent emergency surgery. He started treating with Dr. Gabriel S. Levi for his low back pain. On February 19, 2020, Dr. Gabriel Levi noted that Petitioner stated that he was doing better, taking Meloxicam for pain, rated his back pain as 2 out of 10 at time of the examination with the pain reaching 5 out 10 when doing certain movements or after sitting too long and that Petitioner was currently working without restrictions. It is unclear if Dr. Levi was aware petitioner had changed positions at work which no longer required him to lift. Petitioner was wearing the lumbar brace and which Petitioner reported as helping. Petitioner had a positive straight leg raising test on the left. (Px6, p. 89).

The Arbitrator notes that Petitioner's pain level history recorded by Dr. Gabriel Levi and Dr. Roberto Levi are consistent with those recorded by the physical therapist. The Arbitrator notes that unlike Dr. Deutsch, Dr. Roberto Levi and Dr. Gabriel Levi found Petitioner had a positive straight leg raising test on the left. The Arbitrator also notes that unlike Dr. Deutsch, Dr. Roberto Levi and Dr. Gabriel Levi made clear that they viewed the actual MRI scans whereas Dr. Deutsch did not.

Dr. Gabriel Levi upon examination found objective findings of pain in Petitioner's lumbar spine, which continued to radiate down Petitioner's left leg with numbness to the left big toe. Dr. Levi also personally reviewed the MRI images and concluded Petitioner had two herniated discs at L4-L5 and L5-S1 with left sided foraminal narrowing and the central canal as well. He opined that these findings correspond to his pain and left lower extremity radiculopathy with numbness into the great toe.

Dr. Gabriel Levi reviewed the report of Dr. Deutsch and, like Roberto Levi, M.D., disagreed with Dr. Deutsch's opinions. Dr. Deutsch states, "there is no herniated disc when clearly he has it on MRI and he has the symptoms. We sent him to work on a sedentary job and he should continue to do so." (Px6, p. 90). Dr. Gabriel Levi, M.D. recommended petitioner see a pain management specialist for an injection. (Px6, p. 91). The pain management referral was not approved by Respondent based on Dr. Deutsch's opinions. Petitioner was released to return to work with 10 lb. restriction and to be allowed to work moving and walking as needed. (Px6, p.92).

Petitioners next visit with Gabriel Levi, M.D. occurred on April 1, 2020. Dr. Levi made the same findings as earlier and again noted that petitioner's low back pain and left leg symptoms corresponded with the MRI images. He recommended additional physical therapy. Petitioner started Telemedicine physical therapy on April 6, 2020. The Televisit physical therapy progress notes state Jose was compliant with the physical therapy program, including doing his home exercise program, as prescribed. The physical therapy resulted in Petitioner temporarily resolving the radiculopathy in his buttocks. (Px6, p. 109 - April 13, 2020, physical therapy note).

On May 4, 2020, upon discharge from the Telemedicine physical therapy it was noted that Petitioner still had low back pain, including buttock pain, and continued left leg radiculopathy symptoms. Petitioner's symptoms increased with walking, standing and sitting. The physical therapist concluded that Portioner would benefit from continued physical therapy in order, "to assist in pain relief, and to resolve his neurological symptoms". (Px3, p. 133-136, p 134). Respondent refused to approve any more physical therapy after May 4, 2020.

On May 5, 2020, Petitioner had his last visit with Dr. Gabriel Levi, Dr. Gabriel Levi noted that Petitioner reported to doing better, he is taking Tylenol for pain, and it helped some. Petitioner rated his current pain at 3 out 10 with a maximum of 5 out of 10 with certain movements or when standing in the same position too long. He stopped wearing the brace because he gained some weight, and it was not fitting properly. Petitioner reported that the physical Teletherapy helped. He still had numbness, pain, and tingling in his left buttock, radiating down to his left heel. Dr. Levi noted that Petitioner reported to feeling better with the physical therapy and medications. Dr Levi diagnosis was M51 - a intervertebral disc disorder that involves deterioration, herniation, or other disfunction of an intervertebral disc and M54-16 – Lumbar radiculopathy; and, M46-07 – lumbar spinal stenosis. Petitioner felt he could return to work when the COVID pandemic was over. Dr. Levi told him to follow up on a as needed basis. A copy of the progress note was sent to the physician's assistant at the company clinic. (Px6, pp. 136-37). Petitioner testified that although Respondent stopped all of his medical treatment he would like to go back and see Dr. Levi and continue treatment as it helped his symptoms. However, he has no health insurance and does not have the funds to have medical treatment. The low back pain and left leg extremity symptoms are with him constantly. He continues to do the home exercise program, which includes stretching and relaxing the muscles in his back. He described and showed the Arbitrator how he performs his home exercise program. T. 35-39.

Petitioner also continues to have limitations and restrictions in all of his daily living activities. He is no longer able to go dancing twice a month, to play sports, including soccer, softball, and basketball. He still has difficulty going on walks with his girlfriend. He continues to have sexual dysfunction due to his

herniated discs and associated symptoms. He continues to experience problems going up and down stairs and, is not able to run. He must stop driving after 40-60 minutes in order to stretch, still wears insoles in his shoes, and continues having sleep disruption due to his pain symptoms. He would like to "have more mobility." His injuries have hindered his prior overall lifestyle as it existed before August 15, 2019. T. 25-28, 35-37, 40-43, 66-67. Petitioner stated that we went from a pre-accident waist size of 36 or 38 to 40 or 42. (Tr p.28). He was shirt size extra-large, no he is 3XL. The record does not support that Petitioner gained weight but it does support the he has become deconditioned with the inference that he lost muscle weight and gained fat weight.

On August 15, 2019, Petitioner was employed by Respondent, FlexiCorps, a staffing agency. He had been placed at Apollo Plastics Company, Chicago, Illinois, since October 2015, where he worked as a material handler. He worked the second shift, 2:30 P.M. to 12:00 A.M., six days a week. As a material handler he regularly lifted 40 – 50-pound boxes bringing the materials to the machine operators. He is now a supervisor of machine operators at Apollo Plastics, working the first shift, Monday – Friday through a different staffing agency (Tr. pp. 10, 12, 13).

The record reflects prior to his work accident, Petitioner had not been injured at work. He had not experienced low back pain or left leg pain with radiculopathy. He had never seen any health care providers for low back pain, left leg pain or left ankle pain. He has had no subsequent accidents or injuries to his low back, left leg, or left ankle. (Tr. 17, 18, 24). He had no restrictions or limitations, either at work or outside of work. (Tr. 18). He was not taking medications of any kind. Although Petitioner worked a number years at the Apollo Plastics Company before his work accident of August 15, 2019 in a physically demanding job, no evidence was came out that Petitioner ever missed time off work due to back pain nor did was any evidence voiced that he requested any reasonable accommodation due to back pain. The Arbitrator finds that the record shows that Petitioner's work accident at a minimum aggravated the preexisting asymptomatic degenerative changes in Petitioner's back. There was no evidence presented of intervening or subsequent injuries to Petitioner's back that could explain Petitioner's injuries and current condition.

Petitioner need not prove what is the sole or proximate cause of his injuries, just that the work accident was a proximate cause of his injuries. Petitioner has met his burden for the reasons previously stated. The Arbitrator relies on Petitioner's testimony, the medical records and medical histories of the treating physicians and health providers. The medical histories included in the record demonstrate a consistent history as to the onset of Petitioner's back pain on August 15, 2019, that correlates with Petitioner's testimony.

The Arbitrator concludes Petitioner has met his burden of proof by a preponderance of evidence that the August 15, 2019 work accident caused Petitioner's current conditions of ill-being to his left foot and to his back based on the chain of events and the findings and opinions of the treating health providers and the findings and opinions of Dr., Roberto Levi and Dr. Gabriel Levi. Dr. Roberto Levi and Dr. Gabriel Levi persuasively opined that Petitioner's disc pathology and back pain were causally related to the accident.

WITH RESPECT TO ISSUE (J), WERE THE MEDICAL SERVICES THAT WERE PROVIDED TO PETITIONER REASONABLE AND NECESSARY AND HAS RESPONDENT PAID ALL APPROPRIATE CHARGES FOR ALL REASONABLE AND NECESSARY MEDICAL SERVICES, THE ARBITRATOR FINDS AS FOLLOWS:

The Arbitrator finds Petitioner's treatment to be reasonable and necessary and finds that Respondent has not paid for all the treatment. As such, the Arbitrator orders Respondent to pay for the outstanding medical services, pursuant to the medical fee schedule and Sections 8(a) and 8.2 of the Act.

The following medical bills remain unpaid:

1. City of Chicago - EMS, Date of Service : 08/15/2019 $1,118.00;
2. Specialists in Medical Imaging, Date of Service: 08/15/2019 $510.00; and
3. Orthopaedic & Rehabilitation Centers Dates of Service: 10/28/2019 - 05/05/2020 $3,168.76.

The City of Chicago ambulance bill and the x-rays bill incurred at the emergency room from Specialist in Medical Imaging on August 15, 2019 are reasonable, necessary and causally related to the accidental injuries sustained by Petitioner. Respondent offered no persuasive evidence to the contrary. Dr. Deutsch did not dispute the necessity and reasonableness of these charges. Petitioner testified that the medical treatment and care he received from both Roberto Levi, M.D. and Gabriel Levi, M.D., and the physical therapy prescribed by them, was beneficial and helped relieve his symptoms sufficiently to enable him to return to the work force. The Arbtitrator notes that the company clinic referred Petitioner to Orthopaedic and Rehabilitation with Respondent's approval. The Arbitrator finds that the treatment provided and charges incurred from Orthopaedic and Rehabilitation Centers to be reasonable, necessary, and causally related to the accidental injuries sustained by Petitioner.

Respondent submitted into evidence without objection Respondent's Exhibit 4 as evidence of medical bills paid in the amount of $22,253.34. Respondent is entitled to credit for medical bills paid under Section 8(a) and 8(j). The total bills listed in RX 4 includes payment to Dr. Deutsch, Respondent's Section 12 expert, and payment for Respondent's medical case management both of which are not payable under Section 8(a) or Section 8(j). Additionally, Respondent stipulated that it is not entitled to any 8(j) credit. (Arb X 1) Respondent is entitled to credit for medical bills paid. It is not entitled to credit for payment of to its Section 12 expert Dr. Deutsch. Respondent inadvertently included the prepayment to Dr. Deutsch on October 23, 2019 in the amount $1,390.00 for his December 18, 2019 Section 12 examination. Said payment is coded as payment to hospital under Section 8(a). It clearly is not a medical service as provided in Section 8(a) of the Act. The Arbitrator therefore finds that Respondent has paid $18,367.04 in medical treatment.

Therefore, Respondent shall pay the reasonable and necessary unpaid medical services of $4,796.76. This is in addition to the payments previously made. The Respondent shall pay all outstanding medical bills for his left ankle and back, pursuant to Sections 8(a) and 8.2 of the Act. Respondent shall pay reasonable and necessary medical services, pursuant to the medical fee schedule, of $1,118.00 to City of Chicago - EMS, $510.00 to Specialists in Medical Imaging, and $3,168.76 to Orthopaedic & Rehabilitation Centers, as provided in Sections 8(a) and 8.2 of the Act.

WITH RESPECT TO ISSUE (K), WHAT AMOUNT OF COMPENSATION IS DUE FOR TEMPORARY TOTAL DISABILITY, THE ARBITRATOR FINDS AS FOLLOWS

In addition to the TTD previously paid by Respondent, Petitioner is seeking unpaid TTD payments from December 27, 2019, through January 13, 2020. Respondent terminated TTD based on the findings and opinions contained in the December 18, 2019 report of Dr. Harel Deutsch, Respondent's Section 12 examining physician. Petitioner was placed at maximum medical improvement and released to return to work full duty by Dr. Deutsch. However, he had not reached MMI according to his treating physicians at Orthopaedic and Rehabilitation Centers. Dr. Levi reviewed Dr. Deutsch's report and disagreed with the findings and opinions of Dr. Deutsch. The Petitioner testified that when he returned to work January 16, 2020, he was promoted to new position, which did not require him to lift things at work. The Arbitrator finds the opinions of Dr. Levi and Petitioner's other health care providers to be more persuasive and consistent with the record as a whole than the findings of opinions of Dr. Deutsch. Thus, the Arbitrator

awards Petitioner TTD for the period of December 27, 2019, through January 13, 2020, as provided in Section 8(a) of the Act, in addition to the TTD previously paid.

WITH RESPECT TO ISSUE (L), WHAT IS THE NATURE AND EXTENT OF THE INJURY, THE ARBITRATOR FINDS AS FOLLOWS:

Pursuant to §8.1b of the Act, the following criteria and factors must be weighed in determining the level of permanent partial disability for accidental injuries occurring on or after September 1, 2011:

(a) A physician licensed to practice medicine in all of its branches preparing a permanent partial disability impairment report shall report the level of impairment in writing. The report shall include an evaluation of medically defined and professionally appropriate measurements of impairment that include but are not limited to: loss of range of motion; loss of strength; measured atrophy of tissue mass consistent with the injury; and any other measurements that establish the nature and extent of the impairment. The most current edition of the American Medical Association's "Guides to the Evaluation of Permanent Impairment" shall be used by the physician in determining the level of impairment.

(b) In determining the level of permanent partial disability, the Commission shall base its determination on the following factors;

(i) the reported level of impairment pursuant to subsection (a);
(ii) the occupation of the injured employee;
(iii) the age of the employee at the time of the injury;
(iv) the employee's future earning capacity; and
(v) evidence of disability corroborated by the treating medical records. No single enumerated factor shall be the sole determinant of disability. In determining the level of disability, the relevance and weight of any factors used in addition to the level of impairment as reported by the physician must be explained in a written order.

With regard to subsection (i) of §8.1b(b), the Arbitrator notes that no permanent partial disability impairment report and/or opinion was submitted into evidence. None is required. Therefore, this factor was not taken into consideration.

With regard to subsection (ii) of §8.1b(b), the occupation of the employee, the Arbitrator has taken this factor in consideration and notes that the record reveals that Petitioner was employed as a material handler, a physically demanding job, at the time of the accident and that he may or may not be able to return to work in his prior capacity as a result of said injury. The record is unclear. It is unclear if Petitioner was released by his orthopedic surgeon to return to work to his job at the time or his injury or at the time he was found at maximum medical improvement. It appears that Dr. Gabriel Levi released Petitioner to return to work based on Petitioner stating he felt he could return to work and Petitioner had been working a lighter duty job. The Arbitrator is mindful that Dr. Roberto Levi saw Petitioner saw Petitioner a few months earlier on January 13, 2020 opined that a person like Petitioner with two herniated discs should not be lifting 50 pounds. Petitioner's condition of ill-being did not significantly change from January to May. And, yet Petitioner is working at the same factory and receiving a higher average weekly wage. He was promoted and is now a supervisor. His position does not require frequent lifting nor any heavy lifting. The Arbitrator gives this factor some weight in considering the nature and extent of the Petitioner's disability.

With regard to subsection (iii) of §8.1b(b), the Arbitrator notes that Petitioner was 40 years old at the time of the accident. The Arbitrator has given this factor some weight in the Petitioner has a long-expected work expectancy.

With regard to subsection (iv) of §8.1b(b), Petitioner's future earnings capacity, the Arbitrator notes that Petitioner is making more money than before and that the minimum hourly wage is higher than Petitioner's average weekly wage at the time of his accident. The Arbitrator has given this factor consideration and gives in no weight in considering the nature and extent of the Petitioner's disability.

With regard to subsection (v) of §8.1b(b), evidence of disability corroborated by the treating medical records, the Arbitrator notes that two treating orthopedic surgeons opined Petitioner had two unoperated herniated discs at L4-L5 and L5-S1 with left sided foraminal narrowing and the central canal as well and that the these findings corresponds to his pain and left lower extremity radiculopathy with numbness into the great toe.

Based on the above factors, and the record taken as a whole, the Arbitrator finds that Petitioner sustained permanent partial disability to the extent of 2.5% loss of the left foot, as provided in Section 8(e) 11 of the Act and 10% loss of his person as a whole, as provided in Section 8(d)2 of the Act.

.

IV. CONCLUSION

1. The Arbitrator concludes that Petitioner has proven by a preponderance of the evidence that his conditions of ill-being to his back and left foot are causally related to his work accident based on the chain of events and the findings and opinions of the treating physicians. The Arbitrator finds the opinions of the treating physicians to be more persuasive than the Section 12 examiner, Dr, Deutsch, on the disputed issues.

2. The Arbitrator concludes that Petitioner has proven by a preponderance of the evidence that Respondent is liable for the payment of the unpaid medical bills in the amount of $ 4,796.76.

3. The Arbitrator also finds that Respondent has proven by a preponderance of the evidence that it paid $18, 367.04 in medical benefits.

4. The Arbitrator concludes that Petitioner has proven by a preponderance of the evidence that he is entitled to unpaid TTD for the period commencing December 27, 2019 through January 15, 2020 in addition to the TTD previously paid in amount of $2,637.73 for lost time before December 23, 2020.

5. The Arbitrator concludes that Petitioner has proven by a preponderance of the evidence that he is entitled to PPD benefits of 10% loss of use of his person as whole and 2.5% loss of use of his left foot.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	17WC022481
Case Name	Luis Gomez v. Lang Paving & IWBF
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	24IWCC0385
Number of Pages of Decision	14
Decision Issued By	Stephen Mathis, Commissioner

Petitioner Attorney	Adam Rosner
Respondent Attorney	Rachel Hamer

DATE FILED: 8/12/2024

/s/Stephen Mathis, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Luis Gomez,

Petitioner,

vs. NO. 17WC022481

Lang Paving and Illinois State Treasurer as Ex-Officio Custodian of the Injured Workers' Benefit Fund,

Respondents.

DECISION AND OPINION ON REVIEW

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

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed September 1, 2023, is hereby affirmed and adopted.

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

IT IS FURTHER ORDERED BY THE COMMISSION that the Respondents 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 either Respondent is hereby fixed at the sum of $20,000.00. 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.

AUGUST 12, 2024

SM/sj
o-7/10/2024
44

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

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	17WC022481
Case Name	Luis Gomez v. Lang Paving and Illinois State Treasurer as Ex-Officio Custodian of the Injured Workers' Benefit Fund
Consolidated Cases	
Proceeding Type	
Decision Type	Corrected Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	10
Decision Issued By	Jeffrey Huebsch, Arbitrator

Petitioner Attorney	Adam Rosner
Respondent Attorney	Rachel Peter

DATE FILED: 9/1/2023

THE INTEREST RATE FOR THE WEEK OF AUGUST 29, 2023 5.35%

/s/ Jeffrey Huebsch, Arbitrator

Signature

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
CORRECTED ARBITRATION DECISION

Luis Gomez
Employee/Petitioner

Case # **17** WC **022481**

v.

Lang Paving and Illinois State Treasurer as Ex-Officio Custodian of the Injured Workers' Benefit Fund
Employer/Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Jeffrey Huebsch**, Arbitrator of the Commission, in the city of **Chicago**, on **4/19/2023**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On **6/15/2017**, Respondent-Employer ("Lang") ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner's average weekly wage was $**704.00**.

On the date of accident, Petitioner was **42** years of age, ***married*** with **2** dependent children.

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

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

Lang 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**.

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

ORDER

Respondent shall pay reasonable and necessary medical services of $43,499.80, as provided in Sections 8(a) and 8.2 of the Act, and as is set forth below.

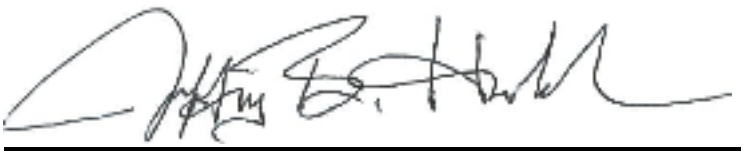
Respondent shall pay Petitioner permanent partial disability benefits of $422.44/week for 6.45 weeks, because the injuries sustained caused the 3% loss of the left leg, as provided in Section 8(e) of the Act.

Respondent shall pay Petitioner the compensation benefits that have accrued from 6/15/2017 through 4/19/2023 in a lump sum, and shall pay the remainder of the award, if any, in weekly payments.

The Illinois State Treasurer as *ex-officio* custodian of the Injured Workers' Benefit Fund was named as a co-Respondent in this matter. The Treasurer was represented by the Illinois Attorney General. This award is hereby entered against the Fund to the extent permitted and allowed under §4(d) of the Act, in the event of the failure of Respondent-Employer to pay the benefits due and owing the Petitioner. Respondent-Employer shall reimburse the Injured Workers' Benefit Fund for any compensation obligations of Respondent-Employer that are paid to the Petitioner from the Injured Workers' Benefit Fund.

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

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



Signature of Arbitrator

SEPTEMBER 1, 2023

FINDINGS OF FACT

This case was tried on April 19, 2023. Petitioner and the State Treasurer/IWBF appeared and were represented by counsel. No one appeared on behalf of the Respondent-Employer, Lang Paving ("Lang"). Petitioner was the only witness that testified. As there was a claim against the IWBF, all issues were in dispute, with the exception of TTD.

Testimony of Petitioner

Petitioner testified that he is currently employed for L&B Trucking as a CDL Class A truck driver. (Tx 11-12). Petitioner testified that in June of 2017, his employer was Respondent-Employer, Lang Paving ("Lang"). (Id. at 12.). Petitioner testified that he started working for Lang in April of 2017 and worked for it until the work accident. (Id.). Petitioner testified that Lang is an asphalt company ("They do streets, the roads with asphalt"), with Petitioner's job being to drive a six-wheeler truck to haul asphalt machines and bobcats. (Id. at 13). Petitioner testified that his typical shift for Lang was from 6:00 AM to 4:00 PM, Monday through Friday. (Id. at 15). Petitioner testified that he worked anywhere from forty to fifty hours per week, making $17.60 per hour. (Id.). Obviously, Petitioner's hours per day were determined by how long the job would take.

Petitioner testified that the foreman at Lang, Luis, was the person that set Petitioner's schedule. (Id. at 16.) Petitioner testified that Luis was at the job site with him and directed Petitioner where to go to haul the asphalt machines. (Id. at 16). Petitioner testified if he missed two days of work or did not show up, he could be terminated. (Id. at 17). Petitioner testified that he had an interview with Luis before he was hired by Lang. (Id. at 17). Petitioner testified that he had no other jobs while working for Lang. (Id. at 18). Petitioner testified that Lang owned the six-wheeler that he drove. Petitioner did not wear a uniform. He was paid cash every Friday. (Id. at 18-19).

Petitioner testified that he was 42 years old on June 15, 2017, was married and had two dependent children under the age of 18. (Id. at 19-20).

Petitioner testified that on June 15, 2017, he was working for Lang and drove to an assigned job site. (Id. at 20). Petitioner testified that he was taking the chains off the machines so that they could be taken off the trailer, and, while he was walking on top of the trailer, his left foot went through the wood floor of the trailer. (Id. at 22). Petitioner testified that his left leg went through the floor up to his knee, and he had to pull himself out of it. (Id. at 23-24). Petitioner testified that he started to feel pain in his left knee a few hours later and notified Luis. (Id. at 24). Petitioner testified that Luis told Petitioner to sit down and stay on the job site, because Petitioner was the only one with a CDL license. (Id. at 24-25). Petitioner did so. Petitioner did not work any further for Lang.

Petitioner testified that he waited a couple of weeks to seek treatment, to see if the pain would get better, but as it continued to worsen, he sought medical treatment. (Id. at 25). Petitioner testified that he did not work after the accident before he sought medical care, due to his pain. (Id. at 25-26). Petitioner testified that his knee pain worsened in the first month following the work accident. (Id. at 28).

Petitioner testified that he never returned back to work for Lang after the work accident. (Id. at 30). Petitioner testified that his left knee still hurts him as of the trial date. (Id. at 33). Petitioner testified that he can't run, jump, or go up and down ladders, as he was able to prior to the work accident. (Id. at 34). He works as a truck driver, so he uses his left knee a lot (climbing in and out of a truck, inspecting the truck and any trailer, working a clutch, etc.) Petitioner testified regarding his medical providers and the bills associated with the providers, which include: MacNeal Hospital; Salcedo Medical Center; IHFS; Pain Center of Illinois; Chicago Sports Medicine; ATI Physical Therapy; Prescription Partners; and ADCO Billing Solutions. (Id. at 35-37).

On cross-examination, Petitioner testified that Luis Nunez was the foreman that hired him. (Id. at 38). Petitioner testified that he did not fill out any paperwork when he was hired. (Id). Petitioner testified that he made $17.60 per hour working for Lang and makes more money with his current employer. (Id. at 39). Petitioner testified that he started working for L&B Trucking in August of 2017 and has done so continuously. (Id. at 41-42). At that time, the RFH form was amended to show that Petitioner was not making a claim for TTD, as he had not been medically authorized off work before he started at L&B. Petitioner testified that he attempted to shovel snow in 2018, which did cause him pain. (Id. at 43). Petitioner testified that he was making $880.00 per week but did not receive receipts or documentation of payment. He apparently did not claim this income for tax purposes. (Id. at 45).

On redirect examination, Petitioner testified that he was paid in cash and that he was paid weekly. (Id. at 48). Petitioner testified that he was paid per hour, not per job. (Id. at 49).

Summary of Medical Records and Treatment

Petitioner testified that he first went to MacNeal Hospital for treatment, on June 30, 2017 and then was seen by a PCP, Dr. Rueda. There are no ER records from MacNeal, only an x-ray on June 30, 2017. There was no evidence of acute fracture of dislocation. (PX 1).

Petitioner then testified that after going to MacNeal on June 30, 2017, he presented to his PCP, Dr. Rueda, at Salcedo Medical Center with severe knee pain due to a work injury. The reason for the visit was left knee pain after working on his truck 2 days ago and wants blood work because he has a 52 year old uncle with prostate cancer. The exact history of the work accident is not documented. On physical examination of the left knee, Dr. Rueda noted edema, tenderness, and decreased range of motion. Dr. Rueda ordered blood work and

an x-ray. The Arbitrator finds that Petitioner went to Dr. Rueda first, before going to MacNeal for an x-ray (the order from Dr. Rueda is dated 6:30 am on June 30 and the x-ray was taken after 11:00am, per PX 1). Petitioner followed up with Dr. Rueda on July 6, 2017 with continued left knee pain and similar physical examination findings. Dr. Rueda recommended Petitioner undergo an MRI of his left knee. (PX 2).

On July 10, 2017, Petitioner underwent an MRI of his left knee, with the radiologist's impression was: (1) grade 1 medial collateral ligament sprain; (2) tiny contusions versus early degenerative change of the lateral femoral condyle and trochlea. No acute fracture; and (3) small joint effusion. (PX 1). After the MRI, Petitioner followed up with Dr. Rueda on July 24, 2017, with continued left knee pain and saying that he had not worked since the work accident. Dr. Rueda noted decreased range of motion of the left knee and recommended Petitioner use a left knee MCL brace. (PX 2)

On August 2, 2017, Petitioner presented to Dr. Hussain at Pain Center of Illinois with 8/10 stabbing pain and numbness in the medial aspect of the left knee and a history consistent with the testimony at trial. (PX 3). The history was of a work accident on June 15, 2017 when the patient was working as a commercial truck driver, picking up scrap. He was picking up scrap in a trailer park, when he stepped through a rotten floor and he injured his left knee. On physical examination of the left knee, Dr. Hussain noted swelling over the medial aspect of the knee, positive medial divot, and tenderness. On review of the MRI, Dr. Hussain noted an MCL sprain. Due to the severity of Petitioner's pain as a result of the accident, Dr. Hussain recommended physical therapy and referred Petitioner to an orthopedic physician. (PX 3).

On August 9, 2017, Petitioner presented to Dr. Markarian at Orthopedic Associates of Naperville with left knee pain. (PX 4). The history to Dr. Markarian was of an injury at work on June 10, 2017. He was hauling a trailer and stepped through a rotten floor to mid-thigh level, injuring his left knee. Dr. Markarian indicated that the MRI showed a Grade 1 MCL tear and some partial tearing of the ACL as well. On Physical examination of the left knee, Dr. Markarian noted tenderness over the MCL near the femoral insertion, ACL laxity, and tenderness along the medial joint line exquisitely. Dr. Markarian recommended Petitioner get a hinged MCL brace. (PX 4).

Petitioner completed a course of physical therapy at ATI Physical Therapy from September 15, 2017 through February 8, 2018. (PX 5).

Petitioner followed up with Dr. Markarian on November 1, 2017, November 29, 2017, January 10, 2018, February 7, 2018, and March 7, 2018 with improved symptoms in his left knee from the partial ACL tear and MCL tear. As Petitioner's condition progressed through conservative treatment, Dr. Markarian discharged Petitioner from care on March 7, 2018. (PX 4).

CONCLUSIONS OF LAW

The Arbitrator adopts the above Findings of Fact in support of the Conclusions of Law that follow.

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

To obtain compensation under the Act, Petitioner has the burden of proving, by a preponderance of the evidence, all of the elements of his claim (O'Dette v. Industrial Commission, 79 Ill. 2d 249, 253 (1980), including that there is some causal relationship between his employment and his injury. Caterpillar Tractor Co. v. Industrial Commission, 129 Ill. 2d 52, 63 (1989)

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

After considering Petitioner's testimony, his demeanor while testifying on direct and cross examination and the medical records with the slightly inconsistent histories, the Arbitrator believes Petitioner's testimony and believes that he was working for Lang on June 15, 2017 and did injure his left knee as he testified to.

WITH RESPECT TO ISSUE (A), WAS THE RESPONDENT-EMPLOYER OPERATING UNDER AND SUBJECT TO THE ILLINOIS WORKERS' COMPENSATION OR OCCUPATIONAL DISEASES ACT, THE ARBITRATOR FINDS:

Lang was operating under and subject to the Act.

Petitioner testified that he drove a truck for Lang and that Lang was in the asphalt business, constructing road. Automatic coverage of the Act applies, pursuant to §3 (2) and (15).

WITH RESPECT TO ISSUE (B), WAS THERE AN EMPLOYEE-EMPLOYER RELATIONSHIP, THE ARBITRATOR FINDS:

There was an employee-employer relationship between Petitioner and Lang.

Petitioner's unrebutted testimony was that he worked for Lang Paving and that he was hired by Luis Nunez. Luis Nunez was the Registered Agent for Lang Paving and Construction, Inc., per RX 1. Petitioner testified that the truck that he drove was owned by Lang and Nunez told Petitioner where and when to drive to work sites.

WITH RESPECT TO ISSUE (C), DID AN ACCIDENT OCCUR THAT AROSE OUT OF AND IN THE COURSE OF THE PETITIONER'S EMPLOYMENT BY THE RESPONDENT-EMPLOYER, AND ISSUE (D), WHAT WAS THE DATE OF THE ACCIDENT, THE ARBITRATOR FINDS:

Petitioner sustained accidental injuries which arose out of and in the course of his employment by Lang on June 15, 2017.

This finding is based on the testimony of Petitioner and the medical records.

WITH RESPECT TO ISSUE (E), WAS TIMELY NOTICE OF THE ACCIDENT GIVEN TO THE RESPONDENT-EMPLOYER, THE ARBITRATOR FINDS:

Timely notice of the accident was given.

Petitioner's unrebutted testimony is that he told Luis Nunez about his injury on the date of accident.

WITH RESPECT TO ISSUE (F), IS THE PETITIONER'S PRESENT CONDITION OF ILL-BEING CAUSALLY RELATED TO THE INJURY, THE ARBITRATOR FINDS:

Petitioner's current condition of ill-being regarding his left knee, to wit: residuals of a resolved Grade 1 MCL tear and partial ACL tear, per the records of Dr. Markarian, is causally related to the injury.

This finding id based on the testimony of Petitioner and the medical records.

WITH RESPECT TO ISSUE (G), WHAT WERE THE PETITIONER'S EARNINGS, THE ARBITRATOR FINDS:

Based upon Petitioner's testimony, the Arbitrator finds that his Average Weekly Wage was $704.00 ($17.60 per hour times 40 hours).

WITH RESPECT TO ISSUE (H), WHAT WAS THE PETITIONER'S AGE AT THE TIME OF THE ACCIDENT, AND ISSUE (I), WHAT WAS THE PETITIONER'S MARITAL STATUS AT THE TIME OF THE ACCIDENT, THE ARBITRATOR FINDS:

Petitioner was 42 and married with 2 dependent children under the age of 18, per his testimony and the medical records.

WITH RESPECT TO ISSUE (J), WERE THE MEDICAL SERVICES THAT WERE PROVIDED TO PETITIONER REASONABLE AND NECESSARY AND HAS RESPONDENT-EMPLOYER PAID ALL APPROPRIATE CHARGES FOR ALL REASONABLE AND NECESSARY MEDICAL SERVICES, THE ARBITRATOR FINDS:

The submitted medical expenses were reasonable and necessary to cure or relieve the effects of the injuries sustained and are causally related to the work injury of June 15, 2017.

This finding is based on the Arbitrator's findings above on the issues of accident and causation, the testimony of Petitioner and the medical records.

The Arbitrator orders Respondent to pay Petitioner directly for the following outstanding medical services, pursuant to the Medical fee Schedule and §§ 8(a) and 8.2 of the Act:

- ATI Physical Therapy: $23,683.84
- Pain Center of Illinois: $543.00
- Prescription Partners: $9,190.52
- ADCO Billing Solutions: $9,188.52
- IHFS Subrogation: $670.95
- Chicago Sports Medicine: $711.97
- **TOTAL: $43,499.80**

WITH RESPECT TO ISSUE (L), WHAT IS THE NATURE AND EXTENT OF THE INJURY, THE ARBITRATOR FINDS:

Petitioner was initially diagnosed with left knee MCL sprain by Dr. Hussain. However, Dr. Markarian, being the only orthopedic treating physician, reviewed the left knee MRI and opined that it showed partial tearing of the ACL and a Grade 1 MCL tear. Petitioner underwent conservative treatment including medications and physical therapy until he was discharged on March 7, 2018. He lost no compensable time from work, having started a truck driving job in August and being excused from work thereafter, but continuing to work.

In determining PPD, the Arbitrator is required to consider the five factors set forth in §8.1b(b) of the Act. The relevance of the five factors considered is obvious, because they are mandated to be considered by the Act.

The Arbitrator assigns weight to the requisite Section 8.1b(b) factors as follows:

(i) An AMA rating was not submitted into evidence. Therefore, the Arbitrator assigns no weight to this factorin determining PPD.

(ii) Petitioner worked as a CDL truck driver for Respondent-Employer. The Arbitrator notes that this is a moderately-intensive labor job. He was able to obtain work as a CDL truck driver some 1-1/2 months after the accident. The Arbitrator assigns appropriate weight to this factor in determining PPD.

(iii) At the time of the injury, Petitioner was 42 years old. Petitioner will likely have to live and work with the residual effects of the injury for several year. The Arbitrator assigns moderate weight to this factor in determining PPD.

(iv) Petitioner has not alleged, nor is there evidence to indicate, any decrease in future earning capacity. In fact, he makes considerably more money in his post-accident employment. The Arbitrator assigns appropriate weight to this factor in determining PPD.

(v) Petitioner has some residual symptoms in his left knee due to this injury. Petitioner testified that he still has difficulty with some daily life activities. Dr. Markarian released Petitioner from care at MMI, PRN, some 9 months after the work injury. The PE on March 7, 2018 noted a good ligamentous evaluation and good quad strength. The Arbitrator assigns substantial weight to this factor in determining PPD.

After due consideration of the above factors and the entirety of the evidence adduced, the Arbitrator finds that, as a result of the injuries sustained, Petitioner suffered the 3% loss of use of his left leg, in accordance with §8(e)12 of the Act.

WITH RESPECT TO ISSUE (N), IS THE RESPONDENT DUE ANY CREDIT, THE ARBITRATOR FINDS:

There was no evidence submitted regarding any credit due Respondent. Accordingly, no credit is awarded.

WITH RESPECT TO ISSUE (O), WC INSURANCE COVERAGE-LIABILITY OF THE IWBF; NOTICE TO RESPONDENT-EMPLOYER, THE ARBITRATOR FINDS:

PX 9 establishes that there was no workers' compensation for Lang on the date of accident. Accordingly, liability of the IWBF is established pursuant to §4 of the Act.

The Arbitrator finds that Lang received appropriate notice of the hearing. PX 10 establishes that a letter advising that the case was set for trial on April 19, 2023 was delivered via Federal Express on March 15, 2023 to the last known address for Lang and its Registered Agent, Nunez (as is shown on RX 1). Further, it is presumed that Lang received the Application for Adjustment of Claim when it was filed in 2017 and Lang never appeared in this case.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	18WC010903
Case Name	Michael Craig v. City of Harvey Fire Dept.
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	24IWCC0386
Number of Pages of Decision	11
Decision Issued By	Stephen Mathis, Commissioner

Petitioner Attorney	Joel Block
Respondent Attorney	Theodore Powers

DATE FILED: 8/12/2024

/s/Stephen Mathis, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Michael Craig,

Petitioner,

vs. NO. 18WC 10903

City of Harvey Fire Department,

Respondent.

DECISION AND OPINION ON REVIEW

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

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed August 30, 2023, is hereby affirmed and adopted.

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

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

No bond is required for removal of this cause to the Circuit Court. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

AUGUST 12, 2024

SJM/sj
o-7/10/2024
44

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

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	18WC010903
Case Name	Michael Craig v. City of Harvey Fire Dept.
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	8
Decision Issued By	Jeffrey Huebsch, Arbitrator

Petitioner Attorney	Joel Block
Respondent Attorney	Theodore Powers

DATE FILED: 8/30/2023

THE INTEREST RATE FOR THE WEEK OF AUGUST 29, 2023 5.35%

/s/ Jeffrey Huebsch, Arbitrator

Signature

M. Craig v. City of Harvey F.D., 18 WC 010903

STATE OF ILLINOIS)
)SS.
COUNTY OF Cook)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Michael Craig Case # **18** WC **010903**
Employee/Petitioner

v.

City of Harvey Fire Dept.
Employer/Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Jeffrey Huebsch**, Arbitrator of the Commission, in the city of **Chicago**, on **6/26/2023**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On **2/12/2018**, Respondent ***was*** operating under and subject to the provisions of the Act.

On this date, an employee-employer relationship ***did*** exist between Petitioner and Respondent. On this date, Petitioner ***did*** sustain an accident that arose out of and in the course of employment. Timely notice of this accident ***was*** given to Respondent.

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

In the year preceding the injury, Petitioner earned $**64,419.68**; the average weekly wage was $**1,238.84**. On the date of accident, Petitioner was **48** years of age, ***married*** with **2** dependent children.

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

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

ORDER

Respondent shall pay reasonable and necessary medical services, pursuant to the medical fee schedule, of $21,557.98, as provided in Sections 8(a) and 8.2 of the Act, and as is set forth below.

Respondent shall pay Petitioner permanent partial disability benefits of $743.30/week for 75 weeks, because the injuries sustained caused the 15% loss of the person as a whole, as provided in Section 8(d)2 of the Act.

Respondent shall pay Petitioner the compensation benefits that have accrued from 2/12/2018 through 6/26/2023 in a lump sum, and shall pay the remainder of the award, if any, in weekly payments.

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

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

AUGUST 30, 2023

Signature of Arbitrator

FINDINGS OF FACT

Petitioner was employed by Respondent as a firefighter. He had been so employed for 16 years.

The Parties stipulated that Petitioner sustained accidental injuries which arose out of and in the course of his employment by Respondent on February 12, 2018. He was responding to a car accident call and he slipped on snow/ice when stepping of the engine. He was holding on the handle and his feet slipped, putting all of his weight on his right arm, yanking his right shoulder and bicep. He felt a pop and excruciating pain. Petitioner testified that his supervisor was present. He finished the run and filled out a report.

Petitioner was sent by Respondent to Ingalls Occupational Health. He was seen for right shoulder and right upper arm pain. The right shoulder x-ray was negative for acute findings. Petitioner was prescribed Naproxen and placed on restricted duty. The diagnosis was right shoulder and upper arm strain. (PX 1).

Petitioner apparently continued care with Ingalls, undergoing an MRI of the right shoulder and right arm on March 6, 2018. The right shoulder study was said to show: posterior labral tear, proximal long head biceps tendinosis, and a tiny partial tear in the distal, most supraspinatus tendon. The right arm study showed a normal appearing biceps muscle belly. An lbow study was recommended if there was clinical concern for distal biceps pathology. (PX 2).

The Petitioner then came under the care of Dr. Blair Rhode at Orland Park Orthopaedics on May 25, 2018. He gave a consistent history of injury and complained of lateral shoulder pain, as well as more significant anterior and deep shoulder pain. He undergone PT and an injection, with continued symptoms. Dr. Weber had recommended surgery. Petitioner apparently only presented with the right arm MRI, so a shoulder MRI was ordered. The assessment was: Shoulder pain; SLAP lesion; Traumatic rotator cuff rupture; elbow pain; and nontraumatic biceps rupture. Dr. Rhode recommended off-work status and MRI studies of the right elbow and shoulder. (PX 3).

Following the MRI on June 11, 2018 Dr Rhode diagnosed the Petitioner with a Slap Tear, Cuff Tendinopathy in the right shoulder and, after discussing treatment options, Petitioner elected to proceed with surgical repair. (PX 4, PX 3).

Dr. Rhode performed shoulder surgery on September 4, 2018, consisting of a Subacromial decompression, Arthroscopic Rotator Cuff Repair and Arthroscopic Bicep Tenodesis, as noted in his chart note of October 1, 2018 (PX 3, and Operative Report, PX 4).

Post Surgery, Petitioner was prescribed physical therapy which was performed at Orland Park Orthopedics. Petitioner continued to have pain in the right arm and shoulder as noted in the patient records. There was continued improvement, as noted in the patient records of March 13, 2019. Petitioner has sufficiently progressed to the point where Dr. Rhode prescribed Work Hardening. (PX 3).

Dr. Rhode's records document that Petitioner was limited by pain, yet he did participate actively in work hardening, as noted in the chart notes of March 19, 2019, March 21, 2019, March 27, 2019 and April 1, 2019. Petitioner completed his course of Physical Therapy and Work Hardening and was released to return to work at full duty as of April 15, 2019.

It is noted that until his release at fully duty on April 15, 2019, Dr. Rhode had authorized Petitioner off work from the time of his initial visit. Temporary Total Disability and PEDA Benefits were paid during Petitioner's time off work.

An MRI had been performed on the Petitioner's right elbow on June 6, 2018, as Petitioner had also been complaining of pain in the right elbow as a result of his work related accident. The Impression was: Distal bicipital tendinosis and thickening, partial intra substance tearing distal biceps tendon. (PX 4).

Petitioner testified that he had no problems with his right shoulder prior to the work accident.

Petitioner testified that he continued to have limitations in regards to his right shoulder with loss of strength, loss of range of motion and that it fatigues. He is right-handed and feels that his left arm is stronger than the right. He is no longer able to perform recreational activities as he had pre-injury, including paddle kayaking and carrying slightly heavy items.

On cross-examination, Petitioner testified that he was now 53 years old and he had retired May 28, 2023. This was a straight pension retirement. He was released to full duty firefighter work as of April 8, 2019 and he did so. He is now looking for less stressful work. Petitioner confirmed that he had initial orthopedic treatment at Integrity, but Respondent was not paying the PPO payments, so he saw Dr. Rhode. The treatment at Integrity was in April and May of 2018.

At trial, it was noted that Respondent stipulated to causation regarding Petitioner's right shoulder condition.

It is noted that PX 3 contained Petitioner's SSN, which was redacted by the Arbitrator. The Parties are reminded to comply with SCR 138.

Respondent submitted UR denials regarding certain post-surgery medications prescribed by Dr. Rhode as RX 1 and RX 2.

Subsequent to the Close of Proofs, the Parties filed a Stipulation regarding Petitioner's Trial Exhibits, filed in CompFile on August 18, 2023. A copy was attached by the Arbitrator to Petitioner's Exhibits.

CONCLUSIONS OF LAW

The Arbitrator adopts the above Findings of Fact in support of the Conclusions of Law that follow.

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

To obtain compensation under the Act, Petitioner has the burden of proving, by a preponderance of the evidence, all of the elements of his claim (O'Dette v. Industrial Commission, 79 Ill. 2d 249, 253 (1980), including that there is some causal relationship between his employment and her injury. Caterpillar Tractor Co. v. Industrial Commission, 129 Ill. 2d 52, 63 (1989)

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

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

Petitioner sustained a witnessed and undisputed accident that caused an injury to his right shoulder and right elbow on February 12, 2018. Respondent stipulated to causation regarding petitioner's right shoulder. Certain post-op medications were disallowed by UR (RX 1, RX 2). Petitioner's Bills Exhibits were PX 8 and PX 9.

Petitioner participated in conservative treatment at Integrity Orthopedics with Dr. Weber that included Physical therapy and injections, per his testimony and the history documented by Dr. Rhode in PX 3.

Petitioner then followed up with Dr. Rhode who ordered MRI's of the right shoulder and elbow.

After the MRI's had been performed and reviewed by Dr. Rhode, shoulder surgery was recommended, performed, and physical therapy and work hardening were completed.

Surgical intervention was the last resort, as all prior conservative treatment that had been offered at Integrity Orthopedics had been unsuccessful. (PX 3).

Petitioner testified that prior to his treatment with Dr. Rhode, he had in fact treated conservatively at Integrity Orthopedics. He was shown itemized bills from Integrity Orthopedics and confirmed that the treatment that he received, and as specifically itemized in those billing records was directly and causally related to this injury, for the dates of services as listed.

Petitioner was also shown a synopsis of bills that was titled "Revised Bill Review Effective May 19, 2023 and Amended on June 14, 2023". Petitioner confirmed that all providers and entities listed were for treatment and medication for this injury, and to the best of his knowledge the bills had not been paid in full.

In consideration of the foregoing, The Arbitrator finds:

(a.) That the medical services that were provided to Petitioner were reasonable and necessary and causally related to the 2/12/2018 work accident; and (b.) That Respondent has not paid all appropriate charges for all reasonable and necessary medical services and further finds that the Respondent shall pay the following pursuant to the Illinois Medical Fee Schedule:

Ingalls Occupational Health:	$4,034.00
Orland Park Orthopedics:	5,462.00
Bob Rady Anesthesiologists:	1,671.80
Integrity Orthopedics:	7,928.00
WC RX:	2,462.18
TOTAL:	**$21, 557.98**

It is noted that certain post-op medications were disallowed by UR (See: Rx 1 and RX 2 and the bills from RX development in PX 8 and 9). Petitioner failed to rebut the UR evidence, so the charges are disallowed, in accordance with §8.7(i)4.

The medical expenses are awarded pursuant to §§8(a) and 8.2 of the Act, subject to the Medical Fee Schedule. By the agreement of the Parties at the start of the trial, Respondent shall have a credit for all awarded bills that it has paid or compromised.

Regarding Issue (L), What is the Nature and Extent of the Injury?, The Arbitrator Finds:

The post operative report of the Surgeon, Dr. Rhode Indicated: Right Shoulder Impingement/Synovitis, Biceps Tendinopathy and 1.5 cm x 1 cm crescent Supraspinatus Rotator Cuff Tear, noted to be a complicated procedure requiring multiple portals, instruments and an arthroscope (don't all arthroscopic procedures by definition include an arthroscope?).

Petitioner was released to full duty work as a firefighter after some 14 months lost time, for which he received benefits. He credibly testified to loss of range of motion and strength. He is right-handed.

As to Petitioner's right elbow, it is noted that Dr. Rhode termed the condition to be non-traumatic distal biceps rupture. Non-traumatic=No Causal Connection in the Arbitrator's view. No award for PPD is made regarding any injury to Petitioner's right elbow.

In determining PPD, the Arbitrator is required to consider the five factors set forth in §8.1b(b) of the Act. The relevance of the five factors considered is obvious, because they are mandated to be considered by the Act.

The Arbitrator assigns weight to the requisite Section 8.1b(b) factors as follows:

(i) An AMA rating was not submitted into evidence. Therefore, the Arbitrator assigns no weight to this factor in determining PPD.

(ii) Petitioner worked as a firefighter at the time of the work injury and he was able to return to work in this job. The Arbitrator assigns significant weight to this factor in determining PPD.

(iii) At the time of the injury, Petitioner was 48 years old. Petitioner will likely have to live and work with the residual effects of the injury for a several years. The Arbitrator assigns moderate weight to this factor in determining PPD.

(iv) Petitioner has not alleged, nor is there evidence to indicate, any decrease in future earning capacity. The Arbitrator assigns appropriate weight to this factor in determining PPD.

(v) Petitioner has residual symptoms in his right shoulder, due to the work injury and the surgical procedure. Petitioner testified that he has loss of strength, loss of range of motion and that it fatigues. He is right-handed and feels that his left arm is stronger. The Arbitrator assigns substantial weight to this factor in determining PPD.

After due consideration of the above factors and the entirety of the evidence adduced, the Arbitrator finds that, as a result of the injuries sustained, Petitioner suffered the 15% loss of use of the person as a whole, in accordance with §8(d)2 of the Act.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	15WC011907
Case Name	Patricia Wade v. Chicago Transit Authority
Consolidated Cases	
Proceeding Type	8(a)/19(h) Petition
Decision Type	Commission Decision
Commission Decision Number	24IWCC0387
Number of Pages of Decision	7
Decision Issued By	Kathryn Doerries, Commissioner

Petitioner Attorney	Pro Se – Patricia Wade
Respondent Attorney	Argy Koutsikos

DATE FILED: 8/12/2024

/s/Kathryn Doerries, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

PATRICIA WADE,

Petitioner,

vs. NO: 15 WC 11907

CHICAGO TRANSIT AUTHORITY,

Respondent.

DECISION AND OPINION ON REVIEW PURSUANT TO §19(h) and §8(a)

This matter comes before the Commission on Petitioner's Sections 19(h) and 8(a) Petition, alleging a material increase in her disability after entering into a Settlement Contract Lump Sum Petition and Order, approved on September 1, 2023, and seeking compensation for medical expenses. A hearing on the Petition was held before Commissioner Doerries in Chicago, Illinois, on January 19, 2024. Oral argument was heard on the matter on June 11, 2024. The Commission, having reviewed and considered the entire record, denies Petitioner's request for additional benefits under Section 19(h). The Commission further finds Petitioner is not entitled to compensation for medical expenses under Section 8(a) as she has not had any treatment since the approval of her settlement contract and does not allege non-payment of medical bills in violation of the settlement contract.

Background

As a preliminary matter, the Commission notes that the settlement contract admitted into evidence was missing the settlement terms section of the contract (page 2 of a four page document). It has been accepted practice that the Illinois Workers' Compensation Commission may take judicial notice of its own records, including prior decisions and awards. See e.g., *Fergasun*

vs. Lowes, 15 IWCC 310, 2015 Ill. Wrk. Comp. LEXIS 311, 15 IWCC 310. The Commission reviewed the entire settlement contract and other filings concerning this matter.

On April 14, 2015, Petitioner filed an Application for Adjustment of Claim alleging accidental injuries while employed by Respondent on September 30, 2014. (RX #4) The Application further alleged the accident caused bilateral carpal tunnel syndrome and internal derangement of the neck. Petitioner was represented by attorney Edward Lichtenstein when she filed her claim. (RX #4)

As reflected in the Employee's Report of Injury, Petitioner reported she was working as a bus operator and sustained sustained injuries to her neck, wrists, arms, and both hands while releasing a latch to the protective shield on the bus. (RX #2) Petitioner further reported having sustained prior work-related injuries which necessitated three cervical spine surgeries.

In November 2015, attorney Steve Seidman of Seidman Margulis & Gairman, LLP, filed an Appearance as co-counsel for Petitioner. Attorney Seidman provided legal representation over the next seven and a half years until March 2023 when he filed a motion to withdraw. The reason set forth in the motion was "total breakdown in the professional relationship between attorney and client that is unresolvable at this stage and nonsalvageable." (Attorney's motion to withdraw.) On May 2, 2023, the Arbitrator entered an Order allowing the motion. Petitioner continued pursing her claim as a self-represented party.

Respondent and Petitioner later entered into a lump sum settlement contract. Petitioner was 63-½ years old when she entered into the contract. Under the terms of the settlement agreement, Respondent agreed to pay, and Petitioner agreed to accept, the sum of $168,320.00 in full and final settlement for the injuries sustained on September 30, 2014. This amount represented 50% loss of the person as a whole under Section 8(d)2 of the Act. The contract included spread language for social security purposes with deductions for payment of the former attorney's fees and costs upon "approval of same." (The CompFile system reflects that attorney Seidman had filed a petition for fees and costs.) The injuries subject to this settlement included the hands/wrists (bilateral carpal tunnel syndrome and De Quervain's) and the cervical spine (aggravation of degenerative disc disease) resulting in permanent restrictions and "a loss of trade as a bus operator." The settlement released Respondent from liability for TTD benefits and unrelated medical expenses. Per the contract terms, Respondent did not pay for any medical bills related to a disputed and denied claim for a lumbar spine injury. Petitioner also agreed to assume responsibility for disputed unpaid medical bills related to treatment that had been submitted for utilization review and non-certified as medically unnecessary. Petitioner also waived rights her rights under Section 19(h) of the Act. Finally, in lieu of funding a Medicare set-aside account, Respondent agreed to preserve Petitioner's future medical rights under Section 8(a).

On September 1, 2023, the parties appeared before the Arbitrator for a hearing to review the proposed settlement. The Arbitrator approved the settlement contract. Twenty-nine days later, Petitioner filed this Petition under Sections 19(h) and 8(a).

Section 19(h) / 8(a) Petition

On September 29, 2023, Petitioner filed a Petition for Review under Sections 19(h) and 8(a). There was no separate motion/pleading attached to the Notice and Petition. Petitioner uploaded two sets of documentation into CompFile on the same day she filed her Petition.

The uploaded documentation included 10 pages from the deposition of Dr. Deutsch who was deposed on March 14, 2018. Petitioner also uploaded CT scan reports from 2015 pertaining to imaging of the brain and cervical spine along with some miscellaneous medical records. The records contained a causation opinion addressing the lumbar spine.

Respondent filed a response contending the Petition should be denied because Petitioner waived her rights under Section 19(h) per the terms of the settlement contract. Respondent further argued Petitioner's Section 19(h) Petition should be denied as there has been no change in Petitioner's work-related disability.

January 19, 2024 Review Hearing

Petitioner testified she did not receive any treatment since she signed the settlement contract. Petitioner testified the reason she had no further medical treatment was because her injuries were beyond repair. (T. 6) Asked if she remembered when she signed the settlement contract, Petitioner replied "No" and stated she does not have a good memory anymore. Petitioner testified she did receive payment for the settlement. (T. 6-7) Petitioner further testified she has not received any medical bills since signing the contract, or at least none that she could remember but there may have been one or two bills. (T. 7) Petitioner testified they were probably paid by "Medicaid/Medicare that I was forced to go on." (T. 7)

Petitioner is not currently working. Regarding her current condition, Petitioner testified she was not herself and the room was spinning around. She testified, "It's the brain injury that does that." (T. 7) Asked if there has been any change in her condition since she signed the settlement contract, Petitioner testified "it's getting greater." Petitioner then testified, "I'm dieing (sic) and I won't be living long, let me just put it that way." (T. 9) Petitioner again stated her injuries were beyond repair and "it's been affecting my life each and every day." (T. 9) Petitioner described dizziness and stated she takes public transportation.

Asked if she received any additional treatment for her cervical spine since the settlement, Petitioner replied "No" and testified "there is no treatment they can give." (T. 10) Asked if she had any treatment for her carpal tunnel syndrome since the settlement, Petitioner replied, "None whatsoever" and "I'm trying to say that all of these injuries were beyond being repaired." (T. 10) Petitioner further testified regarding her hands – "as you can see, they are pure red, day and night, ever since the injury." (T. 11) Petitioner testified she had undergone surgery for the carpal tunnel syndrome and the cervical spine and lumbar spine. (T. 11) Petitioner further testified her "spine cord is busted" and "has been from day one." Petitioner testified; I'm bleeding from the spine. I

struggle because of the broken spinal cord." (T. 11) During the hearing, Commissioner Doerries explained to Petitioner we are addressing the period of time after the settlement through the date of the hearing. Petitioner replied "Oh, that has been *ongoing from day one* (emphasis added) until it takes my life." (T. 13)

On cross-examination, Respondent's attorney presented the settlement contract and asked if she remembered being in court before Arbitrator Sinnen. (T. 14) Petitioner described how the Arbitrator had her hands on the contract for her to sign. Commissioner Doerries noted for the record that Petitioner was folding over part of the settlement contract. (T. 15) Petitioner further stated she was not able to read it during the hearing with Arbitrator Sinnen. Respondent's attorney presented the filed Application and Petitioner agreed her signature was on the document. (T. 15-16) Petitioner then stated the Application did not include all her injuries. (T. 17) Petitioner was then showed RX #2 which was identified as a Miscellaneous Incident Report. Petitioner testified the signature on the document was not her signature. (T. 17-18) She also denied the handwriting as her handwriting. Respondent withdrew the document and RX #2 was not made part of the record. Respondent's attorney then presented RX #3 which was identified as the Employee's Report of Injury. Petitioner agreed the signature was her signature but not the writing on the report. (T. 20) On continued cross-examination, Petitioner reiterated she had not received any treatment for her carpal tunnel syndrome or De Quervain's since the approval of her settlement contract on September 1, 2023. (T. 23-24) Petitioner testified, "No, ma'am, because it was not coming back" and "It's going to be what it is." (T. 24)

Petitioner was afforded the opportunity to clarify anything after Respondent's cross-examination. Petitioner testified there is no coming back from her injuries because her injuries were never addressed. Petitioner began to discuss a brain injury and spinal cord injury. Petitioner then testified the brain injury and other conditions were never addressed during the pendency of her claim and were not addressed in the settlement. (T. 29)

Conclusions of Law

Section 19(h)

Before we can address Petitioner's petition, we must first address the scope of the Commission's powers and authority as Petitioner made various allegations concerning Respondent's refusal to authorize treatment for certain conditions as well as the settlement terms and the process by which her contract was approved. Section 19(f) of the Act provides that decisions of the Commission, in the absence of fraud, are conclusive unless reviewed under the statutory provisions providing for judicial review or corrections of errors. 820 ILCS 305/19(f). The Act permits parties to seek judicial review in the circuit court, subject to a 20-day time limit commencing with receipt of the decision. Settlement contracts approved by the Commission are likewise final and have the same legal effect as an award. *Millenium Knickerbocker Hotel vs. Guzman*, 2017 IL App (1st) 161027WC, P 20. "An approved settlement contract becomes a final award after 20 days if no petition for review is filed." *Id.* Once a settlement contract becomes

final, the Commission is without legislative authority to engage in contract interpretation, and it has no power to enforce a settlement contract. *Millennium Knickerbocker Hotel vs. Guzman*, 2017 IL App (1st) 161027WC, P 22, 24. Only the circuit court is authorized to enforce a contract as provided in Section 19(g).

In the case at bar, the self-represented Petitioner entered into a settlement contract and appeared for an in-person hearing before the Arbitrator, at which time the settlement contract was approved. The contract was then formally approved on September 1, 2023. Petitioner did not seek judicial review within 20 days. As such, the contract became a final award. To the extent that Petitioner seeks to re-litigate the underlying claim or challenge the settlement, Section 19(h) is not the appropriate procedure. The purpose of a proceeding under Section 19(h) is to determine if a Petitioner's disability has "recurred, increased, diminished or ended" since the time of the Commission's original decision. *820 ILCS 305/19*; *Howard v. Industrial Comm'n*, 89 Ill. 2d 428, 433 N.E.2d 657 (1982). The original award or settlement cannot to be brought into question, for it must be considered final. *Zimmerly Construction Co. v. Industrial Com.*, 50 Ill. 2d 342, 344, 278 N.E.2d 789 (1972). A petition for review under Section 19(h) of the Act is not a proceeding which will allow the reversal or modification of the original decision, award, or settlement. *Id.* Accordingly, this Commission is without legal authority under Section 19(h) to consider Petitioner's various allegations concerning the proceedings below in the underlying case or the process by which her case was concluded by settlement.

Turning to the merits of Petitioner's petition, the settlement contract terms clearly and unambiguously waived all rights under Section 19(h). Because Petitioner waived her rights under Section 19(h), she has no legal basis for seeking additional benefits based on a material change in her disability. Even assuming Petitioner did possess rights under Section 19(h), Petitioner admitted she has not received any additional medical treatment since her settlement contract was approved and her testimony shows her conditions have continued without change since "day one." The proper legal standard in Section 19(h) proceedings was set forth in *Gay vs. Industrial Commission*, 178 Ill. App. 3rd 129, 532 N.E.2d 1149 (1989). In that decision, the Court articulated the requirement that there must be a *material* change in the claimant's permanent disability in order to qualify for additional compensatory benefits. Addressing the proof needed to show a "material change" for Section 19(h) purposes, the Court indicated that there must be a "substantial difference" between the claimant's current disability in comparison with the disability that existed at the time of the initial trial. *Gay*, 178 Ill. App. 3rd at 133. Based on the entire record before us, the Commission finds there has been no material change in Petitioner's disability even if Petitioner had not waived her rights under Section 19(h) in the settlement contract. Petitioner's testimony shows her current level of disability is the same as it existed when she settled her case.

Section 8(a)

Concerning medical expenses, there is no allegation that Respondent failed to pay any agreed-upon medical expenses in violation of the settlement contract. Petitioner testified she had not received any unpaid medical bills since the settlement contract was approved. In lieu of funding

a Medicare set-aside account, Respondent agreed to preserve Petitioner's future medical rights under §8(a). That said, Petitioner testified she has not received any treatment since her settlement of this case. The Commission notes that Petitioner is entitled to future medical care, if medically necessary and reasonable, for her hands/wrists and cervical spine per the open medical rights set forth in the settlement contract.

IT IS THEREFORE ORDERED BY THE COMMISSION that Petitioner's Petition under §19(h) of the Act is hereby denied.

IT IS FURTHER ORDERED BY THE COMMISSION that Petitioner's Petition for medical expenses under §8(a) of the Act is hereby denied.

The bond requirement in Section 19(f)(2) is applicable only when "the Commission shall have entered an award for the payment of money." *820 ILCS 305/19(f)(1) (West 2013)*. Based upon the denial of compensation herein, no bond is set by the Commission. Even if compensation had been awarded, no bond would be required since Respondent is a government agency created by statute. *820 ILCS 305/19(f)(2)*. 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.

AUGUST 12, 2024
KAD/swj
O 6/11/24
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/s/*Kathryn A. Doerries*
Kathryn A. Doerries

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	22WC030850
Case Name	John Redden v. K&E Painting and Decorating, Inc.
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b) Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	24IWCC0388
Number of Pages of Decision	23
Decision Issued By	Kathryn Doerries, Commissioner

Petitioner Attorney	James Nawrocki
Respondent Attorney	Timothy Furman

DATE FILED: 8/12/2024

/s/Kathryn Doerries, Commissioner

Signature

DISSENT: /s/Kathryn Doerries, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

JOHN REDDEN,

Petitioner,

vs. NO: 22 WC 030850

K & E PAINTING & DECORATING, INC.,

Respondent.

DECISION AND OPINION ON REVIEW

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

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed September 29, 2023 is hereby affirmed and adopted.

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

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

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

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $33,077.00. 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.

August 12, 2024
O061124
KAD/bsd
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/s/*Carolyn M. Doherty*
Carolyn M. Doherty

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

DISSENT

I respectfully disagree with my colleagues' decision to affirm the Arbitrator's Decision finding that Petitioner proved a causal connection between his two surgeries and his April 28, 2022, accident. Petitioner was 54 years old at the time of the accident and, by description, his height was 5'11" and he weighed 265 pounds, with a BMI of 37, noted to be obese. (PX1, p. 244; T. 292) Petitioner worked as a union painter for 25 years but worked for Respondent for approximately eight months between August 2021 and April 28, 2022. (T. 9, 27)

I would find both Dr. Cole's and Dr. Karlsson's causal connection opinions more credible than Dr. Jereb's opinion given that Petitioner suffered from a symptomatic pre-existing degenerative osteoarthritis in his left knee for which, among other conditions, Petitioner was actively treating when an accident occurred at work on April 28, 2022. Further, I would find that Petitioner's accident on April 28, 2022, caused, at most, a temporary fleeting aggravation of his pre-existing condition in his left knee based upon the following analysis.

Respondent disputes the causal connection relationship between the incident on April 28, 2022, and Petitioner's condition of ill-being in his left knee for which he was treating up to the date of the alleged accident. Although Petitioner testified that he was "fine" on April 27, 2022, the testimony is not dispositive as to the issue of causal connection. A trier of fact is not compelled to leave common sense at the door when adjudicating a case where Petitioner is treating up to the date of accident for a pre-existing condition. In *Caterpillar Tractor*, the Illinois Supreme Court considered Petitioner's argument that her work accident aggravated her pre-existing back condition and concluded the following:

> While the existence of prior back problems does not deprive the claimant of the right to an award (*International Vermiculite Co. v. Industrial Com.* (1979), 77 Ill.

2d 1), the connection between the employment and subsequent problems must be established. The mere fact that the employee was at work or engaged in some work-related activity when the episode occurred is not alone sufficient to support an award. (*County of Cook v. Industrial Comm'n.* (1977), 68 Ill. 2d 24; *Illinois Bell Telephone Co. v. Industrial Comm'n.* (1966), 35 Ill. 2d 474.) *Caterpillar Tractor Co. v. Industrial Comm'n.*, 83 Ill. 2d 213, 218-219, 414 N.E.2d 740, 743.

Pre-Accident Treatment

As recounted in the majority opinion, Petitioner presented to an orthopedic surgeon, Dr. Sean Jereb, six weeks prior to the date of accident, on March 2, 2022. (PX1, 244; T 292) His chief complaint was bilateral knee pain, left worse than right. He also complained of right lateral hip and groin pain and low back pain. (PX1, 245; T. 293) Petitioner reported the pain was ongoing and aggravating factors included stairs, walking, putting on shoes/socks/driving and getting in/out of a vehicle. *Id.* Of note, Petitioner reported popping in his left knee and that his left knee pain radiated down his lateral calf, with some numbness and tingling into his bilateral feet. *Id*. On physical examination, Dr. Jereb documented crepitus and tenderness to the patella on the left. (PX1, 245; T. 293) The only diagnostics performed were x-rays. (PX1, 246; T. 294) Physical therapy (P.T.) was ordered and he was prescribed a Medrol dose pack. (PX1, 247; T. 295)

On March 28, 2022, one month prior to the date of accident, Petitioner presented for an initial P.T. evaluation. Petitioner reported that he had low back, knee and right hip pain for years with no known cause as to what started his symptoms (PX1, 237; T. 285). Petitioner also reported he experienced tingling in his arms and hands for a couple of years and bilateral lower extremity numbness and tingling throughout the legs and into the feet when sitting for prolonged periods of time which started about one year prior. *Id.* Petitioner further reported that he noticed a lot of change with the symptoms with his Medrol dose pack. He could not specify when the symptoms started. The location of symptoms were listed as lower back; LE, bilateral knees. The quality of his symptoms at that time were described as aching, stabbing; dull with special note of stabbing pain in his knees. *Id.* He reported pain disrupted his sleep three to five times per night. *Id.* Further, Petitioner reported difficulty getting on and off of ground and donning/offing pants due to knee pain. (PX1, 238; T. 286)

Upon physical exam the therapist noted Petitioner's gait and mobility performing the squat test was bilaterally limited and Petitioner had pain in his bilateral knees and excessive anterior knee translation. When performing range of motion (ROM) tests the therapist documented bilateral knee crepitus and decreased strength in his bilateral knees in both flexion and extension. (PX1, 238; T. 286) Onset date states "chronic, unable to specify, multiple years." (PX1, 239; T. 287) The therapist Plan included therapy for 2 times per week for 6 weeks for five problems:

1. Body mass index 30+-obesity
2. Low back pain
3. Pain of right knee joint
4. Pain of left knee joint
5. Pain in right hip joint

On April 14, 2022, Petitioner complained of 8/10 left knee pain. On April 19, 2022, the therapist documented Petitioner reported ongoing pain and clicking in the left knee. Petitioner testified that therapy did not alleviate his symptoms. (T. 12) Three days later Petitioner returned to Dr. Jereb on April 22, 2022 and complained of moderate to severe bilateral knee pain, left greater than right, with dull constant pain aggravated by standing, lifting, bending/squatting, pushing/pulling, going from sit to stand, up and down stairs, weakness, swelling, popping, clicking and instability. (PX1, 199-200; T. 247-248) Dr. Jereb testified that on April 22, 2022, Petitioner had weakness, swelling, popping, clicking and instability in the left knee. (PX4, 22-23) According to his office note, Petitioner was taking Aleve with minimal to no relief. On April 22, 2022, Dr. Jereb administered a corticosteroid/cortisone anti-inflammatory injection into the left knee after ordering x-rays. (Px1, 201; T. 249) Dr. Jereb testified the injections are designed to reduce pain. In his experience the effects are noticed from almost immediately to 7 to 10 days post injection. (Px4, pp. 444, 460)

At P.T. on April 26, 2022, Petitioner complained of left knee pain of 7 on a scale of 1 to 10, with ten being the worst possible pain. (PX1, 194-198) Notably, the physical therapy Exercise Flowsheet dated April 19, 2022, indicates the side stepping exercise resulted in clicking, left knee, with pain. (PX1, 210; T. 258) It further indicated that on that date, this exercise was "held". *Id.* On April 21, 2022, side stepping was again on "holdd (sic)" (PX1, 205; T. 253) and was not even attempted on April 26, 2022. Likewise, the Nustep exercise was on "hold due to knee" on April 21, 2022 and April 26, 2022. (PX1, 205, 197; T. 253, 245)

Post-Accident Treatment

On April 28, 2022, Petitioner reported to the emergency room in Winfield that he was coming down from a ladder, and as he stepped off he twisted his knee and he felt a pop in the back of his knee. (PX3) The notes confirm that Petitioner "managed to drive from downtown Chicago." *Id.* Petitioner also reported that he had crutches in the car and he declined a knee immobilizer that was recommended. *Id.* Petitioner reported non-radiating sharp pain of 6/10 in his left knee, *Id.*

On May 6, 2022, Petitioner presented to Dr. Jereb and reported a new condition visit under Work Comp for his left knee. (PX1, 186, T. 234) Dr. Jereb performed a meniscus repair on May 31, 2022. (PX1, T. 64-65) Dr. Jereb testified, "When I got into the knee on May 31st he had a posterior horn medial meniscus flap tear that extended to the root. It could be either an indication of a traumatic event or a degenerative condition." Dr. Jereb qualified his testimony by adding that based on Petitioner's "exam" and "presentation" "it looked to be more of an acute- type injury." (PX4, 13)

Dr. Jereb testified that by August 26, 2022, Petitioner improved "marginally at best." (PX4, 13-14) He felt Petitioner's symptoms were related to his osteoarthritis. (PX4, 14-15) By October 28, 2022, Dr. Jereb discussed a TKA as option for potential pain relief and function. (PX1, 45; T. 93) Petitioner testified that he underwent a left total knee replacement surgery performed by Dr. Jereb on May 2, 2023. (T. 24-25)

Section 12 Opinions

On November 3, 3022, Dr. Brian Cole performed an Independent Medical Evaluation (IME) and opined that despite Petitioner's subjective history of "doing fine" the day before, the incident on April 28, 2022, was not macroscopic enough to induce any single discreet injury to the knee. (RX1) Dr. Cole explained that the radiographic findings and complaints were both chronic and Petitioner had essentially incurred a repeat manifestation of symptoms of his pre-existing, well-established condition that was already under the care of an orthopedic surgeon as recently as one week prior. *Id*. Dr. Cole further opined that Petitioner's subjective complaints were corroborated by objective findings and all treatment was reasonable and necessary, however unrelated to the alleged April 28, 2022, incident. After reviewing additional records including the Petitioner's left knee MRI, Dr. Cole authored an addendum opinion report on May 3, 2023. (RX2) At that time, Dr. Cole opined the additional records galvanized his initial opinions. *Id.* Further, Dr. Cole opined that Petitioner did incur a notable uptick in his symptoms on April 28, 2022 while at work, but evidently had just been seen within the week prior for purposes of a cortisone injection, and (the work accident) does not appear to have caused any acute structural change in his knee nor any significant diverting pathway in his care plan enough to alter my opinion on causality in this case. *Id.*

After review of Petitioner's pre and post-accident medical records, Dr. Troy Karlsson authored a records review opinion report on April 6, 2023, pursuant to §12 of the Workers' Compensation Act (Act). (RX3) Dr. Karlsson opined that there was no causal connection between Petitioner's current left knee condition and any April 28, 2022, incident. *Id*. @ 5 Dr. Karlsson diagnosed Petitioner's current left knee condition as osteoarthritis with up to grade 3 changes at the patellofemoral and medial joint line. He further opined, "He had been given a steroid injection 6 days prior to this accident for a diagnosis of left knee osteoarthritis. Two days before the accident, he complained to his physical therapist that of the multiple parts he was being seen for, this was the greatest pain at 7/10. This is a significant level of pain just 2 days before the alleged incident." He concluded, "There is no causal connection between his current tricompartmental osteoarthritis in the left knee and the April 28, 2022, accident." *Id.*

Dr. Karlsson further explained the bases for his opinions:

> There is no evidence showing that he would have aggravated or materially worsened the preexisting left knee condition. I believe he had a degenerative meniscal tear which was likely preexisting. There is no MRI prior to the work accident to show this, but he was having medial-sided pain at 7/10 just 2 days before this accident. His arthritis was not materially worsened by the accident, as there was no traumatic loss of articular cartilage. If there had been a traumatic loss of articular cartilage, this would have manifested as a loose piece of articular cartilage within the joint noted on MRI or surgery. None was found at surgery. The radiologist found a small loose body in the Baker's cyst, which would be a separate area from the joint and not related to a traumatic loss of articular cartilage. (RX3, 6)

Analysis

I would find Dr. Cole's and Dr. Karlsson's opinions more credible, and more consistent with the treating medical records, than Dr. Jereb's opinions. Petitioner testified that the injection gave him relief "around the 27th of April." (T. 12) When asked what kind of difference was it in his left knee, Petitioner testified, "I felt better. I was able to move freely, work." (T. 13-14) This testimony however does not equate to his condition of left knee osteoarthritis "healing." More importantly, his testimony is not credible given the similarity of complaints at his visit on April 22, 2022 and complaints after April 28, 2022, and the modification in his physical therapy exercises due to left knee pain on April 19, April 21, and April 26. (PX1, 194-205; T. 242-258) This suggests that Petitioner's knee pain had actually not resolved by April 27, 2022. Regardless of whether or not the pain existed on April 27, the condition in the left knee for which Petitioner was actively receiving medical treatment from an orthopedic surgeon including a cortisone injection as well as physical therapy, was present on April 28.

Further, Dr. Jereb made several concessions that I would find do not weigh in favor of his credibility, or his opinion on causation. Dr. Jereb testified if Petitioner still had pain complaints on his return visit on May 6, 2022, he would have ordered an MRI absent any purported accident, confirming there was no change in the course of his treatment plan pre-accident versus post-accident. (PX4, T. 26) Upon questioning, Dr. Jereb also reconsidered his response to Question 3 on causation in his narrative report and conceded, "I think could is the better word than would." I find this concession reflects less certainty, and a weaker causal opinion. (PX4, 27)

Dr. Jereb further admitted that there was no objective way to determine if there was a meniscal tear present before April 28, 2022, because he had no MRI scan before that. However, Dr. Jereb testified that if an MRI was taken prior to April 28, 2022, it is possible the MRI would have shown a medial meniscus tear. (PX4, T. 30) Dr. Jereb further testified that it is possible that a person of Petitioner's age, who was a union painter, with all of his comorbidities would have degenerative changes or medial meniscus tears in the left knee depending on the symptomology. (PX4, 30-31) Dr. Jereb also testified that he was not aware of any study that would say a meniscus tear would quicken arthritic change in the knee. (PX4, 31-32)

Finally, I find it significant Petitioner sought a second opinion which was not introduced into evidence. On December 2, 2022, Petitioner reported to Dr. Jereb that he sought a second opinion at NWCH, and was told that he was not a candidate for a TKA. (PX1, 22; T. 70) On direct examination Petitioner's attorney asked Petitioner if he consulted "Dr. Manning" in November 2022. Petitioner testified that it was Dr. Manning's opinion that Petitioner pursue additional therapy, with his own doctor; however, Dr. Jereb was not recommending more therapy. (T. 22-23) Given that the consult's name was not revealed in Dr. Jereb's records, I would infer those records were not favorable to Petitioner. Dr. Manning's opinion, however, comports with Dr. Cole's and Dr. Karlsson's opinions that Petitioner was not, at the time, a candidate for a TKA.

Therefore, based upon the totality of the medical evidence and the record, including Petitioner's testimony, I would find that Petitioner's left knee condition was unrelated to the incident that occurred on April 28, 2022. Based upon all of the aforereferenced, I dissent from the

majority opinion and would reverse the Arbitrator's finding of causal connection between the April 28, 2022, incident and the Petitioner's current condition.

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	22WC030850
Case Name	John Redden v. K&E Painting and Decorating, Inc.
Consolidated Cases	
Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	15
Decision Issued By	Charles Watts, Arbitrator

Petitioner Attorney	James Nawrocki
Respondent Attorney	Timothy Furman

DATE FILED: 9/29/2023

THE INTEREST RATE FOR THE WEEK OF SEPTEMBER 26, 2023 5.31%

/s/Charles Watts, Arbitrator

Signature

STATE OF ILLINOIS)
)SS.
COUNTY OF Cook)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

John Redden
Employee/Petitioner

v.

K&E Painting & Decorating, Inc.
Employer/Respondent

Case # **22** WC **030850**

Consolidated cases: _____

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Charles Watts**, Arbitrator of the Commission, in the city of **Chicago**, on **06/13/2023**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On the date of accident, **04/28/2022**, 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 $**100,590.88**; the average weekly wage was $**1,934.44**.

On the date of accident, Petitioner was **54** years of age, ***married*** with **1** dependent child.

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

Respondent shall be given a credit of $**42,742.02** for TTD, $**0** for TPD, $**0** for maintenance, and $**0** for other benefits, for a total credit of $**42,742.02**.

Respondent is entitled to a credit of $**26,848.30** under Section 8(j) of the Act for medical previously paid.

ORDER

Respondent shall be given a credit of $**26,848.30** for medical benefits that have been paid, and Respondent shall hold petitioner harmless from any claims by any providers of the services for which Respondent is receiving this credit, as provided in Section 8(j) of the Act.

Respondent shall pay Petitioner temporary total disability benefits of $**1,289.63**/week for **58 5/7** weeks, commencing **04/29/2022** through **06/13/2023**, as provided in Section 8(b) of the Act.

Respondent shall be given a credit of $**42,742.02** for temporary total disability benefits that have been paid.

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

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

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

SEPTEMBER 29, 2023

Signature of Arbitrator

STATE OF ILLINOIS)
)
COUNTY OF COOK)

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION OF THE STATE OF ILLINOIS

JOHN REDDEN,	)	
	)	
Petitioner,	)	
	)	Case # 22 WC 030850
	)	
K&E PAINTING & DECORATING, INC.,	)	
	)	
Respondent.	)	

FACTS

On 04/28/2022, Petitioner was a 54-year-old painter, who had done this kind of work for 25 years (T. 9). This kind of job requires working on ladders, scaffolding, moving equipment and furniture. He must also paint walls, spray, and use spraying equipment (T. 9).

On 03/02/2022, Petitioner presented himself to Dr. Sean Jereb at Barrington Orthopedics. The history given that day states:

> **Location: Low back pain, bilateral knee pain, L>R, right bilateral hip/groin pain**
> **Quality: aching & radiating**
> **Severity: moderate**
> **Duration: several years**
> **Onset/Timing: ongoing**
> **Aggravating factors: stairs, walking, putting on shoes/socks, driving and getting in/out of a vehicle**
> **Alleviating factors: position change, activity modification**
> **Associated Symptoms: numbness & tingling left lateral lower leg, bilateral feet; popping left knee**
> **The patient for a new patient visits for bilateral knee pain, on the left worse than the right.**

> **He also complains of right lateral hip and groin pain. He states that left knee pain radiates down his lateral calf, with some n/t into his feel bilateral. Upon questioning, he does not low back pain for several years with no previous sought out treatment. He states due to his knee, hip and back pain he has difficulty with stairs, putting on shoes/socks, driving, and getting in/out of a vehicle. He feels he is walking with a limp. He denies taking any medication for pain.**

Dr. Jereb charted his exam of both knees as follows:

> **Knees: Active Range of Motion Right: normal, no pain with motion, and crepitus, Active Range of Motion Left: normal and no pain with motion. Strength Right: flexion 5/5, extension 5/5, and quadriceps weakness. Strength Left: flexion 5/5, extension 5/5, and quadriceps weakness. Inspection Right: no deformity or swelling and normal axial alignment, Inspection Left: no deformity or swelling. Bony Palpation Right: tenderness to patella. Bony Palpation Left: tenderness to patella. Soft Tissue Palpation Right: non-tender to palpation. Soft Tissue Palpation Left: non-tender to palpation. Stability Right: no laxity, subluxation, or ligamentous instability and anterior drawer sign, negative, posterior drawer sign negative, pivot shift test negative, and Lachman test negative. Stability Left: no laxity, subluxation, or ligamentous instability and anterior drawer sign negative, posterior drawer sign negative, pivot shift test negative, and Lachman test negative. Special Tests Right: McMurray's test negative. Special Tests Left: McMurray's test negative. (px1, p. 245)**

Petitioner had no previous history of medical treatment to his knees (Px1 p. 238)

X-rays were taken and physical therapy was ordered. Petitioner was not taken off of work or given work restrictions.

On 3/28/22, Petitioner started PT relative to his low back, bilateral knees and right hip. P. Ex. 1 at 236-243. Petitioner attended physical therapy on 03/28/2022, 03/31/2022, 04/07/2022, 04/12/2022, 04/14/2022, 04/19/2022, and 04/21/2022 (T.12). At Petitioner's 4/14/22 PT session, he was noted to have complained of 8/10 left knee pain. P. Ex. 1 at 211-16. The note for Petitioner's 4/19/22 PT session reported ongoing pain and clicking in the left knee. P. Ex. 1 at 207-210. Petitioner testified that the physical therapy did not alleviate his symptoms (T.12).

Petitioner was next examined by Dr. Jereb on 04/22/2022 (Px1, p. 199). The doctor noted that Petitioner was working full duty but was complaining of moderate to severe left knee pain

which was aggravated by bending and squatting. Petitioner was also taking Aleve PRN with minimal to no relief. (Px1, p. 200). Dr. Jereb's examination of Petitioner's knees that day was charted as:

> **Knees: Active Range of Motion Right: normal, no pain with motion, and crepitus. Active Range of Motion Left: normal, no pain with motion, and crepitus. Passive Range of Motion Right: normal and no pain with motion. Passive Range of Motion Left: normal and no pain with motion. Strength Right: flexion 5/5, extension 5/5 and quadriceps weakness. Strength Left: flexion 5/5. Extension 5/5 and quadriceps weakness. Inspection Right: no deformity or swelling and normal axial alignment. Inspection Left: no deformity or swelling. Bony Palpation Right: tenderness to patella. Bony Palpation Left:**
> **tenderness to patella. Soft Tissue Palpation Right: non-tender to palpation. Soft Tissue Palpation Left: non-tender palpation. Stability Right: no laxity, subluxation, or ligamentous instability and anterior drawer sign negative, posterior drawer sign negative, pivot shift test negative, and Lachman test negative. Stability Left: no laxity subluxation, or ligamentous instability and anterior drawer sign negative, posterior drawer sign negative, pivot shift test negative, and Lachman test negative. Special Tests Right: McMurray's test negative. Special Tests Left: McMurray's test negative. (Rx1, p. 200)**

The diagnosis was osteoarthritis of the left knee (Px1, p. 201) At this point Dr. Jereb decided on giving Petitioner a corticosteroid/cortisone anti-inflammatory injection into the left knee (Px1, p.201; Px4, p. 431). Dr. Jereb testified that these sort of injections are designed to reduce pain. In his experience, the effects are noticed from almost immediately to 7 to 10 days (Px4, pgs. 444, 460) post injection. Dr. Jereb testified that a successful reaction to the cortisone injection could be 3-6 months to years, if also doing exercise (Px4, p. 445).

At physical therapy on 04/26/2022 Petitioner was still complaining of left knee pain at 7/10 (Px1, p. 195). Specifically, it was reported that Petitioner had had a left knee Cortisone injection the previous Friday and continued to complain of 7/10 left knee pain. P. Ex. 1 at 194-98.

On 04/27/2022, Petitioner noted the absence left knee pain (T.13). He testified that he felt better could move freely (T.14). At trial Petitioner introduced 2 photographs of a

fence along the Chicago River which Petitioner had to paint with a partner on 04/27/2022 (T. 15, Px5). The length was about 2 city blocks and Petitioner had to do this work on his hands and knees, using kneepads (T. 15). Petitioner stated that although he did not finish this entire job that day, his left knee felt great and that he was experiencing no pain and moving around fine. (T. 16) This history was also recorded in Dr Cole's 11/03/2022 Respondent IME report (Rx1, p. 3).

On 04/28/2022, Petitioner was assigned a painting job at the Byline Bank in Chicago (T.17). Petitioner had to move tools/gang boxes, climb ladders, do masking and paint (T.17). And while on a foot ladder, Petitioner had to contort, while holding a paint bucket, and when reaching over to paint, felt a pop and crack in his left knee (T. 18) Petitioner came down off the ladder, reported his injury to the superintendent, and then drove to central DuPage Hospital (T.19).

Petitioner complained of being unable to bear weight (Px3, p. 393). The history states

> **53-year-old male presents for evaluation of left knee pain. Patient states he was coming down from a ladder as he stepped off he twisted his knee and he felt a pop in the back of his knee. Patient states he does see an orthopedic and has had cortisone shots in the left knee recently. Patient denies any numbness or tingling. Denies any other fall or hitting head or any other injury patient states pain with ambulation. Patient states pain is a 6 out of 10 sharp nature nonradiating. Patient took ibuprofen prior to arrival.**
>
> The history is provided by the patient.
> **Knee Pain** (Px3, p. 387)

X-rays were taken and Petitioner was advised to get a knee immobilizer and was discharged home. (Px3, p. 391)

Petitioner was seen by Dr. Jereb on 05/06/2022. The history documented that day states:

> **Knee:**
>
> **Reported by patient.**
>
> **Location: left; posterior, medical: deep**

Quality: stabbing; sharp; frequent
Severity: moderate (to severe)
Duration: date of onset: (04/28/2022)
Timing: acute
Context: work injury
Alleviating Factors: limited weight bearing: crutches
Associated Symptoms: no numbness; no tingling; weakness; swelling; buckling; instability
Previous Surgery: none
Prior Imaging: x-ray (Central DuPage ER-No acture
Previous: injections; none
Previous PT: none
Work Related: yes
Working: no (has not returned to work since the injury); Union Pinter for K&E and Decorating. The patient presents for a new condition visit under Work Comp for his left knee. Patient works as a Union Painter for K&E Painting and Decorating. On 04/28/2022, patient reports that he was on a 6ft ladder when he twisted his left knee and felt a pop in the knee followed with immediate, severe pain. He was seen at Central DuPage ER, had x-rays taken, and was advised no fracture. He has pain and feelings of with weight bearing and is ambulating with crutches. He is taking ibuprofen 600mg with mild relief, He has not returned to work since the injury.

And the physical exam revealed:

Gait and Station: Appearance: limp and ambulance with crutches.

Knees: Active Range of Motion Left: normal, flexion normal, extension normal, and pain at extreme limits of range. Passive Range of Motion Left: pain elicited by motion. Strength Left: no hamstring weakness or quadriceps weakness and flexion 5/5 and extension 5/5. Inspection Left: no deformity and normal axial alignment: moderate effusion. Bony Palpation Left: no tenderness of the superior pole patella, the inferior pole patella, the tibial tubercle, the adductor tubercle, the lateral joint line, the lateral femoral condyle, the lateral tibial plateau, the head of fibula, or the neck of fibula and tenderness of the medical joint line. Soft Tissue Palpation Left: non-tender to palpation. Stability Left: no laxity, subluxation, or Ligamentous instability and anterior drawer sign negative, Lachman test negative, and posterior sag sign negative. Special Tests Left: McMurray's test positive. (Px1, p. 186)

An MRI was ordered and conducted on the left knee on 05/09/2022 (Px1, p. 250). The impression was of a complex tear involving the posterior root of the medial meniscus (Px1, p. 250) Dr. Jereb recommended surgery, which was performed on 05/31/2022. Dr. Jereb's post-

surgical diagnosis was a (left) posterior horn medial meniscus flap tear that extended to the root (Px1, p. 434). Dr. Jereb opined that this injury appeared to be more an acute type based on Petitioner's exam and presentation (Px4, p. 434).

Following surgery, Petitioner began a course of physical therapy (Px4, p. 434). Petitioner, showed only marginal improvement (Px4, p. 435). Another cortisone injection was given on 08/26/2022 without giving any relief from continuing symptomology (Px4, p. 435).

Dr. Jereb then recommended a monovisc gel injection, which was performed on 09/20/2022. (Px4, p. 436). Dr. Jereb believed that since the left meniscal tear has been repaired, Petitioner's continuing symptoms were related to his osteoarthritis (Px4, pgs. 435-436).

Since Petitioner reported minimal relief from the monovisc injection at his 10/28/2022 Office visit, Dr. Jereb then started discussing the possibility of a left total knee replacement/ arthroplasty (TKA) (T.22). Petitioner sought a second opinion with a Dr. Manning, who only suggested further conservative care. (T22-23)

At that point, Respondent exercised their right to have Petitioner examined pursuant to Section 12, on 11/03/2022, Petitioner was seen by Dr. Brian Cole, in his report (Rx1) Dr. Cole concluded:

> **After careful consideration of the fact pattern provided, medical records reviewed, and. Redden's history and physical today, I do not find he has a discrete work-related event that changed the natural course of his left knee care.**
>
> **He had just seen Dr. Jereb the week before the incident and received a cortisone injection. He obviously had a well-established need for care even absent of this event. I understand he feels like he was "doing fine" the day before when he was painting a fence, but I do not find that his event with the latter was macroscopic enough to induce any single discrete injury to his knee. The radiographic findings and complaints are both chronic and Mr. Redden has essentially incurred a repeat manifestation of symptoms of his preexisting, well-established condition that was already under the care of an orthopedic surgeon as recently as one week prior with Dr, Jereb. He may certainly continue treating with Dr. Jereb, but I do not find that**

his recurrent need for treatment was related to any work "injury" as explained above.

Dr. Cole later reconfirmed these same opinions in an IME Addendum dated 05/03/2023 (Rx2).

As a result of Dr. Cole's 11/03/2022 IME report Respondent terminated all TTD and medical benefits on 12/16/2022 (T. 23-24).

Petitioner was then able to receive medical coverage through his union and his wife's insurance plans (T.24). As a result, Petitioner was able to receive a left TKA on 05/02/2023 (T. 24-25, Px2 p. 311), performed by Dr. Jereb.

At the instant hearing (0613/2023), Petitioner testified that he felt no more arthritic pain in his left knee now, and that in physical therapy, he was getting more and more range of motion each day. (T.25). Petitioner also testified that he has been kept off of work by his physicians since 04/29/2022 and has not had any other traumatic events referable to his left knee since the date of accident. (T.26)

Following the TTD/Medical cut off, Petitioner's attorney requested a narrative report from Dr. Jerebs, which opined that:

> **I believe it is completely plausible that a new injury occur 6 days after a corticosteroid injection to a knee. This was described as a new, novel event and was twisting injury on a ladder, which would exacerbate a current knee condition or cause a new condition.**
>
> **I believe that the work accident on April 28, 2022, was an exacerbation of a pre-existing condition or could be a new injury due to the fact the MRO was on May 9, 2022, as no definite medical meniscus tear diagnosis was made until that date.**
>
> **I believe at this time, Mr. Redden's prognosis is unknown as there are still questions. As I stated above, he has a history of a grade 1 L5-S1 spondylolisthesis, which is likely not the cause of his knee pain. However, an evaluation by a spine specialist would determine any overlap with his knee for causation of pain. With that being said, as he has exhausted conservative management, at this point I see no other options besides a repeat knee**

arthroscopy, debridement and assessment of his medial meniscus versus a total knee arthroscopy fails to give adequate relief. (Px4, 01/17/2018, p. 480)

This was then followed by the taking of Dr, Jereb's evidence deposition on 03/21/2023. (Px4) Dr. Jereb testified that he believed Petitioner sustained a meniscal tear on 04/28/2022:

Q. Okay. So you have a person who's had two negative McMurray's tests prior to the 6th of May, you have a history of a twisting injury, you have him coming in ambulating on crutches, complaining of increased pain on the 6th of May, what was your diagnosis?
A. My diagnosis – My working diagnosis without the MRI at the point was meniscus tear.

Q. And why is that?

A. Because of the change in his exam which looked to be consistent with a meniscus tear.

(Px4, p. 455)

And indeed, the presence of a left meniscal tear was confirmed by MRI and at surgery (Px1, pgs. 16-17, 250).

Dr. Jereb testified that since 04/28/2022 Petitioner's left knee has never returned to baseline that it was before the date (Px4, p. 436). Dr. Jereb addressed medical causation this way in his deposition:

Q. Okay. So I guess the 64,000-dollar question is: Why is he candidate for total left knee replacement today and he wasn't on the 28th of – or the22nd of April 2022 when he was – the last visit before he saw you before the accident?

A. One is he has no meniscus tear. He has arthritic change and he's failed pretty much every other conservative treatment.

Q. But I'm talking about the cause, though, Doctor. Why? Why is he a candidate for a total knee replacement? What did this injury of April 28th do, if anything, to contribute to the fact that he's a candidate today?

A. Well, as I said before we have different definitions of exacerbation, but he had some preexisting osteoarthritis change, it's aggravated, and I can't calm it down.

Q. Okay. And that is because of this in- -- This is because of this twisting injury?

A. Based on the timeline of events, I would have to say yes.

(Px4, p. 458)

Following Dr. Jereb's evidence deposition, (04/06/2023), Respondent obtained a records review IME from Dr. Troy Karlsson who agreed with the non-causation opinions of Dr. Cole. Like Dr. Cole, Dr. Karlsson agreed that Dr. Jereb's treatment to date has been necessary and reasonable but not related to the 04/28/2022 accident (Rx3). And whereas Dr. Cole opined that a TKA for the knee condition, was reasonable. Dr. Karlsson felt such a procedure was not warranted (Rx3).

This matter processed to hearing on 06/13/2023 on the issues of causal connection, TTD, and necessary and reasonable medical treatment.

Conclusion of Law

The Arbitrator adopts the above Findings of Fact in support of the Conclusions of Law set forth below. Section 1(b)3(d) of the Act provides that, in order to obtain compensation under the Act, the Petitioner bears the burden of showing, by a preponderance of the evidence, that he or she has sustained accidental injuries arising out of and in the course of employment. 820 ILCS 305/1(b)3(d). To obtain compensation under the Act, Petitioner has the burden of proving, by a preponderance of the evidence, all of the elements of his or her claim *O'Dette v. Industrial Commission,* 79 I11. 2d 249. 253 (1980) including that there is some causal relationship between the employment and the injury. *Caterpillar Tractor Co. v. Industrial Commission,* 129 I11. 2d 52, 63 (1989). And, yet it also is well established that the Act is humane law of remedial nature

and is to be liberally constructed to effect the purpose of the Act – that the burdens of caring for the casualties of industry should be borne by industry and not by the individuals whose misfortunes arise out of the industry, nor by the public. *Shell Oil v. Industrial Comm'n,* 2 I11.2nd 590, 603 (1954). The Act is remedial statute, which should be liberally constructed to provide financial protection for injured workers. *McAllister v. IWCC,* 2020 IL 124848 ¶ 32. The Act's provisions are to be read in harmony to achieve that goal. *Vaught v. Industrial Commission,* 52 I11.2d 158, 165 (1972). Workers are entitled to "prompt, sure, and definite compensation, together with a quick and efficient remedy" with industry bearing the "costs of such injuries" rather than the injured worker. *O'Brien v. Rautenbush,* 10 I11.2d 167, 174 (1956). Decisions of an Arbitrator shall be based exclusively on stipulation of the parties, the evidence in the record of proceeding and material that has been officially noticed. 820 ILCS 305/1.1(e)

The Arbitrator, as the trier of fact in this case, has the responsibility to observe the witness testify, judge their credibility, and determine how much weight to afford their testimony and the other evidence presented. *Walker v. Chicago Housing Authority,* 2015 IL App (1st) 133788, ¶ 47. The Arbitrator viewed Petitioner's demeanor under direct examination and under cross-examination. Petitioner testified with an easy manner and his demeanor did not change during trial. Petitioner's body language and mannerisms indicated sincerity. The Arbitrator considered the testimony of Petitioner with the other evidence in the record. Petitioner's testimony is found to be very credible. Furthermore, the Arbitrator has considered the testimony in the evidence deposition of Dr. Jereb, and the reports of Drs. Cole and Karlsson, and finds the medical opinions of Dr. Jereb to be both persuasive and dispositive to the issue of medical causation.

With regard to Issue F, is Petitioner's current condition of ill-being causally related to the injury, and Issue J – Were the medical services that were provided to Petitioner reasonable and necessary, the Arbitrator finds the following:

The Arbitrator finds the Petitioner's current condition of ill-being in his left knee is causally related to his work injury. It is well established that an accident need not be the sole primary cause-as long as employment is casus-of a claimant's employer takes its employees as it finds them. *St. Elizabeth Hospital v Worker's Compensation Comm'n,* 371 I11 App 3d 882, 888 (2007). A claimant with a pre-existing condition may recover where employment aggravates or accelerates that condition. *Caterpillar Tractor Co. v Industrial Commission,* 92 I11.2d 30, 36 (1982).

The undisputed facts of the case establish that although Petitioner was complaining of left knee pain from the time of his initial 03/02/2022 office visit with Dr. Jereb he was working full duty unrestricted duty as a union painter until 04/28/2022. Moreover, it is uncontracted that on 04/27/2022 Petitioner was able to work a full day on his hands and knees painting a river walk railing without difficulty or pain having received a cortisone injection 6 days before.

The Arbitrator finds the evidence to be persuasive that Petitioner sustained a left meniscal tear when he twisted on the ladder because:

1) He had negative McMurray's tests on 03/02/2022 and 04/22/2022 and a positive test on 05/06/2022, post-accident.

2) Post-accident, Petitioner's ambulation was so compromised due to increased pain, he had to use crutches.

3) The mechanism of injury, as described by history, is a classic cause for a meniscal injury such as this.

4) After the accident, Petitioner never went back to full duty work and became a surgical candidate for a meniscal tear repair, which was confirmed by MRI and the surgery itself.

And after the 05/31/2022 surgery, Petitioner's left knee condition never returned to its

04/27/2022 status, notwithstanding physical therapy and an injection. This is confirmed by the treating medical records, and Dr, Jereb's testimony. Having exhausted all conservative care, a TKA was the only further treatment Dr. Jereb could offer. The Arbitrator accepts Dr. Jereb's explanation that the 04/28/2022 accident exacerbated / aggravated Petitioner's preexisting osteoarthritis, this making a TKA both necessary and reasonable.

The Arbitrator notes that the success of the TKA implantation renders Dr. Karlsson's non-necessity opinions moot.

Accordingly, for all of the reasons noted above, the Arbitrator finds that Petitioner's current condition of ill-being is casually related to the work injury of 04/28/2022 and that the implantation of a left TKA was both necessary and reasonable under the circumstances to cure and alieve Petitioner's left knee condition.

In the support of the Arbitrator's decision regarding (L), what temporary benefits are in dispute, the Arbitrator finds the following:

In (F) the Arbitrator found that the 04/28/2022 work accident is the proximate cause for Petitioner's current condition of ill-being. It is undisputed by both Petitioner's testimony, and the treating medical records, that Petitioner has been under continuous Doctor's care and not working due to the work accident.

Accordingly, the Arbitrator finds that Respondent shall pay Petitioner temporary total disability benefits of $1,289.63 per week for 58 5/7 weeks (04/29/2022-06/13/2023). Respondent is entitled to a credit in the amount of $42,742.02 for TTD benefits previously paid.

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	19WC007484
Case Name	Billy Tanner v. Knight Hawk Coal
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	24IWCC0389
Number of Pages of Decision	23
Decision Issued By	Deborah Simpson, Commissioner

Petitioner Attorney	Steven Hanagan, Roman Kuppart
Respondent Attorney	Julie Webb, Kenneth Werts

DATE FILED: 8/13/2024

/s/ Deborah Simpson, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF MADISON)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Billy Tanner,
Petitioner,

vs. NO: 19 WC 7484

Knight Hawk Coal,
Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Petitioner herein and notice given to all parties, the Commission, after considering the issues of occupational diseases, sections 1(d)-(f) of the Occupational Diseases Act, and permanent disability and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

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

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

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

There is no bond for the removal of this cause to the Circuit Court by Respondent. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

August 13, 2024

o7/24/24
DLS/rm
046

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

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	19WC007484
Case Name	Billy Tanner v. Knight Hawk Coal
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	21
Decision Issued By	William Gallagher, Arbitrator

Petitioner Attorney	Roman Kuppart, Steven Hanagan
Respondent Attorney	Kenneth Werts

DATE FILED: 2/10/2023

THE INTEREST RATE FOR THE WEEK OF FEBRUARY 7, 2023 4.75%

/s/William Gallagher, Arbitrator

Signature

STATE OF ILLINOIS)
)SS.
COUNTY OF Madison)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Billy Tanner
Employee/Petitioner

v.

Knight Hawk Coal
Employer/Respondent

Case # 19 WC 07484

Consolidated cases: _____

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable William R. Gallagher, Arbitrator of the Commission, in the city of Collinsville, on December 28, 2022. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
B. ☐ Was there an employee-employer relationship?
C. ☒ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
D. ☐ What was the date of the accident?
E. ☐ Was timely notice of the accident given to Respondent?
F. ☒ Is Petitioner's current condition of ill-being causally related to the injury?
G. ☐ What were Petitioner's earnings?
H. ☐ What was Petitioner's age at the time of the accident?
I. ☐ What was Petitioner's marital status at the time of the accident?
J. ☐ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
K. ☐ What temporary benefits are in dispute?
☐ TPD ☐ Maintenance ☐ TTD
L. ☒ What is the nature and extent of the injury?
M. ☐ Should penalties or fees be imposed upon Respondent?
N. ☐ Is Respondent due any credit?
O. ☒ Other Sections 1(d)-(f) of the Occupational Diseases Act

FINDINGSFS

On June 6, 2018, Respondent was operating under and subject to the provisions of the Act.

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

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

Timely notice of this accident was given to Respondent.

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

In the year preceding the injury, Petitioner earned $68,521.96; the average weekly wage was $1,317.73.

On the date of accident, Petitioner was 50 years of age, married with 0 dependent child(ren).

Petitioner claims no medical.

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

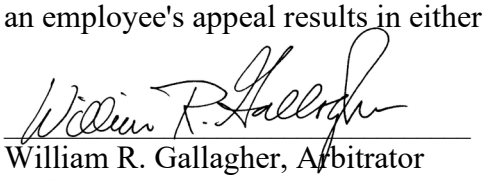
Respondent is entitled to a credit of $0.00 paid under Section 8(j) of the Act.

ORDER

Based upon the Arbitrator's Conclusions of Law attached hereto, claim for compensation is denied.

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

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



William R. Gallagher, Arbitrator
ICArbDec p. 2

February 10, 2023

Findings of Fact

Petitioner filed an Application for Adjustment of Claim which alleged he sustained an occupational disease to his lungs and/or heart. The Application alleged a date of last exposure of June 6, 2018, and that Petitioner sustained the occupational disease as a result of inhalation of coal mine dust including but not limited to coal dust, rock dust, fumes & vapors for a period in excess of 19 years.

At the time of trial, Petitioner was 55 years old. Petitioner was a high school graduate. He worked in the coal mines for approximately 18 years with all that time being underground. Petitioner testified that in the course of his employment in the coal mines, he was regularly exposed to rock dust and coal dust. Petitioner testified that while he worked at American Coal he was exposed to diesel fumes. He testified that the diesel fumes did not really bother his breathing. Petitioner's last date of employment in the coal mines was June 6, 2018 at Respondent. On the date of last exposure, Petitioner was 50 years old. He was a ram car driver. He would take the coal from the miner at the face and haul it to the belt line to send it out of the mine. Petitioner testified that he was exposed to coal dust in that job. Petitioner also had to change the batteries in the ram car, help the miner advance and move the cable and hang curtain to make the air get to the face. Petitioner testified that on June 6, 2018, he was exposed to and breathed coal dust. Petitioner testified that he left Respondent in June, 2018, for a hip replacement. He testified that his breathing did not have any part in his leaving the mine.

From 1986 through 1992, Petitioner worked at McKinney and then at Mirror Motor Company detailing cars. From 1992 through 1998 Petitioner worked at Crownline Boats. From 1998 through 2008, Petitioner operated a ram car underground at American Coal. From 2008 through 2010, Petitioner worked for Respondent at its Royalton Mine. At that mine, he drove a ram car underground. From 2010 to 2018, he worked for Respondent near Percy. He was also a ram car operator at that mine. Petitioner testified that in his work with Respondent, he had to lift, bend, stoop and squat in order to do some of his job duties. He testified that he noticed breathing problems when he did those things. He testified that if he was moving quite a bit he would get winded. Petitioner testified that he first noticed that he had a breathing problem during his employment with Respondent. He noticed that he would get short winded. Petitioner testified that he was able to walk on level ground about a block or so before he had some sort of breathing issue. He testified that he could climb six stairs before having to stop and take a rest. Petitioner testified that since the onset of his breathing problems until the time of trial they have stayed about the same.

Petitioner testified that he mows his yard with a riding mower. His wife does the weed eating. He testified that his wife also carries the groceries because that causes breathing problems for him. Petitioner testified that he went deer hunting this year. He testified that he had to have a friend help him get the deer he killed to the house. He was not able to drag it because of his breathing issues. Petitioner testified that he never smoked. Petitioner testified that he was able to complete his work every day in the coal mine, but as time went on it got harder for him to do so. Petitioner testified that as of trial he could not do his last job in the coal mines because of his breathing.

Petitioner testified that he left work at the time he did because of his right hip. He was advised that he needed a total hip replacement but before that could happen, he had to lose a substantial amount of weight. He also was suffering from atrial fibrillation. He testified that these conditions increased

his risk for the hip surgery. Petitioner's primary provider through the years was Dr. Davis. He testified that he was always honest with Dr. Davis in sharing his symptoms or lack of symptoms. Petitioner testified that Dr. Davis ordered a wheeled walker for him in June, 2018. He testified that he could not use same underground. Petitioner was using a cane at the time of trial. Petitioner testified that he has three discs in his back that are bad. He testified that he needs the cane if he goes very far and that he would not be able to do his job in the mine with a cane. Petitioner testified that he received short term disability for a time when he was first out of the mine. Petitioner was referred to Dr. Ajmal for bariatric surgery to reduce his weight. Petitioner has applied for and received Social Security Disability for his back and hip. Petitioner testified that he underwent a sleeve gastrectomy in January 2021 and has lost 135 pounds since then. Petitioner underwent hip replacement in September 2021. He testified that his physical condition has improved somewhat with his weight loss and hip replacement. Petitioner testified that he did not work after he left his employment with Respondent in June, 2018, and has not looked for work since that time.

Petitioner testified that while he was employed at the mine from time to time he had an opportunity to undergo NIOSH chest x-ray screening for black lung. He testified that he participated in that screening. He could not recall if he was sent a letter after that screening to tell him what the x-ray revealed. Petitioner testified that with his weight loss from the bariatric surgery, he has not really noticed a change in his breathing. He testified that his breathing has stayed about the same.

Dr. Suhail Istanbouly was deposed on December 13, 2022, and his deposition testimony was received into evidence at trial. Dr. Istanbouly specializes in pulmonary, critical care and sleep medicine (Petitioner's Exhibit 1, p 5). Dr. Istanbouly practiced in Southern Illinois from April 2003 until March 2019. At that time he took a position at Hines VA in Maywood, Illinois (Petitioner's Exhibit 1, pp 5-6). Dr. Istanbouly testified that in Southern Illinois he was a community physician seeing all kinds of cases related to his specialty. He testified that being a pulmonologist practicing in Southern Illinois gave him good exposure to black lung cases, which accounted for 30 to 40 percent of the patients he saw on a daily basis for 16 years. Dr. Istanbouly still has a clinic in Southern Illinois where he goes once a month so he is still in touch with black lung cases (Petitioner's Exhibit 1, p 6). Dr. Istanbouly used to be affiliated with the Respiratory Disease Clinic in Southern Illinois and was the Medical Director of the Pulmonary Department at Herrin Hospital from 2005 to March, 2019. He was the Director of the Intensive Care Unit at Carbondale Memorial Hospital for eight years (Petitioner's Exhibit 1, p 7).

Dr. Istanbouly saw Petitioner one time on June 17, 2019, for an evaluation in his state black lung claim (Petitioner's Exhibit 1, pp 8, 19). Dr. Istanbouly testified that for many years he would do five to seven such examinations a month. These examinations were always performed at the request of a claimant attorney. Dr. Istanbouly travels to Southern Illinois on an average of once a month where he continues to perform such examinations (Petitioner's Exhibit 1, pp 19-20).

Dr. Istanbouly noted that Petitioner worked as a coal miner for 18 years with all that time being underground. Petitioner's last month of employment in the coal mine was June, 2018. He was a ram car driver in the last year of his employment. He left the coal mine due to a right hip injury. Petitioner never smoked in the past. Petitioner reported he coughed intermittently on and off for the past few years. The cough was mild in intensity, occasionally productive of slight clear sputum. Petitioner complained of exertional dyspnea. He was getting short of breath by walking less than

half a block with progressive worsening of physical capacity over the prior six months. He had had no significant weight change since he quit working in the coal mine (Petitioner's Exhibit 1, p 9).

Dr. Istanbouly testified that on physical examination of Petitioner's chest, he noted reduced air entry at the bases bilaterally. He testified that reduced air entry could be related to obstructive lung disease, trapped air atelectasis, collapsed lung and pleural effusion or morbid obesity. Dr. Istanbouly testified that based on Petitioner's occupational history, clinical history, x-ray and pulmonary function testing it could be black lung related (Petitioner's Exhibit 1, p 10). Dr. Istanbouly testified that pulmonary function testing performed on Petitioner was valid. He testified that the results of Petitioner's pulmonary function studies revealed mild nonspecific ventilatory limitation. Dr. Istanbouly testified that the test was suggestive of a restrictive versus mixed restrictive/obstructive defect and recommended complete pulmonary function testing with lung volumes if clinically indicated (Petitioner's Exhibit 1, p 11). Dr. Istanbouly testified that he is familiar with the *AMA Guides to Evaluation of Permanent Impairment, Sixth Edition*. He testified that based on Petitioner's pulmonary function testing, he fell in Class 1 impairment (Petitioner's Exhibit 1, p 12). Dr. Istanbouly testified that he reviewed a chest x-ray of Petitioner dated January 16, 2019. He testified that the chest x-ray revealed mild bilateral interstitial changes consistent with simple coal workers' pneumoconiosis (Petitioner's Exhibit 1, pp 13-14). Dr. Istanbouly diagnosed Petitioner with coal workers' pneumoconiosis, which was caused by his long time coal dust inhalation (Petitioner's Exhibit 1, p 15).

Dr. Istanbouly testified that the disease process of coal workers' pneumoconiosis is caused by fine particles being inhaled and reaching the deep parts of the airways ending in the alveoli creating a local irritation or inflammation that will end up with tiny scars, which are the small round opacities seen on the x-ray. Dr. Istanbouly testified that the tiny scars will replace normal lung tissue and will affect the gas exchange through the vascular parenchymal barrier. Dr. Istanbouly testified that not every coal miner who is exposed to coal dust gets coal workers' pneumoconiosis. Dr. Istanbouly testified that the scarring and fibrosis of pneumoconiosis are permanent and cannot carry on the function of normal healthy lung tissue. He testified that by definition if one has coal workers' pneumoconiosis, he would have an impairment of the function of the lung at least at the site of the scar or fibrosis (Petitioner's Exhibit 1, pp 16-17). Dr. Istanbouly testified that Petitioner had clinically significant pulmonary impairment based upon his cough, sputum production and exertional dyspnea. Dr. Istanbouly testified that Petitioner has an environmental impairment in terms of being precluded from safely returning to the environment of the coal mine because of his coal workers' pneumoconiosis. He testified that it was advisable for Petitioner to not have any further coal dust exposure to prevent the progression of his pulmonary disease (Petitioner's Exhibit 1, p 18).

Dr. Istanbouly testified that Petitioner related to him no past history of respiratory disease. Dr. Istanbouly testified that Petitioner left work in the mine as a result of a hip problem and not due to respiratory disease or breathing impairment. Petitioner related intermittent cough, mild in intensity and occasionally productive. Dr. Istanbouly testified that when he diagnosed someone with chronic bronchitis, he specifies chronic daily cough. He did not diagnose Petitioner with chronic bronchitis. Dr. Istanbouly testified that Petitioner was not taking any breathing medications at the time he saw him and based upon the history Dr. Istanbouly obtained, Petitioner had not done so in the past (Petitioner's Exhibit 1, pp 20-21). Dr. Istanbouly testified that there are causes for exertional

dyspnea other than pulmonary disease. These would include heart disease and deconditioning. At the time of his examination, Petitioner was morbidly obese (Petitioner's Exhibit 1, pp 22-23). Dr. Istanbouly testified that reduced air entry at the bases can be seen in patients with morbid obesity. Dr. Istanbouly reviewed no treatment records regarding Petitioner. Dr. Istanbouly testified that the pattern seen in the spirometry performed on Petitioner could be seen in someone who is morbidly obese (Petitioner's Exhibit 1, p 24). Dr. Istanbouly agreed with the *AMA Guides* that they are of value only if the medical diagnosis is correct and that an incorrect diagnosis can lead to an incorrect rating of impairment. He also agreed with *Guides* that an impairment rating should only be given after the individual has reached maximum medical improvement (Petitioner's Exhibit 1, p 25).

Dr. Istanbouly testified that when he met with Petitioner, he was presented with the chest x-ray taken on January 16, 2019, along with Dr. Henry K. Smith's interpretation of same. He testified that he has not seen any other chest imaging or interpretation of chest imaging for Petitioner. Dr. Istanbouly testified that he is neither an A or B-reader of films. Dr. Istanbouly does not provide profusion ratings on the films he interprets for black lung. When he interprets a film for black lung, he determines whether the film is positive or negative for same and if it is positive, he classifies what he sees as mild or early, moderate or severe. He testified that he classified what he saw on Petitioner's film as mild or early pneumoconiosis (Petitioner's Exhibit 1, pp 25-26). Dr. Istanbouly testified that he did not do a side by side reading of Petitioner's chest x-ray with the standard ILO films. Dr. Istanbouly testified that he could not say whether the film he reviewed had a profusion of 1/0 or 0/1 (Petitioner's Exhibit 1, pp 26-27). Dr. Istanbouly testified that one must be a susceptible host to develop coal workers' pneumoconiosis. He testified that not all coal miners develop coal workers' pneumoconiosis. Dr. Istanbouly's sole assessment for Petitioner was simple coal workers' pneumoconiosis (Petitioner's Exhibit 1, p 27).

Dr. Henry K. Smith was deposed on October 14, 2021, and his deposition testimony was received into evidence at trial. Dr. Smith is a diagnostic radiologist (Petitioner's Exhibit 2, p 3). Dr. Smith has been board certified in radiology since 1973. He took the B-reading exam for the first time in 1987 and has been continuously certified as a B-reader since that time (Petitioner's Exhibit 2, p 11). Dr. Smith testified that being awarded a B-reader certification is an "additional feather in your cap." (Petitioner's Exhibit 2, p 18). Dr. Smith testified that he failed the B-reading exam twice somewhere around 1999. He testified that he failed because of overreading films. He was finding more disease than was present on the standard film (Petitioner's Exhibit 2, pp 48-49). Dr. Smith received his Doctor of Osteopathic Medicine in 1968 from Kirksville College of Osteopathic Medicine (Petitioner's Exhibit 2; Deposition Exhibit 1, pp 6-7). Dr. Smith did a rotating general internship at Carson City Hospital in Carson City, Michigan, and a radiology residency at Memorial Osteopathic Hospital in York, Pennsylvania (Petitioner's Exhibit 2, p 7). Dr. Smith operated his own private radiology practice from 1988 to 2016. Since leaving his practice, he has been doing consulting work in the field of radiology including a lot of B-readings (Petitioner's Exhibit 2, p 9).

Dr. Smith testified that in performing the B-reading, he starts with determining the quality of the film. The next step is to determine if there are small opacities present. If opacities are present, he determines if there are enough to be called pneumoconiosis. If so, then he determines whether they are round or linear opacities and categorizes them by size (Petitioner's Exhibit 2, pp 19-20). Dr. Smith testified that with coal workers' pneumoconiosis the preponderance of the small opacities are round. He testified that with other kinds of pneumoconiosis, such as asbestos-related, they are linear

or irregular opacities. In coal workers' pneumoconiosis, opacities occur primarily in the upper to mid lung zones (Petitioner's Exhibit 2, p 21). Dr. Smith next considers the profusion which is the concentration or density of the findings in the lungs (Petitioner's Exhibit 2, p 22). Dr. Smith testified that the profusion tells the reader what degree of involvement is present (Petitioner's Exhibit 2, p 23). Dr. Smith testified that the last thing included in completing the B-reading form are the obligatory findings which are things which need to be recorded other than the findings of black lung (Petitioner's Exhibit 2, p 25). Dr. Smith described an opacity as a small abnormal density one would not see on a normal chest x-ray. It is often seen in people who have occupational disease or pneumoconiosis (Petitioner's Exhibit 2, pp 28-29). Dr. Smith testified that reading films for pneumoconiosis is an art (Petitioner's Exhibit 2, p 34).

At the request of Petitioner's counsel, Dr. Smith reviewed a chest x-ray of Petitioner dated January 16, 2019. He testified that the film was of diagnostic quality. Dr. Smith testified that there was interstitial fibrosis classification P/P in the bilateral mid and lower lung zones and left upper zone of profusion 1/0 (Petitioner's Exhibit 2, p 36). Dr. Smith testified that he did not see any improper positioning, mottle or poor contrast on the film. He testified that if he would have seen those, he would have recorded those on his report (Petitioner's Exhibit 2, pp 36-37). Dr. Smith testified that mottle would influence the degree to perceive small or large opacities. He testified that mottle makes one tend to overread films. Dr. Smith testified that if a film does not have good contrast it may be difficult to discern small opacities (Petitioner's Exhibit 2, p 37). Dr. Smith testified that Petitioner had coal workers' pneumoconiosis and as a result of same he had damage to his lungs (Petitioner's Exhibit 2, pp 38-39).

From 1988 to 2016, Smith Radiology was a freestanding diagnostic walk-in medical facility (Petitioner's Exhibit 2, pp 51-52). Dr. Smith testified that Smith Radiology made $1.25 million dollars in annual income after expenses. Of that income maybe 5% was for medical/legal exams or interpretations (Petitioner's Exhibits No. 2, pp 52-53). Dr. Smith testified that over the years he has interpreted chest x-rays for black lung for over 20 law firms. He testified that over 80% of those firms represented claimants (Petitioner's Exhibit 2, p 53-54). Dr. Smith testified that he presently is reviewing films for black lung for five firms that represent claimants. Dr. Smith testified that one of those firms was Petitioner's counsel. He also reviewed films for Culley & Wissore. He testified that he has read more than 345 films for Culley & Wissore or Petitioner's counsel (Petitioner's Exhibit 2, pp 56-57). Dr. Smith testified that when he received films from Culley & Wissore he would get two or three films at a time on a frequency of twice a month. He might receive a tiny bit more than that from Petitioner's counsel (Petitioner's Exhibit 2, p 58). Dr. Smith testified that at his peak he was interpreting 2,000 films a year for law firms. Presently he is interpreting about 1,500 films per year (Petitioner's Exhibit 2, pp 59-60).

Dr. Smith has never sat on any committee with NIOSH or held any office with the College of Osteopathic Medicine or the Osteopathic Board of Radiology (Petitioner's Exhibit 2, pp 61-62). Dr. Smith testified that the syllabus that he uses to study for the B-reading exam he pretty much takes as gospel. He testified that the panel who puts that together are the peers that he aspires to be. He testified that he respects them highly. He testified that the leaders in the field have been chosen to put the syllabus together. Dr. Smith testified that a new syllabus has been authored for NIOSH and that Dr. Meyer was one of the authors of that syllabus (Petitioner's Exhibit 2, pp 63-64). Dr. Smith testified that he agrees with the current B-reading syllabus that small opacities associated with

exposure to silica and coal dust are usually rounded (Petitioner's Exhibit 2, p 64). Dr. Smith agreed with the B-reading syllabus that small round opacities usually involve the upper lung zones first and as the dust exposure continues, all of the lung zones may become involved (Petitioner's Exhibit 2, p 66). Dr. Smith agreed that simple pneumoconiosis is unlikely to progress once the exposure ceases. Dr. Smith testified that pulmonary impairment is determined by appropriate pulmonary function testing and not by chest x-ray. Dr. Smith testified that if one wants to know whether there is any functional impairment and if present, the degree of same, he would want to have valid pulmonary function testing (Petitioner's Exhibit 2, p 67).

Dr. Smith did not know if the monitors he uses for interpreting chest x-rays were in compliance with the guidelines that are set forth in the Code of Federal Regulations. He did not know whether the equipment complied with the DICOM Standard that is set forth in the Code of Federal Regulations (Petitioner's Exhibit 2, pp 68-69).

Dr. Smith testified that adoption of profusion ratings was done to avoid imprecise descriptive terms of what was seen on the films such as early, moderate or severe pneumoconiosis (Petitioner's Exhibit 2, pp 69-70). Dr. Smith testified that any A or B-reader knows what is meant by 1/0 profusion. He testified that describing 1/0 profusion is something different than saying early because what is early to one person may not be early to another (Petitioner's Exhibit 2, pp 70-71).

Dr. Cristopher Meyer was deposed on April 22, 2021, and his deposition testimony was received into evidence at trial. Dr. Meyer reviewed a chest x-ray of Petitioner dated January 16, 2019. Dr. Meyer testified that the film was of diagnostic quality. He read it as quality 2 for improper position, edge enhancement and mottle (Respondent's Exhibit 1, p 40). Dr. Meyer testified that mottle makes the film look grainy, very similar to photographs that used a 400 ASA would have a kind of little polka dot look to them. He testified that mottle can simulate small opacities (Respondent's Exhibit 1, p 27). Dr. Meyer's impression was no findings of coal workers' pneumoconiosis and the lungs were clear (Respondent's Exhibit 1, p 40). Dr. Meyer testified that mottle and edge enhancement are fairly technical factors that are more easily recognizable to radiologists than other clinicians who interpret chest radiographs (Respondent's Exhibit 1, p 58).

Dr. Meyer has been board certified in radiology since 1992 (Respondent's Exhibit 1, p 7). Dr. Meyer has been a B-reader since 1999 (Respondent's Exhibit 1, p 19). Dr. Meyer was asked to take the B-reading exam by Dr. Jerome Wiot who was part of the original committee that designed the teaching course which was called the B-reader program (Respondent's Exhibit 1, pp 19-21). Dr. Meyer testified that there are several ways to study for the B-reader examination. There is a course module that contains a whole series of films that NIOSH will send to the physician or the American College of Radiology runs a B-reading course. Dr. Meyer testified that he had participated in the course previously while studying for the examination and was recently asked to have a more active academic role in creating the new syllabus and designing the new B-reader exam. Dr. Meyer is currently co-director of the ACR B-Reader Course (Respondent's Exhibit 1, pp 31-32). Dr. Meyer was a member of the ACR Pneumoconiosis Task Force which completed a new syllabus for the course as well as a test that was delivered to NIOSH in 2017 (Respondent's Exhibit 1, p 32). Dr. Meyer testified that the B-reader training course was a day and a half course in which there were a series of lectures describing the B-reading classification system and going through some standard examples of the various components of the B-reading system. The course participants would then

review a series of practice examples with mentors overseeing the practice examples. Dr. Meyer testified that the faculty for the B-reading course is typically experienced senior level B-readers who have been involved in the process for quite some time (Respondent's Exhibit 1, pp 32-33).

Dr. Meyer testified that typically after one takes the course, the individual will take the B-reading exam. Dr. Meyer testified that the old certifying exam was six hours long with 120 chest x-rays to be categorized. The pass rate for the examination ran roughly 60%.The current exam is 24 multiple choice questions and 72 cases in five hours. Dr. Meyer testified that radiologists have about a 10% higher pass rate on the B-reading exam than other specialties. In Dr. Meyer's opinion radiologists have a better sense of what the variation of normal is (Respondent's Exhibit 1, pp 33-34). Dr. Meyer testified that one of the most important parts of the B-reading training and examination is making the distinction between a 0/1 and 1/0 film. Dr. Meyer testified that this distinction is an emphasis in the B-reading course as well as on the examination (Respondent's Exhibit 1, pp 34-35).

Dr. Meyer testified that the B-reader looks at the lungs to decide whether there are any small nodular opacities and based on the size and appearance of the small opacities they are given a letter score (Respondent's Exhibit 1, p 22). Dr. Meyer testified that specific occupational lung diseases are described by specific opacity types. Coal workers' pneumoconiosis is characteristically described by small round opacities. Diseases that cause pulmonary fibrosis, like asbestosis, would be described by small linear opacities (Respondent's Exhibit 1, p 28). The distribution of the opacities is also described because different pneumoconioses are seen in different regions of the lung. Coal workers' pneumoconiosis is typically an upper lung zone predominant process. Idiopathic pulmonary fibrosis or asbestosis is a basilar or linear process (Respondent's Exhibit 1, pp 22-23). Dr. Meyer testified that the typical description of coal workers' pneumoconiosis is that it begins in the upper zones, most commonly in the apical and posterior segment of the right upper lobe greater than the left upper lobe (Respondent's Exhibit 1, p 43). The last component of the interpretation is the extent of the lung involvement or the so-called profusion (Respondent' Exhibit 2, p 23). Dr. Meyer testified that the profusion is basically trying to describe the densities of the small opacities in the lung (Respondent's Exhibit 1, p 30). Dr. Meyer testified that although he read the chest x-ray as negative, Petitioner could still have coal workers' pneumoconiosis on a pathological level (Respondent's Exhibit 1, p 51). Dr. Meyer testified that simple pneumoconiosis typically will not progress once exposure ceases (Respondent's Exhibit 1, p 52).

Dr. Meyer did not pass the B-reading test the first time he took it. He testified that he was two years out of his residency, around 1994, when his commanding officer at the hospital told him he was to go and take the B-reading exam. He had no idea that he was actually supposed to study for the exam so he showed up on a weekend, took the American College of Radiology course and sat for the examination. Dr. Meyer testified that he became certified as a B-reader in 1999 and has not failed the B-reader exam since then (Respondent's Exhibit 1, p 62).

Dr. Meyer testified that in an article by Cohen & Velho from 2002, the author cited a study that revealed that with coal workers' pneumoconiosis, round opacities were most commonly seen and indicated that 69% of subjects had such opacities. Dr. Meyer testified that same was in accord with his experience. Dr. Meyer testified that there was an article by Remy-Jardin a few years ago correlating CTs and chest x-rays that had also demonstrated small round opacities with a clear upper zone predominance in coal workers' pneumoconiosis. In the Cohen, et al article from 2008, the

authors stated that the classic feature of coal workers' pneumoconiosis is nodular opacities predominantly in the upper lung zones on chest x-ray. Dr. Meyer testified that this has been his experience (Respondent's Exhibit 1, pp 61).

Dr. David Rosenberg was deposed on June 21, 2022, and his deposition testimony was received into evidence at trial. Dr. Rosenberg conducted a review of medical records and chest imaging regarding Petitioner at the request of Respondent's counsel (Respondent's Exhibit 2, pp 11-12). Dr. Rosenberg has been board certified in internal medicine since 1977. After graduating from medical school, he did a pulmonary fellowship at the National Institute of Health in Bethesda, Maryland. Dr. Rosenberg received his board certification in pulmonary disease in 1980 (Respondent's Exhibit 2, p 5). In 1995, he received his board certification in occupational medicine (Respondent's Exhibit 2, p 6). Dr. Rosenberg has been a B-reader since July 2000. He is a member of the American Thoracic Society and American College Chest Physicians (Respondent's Exhibit 2, pp 7-8). Dr. Rosenberg has lectured by invitation on a number of subjects through the years. These topics include interstitial lung disease, chronic obstructive lung disease, pulmonary stress testing, pulmonary function testing, exercise testing and occupational lung disease (Respondent's Exhibit 2, p 10). Dr. Rosenberg has patients in his clinical practice who he is treating who have black lung (Respondent's Exhibit 2, p 11).

Dr. Rosenberg reviewed a chest x-ray for Petitioner dated January 16, 2019. Dr. Rosenberg found the film to be of quality 2 due to poor contrast. He testified that the film revealed no parenchymal changes of a pneumoconiosis. He gave the film a profusion of 0/0 (Respondent's Exhibit 2, pp 26-27). Dr. Rosenberg testified that for a proper reading of a chest x-ray for pneumoconiosis, the reader first assesses the film quality, then the reader determines if there are any opacities present. If they are present, the opacity type is identified as linear or rounded. Next the reader marks the lung zones where the opacities are found and then the profusion reading is given. Dr. Rosenberg testified that profusion is the degree of changes seen on the chest x-ray. The reader then outlines pleural abnormalities if they are present. The reader also marks any other abnormalities (Respondent's Exhibit 2, pp 27-28).

Dr. Rosenberg testified that one uses standard B-reading films for comparison in determining both the type of opacities present and the intensity or profusion. He testified that the interpretation of the target film is performed side by side with the standard ILO films. Dr. Rosenberg testified that profusion is important in the interpretation because it is the degree or intensity of the parenchymal abnormalities observed. He testified that a profusion of 1/0 is considered positive for pneumoconiosis and a profusion of 0/1 would be negative for the presence of pneumoconiosis (Respondent's Exhibit 2, p 28). Dr. Rosenberg testified that on his interpretation of Petitioner's chest x-ray he did not see emphysema. He testified that none of the B-readers who interpreted Petitioner's chest x-ray found emphysema. He made this determination by looking at the markings of other abnormalities on Section 4B of the B-reader form. Dr. Rosenberg testified that the distinction between a category 1 pneumoconiosis and a film negative for same can be a fine one. He testified that same is a point of emphasis in the syllabus, B-reader course and examination taken to be certified as a B-reader (Respondent's Exhibit 2, p 29).

Dr. Rosenberg testified that it would be unlikely for coal workers' pneumoconiosis to progress once the exposure ceases. Dr. Rosenberg agrees with the position of the American Thoracic Society that

an older worker with a mild pneumoconiosis may be at low risk for working in currently permissible dust levels in the mine until he reaches retirement age. Dr. Rosenberg testified that a miner must be a susceptible host to develop coal workers' pneumoconiosis and that not all coal miners develop the disease. He testified that a majority do not develop coal workers' pneumoconiosis (Respondent's Exhibit 2, pp 29-30).

Dr. Rosenberg testified that cough is not considered an objective determinant of pulmonary impairment. Dr. Rosenberg testified that chronic bronchitis is a cough and sputum production that occurs, on the average, three months in a given year for two consecutive years. He testified that a history of intermittent cough on and off for a few years, occasionally productive, does not satisfy that definition. Dr. Rosenberg testified that in the medical records he reviewed, he did not see the diagnosis of chronic bronchitis. Dr. Rosenberg is familiar with the *AMA Guides to the Evaluation of Permanent Impairment, Sixth Edition* Chapter 5 the Pulmonary System, which provides that chest imaging is not a factor, let alone a key factor, in the assessment of pulmonary impairment. Dr. Rosenberg agreed with the *Guides* that the correlation of chest x-ray interpretations and physiologic measurements of impairment are poor (Respondent's Exhibit 2, pp 23-24).

Dr. Rosenberg testified that the spirometry performed on Petitioner revealed a proportionate reduction of his FVC and FEV1. Dr. Rosenberg testified that this was a sequelae of Petitioner's morbid obesity. Dr. Rosenberg testified that when one has morbid obesity, there is increased adipose tissue surrounding the chest so that the chest is heavier than normal. There is adipose tissue pushing from the abdomen up against the diaphragmatic or breathing muscles. Those factors make it more difficult for a normal, healthy individual who is obese to expand the chest in a normal fashion, which may cause the lungs volumes specifically the ventilatory measurements, to be reduced (Respondent's Exhibit 2, pp 24-25). Dr. Rosenberg testified that there are a whole variety of articles that outline the concept of obesity causing a reduction of ventilatory measurement. Dr. Rosenberg testified that from a respiratory standpoint, Petitioner would be capable of heavy manual labor. Dr. Rosenberg testified that Petitioner had major problems surrounding his back, problems with his hip and problems with his heart including atrial fibrillation, flutter and irregular heartbeat. He testified that all of those factors affected his global health (Respondent's Exhibit 2, p 26). Dr. Rosenberg testified that chronic respiratory problems were not outlined in Petitioner's medical records and his pulmonary function test revealed mild restriction. Dr. Rosenberg testified that radiographically, Petitioner did not have findings of pneumoconiosis. He testified that Petitioner's mild restriction was related to his extreme morbid obesity (Respondent's Exhibit 2, pp 30-31). Dr. Rosenberg testified that Petitioner was not disabled from a pulmonary perspective and there was no documentation in the extensive medical records he reviewed of any chronic respiratory condition. Dr. Rosenberg testified that Petitioner did not have any form of pneumoconiosis or respiratory condition which occurred consequent to his employment in the coal mines (Respondent's Exhibit 2, p 31).

Dr. Rosenberg testified that Petitioner's pulmonary function studies were consistent with a restrictive defect. He testified that when pneumoconiosis has progressed enough to manifest itself on pulmonary function studies, it is generally a restrictive defect (Respondent's Exhibit 2, p 46). Dr. Rosenberg testified that based on Table 5-4 of the *AMA Guides to the Evaluation of Permanent Impairment, Sixth Edition* given Petitioner's pulmonary function values, he would fall in Class 1 impairment (Respondent's Exhibit 2, pp 46-47). Dr. Rosenberg testified that he would not expect a

restriction to be present due to scarring of the lung with a category 1/0 pneumoconiosis. He testified that restriction comes about from parenchymal lung disease when the lungs become involved enough to become scarred and then they become stiff and they shrink down because of the stiffness. He testified that this stiffness only comes about when there is a large amount of lung that has become scarred and fibrotic. He testified that minimal changes of 1/0 profusion are not significant to cause the lungs to be scarred enough to become stiff and smaller in size (Respondent's Exhibit 2, pp 48-49).

Medical records from Logan Primary Care were received into evidence. Petitioner was seen on April 13, 2000, relating left elbow pain (Respondent's Exhibit 3, p 539). Petitioner was seen on February 16, 2002, with URI symptoms present for two days. He had runny nose, cough, congestion and sneezing. Lungs were clear to auscultation and percussion bilaterally. The assessment was URI and mild sinusitis (Respondent's Exhibit 3, p 536). Petitioner was seen on March 12, 2003, with upper respiratory symptoms, which included runny nose and congestion but no cough. His lungs were clear to auscultation and percussion. The assessment was URI viral and rhinitis (Respondent's Exhibit 3, p 532). Petitioner was seen on January 13, 2004, with upper respiratory symptoms including runny nose, congestion, cough and sneeze. His lungs were clear to auscultation and percussion. The assessment was sinusitis (Respondent's Exhibit 3, p 530). Petitioner was seen on November 3, 2004, with complaint of back pain with bilateral lower extremities radiculopathy. He was taken off work and physical therapy was prescribed (Respondent's Exhibit 3, p 528).

Petitioner was seen regarding back pain on November 1, 2006 and June 1, 2007 (Respondent's Exhibit 3, pp 520-523). Petitioner was seen on January 27, 2008, with complaint of cough and congestion as well as shortness of breath. Examination of the chest revealed no rhonchi or wheezing. Assessment was acute bronchitis (Respondent's Exhibit 3, pp 518-519). He returned for follow up on his upper respiratory infection on January 30, 2008. He still had cough and congestion. Examination of the chest revealed mild bilateral wheeze. Assessment remained acute bronchitis (Respondent's Exhibit 3, pp 516-517). Petitioner was seen on April 3, 2009, with complaint of left foot pain in the ball and heal of the foot. His lungs were clear to auscultation without rales, rhonchi or wheezing (Respondent's Exhibit 3, pp 514-515). Petitioner was seen on April 20, 2009, for hypertension management. Review of systems respiratory was negative. His lungs were clear to auscultation bilaterally (Respondent's Exhibit 3, pp 512-513). Petitioner was seen on October 6, 2009, for management of hypertension. He denied shortness of breath. He expressed a desire to do something about his weight. On this date he weighed 374 pounds. Examination of the chest revealed the lungs clear to auscultation bilaterally (Respondent's Exhibit 3, pp 505-506). Petitioner was seen on October 30, 2009, with complaint of upper respiratory symptoms, which included cough. His lungs were clear to auscultation and percussion. Assessment was URI viral (Respondent's Exhibit 3, pp 503-504).

Petitioner was seen on April 6, 2010, with complaint of upper respiratory symptoms including runny nose, congestion, cough and sore throat. Examination of the chest revealed bilateral rhonchi with expiratory wheeze. The assessment was acute bronchitis (Respondent's Exhibit 3, pp 499-500). Petitioner was seen in follow up for his upper respiratory infection on April 15, 2010. He was continuing to wheeze with cough and congestion and did not feel any better. Medications included Robitussin and Depo Medrol. Examination of the chest revealed bilateral rhonchi and wheezing. The assessment was acute bronchitis, broncho spasm and cough (Respondent's Exhibit 3, pp 497-

498). Petitioner was seen next on December 18, 2010, with complaint of cough for the past three weeks. On this date, Petitioner's weight was 407 pounds. Examination of the chest revealed a few rhonchi in the left lung base. The assessment was pneumonia (Respondent's Exhibit 3, pp 495-496). Petitioner was seen on March 13, 2011, regarding right eye redness and swelling. His chest was clear to auscultation with no wheezes, rhonchi or rales (Respondent's Exhibit 3, pp 493-494).

Petitioner was seen on March 1, 2012, for management of his weight and cholesterol. His lungs were clear to auscultation with no wheezes, rhonchi or rales (Respondent's Exhibit 3, pp 485-486). Petitioner was seen on July 25, 2012, with complaint of mid back pain of four days duration. He denied shortness of breath. His lungs were clear to auscultation with no wheezes, rhonchi or rales (Respondent's Exhibit 3, pp 483-484). Petitioner was seen on March 25, 2013, for management of cholesterol and weight. He also noted that he was suffering from dry cough and had been taking Muscinex. Examination of the chest revealed bibasilar rhonchi and wheezes. The assessment included acute sinusitis, cough and acute bronchitis. Petitioner was encouraged to stop smoking (Respondent's Exhibit 3, pp 477-478). Petitioner was seen on June 24, 2013, for management of cholesterol and osteoarthritis of the knees. He had been walking daily. His lungs were clear to auscultation with no wheezes, rhonchi or rales (Respondent's Exhibit 3, pp 475-476). Petitioner was seen on August 12, 2013. He denied shortness of breath. His major problems included tobacco abuse disorder. His lungs were clear to auscultation with no wheezes, rhonchi or rales (Respondent's Exhibit 3, pp 473-474).

Petitioner was seen on February 26, 2014, for follow up regarding chronic back pain. He denied shortness of breath. Petitioner was again advised to stop smoking (Respondent's Exhibit 3, pp 471-472). Petitioner was seen on December 1, 2014. He denied shortness of breath (Respondent's Exhibit 3, pp 466-467). Petitioner was seen on April 20, 2015. He denied shortness of breath. His lungs were clear to auscultation with no wheezes, rhonchi or rales. His EKG was interpreted as abnormal. The assessment was super ventricular tachycardia (Respondent's Exhibit 3, pp 463-465). Petitioner was seen on April 23, 2015, for admission to Herrin Hospital with new onset atrial fibrillation. His chest examination revealed the lungs were clear to auscultation with no wheezes, rhonchi or rales (Respondent's Exhibit 3, pp 460-462). Petitioner was seen on May 22, 2015, for management of his atrial fibrillation. His lungs were clear to auscultation with no wheezes, rhonchi or rales. It was charted that Petitioner was not a current smoker. He was released to return to work since his stress test came back normal (Respondent's Exhibit 3, pp 457-458).

Petitioner was seen on January 25, 2016. He denied shortness of breath. His lungs were clear to auscultation with no wheezes, rhonchi or rales (Respondent's Exhibit 3, pp 447-449). Petitioner was seen on April 25, 2016. His right leg and hip were bothering him. He denied shortness of breath. His lungs were clear to auscultation with no wheezes, rhonchi or rales (Respondent's Exhibit 3, pp 443-445). Petitioner was seen on July 25, 2016. He denied shortness of breath. He was suffering right hip pain and some back pain. Lungs were clear to auscultation with no wheezes, rhonchi or rales. Assessment included atrial fibrillation (Respondent's Exhibit 3, pp 436-438). Petitioner was seen on November 7, 2016, in follow up for atrial fibrillation, hypertension and chronic low back pain. His hip was about the same and the medication was working to help his pain. It was noted that Petitioner had been coughing a lot more and taking over the counter medication, which was not helping him. The cough was productive. His lungs were clear to auscultation with no wheezes, rhonchi or rales (Respondent's Exhibit 3, pp 429-431).

Petitioner was seen on March 20, 2017, for management of his atrial fibrillation, hypertension and low back pain. He denied shortness of breath. He reported a cough that was worse at night. His lungs were clear to auscultation with no wheezes, rhonchi or rales. Assessment included acute upper respiratory infection and cough (Respondent's Exhibit 3, pp 425-428). Petitioner was seen on July 20, 2017. He denied shortness of breath. They would not do surgery on the right hip due to his health risk related to his atrial fibrillation and weight (Respondent's Exhibit 3, pp 267-270). Petitioner completed a Health Risk Assessment on November 4, 2017, wherein he indicated that he had never suffered from chronic bronchitis, emphysema or COPD (Respondent's Exhibit 3, pp 381-384). Petitioner was seen on December 4, 2017, in follow up for his systemic problems. He denied shortness of breath. Physical examination of the chest revealed normal effort and breath sounds (Respondent's Exhibit 3, pp 277-280).

Petitioner was seen on March 31, 2018, with complaint of upper respiratory infection of one week duration. Symptoms included congestion and cough. He denied shortness of breath. Examination of the chest revealed wheezes. Assessment was bronchitis and cough (Respondent's Exhibit 3, pp 296-300). Petitioner was seen on June 4, 2018, regarding right hip pain that radiated all the way down to the front of his leg and with stretching all the way down to his right foot. He was barely getting up or down out of his truck. He was still trying to work but just could not do it. He had been chronically walking with a limp due to right hip pain. An order was placed for a wheeled walker (Respondent's Exhibit 3, pp 303-307). Petitioner was seen on June 13, 2018. He related his pain was still radiating down his right leg with his foot being continuously numb. He presented paperwork for disability (Respondent's Exhibit 3, pp 312-314). Petitioner was seen on July 16, 2018, at which time it was noted he was walking with a walker (Respondent's Exhibit 3, pp 317-318) Petitioner was seen on December 17, 2018, with the chief complaint being hypertension and right hip pain. The examination of his chest revealed normal breath sounds (Respondent's Exhibit 3, pp 335-339).

Dr. Dennon Davis completed a Persons with Disabilities Certification for Parking Placard/License Plates on December 31, 2018. In that certification he indicated that Petitioner had a permanent disability involving his right hip as well as multilevel degenerative disc disease of the lumbar spine and that he was severely limited in the ability to walk and could walk no further than 200 feet without stopping to rest because of the above noted conditions (Respondent's Exhibit 3, p 423).

Petitioner was seen on April 5, 2019 for sinus problems that began seven days prior. His symptoms included congestion, coughing, sinus pressure and sore throat. Examination of the chest revealed normal effort and breath sounds. The assessment was post-nasal drip, cough and acute pansinusitis (Respondent's Exhibit 3, pp 350-354). Petitioner was seen on April 18, 2019. He denied shortness of breath. It was charted that Petitioner never smoked and quit smokeless tobacco six months prior. Examination of the chest revealed normal effort and breath sounds (Respondent's Exhibit 3, pp 355-359). Petitioner was seen on August 19, 2019, for follow up regarding right hip pain and hypertension. He related that his hip pain was about the same and that "it always hurts." He related that he could hardly move. Petitioner denied shortness of breath. There was no mention of a pulmonary problem in his active problem list (Respondent's Exhibit 3, pp 230-234). Petitioner was seen on June 18, 2020, for hypertension and chronic hip pain. He was walking with a cane. His active problem list did not include pulmonary disease (Respondent's Exhibit 3, pp 165-170).

Petitioner was seen on October 19, 2020. He denied dyspnea. His active problem list did not include pulmonary disease. Examination of the chest revealed normal pulmonary effort and breath sounds (Respondent's Exhibit 3, pp 139-144).

Petitioner was seen on February 22, 2021. He denied dyspnea on exertion. No respiratory diagnosis was listed. Physical examination of the chest revealed normal effort and breath sounds (Respondent's Exhibit 3, pp 117-121). Petitioner was seen on June 24, 2021. He denied dyspnea on exertion. Physical examination of the chest revealed normal effort and breath sounds (Respondent's Exhibit 3, pp 103-105). Petitioner was seen on September 15, 2021, for pre-op exam for right total hip arthroplasty. Past medical history did not include respiratory disease. Physical examination of the chest revealed normal effort and breath sounds. He was cleared for surgery (Respondent's Exhibit 3, pp 82-85).

A Disability Status Update for UNUM was signed by Dr. Davis on October 6, 2021. The same provided that the primary diagnosis that impacted Petitioner's functional capacity was lumbar disc bulge and chronic right hip pain. It was indicated that he had been physically unable to work since July 16, 2018, due to back pain and right hip osteoarthritis (Respondent's Exhibit 3, pp 78-79).

Petitioner was seen on January 17, 2022. He denied dyspnea on exertion. Petitioner's active problem list did not include respiratory disease. Physical examination of the chest revealed normal pulmonary effort and breath sounds (Respondent's Exhibit 3, pp 54-57). On March 18, 2022, Parking Placard Renewal was completed for Petitioner in which he was indicated to suffer permanent disability with severely limited ability to walk due to an arthritic, neurological, oncological or orthopedic condition. His diagnosis was osteoarthritis of the right hip and degenerative disc disease of the lumbar spine (Respondent's Exhibit 3, pp 39-40). Petitioner was seen on April 18, 2022. His active problem list included right foot pain, skin ulcer of third toe of the right foot, hyperkeratosis of skin, acquired bilateral hammer toes, peripheral neuropathy, status post right hip replacement, asymptomatic varicose veins, status post laparoscopic sleeve gastrectomy, morbid obesity, hypertension, vitamin D deficiency, stutter, fatty liver, GERD, arthritis of lumbar spine, spinal stenosis, degenerative disc disease, bulging lumbar disc, hyperuricemia, hydrocele, varicocele, arthritis of right hip, chronic pain of right hip, thrombocytopenia, hyperlipidemia, a-fib and chronic low back pain. Examination of his chest revealed normal breath sounds (Respondent's Exhibit 3, pp 29-31). Petitioner was seen on May 17, 2022, in follow up of his chronic conditions. Physical examination of the chest revealed normal breath sounds (Respondent's Exhibit 3, pp 10-13).

Medical records of Prairie Cardiovascular Consultants were received into evidence. Petitioner was seen on April 20, 2015, in the hospital. He was noted to be suffering tachycardia earlier in the day. His EKG was abnormal and appeared to either be a-fib or a flutter. He was asymptomatic from the tachycardia. He denied shortness of breath. He was noted to be a never smoker and a coal miner. His review of systems respiratory was negative for cough or shortness of breath with exertion. Physical examination of the chest revealed the lungs clear to auscultation. In a cardiology consultation, Petitioner denied chest pain or shortness of breath. Assessment was atrial fibrillation with RVR, hypertension and morbid obesity (Respondent's Exhibit 4, pp 100-104). The radiology progress note from April 21, 2015, revealed that Petitioner denied chest pain or shortness of breath, and lungs were clear to auscultation with equal breath sounds (Respondent's Exhibit 4, pp 86-90).

The Cardiology progress note of April 22, 2015, revealed that Petitioner felt well with no complaint. He was in normal sinus rhythm at that time. On this date Petitioner was noted to weigh 392 pounds with a BMI of 55.3. Physical examination of the chest revealed the lungs clear to auscultation (Respondent's Exhibit 4, pp 79-83). In the discharge summary dated April 22, 2015, Petitioner was advised to avoid going back to the coal mine until he followed up with Dr. Maddipoti on May 6, 2015. It was indicated that during the hospital stay, a chest x-ray was performed and was negative (Respondent's Exhibit 4, pp 76-78).

Petitioner was seen in the office on May 6, 2015. Petitioner had remained in sinus rhythm after conversion following recent hospitalization. Review of systems respiratory was positive for snoring. Examination of the chest revealed lungs clear to auscultation (Respondent's Exhibit 4, pp 67-69). Petitioner underwent a stress test on May 13, 2015. BRUCE protocol was performed and Petitioner exercised for five minutes thirty seconds, achieving a work load of 7.20 METS. He achieved 87% of his maximal age predicted heart rate. Petitioner's functional capacity was noted to be moderately decreased (Respondent's Exhibit 4, p 47). Petitioner was released to return to work as of May 26, 2015 (Respondent's Exhibit 4, p 42). Petitioner was seen on December 7, 2015, in follow up to his paroxysmal atrial fibrillation. Petitioner had not had any recurrent atrial arrhythmias. He was not having any problems with dyspnea. Chest examination revealed the lungs clear to auscultation (Respondent's Exhibit 4, pp 34-36).

Petitioner was seen on July 21, 2016, in follow up for his atrial fibrillation. He was noted to be a former smoker and a current user of smokeless tobacco. Review of systems respiratory was negative for cough or wheeze but positive for snoring. Examination of the chest revealed normal breath sounds with no respiratory distress (Respondent's Exhibit4, pp 6-8). Petitioner was seen on March 30, 2017. Petitioner was noted to be a coal miner and a never smoker although he was a current user of smokeless tobacco. Review of systems respiratory was negative for cough or wheezing. Examination of the chest revealed normal breath sounds with no respiratory distress (Respondent's Exhibit 4, pp 9-12). Petitioner was seen on November 6, 2017. Petitioner reported that he had lost 40 pounds with dietary modification. He was not having any rapid heart rate or breathing difficulty (Respondent's Exhibit 4, pp 13-16). Petitioner was seen on July 19, 2018, in follow up for his paroxysmal atrial fibrillation. He had not had recurrence of his atrial fibrillation. Review of systems respiratory was negative for cough or significant shortness of breath. Examination of the chest revealed normal breath sounds with no respiratory distress (Respondent's Exhibit 4, pp 17-20). Petitioner was seen on October 18, 2018. This was a preop evaluation prior to bariatric surgery. Petitioner was not having any palpitations, chest pain or dyspnea. Petitioner was stable from a cardiac standpoint. Review of systems respiratory was negative for cough or new or significant shortness of breath. Physical examination of the chest revealed normal breath sounds with no respiratory distress (Respondent's Exhibit 4, pp 20-23). Petitioner was seen on May 30, 2019. He is building his house and was active doing that. He walked with the help of a cane but was limited because of hip pain. He denied any shortness of breath. Review of systems respiratory was negative for cough, new or significant shortness of breath. Examination of the chest revealed normal breath sounds (Respondent's Exhibit 4, pp 26-28).

Medical records of Brain and Spine Institute were received into evidence. Petitioner was seen on July 11, 2018, for a neurological evaluation. Petitioner related several year history of low back pain that had waxed and waned. Petitioner related that beginning June 4, 2018, he had an exacerbation of

back pain that radiated into his right hip and anterior thigh and into his medial calf and into the dorsum of the right foot. He was using a walker for long distances as he was having a giving out sensation of the right leg as well. Petitioner had been told he needed a hip replacement, but due to his morbid obesity orthopedic surgeons had instructed him he would need to lose weight before surgery could be performed. Petitioner inquired about returning to work. Assessment included osteoarthritis of the lumbar spine, degenerative disc disease of the lumbar spine, bulging lumbar disc, acute back pain, sciatica and spinal stenosis of the lumbar region (Respondent's Exhibit 5, pp 22-27). Petitioner was seen on August 9, 2018. Petitioner related that prior to the onset of his symptoms on June 4, 2018, he was able to stand and ambulate. He indicated that his ability to stand and ambulate for long periods of time was limited due to the pain produced in the groin and anteromedial thigh. Physical examination of the chest revealed normal effort and respiration. The doctor advised Petitioner that he did not see anything that could be done surgically to Petitioner's back that would relieve the intense groin and medial thigh pain that he had. The doctor concluded that at this point in time he did not see how Petitioner could possibly go back to work as a miner with his current spine and hip problems (Respondent's Exhibit 5, pp 3-7).

Medical records of Dr. Saad Ajmal were admitted into evidence. Petitioner was seen on September 25, 2018. Petitioner was noted to be 71.5 inches in height with a weight of 386 pounds giving him a BMI of 53.3. It was noted that Petitioner had decided to pursue bariatric surgery and was considering sleeve gastrectomy. He related severe right hip pain and difficulty walking. He denied any difficulty breathing. He was noted to be a never smoker. Review of systems respiratory was negative. Physical examination of the chest revealed normal breath sounds (Respondent's Exhibit 6, pp 470-476). Petitioner was seen on October 23, 2018, for pre-op evaluation. Review of systems respiratory was negative. Examination of the chest revealed normal breath sounds (Respondent's Exhibit 6, pp 443-449). Petitioner underwent a chest x-ray on October 23, 2018, which revealed no acute cardiopulmonary process (Respondent's Exhibit 6, p 441). Petitioner was seen for another pre-op exam on January 28, 2019. His review of systems respiratory was negative. Physical examination of the chest revealed normal breath sounds (Respondent's Exhibit 6, pp 384-390). Petitioner's review of systems respiratory was negative on March 19, 2019, April 16, 2019 and May 24, 2019. His physical examination of the chest revealed normal breath sounds on all of these dates (Respondent's Exhibit 6, pp 378-379, 368-369, 358-359). When seen on June 3, 2019, Petitioner's review of systems respiratory was negative for cough or wheeze. Petitioner had very long active problem list that did not involve the pulmonary system. Physical examination of the chest revealed normal effort and breath sounds (Respondent's Exhibit 6, pp 336-339, 347). Petitioner was seen on June 28, 2019. It was noted that Petitioner was building a house and did not have time to exercise, but he was outside working on the house daily. Review of systems respiratory was negative for cough and shortness of breath. Physical examination of the chest revealed normal breath sounds (Respondent's Exhibit 6, pp 329-333). Petitioner was seen on October 31, 2019. He related right hip pain and difficulty walking. He denied chest pain or difficulty breathing. Review of systems respiratory was negative. Physical examination of the chest revealed normal breath sounds (Respondent's Exhibit 6, pp 289-294). Petitioner was seen on December 27, 2019. He continued to have pain in his right leg that caused him problems with exercise. Past medical history charted failed to reveal respiratory system problems. Petitioner was shown to be a never smoker but a chewer of tobacco. Review of systems respiratory was negative for cough or shortness of breath. Examination of the chest revealed normal effort and breath sounds. His active problem list failed to reveal any problem with the pulmonary system (Respondent's Exhibit 6, pp 267-274).

Petitioner was seen on February 21, 2020. He complained of overdoing it while working at home and having increased hip pain. Review of systems respiratory was negative for cough, chest tightness or shortness of breath. Examination of the chest revealed normal effort and breath sounds. His active problem list remained void of pulmonary system problems (Respondent's Exhibit 6, pp 247-254). Petitioner was seen on April 27, 2020. Petitioner denied difficulty breathing. Review of systems respiratory was negative for cough or shortness of breath. Examination of the chest revealed normal effort and breath sounds (Respondent's Exhibit 6, pp 228-234). Petitioner was seen on May 29, 2020. He was using a cane for ambulation. His past medical history was devoid of mention of respiratory disease. Review of systems respiratory was negative for cough or shortness of breath. Examination of the chest revealed normal effort and breath sounds (Respondent's Exhibit 6, pp 214-220). Petitioner was seen on June 26, 2020. It was noted that he engaged in outdoor work 30 minutes a day, five times a week. Review of systems respiratory was negative for cough or shortness of breath. Physical examination of the chest revealed normal effort and breath sounds (Respondent's Exhibit 6, pp 204-210).

Petitioner was seen on January 22, 2021. Review of systems respiratory was negative for cough or shortness of breath. Physical examination of the chest revealed normal effort and breath sounds (Respondent's Exhibit 6, pp 100-108). Petitioner underwent laproscopic sleeve gastrectomy on January 26, 2021 (Respondent's Exhibit 6, pp 93-95). Petitioner was seen post operatively on February 1, 2021. Review of systems respiratory was negative for cough or shortness of breath. Physical examination of the chest revealed normal pulmonary effort and breath sounds (Respondent's Exhibit 6, pp 83-88). Petitioner was seen on May 5, 2021. It was charted that he was keeping busy around his 15 acre property with exercise. He was walking more. Review of systems respiratory was negative for cough or shortness of breath. The examination of the chest revealed normal pulmonary effort (Respondent's Exhibit 6, pp 62-67). Petitioner was seen on December 15, 2021. It was noted that his mobility was picking back up prior to what it was before his hip surgery in September 2021. He was walking his driveway several times a day. Review of systems respiratory was negative for shortness of breath. Physical examination of the chest revealed normal pulmonary effort (Respondent's Exhibit 6, pp 33-37). Petitioner was seen on March 14, 2022. It was charted that he was swimming 45 minutes two days a week. Review of systems respiratory was negative for cough or shortness of breath. Physical examination of the chest revealed normal pulmonary effort (Respondent's Exhibit 6, pp 28-32). Petitioner was seen on September 19, 2022. It was charted that he mowed his yard for exercise. Past medical history contained nothing regarding the respiratory system. Review of systems respiratory was negative for shortness of breath (Respondent's Exhibit 6, pp 3-9).

Medical records of Orthopedic Center of Southern Illinois were received into evidence. Petitioner was seen on July 19, 2021, for examination of right hip and consideration of right hip replacement surgery. Petitioner reported that he had suffered from right hip pain for four to five years. Under medical history/review of systems, Petitioner denied COPD, asthma, emphysema or tuberculosis. He denied the use of tobacco products. Assessment was right hip primary severe osteoarthritis. The plan was to go forward with hip replacement (Respondent's Exhibit 7, pp 40-43). Petitioner underwent right hip replacement surgery on September 29, 2021 (Respondent's Exhibit 7, pp 25-26). The physical therapy note from NovaCare dated October 19, 2021, provided that Petitioner was to attend therapy two visits per week with an expected duration of six weeks (Respondent's Exhibit

7, pp 18-19). Petitioner was seen on November 10, 2021. It was noted overall he was doing well enough. The physical therapist was to get him off the walker on to a cane. The doctor noted he had been limping for over six years (Respondent's Exhibit 7, p 14). Petitioner was seen on December 20, 2021, at which time he was still having issues with his limp. It was noted that he had suffered significant tearing of his abductor muscle. He was to follow up in three months to see if he needed further physical therapy because of the abductor muscle tear (Respondent's Exhibit 7, p 4).

Petitioner's Disability Determination Transmittal Report from Social Security Disability was received into evidence. Petitioner was determined to be disabled as of June 4, 2018. His primary diagnosis was disorders of the back (discogenic and degenerative). The secondary diagnosis was osteoarthrosis and allied disorders (Respondent's Exhibit 8).

Petitioner underwent pulmonary function testing on April 14, 2009. On that date Petitioner's weight was recorded at 377 pounds. The physician noted that the testing demonstrated mild restrictive pattern, possibly due to obesity (Respondent's Exhibit 9).

Conclusions of Law

In regard to disputed issues (C) and (F) the Arbitrator makes the following conclusion of law:

The Arbitrator concludes Petitioner failed to prove that he sustained an occupational disease arising out of and in the course of his employment and that his current condition of ill-being is causally related to an occupational exposure.

In support of this conclusion the Arbitrator notes the following:

All of the retained physicians interpreted the chest x-ray of Petitioner dated January 16, 2019. Dr. Smith and Dr. Rosenberg described the protocol for proper reading of a chest x-ray for pneumoconiosis. Dr. Smith testified that profusion is the concentration or density of the findings in the lungs. Dr. Rosenberg testified that the profusion tells the reader the extent of the parenchymal change and is the measure by which determination is made as to whether or not the x-ray is positive or negative for pneumoconiosis. Dr. Istanbouly did not follow this protocol and did not know the profusion of the film that he reviewed.

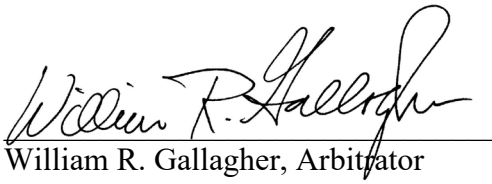
Dr. Meyer testified to the training and examination required to become a B-reader. Dr. Istanbouly is not an A or B-reader of films. Although one does not have to be a B-reader to interpret films for the presence of coal workers' pneumoconiosis, such certification lends credibility to a physician's interpretation. Dr. Istanbouly testified that when he interprets a film for black lung, he determines whether it is positive or negative and if it is positive, he classifies it as mild, moderate or severe pneumoconiosis. In this case he classified what he saw on Petitioner's chest x-ray as mild or early pneumoconiosis. Dr. Smith testified that the adoption of profusion ratings was done to avoid imprecise descriptive terms of what was seen on a film such as early, moderate or severe pneumoconiosis. Dr. Smith testified that any A or B-reader knows what is meant by 1/0 profusion. He testified that what early pneumoconiosis means to one person may or may not be what early pneumoconiosis means to another.

Dr. Smith interpreted the chest x-ray of January 16, 2019, as positive for pneumoconiosis, profusion 1/0 with P/P opacities in the bilateral mid and lower lung zones and the left upper lung zone. Dr. Meyer and Dr. Rosenberg interpreted the same chest x-ray as negative for pneumoconiosis. Dr. Smith testified that he agreed with the B-reading syllabus that the small round opacities of pneumoconiosis usually involve the upper lung zones first and as the dust exposure continues all the lung zones may be involved. Dr. Meyer testified to various studies which demonstrated that small round opacities with an upper zone predominance were commonly seen with coal workers' pneumoconiosis. Dr. Meyer also testified that coal workers' pneumoconiosis most commonly begins in the right upper lobe greater than the left upper lobe. Dr. Smith's interpretation is not consistent with the general presentation of pneumoconiosis. Dr. Smith testified that the panel which assembled the B-reading syllabus are the peers he aspires to be and that the leaders in the field have been chosen to put that syllabus together. He acknowledged that Dr. Meyer is one of the authors of that syllabus.

Dr. Istanbouly and Dr. Rosenberg testified that Petitioner's pulmonary function testing was consistent with a mild restriction. Dr. Rosenberg testified that this restriction was due to Petitioner's extreme morbid obesity. Dr. Rosenberg cited numerous studies which outlined the concept of obesity causing a reduction of ventilatory measurement. Dr. Rosenberg also testified that a profusion of 1/0 on Petitioner's chest film, if present, would not result in a restriction. He testified that one would need a higher profusion in regard to the chest imaging for a restriction to manifest itself. He testified that minimal changes of 1/0 are not significant enough to cause the lungs to be scarred enough or stiff and smaller in size to result in a restriction.

Based on the preceding, the Arbitrator finds the opinions of Dr. Meyer and Dr. Rosenberg to be more credible than those of Dr. Istanbouly and Dr. Smith.

In regard to disputed issues (L) and (O) the Arbitrator makes no conclusions of law as these issues are rendered moot because of the Arbitrator's conclusion of law in disputed issues (C) and (F).



William R. Gallagher, Arbitrator

February 10, 2023

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	20WC017831
Case Name	Darrell Muskopf v. O'Reilly Auto Parts
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b) Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	24IWCC0390
Number of Pages of Decision	15
Decision Issued By	Marc Parker, Commissioner

Petitioner Attorney	Eric Kirkpatrick
Respondent Attorney	Emilie Miller

DATE FILED: 8/13/2024

/s/Marc Parker, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF MADISON)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Darrell Muskopf,

Petitioner,

vs. NO: 20 WC 17831

O'Reilly Auto Parts,

Respondent.

19(b) DECISION AND OPINION ON REVIEW

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

For the reasons that follow, the Commission modifies the Arbitrator's findings on causation, medical expenses, temporary total disability, and prospective medical treatment, and finds Petitioner has proven his current lumbar condition is related to the work accident, thereby awarding all causally related medical expenses, temporary total disability benefits from July 13, 2020 through February 8, 2023, and the CT discogram recommended by Dr. Gornet.

1. Causation

An employee must establish the existence of a causal relationship between his or her current condition of ill-being and employment. *Navistar International Transportation Corp.*, 315 Ill. App. 3d at 1197, 1202 (1st Dist. 2000). Whether a causal relationship exists between the claimant's employment and his condition of ill-being is a question of fact for the Commission. *Mansfield v. Illinois Workers' Compensation Comm'n*, 2013 IL App (2d) 120909WC, 28, 999 N.E.2d 832, 376 Ill. Dec. 657. In resolving such questions of fact, it is the function of the Commission to assess the credibility of the witnesses, resolve conflicts in the

evidence, assign weight to be accorded to the evidence, and draw reasonable inferences from the evidence. *Hosteny v. Illinois Workers' Compensation Comm'n*, 397 Ill. App. 3d 665, 674, 928 N.E.2d 474, 340 Ill. Dec. 475 (2009).

Petitioner sustained an undisputed work injury on June 13, 2020, when he lifted and moved a battery from a shelf while assisting a customer. Petitioner had immediate pain in his low back but attributed it to his lengthy history of kidney stones. Petitioner presented to the emergency room on June 14, 2020 with left sided low back pain radiating into his left buttocks and was diagnosed with sciatica. He continued to treat and was prescribed physical therapy and pain management, where he underwent an injection at L5-S1. The injection did not provide significant relief. Petitioner was referred to Dr. Matthew Gornet on September 17, 2020 with low back pain central to the left buttock, left hip and down into the left foot. Dr. Gornet took a history of injury from Petitioner and recorded his previous medical treatment. Dr. Gornet's physical exam showed a mild decrease in ankle dorsiflexion at 4/5, an EHL function and plantar flexion on the left at 4/5, decreased sensation to light touch in the L5 dermatome, and a positive straight leg test. Dr. Gornet reviewed the MRI from July 30, 2020, and noted potential disc injury and annular tear at L4/5 to the left and disc injury/annular tear at L5-S1 slightly more to the right. Dr. Gornet recommended injections to treat those levels and opined Petitioner's current symptoms and need for treatment were causally related to the work accident. (PX6 at 121). Petitioner continued to report low back pain radiating into his left leg to Dr. Gornet and other providers. Dr. Gornet continued to believe Petitioner required treatment and recommended a CT discogram at L4/5 and L5/S1 however, he would not perform the discogram until Petitioner lost weight.

On March 16, 2021, Respondent forwarded Petitioners' medical records to Dr. Jesse Butler for a record review and causation opinion. Dr. Butler did not examine Petitioner. He reviewed medical records of Petitioner's treatment to date except for the lumbar MRI from July 30, 2020. Dr. Butler opined Petitioner sustained a lumbar strain which would have resolved within six months following the work accident. Dr. Butler opined Petitioner's treatment for six months was reasonable but additional treatment after that date was not and there was no basis for work restrictions. Dr. Butler noted that Petitioner's morbid obesity may be causing his ongoing lumbar pain and was suspicious of his delay in reporting the work accident as it opened the possibility of Petitioner being injured outside of work.

On August 16, 2022, Dr. Butler examined Petitioner and provided an updated opinion. Petitioner reported pain in his low back with radiating pain into his legs. Dr. Butler reported a normal physical and neurological exam, along with a normal MRI. Dr. Butler did not believe the injections ordered by Dr. Gornet were reasonable and necessary. He did not believe the CT discogram was reasonable or necessary because Petitioner had no nerve compression or objective basis for his radiating symptoms.

The Commission disagrees with the Arbitrator's reliance on Dr. Butler's opinions over those of Dr. Gornet. Dr. Butler's original opinion on causation, treatment, and Petitioner's MMI date was solely based on a review of Petitioner's medical records. He did not examine Petitioner. He did not review MRI images. He failed to consider the consistent reports of pain and abnormal physical exam findings from various providers including Dr. Gornet, Dr. Naseer, BJC Medical group, and physical therapy. He failed to analyze Petitioner's mechanism of injury with his immediate onset of symptoms that were not present before the accident. He indicated Petitioner's ongoing lumbar

symptoms were likely related to his morbid obesity, but failed to consider the fact Petitioner was working full duty without those symptoms prior to the work accident. The Commission is further unpersuaded by Dr. Butler's opinions because they are seemingly affected by Petitioner's alleged failure to immediately report his work injury. However, the evidence shows Petitioner completed an Illinois Form 45 on June 13, 2020, the day of the accident, stating he injured his sciatic nerve while stacking batteries. The Commission acknowledges Dr. Butler examined Petitioner on August 16, 2022 noting his examination was more than two years after the work accident. Petitioner continued to have radiating low back pain during the examination which Dr. Butler failed to consider or offer treatment suggestions, regardless of causality.

It is within the Commissions province to weigh and resolve conflicts within the medical evidence and we are more persuaded by the opinions of Dr. Gornet. Dr. Gornet evaluated Petitioner three months after his work injury; he recorded a history of injury and noted Petitioner's medical treatment to date; he reviewed Petitioner's July 30, 2020 MRI and noted potential disc injuries; he conducted a physical exam which was abnormal and opined Petitioner's symptoms were causally related to the work accident. Since Petitioner continued to be symptomatic with abnormal physical exam findings, Dr. Gornet recommended a CT discogram.

Petitioner had a mechanism of injury that may cause a low back injury, he was working prior to the work accident, he had immediate symptoms, he reported the injury, he went to the emergency room the day after the injury, he consistently reported he was injured while lifting a battery, he had findings on physical exam and MRI that support a potential disc injury, and his treating provider opined his current condition was causally related to the work injury as described. The Commission finds the inconsistencies in Petitioner's testimony, as noted by the Arbitrator, not significant enough to materially affect causation. Specifically, although Petitioner testified at trial he had not worked since July 2020, he clarified on cross examination he did modified work at his farm and administrative work for his girlfriend's bar. He also reported his modified farm work to medical providers and Section 12 examiner, Dr. Butler.

2. Medical Expenses

Based on the causation finding above, the Commission finds Petitioner is not at maximum medical improvement and awards all causally related medical expenses as outlined in Petitioner's Exhibit 14 pursuant to Sections 8 and 8.2 of the Act. This includes the flexible cystoscopy performed on April 7, 2021, as the medical record indicated Petitioner's urinary symptoms were related to the work accident. (PX11 at 192). This does not include unrelated medical expenses included in Petitioner' Exhibit 14 or Petitioner's bariatric procedure, as there was no opinion on the reasonableness, necessity, or causality of the procedure to the work accident. Moreover, Petitioner did not submit medical bills or otherwise request payment of his bariatric procedure or attendant care.

3. Temporary Total Disability

The Commission further awards temporary total disability benefits from July 13, 2020 through February 8, 2023, the date of trial. The employer's obligation to pay temporary total disability benefits continues until the employee's medical condition has stabilized. *Interstate Scaffolding, Inc. v. Ill. Workers' Comp. Comm'n*, 236 Ill. 2d 132, 149, 923 N.E. 2d 266, 276 (2010). The fact a claimant has returned to work in some capacity *may* be relevant to whether and to what

extent the claimant's condition has stabilized. To this extent, it may be appropriate to consider the type of work being performed, hours worked, and any income earned, all to ascertain whether the claimant's condition has stabilized. *See Freeman United Coal Mining Co v. Industrial Comm'n*, 318 Ill. App. 3d 170, 178, 741 N.E. 2d 1144. (2000). Many Courts have considered the claimants' earnings and "work" as one factor—not necessarily the dispositive factor—in determining whether they were entitled to TTD benefits. See *e.g., J.M. Jones Co. v. Industrial Comm'n*, 71 Ill. 2d. 368, 375 N.E.2d 1306, 17 Ill. Dec. 22 (1978) (working approximately 1 1/2 hours per day as a hot dog vendor did not preclude a TTD award); *Zenith Co. v. Industrial Comm'n*, 91 Ill. 2d 278, 437 N.E.2d 628, 62 Ill. Dec. 940 (1982) (driving a bus for a few hours per day did not preclude a TTD award); *Mechanical Devices v. Industrial Comm'n*, 344 Ill. App.3d 752, 761-62, 800 N.E.2d 819, 828, 279 Ill. Dec. 531 (2003) (driving a shuttle bus 10 to 15 hours per week did not preclude a TTD award); *Dolce v. International Comm'n*, 286 Ill. App. 3d 117, 675 N.E.2d 175, 221 Ill. Dec. 268 (1996) (consistent work selling real estate precluded claimant from a TTD award). In *Sunny Hill of Will County v. Ill Workers' Comp Comm'n*, the Court held "the Commission's focus was properly directed to whether the claimant's condition had stabilized…not whether she was working in a stable labor market." 14 N.E. 3d 16, 23. (3rd Dist. 2014).

The Commission finds Petitioner's condition has not stabilized. At the time of trial, Petitioner continued to be symptomatic. None of his providers released him to full duty work. On July 13, 2020, Petitioner was placed off work until he could return full capacity by Brandi Holthaus, NP. Dr. Gornet placed him of work on September 17, 2020. BJC Medical Group placed him off work until further notice on January 14, 2021. Dr. Gornet continued off work restrictions on June 10, 2021. During his September 30, 2021, visit, Dr. Gornet recommended additional treatment if Petitioner hit his target weight. He did not release Petitioner to work or give him light duty restrictions. Petitioner made diligent efforts to lose weight, including undergoing a gastric sleeve procedure. Petitioner continues to have functional deficits and difficulties with activities of daily living.

In the instant matter, Petitioner's continued ownership of his tree farm and his assistance in performing administrative tasks at his girlfriend's bar does not amount to evidence of a stabilized condition so as to preclude Petitioner from an award of TTD benefits. In so finding, the Commission follows the holding from *Sunny Hill v. Ill. Workers' Comp Comm'n* that a return to work in some capacity is not an automatic denial of TTD, but rather evidence of whether the claimant's condition has stabilized, which is the proper focus of the TTD analysis under *Interstate Scaffolding*. 14 N.E. 3d 16 at 23. Petitioner operated a tree farm for many years before the work accident and credibly testified the nature of his operations have changed since the accident, namely he no longer harvests and sells large trees, only smaller trees he purchases from a wholesaler, re-boxes, and ships to customers. Petitioner testified he must lay on his stomach to do farm work such as pulling weeds. He can no longer hammer stakes, move cattle panels for beans, or pick pumpkins, and his children and girlfriend must assist him with maintaining his property. Petitioner's modified farm work is documented in the medical records. Additionally, there is no evidence Petitioner received significant income from his tree farm, as he clearly relied on his employment with Respondent at the time of his injury. We further find Petitioner helping his girlfriend with her business Facebook page is not probative in determining whether Petitioner's condition has stabilized, as that job would have no physical requirements.

4. Prospective Medical

Based on the above, the Commission awards the prescribed CT discogram at L4/5 and L5/S1 under the recommendations of Dr. Gornet. Specifically, Dr. Gornet continued to believe Petitioner may have treatable pathology based on his symptoms and mechanism of injury. Petitioner had consistent complaints of radiating low back pain, mainly into the left extremity directly after the work accident and through the date of trial. Petitioner underwent physical therapy and injections without relief. Accordingly, the Commission finds Respondent shall authorize and pay for the CT discogram at L4/5 and L5/S1 as prescribed by and under the conditions specified by Dr. Gornet.

All else is affirmed and adopted.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed March 29, 2023, is modified as stated herein.

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

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent is liable for all causally related medical expenses outlined in Petitioner's Exhibit 14, pursuant to the fee schedule as provided in §8(a) and 8.2 of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Petitioner shall receive temporary total disability benefits from July 13, 2020, through February 8, 2023, the date of trial, or 134 2/7 week at $410.06 per week as provided in §8(b) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall authorize and pay for the CT discogram at L4/5 and L5/S1 as prescribed by Dr. Gornet.

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

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

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

August 13, 2024

MP: ns
o 7/11/24
68

/s/ *Marc Parker*
Marc Parker

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	20WC017831
Case Name	Darrell Muskopf v. O'Reilly Auto Parts
Consolidated Cases	
Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	8
Decision Issued By	Edward Lee, Arbitrator

Petitioner Attorney	Eric Kirkpatrick
Respondent Attorney	Emilie Miller

DATE FILED: 3/29/2023

THE INTEREST RATE FOR THE WEEK OF MARCH 28, 2023 4.65%

/s/Edward Lee, Arbitrator

Signature

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

Darrell Muskopf
Employee/Petitioner

v.

O'Reilly's Auto Parts
Employer/Respondent

Case # **20** WC **17831**

Consolidated cases: _____

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Edward Lee**, Arbitrator of the Commission, in the city of **Collinsville**, on **February 8, 2023**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On the date of accident, **6/13/2020**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $**31.985.20**; the average weekly wage was $**615.10**.

On the date of accident, Petitioner was **39** years of age, ***single*** with **2** dependent children.

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

Respondent shall be given a credit of $**3,533.28** for TTD, $**0** for TPD, $**0** for maintenance, and $**0** for other benefits, for a total credit of $**0**.

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

ORDER

Respondent shall pay reasonable and necessary medical services incurred through January 12, 2021, with the exception of the injection administered by Dr. Butler on October 6, 2020 pursuant to the fee scheduled as provided in Section 8(a) and 8.2 of the Act.

Respondent shall be given a credit for any medical benefits paid.

Respondent shall pay TTD to Petitioner from 9/17/20 through 12/13/20 or 13 weeks at rate of $410.06.

Respondent shall be given a credit for any TTD already paid.

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

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

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

Edward Lee_____ **MARCH 29, 2023**
Signature of Arbitrator

Findings of Fact

Petitioner testified that in June of 2020 he worked for O'Reilly Auto Parts as an assistant store manager. Petitioner testified that on June 13, 2023, he lifted a battery for a customer off a rack and twisted and felt pain in his low back. Petitioner is seeking further treatment of his low back with Dr. Gornet, as well as an award of TTD and medical, including an award of gastric sleeve surgery. Respondent disputes that Petitioner's current condition of ill-being is casually related to his work accident.

Petitioner testified that immediately after his accident he began to experience back pain, which he thought was the result of kidney stones. Petitioner testified he initially sought out treatment at the ER. Medical records from St. Elizabeth's Hospital from June 14, 2020 confirm Petitioner's treatment and report of left-sided low back pain radiating to the left buttock. It was noted Petitioner has a small kidney stone on May 21, 2020, which passed. Petitioner was diagnosed with sciatica and prescribed methocarbamol, methylprednisolone, and tramadol. (Pet's Ex. 1)

Petitioner testified he went on to treat with nurse practitioner, Brandy Holthaus at SIHF Healthcare. Medical records from Ms. Holthaus confirm she first saw Petitioner for his back on June 16, 2020 via a telehealth visit. Petitioner continued to report back pain. Ms. Holthaus diagnosed Petitioner with lumbago with sciatica and piriformis syndrome and referred him for physical therapy. However, per her records, Petitioner refused physical therapy at the time. Petitioner was advised to continue medications prescribed at the ER and was provided piriformis exercises. (Pet's Ex. 2)

On June 29, 2020, Petitioner followed-up with Ms. Holthaus again via a telehealth visit. Petitioner continued to report low back pain and was again diagnosed with lumbago with sciatica and prescribed prednisone. (Pet's Ex. 2)

Petitioner subsequently began physical therapy on July 1, 2020, at which time he presented for an initial physical therapy evaluation at SSM Health. Petitioner reported he grabbed a battery on June 13, 2020 and had so much back pain that he dropped it. He complained of low back pain radiating down the groin and into the left leg. He rated his pain at a 6.5/10 and reported he fell out of bed multiple times due to difficulty getting in and out. (Pet's Ex. 5)

Without returning to Ms. Holthaus, Ms. Holthaus authored a work status not for Petitioner on July 13, 2020 placing him on restrictions of no lifting more than 4 lbs. or climbing ladders. (Pet's Ex. 13) Petitioner testified he thought he reached out to Ms. Holthaus' office regarding his work status at that time.

Petitioner continued in physical therapy until July 30, 2020. During his therapy visit on the 30th, Petitioner reported severe pain in his back with dribbling urine and was advised to present to the ER. (Pet's Ex. 5)

Upon presenting to the ER at SIHF Medical Center on July 30, 2020 Petitioner was sent for an MRI of his lumbar spine to investigate for possible cauda equina syndrome. (Pet's Ex. 3) The MRI was read as showing no significant abnormality and minimal chronic degenerative disc disease at L5-S1 with minimal disc bulging. No central stenosis or foraminal narrowing was noted. Petitioner also presented for an x-ray of his lumbar spine which confirmed no acute findings. Petitioner was diagnosed with back pain and discharged with new medications, including Norco, Ibuprofen, and Lidocaine patches. (Pet's Ex. 4)

Thereafter, Petitioner was provided a referral by Ms. Holthaus to Dr. Gornet, as well as a referral to pain management. Petitioner presented to Dr. Kristina Naseer at SIHF Healthcare for a pain management evaluation on August 25, 2020. It was noted Petitioner was experiencing low back pain that radiated to his left abdomen/flank, left gluteal region and down the left leg with numbness. It was noted Petitioner's pain began while at work on June 13, 2022, while removing a car battery from a shelf and moving in a turning/twisting fashion to avoid some people that were standing to the left and right of him. Petitioner reported he had returned to work light duty following his accident but had been off work since. tried physical therapy, hydrocodone, tramadol, gabapentin, methocarbamol,

with no relief. Petitioner was diagnosed with lumbar radiculopathy and recommended for an L5-S1 lumbar transforaminal epidural steroid injection. Petitioner's injection was administered on September 2, 2020. (Pet's Ex. 2)

Petitioner subsequently presented for initial evaluation with Dr. Gornet on September 17, 2020. Petitioner reported to Dr. Gornet, low back pain central to the left buttock, left hip and down the left leg to his anterior left lower leg to foot. Petitioner described his pain as constant but severe on standing, walking, or bending. Dr. Gornet reviewed Petitioner's MRI and noted left side suggestion of annular tear and disc injury at L4-5 and on at L5-S1, *suggestion* of central disc injury and annular tear, which is slightly more to right. Dr. Gornet noted Petitioner currently weighed 360 pounds, making it difficult to treat him until he lost weight. Dr. Gornet noted a twisting injury such as that described could easily cause a disc injury. Dr. Gornet recommend referral to Dr. Blake for a transforaminal epidural steroid injection at L4-5 and ESI at L5-S1. Dr. Gornet also took Petitioner off work for the first time and prescribed him meloxicam and cyclobenzaprine. (Pet's Ex. 6)

Petitioner testified he took steps beginning in September of 2020 to lose weight by trying to "eat healthier" and less food by skipping meals. Petitioner testified he did not do any exercise because of his back.

Petitioner underwent two additional injections with Dr. Blake on September 22, 2020, and October 6, 2020, to include left L4-5 and L5-S1 transforaminal epidural steroid injection, respectively. (Pet's Ex. 7)

On November 23, 2020, Petitioner returned to Ms. Holthaus and reported worsening pain following the injections. Ms. Holthaus provided a referral to Belleville Memorial Orthopedic Surgery Group for evaluation of his low back pain. (Pet's Ex. 2) Petitioner's work status was not addressed.

On December 10, 2020, Petitioner presented to Dr. Kadonsky at BJCMG Orthopedics & Sports Medicine for evaluation. Petitioner reported persistent low back pain left greater on left radiating into left groin and left anterior thigh region with no lower leg, foot, or toe pain. Petitioner also reported thoracic back pain. Petitioner reported his pain started June 13, 2020, working as a store manager at O'Reilly's after he picked up a battery and turned with twisting motion. However, per Ms. Kadonsky's report, Petitioner reported that so far, he was not claiming a worker's compensation injury, but planned to. Petitioner reported his back pain was so bad he wet himself, however, he was able to control his urine. Ms. Kadonsky reviewed Petitioner's thoracic spine and lumbar spine x-rays, and MRI of his lumbar spine and administered trigger point injections to the mid-trapezius and lower lumbar quadratus. Petitioner was provided another referral for physical therapy with dry needle therapy at Memorial East Physical Therapy. Petitioner was also recommended to follow-up with Dr. Gornet's office and his urologist. Petitioner was also offered a referral to a weight loss specialist, which he declined. Petitioner was instructed to follow up with Dr. Kadonsky after completion of his physical therapy. (Pet's Ex. 9) Petitioner's work status was not addressed.

Petitioner began physical therapy at Memorial East on December 16, 2020 and continued in therapy through January 12, 2021. As of January 12th, it was noted Petitioner had not made any reasonable progress toward his goals. (Pet's Ex. 10)

On January 14, 2021, Petitioner returned to Ms. Kadonsky for follow-up. Petitioner reported brief reduction of his low back pain symptoms with physical therapy. Additional physical therapy with aquatic therapy was ordered at Benchmark. The importance of obtaining normal BMI was again discussed with Petitioner. It was noted Petitioner's BMI of greater than forty-seven places significant stress upon spine and joints. Petitioner was also taken off work. (Pet's Ex. 13) Petitioner was also taken off work. (Pet's Ex. 13) Petitioner testified he did not complete the recommended therapy as he was fearful of bladder control issues.

On February 17, 2021, Petitioner was seen by Dr. Dooley at HSHS Medical Group Multispecialty Care-St. Elizabeth's for a urology evaluation. Petitioner reported to Dr. Dooley urinary incontinence after developing back pain after lifting a battery. Dr. Dooley noted Petitioner reported pain in the middle portion of his back and not his low back. Petitioner was prescribed Flomax and advised to follow-up in three weeks. (Pet's Ex. 11)

On March 10, 2021, Petitioner returned to Dr. Dooley. Petitioner reported he was not sure if the Flomax had improved his overall voiding. Petitioner was advised to continue Flomax and a cystoscopy was ordered to rule out an underlying anatomical problem. (Pet's Ex. 11)

On March 18, 2021, Petitioner underwent a renal ultrasound. The impression was suspected non-obstructing left renal calculus measuring 6 mm. no hydronephrosis. (Pet's Ex. 11)

On April 7, 2021, Petitioner underwent a flexible cystoscopy. The assessment as BPH with obstructive and irritative lower urinary tract symptoms. Petitioner's prostate was noted to be enlarged for his age and he was noted to have mild trabeculation of the bladder.

On June 10, 2021, Petitioner returned to Dr. Gornet for follow up after his September 17, 2020, visit. It was noted he had undergone two injections with Dr. Blake with no improvement. Dr. Gornet noted the next step would be a CT discogram at L4-5 and L5-S1, but that Petitioner would have to lose weight before he would entertain further treatment. Dr. Gornet specifically noted Petitioner's weight would need to be below 300 for further workup and 270 for potential further definitive treatment. Dr. Gornet also noted that if Petitioner did not demonstrate weight loss over time, he would refer him for an FCE. (Pet's Ex. 6)

Petitioner was next seen by Dr. Gornet on September 30, 2021. It was noted Petitioner was on oxygen after contracting COVID in August and being hospitalized. Petitioner's weight was noted to be 362 lbs. Petitioner was released by Dr. Gornet to follow up as need and was advised he could return if he hit his weight loss target for further work-up. Petitioner testified he has not returned to Dr. Gornet since September 30, 2021. (Pet's Ex. 6)

Petitioner presented for weight loss management and bariatric surgery assessment at SSM Health Weight Management Services at St. Mary's Hospital in Centralia on March 3, 2022. At the time of his initial evaluation on March 3rd, Petitioner reported his onset of weight gain began at adolescence and was associated with knee and back pain. Petitioner's recorded weight as of March 3, 2022 was 388.9 lbs. Petitioner was noted to meet criteria for bariatric surgery and was recommended to optimize pre-op weight loss with liquid protein diet and protein diet replacement therapy and exercise program. Petitioner was also referred to a dietician. (Pet's Ex. 12)

On March 7, 2022, Petitioner presented for a virtual visit with RD LDN Becherer for bariatric surgery initial nutrition evaluation. (Pet's Ex. 12)

On April 5, 2022, Petitioner returned to RD LDN Becherer for nutrition assessment, as well as to APRN CNP Perez-Meskil for preoperative work up prior to sleeve gastrectomy. Petitioner's weight as of April 5th was noted to be up 3 lbs. (Pet's Ex. 12)

On June 13, 2022, Petitioner returned to RD LDN Becherer for nutrition follow up and reported kidney stone and problems with a-fib since his last visit. Petitioner's weight was noted to be up 4 lbs. since his last visit. Petitioner was also seen that day by APRN CNP Perez-Meskil for preoperative follow up. Petitioner was encouraged to optimize preoperative weight loss with diet and exercise. (Pet's Ex. 12)

Petitioner underwent a sleeve gastrectomy on December 5, 2022. As of the time of hearing Petitioner testified his weight was at 329 lbs. Petitioner was last seen in follow-up after his surgery on January 9, 2023 by RD Abigail. (Pet's Ex. 14) There is no record of Petitioner being taken off work by his surgeon following his surgery.

Petitioner testified that he wishes to proceed with the CT discogram recommended by Dr. Gornet. Petitioner testified at the time of hearing that he continues to experience pain in his low back with radiating pain into his left buttock and leg. Petitioner testified that his pain is made worse by a couple steps, going from the garage, inside the house. Petitioner testified that his pain has impacted his ability to hunt and that while he still hunts, he does so with modifications. He also testified that it has impacted his ability to work his farm.

Petitioner testified under direct examination that he has not worked anywhere since July of 2020. However, under cross examination, Petitioner testified in December of 2022 he began working at his girlfriend's bar in Fayetteville helping with management of the bar's Facebook page and ordering supplies. Petitioner testified he is being paid for his work but has not cashed any of the checks.

Petitioner also testified on direct examination that he was limited in his ability to work his farm. However, medical records from SSM Health Weight Management Services noted that as of April 5, 2022, Petitioner reported he was staying active with farm work and due to his work would often skip meals. Petitioner testified the farm is run as a business and sells trees and has an orchard and pumpkin patch.

Respondent presented Petitioner and his medical records for examination by spine surgeon, Dr. Jesse Butler. Dr. Butler initially reviewed Petitioner's medical records in 2021, including the films of his MRI. He later also examined Petitioner on August 16, 2022. Dr. Butler diagnosed Petitioner with a lumbar strain and confirmed his MRI did not show any structural pathology affecting the lumbar spine.

Dr. Butler opined that Petitioner reached MMI regarding his work-related lumbar strain at six months status post-injury or by December of 2020 after physical therapy and that the injections administered by Dr. Blake in September and October were not reasonable or necessary to treat Petitioner's work-related lumbar strain as he had no evidence of nerve compression. He also opined that a CT discogram as recommended by Dr. Butler was not reasonable and necessary as Petitioner is not a surgical candidate. Dr. Butler also opined that it would not be reasonable for a patient to undergo gastric bypass surgery to pursue a CT discogram.

Conclusions of Law

Regarding disputed issue **(F)**, the Arbitrator finds that Petitioner's current condition of ill-being is not causally related to his work accident.

To obtain compensation under the Act, an employee bears the burden of proving that his condition is causally related to his employment. *Excelsior Leather Washer Co. v. Industrial Com.*, 54 Ill.2d 318, 326, 297 N.E.2d 158) There is no dispute that Petitioner sustained an injury to his low back because of his work accident on June 13, 2020 when he lifted a battery while at work. Dr. Butler examined Petitioner at Respondent's request and reviewed his MRI and medical records and opined that he sustained a lumbar strain because of his work accident which resolved by December of 2020 with physical therapy.

Dr. Gornet did not confirm a diagnosis for Petitioner and recommended a CT discogram to further evaluate his discs. However, the CT discogram could not be completed due to Petitioner's weight, and he was released by Dr. Gornet on September 30, 2021 with no outstanding recommendation for treatment.

As Petitioner's MRI as read by the radiologist shows no structural pathology affecting Petitioner's lumbar spine, and Petitioner has not reduced his weight to the level noted by Dr. Gornet to proceed with a CT discogram to show an ongoing condition related to his lumbar spine, the Arbitrator finds the opines of Dr. Butler more credible than Dr. Gornet and finds that Petitioner reached maximum medical improvement related to his work injury as of December 13, 2020.

The Arbitrator also notes issues related to Petitioner's credibility. Regarding the issue of his current pain and work status, Petitioner testified on direct examination that he had not worked anywhere since July of 2020 due to his ongoing sever pain, however, his medical records document his ongoing work on his farm. Furthermore, Petitioner admitted on cross examination that he took a job with his girlfriend's bar as of December of 2022.

Regarding disputed issue **(J)**, having found Petitioner's current condition of ill-being is not causally related to his work accident and that he reached maximum medical improvement related to his work injury as of December 13, 2020, Respondent is ordered to pay related medical expenses incurred through December 13, 2020 only, with the exception of the injections administered by Dr. Dr. Blake on September 22, 2022 and October 6, 2020, which Dr.

Butler opined were not reasonable or necessary to treat Petitioner's work-related lumbar strain as he had no evidence of nerve compression. The Arbitrator finds that Dr. Butler's opinion credible as Petitioner reported worsening of his condition with the injections. Respondent is entitled to a credit for any medical bills already paid.

As it relates to Petitioner's bariatric surgery, Dr. Butler opined it would not be reasonable for a patient to undergo gastric bypass surgery to pursue a CT discogram. As no other medical opinions were admitted into evidence supporting Petitioner's need for bariatric surgery related to his work accident and a finding has been made that Petitioner reached maximum medical improvement related to his work injury as of December 13, 2020, the Arbitrator denies Petitioner's bariatric surgery.

Regarding disputed issue **(K)**, having found Petitioner's current condition of ill-being is not causally related to his work accident and that he reached maximum medical improvement related to his work accident as of January 12, 2021, as well as the fact that Petitioner has not lost weight as recommended by Dr. Gornet, prospective medical treatment is denied.

Regarding disputed issue **(L)**, Petitioner alleges entitlement to TTD from July 13, 2020 through the date of arbitration of February 8, 2023. Per the medical records admitted into evidence, Petitioner was first placed on light duty restrictions by Ms. Holthaus on July 13, 2020. While Petitioner testified, he did not work after that time, Petitioner reported to Ms. Holthaus during his follow up on August 25, 2020 that he had been working light duty.

After July 13, 2020, Petitioner's work status was not addressed again until September 17, 2020, when he was first taken off work by Dr. Gornet. After September 17, 2020, Petitioner returned to Ms. Holthaus on November 23, 2020 and Dr. Kadonsky on December 10, 2020, however, neither addressed Petitioner's work status. Petitioner's work status was not addressed again until January 14, 2021, when Dr. Kadonsky again took him off work. However, by this time, Dr. Butler had opined that Petitioner would be at MMI by December 13, 2020 and did not require restrictions related to his work accident. The Arbitrator finds Dr. Butler's opinions to be credible as they relate to Petitioner's work accident.

Having found that Petitioner reached maximum medical improvement related to his work injury as of December 13, 2020, the Arbitrator finds that Petitioner was temporarily totally disabled for the period of September 17, through December 13, 2020. Respondent shall receive a credit for any TTD already paid.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	19WC000538
Case Name	Lucila Campa v. Apak, Inc
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b) Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	24IWCC0391
Number of Pages of Decision	22
Decision Issued By	Stephen Mathis, Commissioner

Petitioner Attorney	Erin Sievers
Respondent Attorney	Craig Bucy

DATE FILED: 8/13/2024

/s/Stephen Mathis, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF LAKE)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Lucila Campa,

Petitioner,

vs. NO. 19WC 00538

Apak Inc.,

Respondent.

DECISION AND OPINION ON REVIEW

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

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed September 5, 2023 is hereby affirmed and adopted.

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

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

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

No bond is required for the removal of this cause to the Circuit Court. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

August 13, 2024
SJM/sj
o-7/10/2024
44

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

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	19WC000538
Case Name	Lucila Campa v. Apak, Inc.
Consolidated Cases	
Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	19
Decision Issued By	Gerald Napleton, Arbitrator

Petitioner Attorney	Erin Sievers
Respondent Attorney	Craig Bucy

DATE FILED: 9/5/2023

THE INTEREST RATE FOR THE WEEK OF AUGUST 29, 2023 5.35%

/s/Gerald Napleton, Arbitrator

Signature

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

LUCILA CAMPA
Employee/Petitioner

v.

APAK, INC.
Employer/Respondent

Case # **19** WC **00538**

Consolidated cases: _____

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Gerald Napleton**, Arbitrator of the Commission, in the city of **Rockford**, on **5/15/23**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On the date of accident, **11/17/17**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $**16,925.25**; the average weekly wage was $**325.49**.

On the date of accident, Petitioner was **38** years of age, ***single*** with **4** dependent children.

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

Respondent shall be given a credit of $**25,438.73** for TTD, $**0** for TPD, $**0** for maintenance, and $**2,603.92** for other benefits, for a total credit of $**28,042.65**.

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

ORDER

The Arbitrator finds that petitioner failed to prove causal connection between her current condition of ill-being with respect to the cervical spine and the accident of 11/17/2017. All benefits related to the cervical spine are denied. The Arbitrator makes no finding as to other body parts.

Petition for Penalties under Sections 16, 19(k), and 19(l) of the Act are denied.

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

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

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

/s/ Gerald W. Napleton
Signature of Arbitrator

SEPTEMBER 5, 2023

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATOR'S DECISION

LUCILA CAMPA	)	
	)	
Petitioner,	)	**Case No: 19 WC 00538**
	)	
vs.	)	
	)	
APAK, INC.	)	
	)	
Respondent.	)	

FINDINGS OF FACT and CONCLUSIONS OF LAW

Findings of Fact

The parties have stipulated that Petitioner sustained a work-related accident on 11/17/17. The issue giving rise to litigation is whether Petitioner's cervical complaints are causally related to her accident. Medical expenses and TTD related to her cervical issue are in dispute. There is some overlap between treatment received to her shoulder and her cervical spine. The treatment to the shoulder is not currently at issue and the Arbitrator makes no findings related thereto.

Testimony and Medical Treatment of Petitioner

Petitioner testified that on November 17, 207 she was employed by APAK (hereinafter "Respondent"). On that day she was working a machine pulled her right hand. She testified that "it felt like something broke" and complained at hearing of pain in her shoulder between her shoulder and neck. (Tr.7).

Petitioner continued to work and eventually sought medical care at Advocate Occupational Health Center. She gave a history of her accident and complained of pain in her right hand and shoulder. She was diagnosed with a strain of the arm and hand, prescribed physical therapy, and was placed on light duty (Tr. 8). Petitioner continued to have pain and eventually received a shoulder sling. Petitioner testified that she underwent a cervical MRI on August 6, 2018. *Id.*

After the MRI, petitioner testified she underwent injections at Prairie Shore Pain Center. Petitioner testified the injections did not provide relief. *Id.* She testified that physical therapy brought little relief. Opioid therapy was suggested along with Lyrica. An epidural steroid injection was performed on November 2, 2018 which provided no relief.

Petitioner testified she eventually came under the care of Dr. Talarico for the right shoulder and right hand. She underwent right shoulder surgery consisting of a subacromial decompression and a carpal tunnel surgery with him. After the shoulder surgery, petitioner testified she had ongoing pain, the same as after the accident. (Tr. 10).

Petitioner was seen by Dr. Scott Haller at Lakeshore Neurology on January 30, 2019 for an EMG/nerve conduction study. The EMG was interpreted to be positive for a mild right ulnar neuropathy across the elbow without active denervation within the proximal and/or distal ulnar

innervated muscles. It was also interpreted to be positive for a mild right median neuropathy at the wrist level without active denervation within the distal median innervated muscles. Lastly, it was positive for a mild right partial superficial radial sensory neuropathy. The EMG/NCS was negative for any electrodiagnostic evidence of a right cervical radiculopathy. (RX3, RX4, RX7).

Petitioner testified she underwent an updated cervical MRI on August 16, 2019. (Tr. 10). She testified she was seen at the request of Respondent for a Section 12 examination by Dr. William Vitello but could not recall if he recommended any cervical spine evaluation. Petitioner testified she was also examined by Section 12 examiner, Dr. Julie Wehner, on December 17 2019. (Tr. 11).

Petitioner was released from care for her shoulder and placed at MMI on November 21, 2019. She was referred to a spine surgeon. Px2.

Petitioner testified that she presented to the ER in March of 2020 with complaints for radiating pain down the right arm. *Id.* She testified she then sought medical treatment with Dr. Alzate for her cervical spine on January 10, 2020. (Tr. 12). Petitioner testified she underwent an updated cervical MRI on July 23, 2020. *Id.* Petitioner testified he took her off work and eventually prescribed surgery consisting of a C5-6 anterior cervical discectomy and fusion. Dr. Alzate related the need for surgery to her accident.

Petitioner testified she has ongoing pain. (Tr. 13). She testified that the pain makes her cry, that her hand goes numb, and she has to support her right arm using the left arm. *Id.* Petitioner testified that her right hand "swells up", which she attributes to the work accident and cervical spine. Swelling of the hand was noted in her March of 2020 ER visit. Petitioner testified that she wears a shoulder brace on the right, as it provides "a little bit" of relief. (Tr. 15). Petitioner testified that she experiences pain from the top of her head down through her right shoulder. *Id.* Intervening or other traumatic accidents were denied by Petitioner. Tr.15-16.

On cross-examination, Petitioner acknowledged completing an accident report on November 21, 2017 and confirmed her signature and acknowledged not reporting any injury to her neck or spine. Tr. 23. Petitioner amended her earlier statement and then denied that the signature was hers but then, again, acknowledged it was her signature but did not recall writing in the date. Tr.24-25. Petitioner acknowledged not receiving treatment until January 12, 2018 and that she worked full duty without restrictions, despite pain complaints. Petitioner acknowledged the lack of cervical complaints in her medical records in her January 2018 medical treatment.

Further, on cross-examination, Petitioner testified that Dr. Talarico opined the MRI was a completely normal study. (Tr. 34-35). Petitioner testified that when Dr. Talarico told her that her symptoms were non-specific in nature, she obtained a second opinion. (Tr. 35). Petitioner testified she underwent an EMG on January 30, 2019, which was negative for cervical radiculopathy. (Tr. 35-36). Petitioner testified she eventually underwent surgery for the right shoulder and right wrist with Dr. Talarico on March 1, 2019. (Tr. 36).

Petitioner testified she spoke with Dr. Alzate on the phone on August 3, 2020. She testified this was the first time she was ever prescribed any kind of cervical spine surgery. (Tr. 39). She testified that an updated EMG was again negative for any kind of cervical radiculopathy. (Tr. 40). Petitioner testified that she had not seen Dr. Alzate since October 28, 2022 and had not returned for any further medical care with any provider since that time with respect to the cervical spine. (Tr. 40-41).

On re-direct, Petitioner testified that she understands some English but is not fluent. (Tr. 42). Petitioner testified that she was asked questions about the accident with respect to the Employee Report of Injury and someone else filled it out. (Tr. 42). Petitioner testified that she

couldn't recall what questions were asked but recalled going to file a complaint and then being sent to a doctor. *Id.*

Section 12 Examination with Dr. William Vitello

Petitioner was seen for an IME by Dr. William Vitello, an orthopedic surgeon, on October 16, 2019 for the right wrist and shoulder only. (RX3). A Spanish speaking interpreter was again used for communication with petitioner. Petitioner stated that she was working as a packer on November 17, 2017. She alleged that she would handle small bottles of vitamins that came down the line and put them into a box. She stated that on November 17, 2017, her right hand was caught in the belt of the machine as packages were coming by and this pulled her right arm. (RX3).

Dr. Vitello reviewed a January 30, 2019 EMG which documented mild right ulnar neuropathy across the elbow and right median neuropathy at the wrist without evidence of cervical radiculopathy. Further, Dr. Vitello reviewed records which indicated petitioner underwent a right carpal tunnel syndrome release and right shoulder arthroscopy with repair of the labrum on March 1, 2019 with Dr. Talarico. (RX3).

Petitioner stated that her pain was in her neck and pointed directly to her paraspinal musculature. She also pointed to her back along the medial scapula. She complained that her "whole arm hurt" and further complained of numbness radiating into the arm from her neck. (RX3).

A physical examination of the right shoulder noted diffuse tenderness with any attempts at palpation around the shoulder. Petitioner was very tender to the posterior neck and paraspinal muscles as well as the medial border of the scapula. Rotation of the neck was limited in all planes due to petitioner's pain complaints. Dr. Vitello documented a positive Spurling's on the right. Petitioner had reduced external rotation of the right shoulder, which was unable to be completed due to petitioner withdrawing from pain. Rotator cuff strength testing was suboptimal due to petitioner's diminished effort while O'Brien's testing was negative. (RX3).

A physical examination of the right hand was normal. Petitioner complained of diffuse pain throughout the entire hand that Dr. Vitello noted varied with distraction. A median nerve compression test was equivocal while Tinel's sign was negative. (RX3).

Dr. Vitello noted that petitioner was extremely guarded with any attempts at range of motion of the right shoulder and showed elements of symptom magnification. She had pain-focused behavior and yelled out in pain with any general attempts to assess her range of motion. She additionally withdrew and cried from pain during the examination of her paraspinal musculature. (RX3).

Dr. Vitello diagnosed petitioner with a resolved right shoulder labral tear and right carpal tunnel syndrome. (RX3). He opined that her condition was most consistent with right upper extremity radiculopathy and a cervical/paraspinal strain. (RX3). He further opined that the treatment provided by Dr. Talarico was reasonable and necessary but questioned the pain management treatment petitioner had undergone. Dr. Vitello recommended an evaluation by a spinal surgeon for petitioner's cervical complaints. He did not recommend any work restrictions with respect to the right shoulder or right carpal tunnel and placed petitioner at MMI for the right shoulder and right arm. (RX3).

Section 12 Examination with Dr. Julie Wehner

Petitioner was seen by Dr. Julie Wehner, an orthopedic spinal surgeon, on December 17, 2019 for an IME of the cervical spine. (RX4). A Spanish speaking interpreter was used to communicate with petitioner. Petitioner told Dr. Wehner that she was working on November 17, 2017 when her hand became stuck in a belt which then pulled her arm. Petitioner stated that she was putting a plastic container with peanuts that weighed approximately 16 ounces on the belt when it pulled her right arm. (RX4.

Petitioner stated her fingers got stuck between the belt and a metal part below which caused the machine to stop. (RX4). Petitioner stated she was referred to the company clinic where she underwent x-rays. Petitioner then provided a history of her subsequent medical treatment including her surgery.

At the time of the IME, petitioner stated she was "no better after surgery" and rated her pain at a 9/10 level. (RX4). Petitioner stated the pain was located in the right side of her head and right shoulder. She complained of a stocking type distribution of numbness in her right arm below the elbow level. (RX4). Petitioner denied any prior injuries to the right arm or neck and stated she did not perform any other employment, did not go to school or to health clubs. Petitioner stated she was able to drive short distances using her left arm only.

On physical examination, petitioner was able to bend to ankle level and flex her chin to 70 degrees. She was able to rotate to 60 degrees with grimacing while side bending was to 70 degrees also with marked grimacing. Tinel testing at the elbow and wrist were positive; however Dr. Wehner noted that tapping on petitioner's entire forearm and lateral aspect of the elbow produced a similar degree of pain. (RX4). Petitioner had no scapular winging, but had marked grimacing. Petitioner tended to walk with her right arm held across her chest in front of her, but Dr. Wehner noted that petitioner was seen holding her bag/purse with her right arm at various other times. (RX4).

Dr. Wehner reviewed medical records, an incident investigation report filled out immediately after the accident and the photos of petitioner's right hand taken immediately after the accident. (RX4, RX9). Dr. Wehner was able to review the films from petitioner's August 7, 2018 cervical MRI. (RX4). She opined that the MRI findings were minor and not clinically significant. She opined the MRI findings would not cause petitioner's pain symptomology and would not be caused by a work injury. (RX4). Dr. Wehner noted that petitioner had undergone prior cervical spine x-rays at Condell Hospital in 2008 and 2016. She noted that prior cervical spine x-rays would indicate prior neck complaints, but indicated that she did not have any of the corresponding pre-accident medical records. (RX4).

Dr. Wehner opined that petitioner did not suffer any kind of injury to her cervical spine as a result of the November 17, 2017 work accident. (RX4). This opinion was based on the lack of a report of an injury to the cervical spine in petitioner's initial medical records. (RX4). She opined that petitioner's initial complaints at Advocate Condell Medical Center were nonspecific in nature without any specific clinical or radiographic findings. (RX4). She further opined that petitioner's current complaints, which included pain along the side of her face and neck, did not have any specific medical etiology. (RX4). Dr. Wehner noted that petitioner's subjective pain complaints remained high at a 9/10 level without any objective basis. (RX4).

Dr. Wehner opined that petitioner appeared to have had pre-existing cervical spine complaints due to prior neck x-rays taken at Advocate Condell Hospital. (RX4). Dr. Wehner further noted that petitioner's subjective complaints far outweighed the objective findings. Clinical examination showed numbness in a non-anatomic pattern. Dr. Wehner opined that, at most, petitioner may have suffered a soft tissue injury which would have healed in two to four weeks.

(RX4). She opined that conservative care and surgical intervention had not resulted in any benefits because petitioner's subjective complaints could not be objectively verified. (RX4). She further opined that petitioner did not require any medical treatment with respect to the cervical spine as a result of the November 17, 2017 work accident nor did she require any work restrictions. (RX4). Dr. Wehner then stated that petitioner did not qualify for an impairment rating as she did not suffer any specific injury to the cervical spine. (RX4).

Petitioner's Medical Treatment Continued

Petitioner was first seen by Dr. Juan Alzate, a neurosurgeon at the American Center for Spine & Neurosurgery, on January 10, 2020. (PX4). Petitioner told Dr. Alzate she had suffered a work accident in 2017 and experienced neck pain and radiating pain into the right upper extremity ever since. Petitioner rated her pain at a 9/10. (PX4).

A physical examination documented minimal limitation to cervical range of motion. It additionally noted possible pain that radiated from the right upper extremity into the ulnar nerve distribution. Dr. Alzate thought this could also be part of the C5-C7 dermatome. He further noted distal numbness and weakness. (PX4).

Dr. Alzate diagnosed petitioner with neck pain and numbness. (PX4). He prescribed an updated cervical MRI and EMG as he believed petitioner's complaints could be related to ulnar nerve compression at the elbow. Dr. Alzate prescribed Celebrex and cyclobenzaprine. He then authored a work status note taking petitioner off work due to pain. (PX4).

Petitioner sought treatment in the emergency room of Advocate Condell Medical Center on March 11, 2020 at 2:31 p.m. with complaints of a swollen right hand, which she alleged had an initial onset months prior. (PX2). Petitioner stated that her right hand was normally swollen, but alleged it was more swollen than usual. She complained of numbness and tingling throughout the day, which kept her up at night. Petitioner rated her pain at a 9/10 level. Petitioner stated that she had an accident at work a few years prior when her arm was pulled into a machine and hyperextended the right arm. She stated that ever since then, she had experienced chronic pain in her right upper extremity. She stated that her pain had progressively increased and over the counter medication no longer alleviated her pain. (PX2).

A physical examination documented no focal neurological deficits other than decreased sensation in the right upper extremity, which petitioner stated had been chronic since her work accident. X-rays were obtained of the right hand, which were negative for any acute boney abnormalities. A physical examination of the hand was noted to be unremarkable. (PX2).

Petitioner was discharged home with a diagnosis of chronic right upper extremity pain. Petitioner was prescribed hydrocodone-acetaminophen and a lidocaine patch. (PX2).

Petitioner called Dr. Alzate's office on April 13, 2020 to request refills as she was only given a few lidocaine patches and hydrocodone at Advocate Condell Hospital. (PX4). Petitioner called Dr. Alzate's office on May 12, 2020 to obtain updated prescriptions for lidocaine patches and Celebrex. (PX4). Petitioner called Dr. Alzate's office on June 3, 2020, to request a prescription for pain medications due to continued pain in her right shoulder. (PX4).

Petitioner underwent an updated cervical MRI on July 23, 2020 at Northwestern Medicine Grayslake Outpatient Center. (PX4). The radiologist interpreted the films to document a small central/rightward disc herniation at the C3-4 level with a moderate to large size extruded and inferiorly migrated central/rightward disc herniation at the C5-6 level.

Petitioner underwent a telephonic evaluation with Dr. Alzate on August 3, 2020. (PX4). Petitioner continued to allege persistent neck pain with radiation to the right upper extremity associated with tingling, numbness and mild weakness. Petitioner had sent a copy of the updated MRI films for Dr. Alzate's review. (PX4). No physical examination was performed at this visit as it was conducted telephonically. (PX4). Dr. Alzate reviewed petitioner's updated MRI and felt that it showed a large disc herniation between the C5-C6 level with cord compression. (PX4). Dr. Alzate opined that petitioner had an accident at work that aggravated a pre-existing and underlying condition. (PX4). He stated that petitioner would require surgery in the form of a C5-C6 anterior cervical discectomy and fusion. (PX4).

Section 12 Examination with Dr. Kern Singh

Petitioner underwent a second IME, this time with Dr. Kern Singh, on April 15, 2021 as Dr. Wehner had retired. (RX7). At the time of the IME, petitioner complained of neck pain which she rated at an 8-9/10 level. Petitioner denied any bilateral upper extremity dysesthesias and alleged that her pain had been unchanged for a significant time. (RX7). Petitioner complained of severe discomfort, which worsened at night and reported that she was not currently working. Petitioner reported that her pain increased with any kind of activity and further alleged that it stopped her from performing activities of daily living. Petitioner reported that she had undergone physical therapy and epidural steroid injections with no relief of symptoms. (RX7).

At the time of the IME, monofilament testing performed on the bilateral upper and lower extremities was symmetric and equal without any documented sensory loss. Petitioner had full range of motion of the cervical and lumbar spine with full strength in the upper and lower extremities. Petitioner had intake reflexes across the bilateral upper extremities with negative Hoffman's and Spurling's signs. Waddell findings were completely negative. (RX7).

Dr. Singh reviewed films from MRIs of the cervical spine performed on August 7, 2018 as well as July 23, 2020. (RX7). Dr. Singh diagnosed petitioner with a C5-C6 herniated nucleus pulposus at the time of the IME which he did not believe was causally related to the work accident. (RX7). Dr. Singh instead opined that petitioner sustained a soft tissue strain of the cervical spine only as a result of the work accident. (RX7). Dr. Singh based his opinion upon the review of the two MRIs taken almost two years apart. (RX7). Dr. Singh stated that the herniated nucleus pulposus was not present on the original MRI dated August 7, 2018. (RX7). As a result, he believed that petitioner's herniated disc occurred at sometime between the two studies and was not the result of a work accident. Dr. Singh further noted that petitioner had a large gap between the date of injury and the first treatment for her cervical spine. (RX7).

Dr. Singh felt that petitioner's complaints correlated with the C5-C6 herniated disc, however he again did not believe the diagnosis was work related as the initial MRI films did not document the condition. (RX7). Specifically, Dr. Singh noted that the August 7, 2018 cervical MRI revealed minimal central disc protrusion at the C5-C6 level with no significant stenosis. (RX7). He noted that the MRI study of July 23, 2020 documented significant cord compression at the C5-C6 level. (RX7). He opined that the MRI findings indicated that the herniated disc occurred sometime between August 7, 2018 and July 23, 2020 and not as a result of the work accident. (RX7).

Dr. Singh recommended that petitioner undergo a C5-C6 anterior cervical discectomy fusion versus a total disc replacement to address the C5-C6 herniated disc. He again reiterated

however that the condition was not causally related to the accident of November 17, 2017 for reasons previously mentioned. (RX7).

Medical Treatment Continued

Petitioner returned to see Dr. Alzate on November 5, 2021. (PX4). Dr. Alzate noted that he had not seen petitioner in person since August of 2020. Petitioner complained of tingling, numbness, and weakness. Petitioner advised that she had not improved in any way since her last visit. (PX4).

A physical examination noted significant limitation to the cervical spine and flexion, extension, and rotation. A Spurling's sign was positive on the right side. Petitioner reported the pain radiated to the right upper extremity, and had severe pain to mobilization, as well as to proximal weakness. Petitioner alleged that she could not lift her arm for a long time, and also alleged significant neck pain when she tried to move the arm. Dr. Alzate noted distal hand swelling, which he related to petitioner's lack of mobility, and opined "this could be permanent damage." (PX4).

Dr. Alzate diagnosed petitioner with a cervical disc herniation and neck pain. (PX4). He prescribed a new MRI as well as medication and steroids. Dr. Alzate opined this "could be a pre-existing condition that was aggravated by the accident at work." (PX4).

Petitioner then underwent the updated cervical MRI on November 20, 2021. (PX4). The radiologist interpreted the MRI to show a broad based central posterior disc extrusion measuring 3.5 millimeters at the C5-C6 level. He opined this spanned six millimeters caudal to the C6 superior end plate, superimposed on trace C5 retrolisthesis, which resulted in effacement and slight flattening of the ventral cord. The radiologist felt this contributed to mild to moderate central canal stenosis with no significant neuroforaminal narrowing. At the C3-C4 and C4-C5 levels, the radiologist felt the study showed shallow broad based central posterior disc protrusions measuring 2.5 millimeters with results in effacement and slight flattening of the ventral thecal sac, contributing to minimal central canal stenosis. There was associated small central posterior annular fissures. Lastly, he noted mild reversal of normal cervical lordosis, which may be secondary to muscle spasms. (PX4).

Petitioner returned to see Dr. Alzate on December 27, 2021 to follow up regarding the recent MRI. (PX4). Petitioner continued to complain of neck pain into the right upper extremity in the C5-C7 dermatomal distribution with associated tingling, numbness and mild weakness. (PX4).

Dr. Alzate noted that there was no change in physical examination with limitation to mobilization of cervical spine rotation, right upper extremity tingling, numbness, and mild distal weakness as well as persistent limitations to mobilization of the arm. Dr. Alzate reviewed the updated MRI and opined it showed a persistent C5-C6 disc osteophyte complex. He opined that petitioner would benefit from a C5 artificial disc replacement. (PX4).

Petitioner returned to Dr. Alzate for a follow up visit on August 30, 2022. (PX4). Dr. Alzate noted he had not seen petitioner for six months. He proposed surgery, which had not been approved. Petitioner continued to complain of persistent neck pain and headaches as well as tingling, numbness, and weakness to the right upper extremity. (PX4).

A physical examination documented a positive Spurling's sign on the right side. Petitioner had significant pain in flexion and extension as well as rotation on the cervical spine. Dr. Alzate opined petitioner had tingling and numbness in the C5-C7 dermatomal distribution with associated

mild distal weakness. Dr. Alzate noted petitioner had a previously known C5-C7 disc osteophyte complex, with worsening of the symptoms and limitation of most daily living activities. He ordered a new MRI and an EMG. He renewed his recommendation for an anterior cervical discectomy and fusion. He further prescribed Nabumetone as well as Gabapentin. (PX4).

Petitioner underwent an updated cervical MRI on October 4, 2022. (PX4). The MRI documented a significant reduction in size of the central disc herniation at the C5-C6 level with caudal migration. There was further interval reduction in impression on the ventral margin of the thecal sac compared to a prior MRI performed on July 23, 2020. There was minimal spinal canal narrowing identified. There was no cord signal abnormalities, or no significant spinal canal or neuroforaminal narrowing at any level. The radiologist opined there was mild discogenic degenerative changes with a stable small central disc herniation at the C3-C4 level. (PX4).

Petitioner underwent the updated EMG on October 21, 2022, which was found to be a normal study with no evidence of cervical radiculopathy. (PX4).

Petitioner was last seen by Dr. Alzate on October 28, 2022. She complained of persistent headaches, neck pain, as well and numbness and tingling in the right upper extremity. She brought her recent MRI for review. (PX4).

A physical examination was unchanged. She had limited range of motion of the cervical spine in the flexion-extension and during rotation. Pain allegedly radiated in the C5-C7 dermatome. He had a positive spurling's on the right side. (PX4).

Dr. Alzate maintained a diagnosis of a cervical disc herniation. He reviewed the new MRI and opined it showed a C5-6 extrusion with caudal migration and mild degeneration between the C6-7 level. He felt that her main symptoms were coming from the C5-6 level. He now recommended a C5-6 discectomy and artificial disc replacement. (PX4).

Deposition Testimony of Dr. Julie Wehner

Dr. Wehner testified via evidence deposition on August 18, 2020. Dr. Wehner testified that she was obtained a somewhat unclear history of the accident from petitioner. (RX5, 14). Dr. Wehner testified that petitioner reported suffering an injury on November 17, 2017 while putting a plastic container containing peanuts onto a conveyer line belt. She stated that she was wearing gloves and believed that her fingers got stuck between the belt and the metal part below. Petitioner reported that the incident happened very suddenly and the belt stopped moving after her hand became stuck. *Id*. Dr. Wehner noted that despite the treatment received to date, Petitioner reported that none of the treatment had resolved her symptoms. (RX5, 14-15).

Dr. Wehner testified that petitioner specifically denied ever undergoing any treatment for her cervical spine prior to the work accident on November 17, 2017. (RX5, 16). Dr. Wehner testified that she reviewed x-rays from Advocate Condell Medical Center, which pre-dated the work accident, which appeared to document some kind of treatment to the cervical spine, which contradicts this allegation. (RX5, 16-17).

Dr. Wehner testified that at the time of the IME, petitioner complained of pain at a 9/10 level with numbness in a stocking-like distribution below the elbow level in the right upper extremity. (RX5, 15). Dr. Wehner noted that this was a nonspecific finding, which almost no medical condition would be able to reproduce. (RX5, 16). Dr. Wehner noted that this was a non-anatomic finding which did not correlate with any kind of cervical spine injury. *Id*.

Dr. Wehner then testified that she had the opportunity to review EMGs dated April 10, 2018 as well as January 30, 2019. (RX5, 17). She noted that while the April 10, 2018 EMG

documented a cervical radiculopathy, the January 3, 2019 EMG did not. *Id*. Dr. Wehner testified that EMGs were not very sensitive or specific, and that it was not her practice to rely upon the EMG in evaluating the cervical spine. *Id*. She testified that EMGs were more useful in determining whether the individual had carpal tunnel or cubital tunnel. (RX5, 18). Dr. Wehner testified that when evaluating an individual for a cervical spine injury, a doctor should review the patient's subjective complaints followed by any objective clinical findings and a review of the diagnostic films. (RX5, 18-19).

Dr. Wehner testified that she had the opportunity to view the actual films from petitioner's August 6, 2018 cervical MRI. (RX5, 19). She opined that the MRI was essentially age appropriate, which documented degenerative findings only. (RX5, 19-20). She specifically testified that the findings at the C5-C6 level were degenerative in nature and correlated with normal wear and tear of an individual's spine as they age. (RX5, 19). Dr. Wehner testified that the MRI findings were not clinically significant and would not be caused by any work injury. (RX5, 19-20). Dr. Wehner repeatedly testified that the MRI findings did not correlate in any way to petitioner's alleged pain complaints and symptomology. (RX5, 21).

Dr. Wehner testified that she performed a physical examination of petitioner at the time of her IME on December 17, 2019. (RX5, 21-23). She testified that petitioner did not have any objective physical examination findings consistent with a cervical spine injury. She further noted that petitioner had numerous non-anatomical findings including nonspecific Tinel's sign over her entire arm as well as nonspecific Phalen's testing. This is in addition to petitioner's alleged complaints of numbness in a stocking-like distribution below the level of the elbow, which Dr. Wehner additionally noted was completely non anatomic and did not correlate to any kind of radiculopathy. *Id*.

Dr. Wehner then testified that petitioner's alleged pain complaints did not correlate with the mechanism of injury described by petitioner as occurring on November 17, 2017. (RX5, 23). She again noted that she was unable to find any objective evidence to support petitioner's pain complaints and noted various aspect of symptom magnification during her physical examination of petitioner including grimacing and inconsistent physical examination findings. (RX5, 23-24).

Dr. Wehner testified that it was her opinion that petitioner did not suffer any kind of injury to the cervical spine as a result of the November 17, 2017 work accident. (RX5, 26). She noted there was no report of any kind of injury to the cervical spine in the initial medical records. Dr. Wehner noted that petitioner's initial complaints were very nonspecific and appeared to be limited to her right hand. (RX5, 24-25). Dr. Wehner testified that it appeared petitioner's initial medical treatment was focused on the right hand before expanding to the right upper extremity. She noted that petitioner's subjective pain complaints remained extremely high despite a lack of objective findings on the EMG and an MRI of the right shoulder. (RX5, 25-26). She further noted that petitioner underwent surgery without any kind of improvement whatsoever.

Dr. Wehner noted that petitioner's pain complaints did not have any kind of specific medical etiology. She testified that it did not have any kind of relationship to the cervical spine or any kind injury of November 17, 2017. Dr. Wehner testified that petitioner had subjective pain complaints without any objective evidence to substantiate the same. Dr. Wehner testified that petitioner's work accident did not aggravate, accelerate, or contribute to any kind of cervical spine condition.(RX5, 25). Dr. Wehner testified that she did not believe petitioner required any medical treatment for the cervical spine as a result of the November 17, 2017 work accident. (RX5, 25-26). Dr. Wehner testified that petitioner did not require any kind of work restrictions as a result of the

November 17, 2017 work accident as she did not believe petitioner suffered any injury to the cervical spine at that time. (RX5, 27-28).

On cross-examination, Dr. Wehner testified that she did not review any pre-accident medical records which were not listed in her IME report. (RX5, 35). She reiterated that there is not any kind of radiological study which can objectively measure an individual's level of pain. (RX5, 37-38). Dr. Wehner stated that if she had an important physical examination finding or found a medical record pertinent, she would include the same in her IME report. (RX5, 38).

Dr. Wehner was questioned regarding the overlap of shoulder complaints to cervical spine injuries. (RX5, 39-41). Dr. Wehner testified that in this scenario, petitioner's symptoms apparently began in the hand before moving to the shoulder, and lastly allegedly progressed into the cervical spine. (RX5, 39). She again noted that petitioner had undergone significant treatment without any kind of symptom relief despite multiple surgeries. Dr. Wehner further noted that an orthopedic spinal surgeon should be able to determine whether an individual's pain complaints are based in the cervical spine, or the shoulder based upon multiple physical examination findings as well as review of an MRI.

After questioning, Dr. Wehner acknowledged that cervical radiculopathy can produce pain in the shoulder, however she disagreed with the statement that if an individual suffered an injury to both the shoulder and the neck, the shoulder should receive treatment first. (RX5, 40-41). Dr. Wehner then confirmed that an epidural steroid injection can be both diagnostic and therapeutic in nature. (RX5, 41). She confirmed that her reading of the MRI report did not significantly differ from the radiologist interpretation of the films. *Id*.

Dr. Wehner was questioned regarding her review of Dr. Sagerman's IME. Dr. Wehner testified that Dr. Sagerman's report did not form any basis of her opinion in this matter, she merely discussed the report as well as another finding of Dr. Talarico to confirm that multiple medical professionals found petitioner to demonstrate non-anatomic complaints which could not be objectively documented. (RX5, 41-43).

On re-direct, Dr. Wehner testified that she did not note any objective findings to support petitioner's pain complaints at the time of the IME or throughout the medical records. (RX5, 48-49). She noted that petitioner had numerous non-anatomic findings during the physical examination and did not have any symptoms consistent with cervical radiculopathy. (RX5, 45-47). She again noted that petitioner's complaints of numbness in a stocking-like pattern below the elbow in the right upper extremity did not correlate with any kind of injury to the cervical spine. Dr. Wehner again noted that petitioner specifically denied any prior treatment to the cervical spine, despite medical records, which contradict that statement. (RX5, 44).

Deposition Testimony of Dr. Kern Singh

Dr. Singh testified via evidence deposition on May 18, 2022. Dr. Singh, a board-certified orthopedic spine surgeon, testified that petitioner reported suffering an injury on November 17, 2017, while working. (RX8, 11-12). Dr. Singh testified petitioner reported she got her glove caught in a conveyer belt, which led to a traction type injury and an immediate onset of right upper extremity pain. (RX8, 12, 16). Dr. Singh testified that petitioner alleged she immediately developed neck pain after the November 17, 2017 accident. *Id*. The medical records document a gap before petitioner began to allege any kind of neck pain. (RX8, 13).

Dr. Singh testified that petitioner reported neck pain at an 8-9/10 level but denied any upper extremity dysesthesias. He noted that petitioner stated her pain had been unchanged and that her

pain worsened at night. He noted petitioner reported increased pain with any kind of physical activity and that deep tissue massage and bracing had been the only treatment which provided moderate relief.(RX8, 12). Dr. Singh noted that there were some inconsistencies between petitioner's medical records and her complaints but did not indicate whether he considered the inconsistencies to be significant or minor in nature. (RX8, 12-13).

Dr. Singh then testified he performed a physical examination of petitioner, which was largely within normal limits. (RX8, 13). He noted that petitioner had full range of motion of the cervical spine with full strength in the bilateral upper extremities. *Id*. He noted that petitioner did not have any loss of sensation to light touch. Dr. Singh testified that petitioner's reflexes were completely normal and she did not have any Hoffman's, Inverted Brachioradialis, or Spurling's sign. *Id*. He testified that petitioner had essentially no positive orthopedic findings during his physical examination. Dr. Singh testified that petitioner did not exhibit any Waddell findings and noted that he felt petitioner was fairly representing her complaints to him at the time of the examination. (RX8, 13).

Dr. Singh testified that he reviewed MRIs of the cervical spine dated August 7, 2018 and July 23, 2020. (RX8, 13-14). He testified that he personally reviewed the MRI films, and the interpretation of the films was based upon his only viewing of the actual films and not in reliance upon the radiologist report. With respect to the August 7, 2018 MRI, Dr. Singh testified that it revealed a very slight C5-C6 disc protrusion without stenosis. (RX8, 14). Dr. Singh testified this was a completely degenerative condition and was not the result of any acute injury. *Id*. He testified that you could somewhat tell the age of an injury due to various factors including the signal intensity and loss of water in the vertebral. (RX8, 14-15). He testified that based upon his review of the MRI, this was clearly a degenerative condition and did not have any connection to the November 17, 2017 accident. (RX8, 15). He testified that the MRI findings were not attributable in any way to the November 17, 2017 accident. *Id*.

Dr. Singh then testified regarding his review of the July 23, 2020 cervical MRI. (RX8, 15-16). He testified that this MRI now showed a herniated disc with significant cord compression at the C5-C6 level.(RX8, 16). Dr. Singh testified that this was an acute finding as the herniated disc did not appear on the August 7, 2018 MRI. *Id*. Dr. Singh testified that the herniated disc at the C5-C6 level was not a natural progression of any underlying condition. (RX8, 16-18).

Dr. Singh testified that petitioner's accident occurred on November 17, 2017. If she had suffered a herniated disc as a result of the accident, Dr. Singh testified that her symptoms would have been readily apparent within a few weeks after the accident and further would have appeared on the August 7, 2018 MRI, which was nine months after the accident date. (RX8, 17-18). Dr. Singh testified that if the herniated disc would have been a natural progression of a pre-existing condition, it would have appeared on the August 7, 2018 MRI. *Id*.

Dr. Singh testified that the herniated disc occurred at some point between the August 7, 2018 MRI and the July 23, 2020 MRI. *Id*. He testified that there was no relationship whatsoever between the herniated disc at the C5-C6 level and the November 17, 2017 accident. He again reiterated the basis for his opinion and largely stated that the herniated disc did not appear on the August 7, 2018 MRI, but did appear on the July 23, 2020 MRI. (RX8, 17-18). As such, Dr. Singh testified it was clearly acute in nature and thus had no relationship to the November 17, 2017 work accident.

Dr. Singh testified he believed petitioner sustained a soft tissue strain in the cervical spine, at most, as a result of the November 17, 2017 incident. He further testified that petitioner does have a herniated disc at the C5-C6 level, but this was completely unrelated to the November 17,

2017 accident. (RX8, 18-19). Dr. Singh testified his opinion was based upon the objective medical evidence which clearly indicated the herniated disc was not present at the MRI taken nine months after the accident but was present on an MRI taken two and a half years after the accident. *Id*.

Dr. Singh then testified that petitioner has undergone a significant amount of treatment, almost all of which is related to the cervical herniated disc, which he did not believe to be related to the work accident. Dr. Singh testified that some minor conservative care would have been appropriate for a soft tissue strain, but denied all other medical care as being unrelated. (RX8, 19). Dr. Singh testified he believed petitioner has reached maximum medical improvement as a result of the November 17, 2017 accident. (RX8, 20).

On cross- examination, Dr. Singh confirmed he did not find any evidence of malingering during his examination of petitioner. (RX8, 24). Dr. Singh testified that a cervical herniation could be asymptomatic and then become symptomatic at some point down the road. (RX8. 24-25). He noted that while it was possible, it was not plausible in this case. Dr. Singh again noted that there was no herniated disc on the original MRI performed nine months after the accident. As such Dr. Singh testified that there was no potentially asymptomatic condition at that time. Dr. Singh testified that there are different strengths of MRI machines but indicated he would note in his report if the MRI was of poor quality. (RX8, 25). Given that he did not do so in this case, Dr. Singh testified he did not believe that to be an issue. Dr. Singh testified that he did not rely upon the radiology report in any way, but rather reviewed the diagnostic films himself and offered his own interpretation of the findings.

On re-direct, Dr. Singh testified that he had no issues in reviewing petitioner's MRI films and was able to visualize all appropriate images for purposes of a diagnosis. (RX8, 27). Dr. Singh then reiterated his opinion that petitioner's herniated disc was not related in any way to the November 17, 2017 accident, either as an acute condition or a natural progression of a degenerative condition that was aggravated by the incident. (RX8, 27-28). He again testified that it was clear petitioner's herniated disc occurred between the two MRIs and had no relationship whatsoever to the November 17, 2017 accident. *Id*.

Dr. Singh again testified there was simply no way for the herniated disc to be considered a natural progression of an underlying condition as aggravated by the work accident, as the herniated disc would have appeared on the August 7, 2018 MRI if that was the case. Given that there was no herniated disc on the August 7, 2018 MRI, Dr. Singh testified it was objectively clear that the herniated disc was completely unrelated to the work accident.

CONCLUSIONS OF LAW

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

It is the claimant's burden to prove by a preponderance of the evidence that he suffered a disabling injury which arose out of and in the course of his employment. *Sisbro, Inc. v. Industrial Comm'n*, 207 Ill.2d 193, 203 (Ill. 2003). The claimant must show that his condition of ill-being is causally related to the accident at issue.

There is no dispute that petitioner suffered a work accident on November 17, 2017. The dispute in this case centers around what body parts petitioner injured as a result of the accident. Petitioner has alleged injuries to the right arm, right hand, right shoulder and cervical spine. The parties have limited this hearing solely to the cervical spine.

The Arbitrator notes that the contemporaneous medical records from petitioner's initial medical treatment, as well as an Employee Report of Injury Form signed by petitioner do not document any injury to the cervical spine.

Petitioner testified that her right hand was caught in a conveyor belt, which jolted her right arm. She testified that the conveyor belt immediately stopped and she reported the accident to a supervisor. Petitioner testified that she felt an immediate onset of pain in the neck/cervical spine area, which has remained constant since the date of the accident. The Arbitrator notes that petitioner was presented with an Employee Report of Injury Form at trial (RX9). Petitioner confirmed that it was her name and signature on the Injury Form. Petitioner testified that she only reported an injury to the right knuckle and did not report any injury to the neck on the document. The Arbitrator notes that upon re-direct examination, petitioner subsequently changed her earlier testimony and then claimed the signature was not hers, in contradiction to her earlier statement. The petitioner then conceded the signature was hers but claimed she did not recall the date it was completed or what she wrote.

Petitioner first sought medical care on January 12, 2018, almost two months after the accident date. Petitioner testified at trial that she accurately reported all of her complaints to the treating medical providers at each visit. At that time, petitioner's complaints were limited solely to the right hand and shoulder. Petitioner conceded that she had been working full duty without restrictions from the date of the accident through that first evaluation. She confirmed at trial that her medical records were accurate, which did not document any cervical spine or neck injury/complaints. Petitioner further conceded at trial that a physical examination was performed solely with respect to the right hand and arm. The Arbitrator further notes petitioner was unable to state when her symptoms first began and simply indicated "probably several months ago".

It is noteworthy that subsequent medical treatment was focused on the right hand and shoulder, not the cervical spine. Petitioner was seen again on January 25, 2018 with no complaints of cervical spine pain or a neck injury. Petitioner was then seen on February 2 2018 and complained of pain in the right arm, shoulder, elbow, forearm, wrist, and right hand. The Arbitrator notes that despite the extensive lists of body parts petitioner was claiming injury, she made no mention of any kind of neck or cervical pain. Petitioner thereafter came under the care of Dr. Marcus Talarico, who would eventually perform surgery. Dr. Talarico ordered an MRI of the cervical spine, which petitioner underwent. The records show that Dr. Talarico opined the MRI was a completely normal study and further felt that petitioner's complains were non-specific in nature. The Arbitrator additionally notes that petitioner underwent an EMG on January 30, 2019 which was negative for any kind of cervical radiculopathy.

At the time of trial, petitioner alleged ongoing cervical spine issues. She claimed that her pain had not changed in any way since the accident and that the two prior surgeries she underwent had no effect on her pain levels whatsoever. The Arbitrator finds this statement to be unsupported by the medical records. The records clearly indicate that petitioner initially complained of symptoms in the right hand and shoulder, which were treated with surgery by Dr. Talarico. The records from Dr. Talarico indicate that petitioner's complaints resolved and was placed at maximum medical improvement with a full duty release in November of 2019. The medical records and Petitioner's testimony do not corroborate each other.

The Arbitrator notes that petitioner did begin treating with Dr. Alzate until over two years after the accident. The Arbitrator notes that Dr. Alzate did not appear to have reviewed any medical records which pre-dated his initial evaluation of petitioner on January 10, 2020. At this initial visit, Dr. Alzate thought petitioner's symptoms could be coming from ulnar nerve compression at the

elbow. The Arbitrator notes Dr. Alzate never reviewed any of petitioner's contemporaneous medical records after the accident nor did he review any of petitioner's prior diagnostic imaging, including multiple MRIs. The first film that Dr. Alzate reviewed was the July 23, 2020 cervical MRI, which he opined showed a disc herniation at the C5-C6 level with compression. Despite not reviewing any other records, Dr. Alzate apparently opined that petitioner had suffered an aggravation of a pre-existing condition. The Arbitrator notes this appears to be based entirely upon petitioner's statements that she had an immediate onset of neck pain after the accident, which is not reflected in the actual medical records. The Arbitrator notes that Petitioner's testimony and medical records do not corroborate each other. Accordingly, Dr. Alzate's reliance on petitioner's statements in reaching his opinions is based on imperfect information.

The only experts to review the entirety of petitioner's medical records were Respondent's Section 12 physicians, Dr. Wehner and Dr. Singh. The Arbitrator further notes that the report of Dr. William Vitello offered no causation opinions with respect to the cervical spine and instead opined that any residual symptoms petitioner was experiencing in the right upper extremity may be due to a cervical condition .

Dr. Wehner examined petitioner on December 17, 2019. Petitioner claimed she was no better after her surgeries with Dr. Talarico, which Dr. Wehner noted was inconsistent with the medical records she reviewed. Dr. Wehner further noted at her deposition that petitioner was not able to offer a very clear history of how the accident occurred or a timeline of the onset of her cervical complaints. Dr. Wehner noted that petitioner had specifically denied undergoing any kind of prior medical treatment for the cervical spine whatsoever. This was contradicted by the x-rays reviewed by Dr. Wehner, which showed comparisons to x-rays of the cervical spine pre-dating the accident. Dr. Wehner further noted that petitioner alleged 9/10 pain in a stocking like distribution in the right arm below the elbow level, which she testified was a non-anatomical complaints and not reflective of any specific dermatome. The Arbitrator notes that Dr. Wehner is not the first medical provider to question the reliability of petitioner's reported complaints, as her own treating surgeon Dr. Talarico indicated that petitioner had non-specific complaints.

Dr. Wehner testified that she had the opportunity to review petitioner's actual MRI films from August 6, 2018, which was almost nine months post-accident. Dr. Wehner testified the MRI findings were age appropriate in nature, not clinically significant and further would not cause any of petitioner's alleged ongoing complaints. Dr. Wehner further testified that the MRI findings did not correlate with petitioner's complaints. She noted that petitioner's pain complaints remained extremely high despite surgeries for the right hand and shoulder, lack of objective findings on the EMG as well as lack of objective findings on any diagnostic films. Dr. Wehner testified it was her expert opinion that petitioner did not suffer any kind of cervical spine injury as a result of the November 11, 2017 incident.

Petitioner was subsequently evaluated by Dr. Kern Singh, an orthopedic spinal surgeon from Midwest Orthopedics at Rush, on April 15, 2021. The Arbitrator notes that Dr. Singh had the opportunity to review all of petitioner's medical records to that date, including the diagnostic films, in direct contrast to Dr. Alzate. Dr. Singh testified that petitioner reported an injury occurring on November 11, 2017. Petitioner told Dr. Singh that her glove was caught in a conveyor belt, which led to a traction type injury and an onset of right upper extremity pain. Petitioner also claimed to have experienced constant neck pain since the accident, which Dr. Singh noted was inconsistent with the actual records.

Dr. Singh testified that petitioner essentially had a normal orthopedic examination. He felt petitioner was fairly representing her complaints to him. Most significantly, Dr. Singh testified

that he reviewed petitioner's MRI films from August 7, 2018 as well as July 23, 2020. The Arbitrator notes that Dr. Alzate never reviewed the August 7, 2018 MRI. The Arbitrator finds this vitally important as will be discussed below.

Dr. Singh testified that the August 7, 2018 MRI showed a very slight C5-C6 protrusion with stenosis, which he testified was a completely degenerative condition and not the result of any kind of acute injury. The Arbitrator is swayed by Dr. Singh's testimony that an examining physician can tell the approximate age of an injury due to factors such as signal intensity and loss of water in the vertebrate. Dr. Singh testified that the August7, 2018 MRI findings had no relationship to the November 17, 2017.

Dr. Singh then testified to his review of petitioner's July 23, 2020 cervical MRI. He testified that this study, which the Arbitrator notes is the only study reviewed by Dr. Alzate, shows a herniated disc with significant cord compression at C5-C6 level. Dr. Singh testified that this represented a new and acute finding, as it was not present on the prior study. Dr. Singh further testified that this finding was not a progression of any findings from the August 7, 2018 study but rather represented a brand new condition. The Arbitrator notes Dr. Singh's repeated testimony that the herniated disc occurred sometime between the August 7, 2018 study and the July 23, 2020 study and is swayed by the same.

Dr. Singh testified that if petitioner had suffered a herniated disc as a result of the accident, it would have been clearly apparent on the August 7, 2018 MRI. Dr. Singh testified this earlier study showed no such herniation. As such, Dr. Singh testified it was clearly apparent the disc herniation had no relationship whatsoever to the work accident of November 17, 2017. During cross-examination questioning, Dr. Singh repeatedly testified that while a disc herniation could be asymptomatic and then become symptomatic, that scenario was clearly not the case in the matter at hand. Dr. Singh testified that the August 7, 2018 MRI clearly showed a lack of any herniation, while the July 23, 2020 MRI clearly did show a herniation. As a result, Dr. Singh testified that the earlier MRI was proof the petitioner's disc herniation is unrelated to the work accident. The Arbitrator again notes that Dr. Alzate, petitioner's treating physician, never reviewed this prior study and this testimony is therefore unrebutted. Dr. Singh testified that petitioner clearly needs treatment to the cervical spine to address her current issues but was adamant that this condition was not related to the work accident. The Arbitrator agrees with the same.

The Arbitrator notes that both Dr. Wehner and Dr. Singh were the only medical experts to review all of petitioner's medical records, including the diagnostic films. For this and the above-mentioned reasons, the Arbitrator finds the opinions of Dr. Wehner and Dr. Singh to be persuasive and more credible than those of Dr. Alzate. Accordingly, the Arbitrator finds that Petitioner's current cervical condition is not related to her work accident.

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

The Arbitrator adopts and incorporates herein the findings set forth in Section F above. The Arbitrator therefore declines to award any medical bills related to any cervical spine condition.

K. Is Petitioner entitled to any prospective medical care?

As indicated in Section F above, the Arbitrator find that petitioner has failed to prove causal connection with respect to the cervical spine and the work accident of November 17, 2017. The Arbitrator therefore finds that petitioner is not entitled to any prospective medical care for the cervical spine.

L. What temporary total benefits are dispute?

Based upon the findings in Sections F, J and K above, the Arbitrator finds that Petitioner is not entitled to any TTD benefits with respect to the cervical spine condition.

M. Should penalties or fees be imposed upon respondent?

Based upon the findings in Sections F, J, K and L above, the Arbitrator finds that petitioner is not entitled to any penalties or fees. The Arbitrator further notes that Respondent reasonably relied upon the Section reports and opinions of Dr. Wehner and Dr. Singh as basis to deny benefits under the Act.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	19WC018485
Case Name	Gary Ward v. Knight Hawk Coal
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b)
Decision Type	Commission Decision
Commission Decision Number	24IWCC0392
Number of Pages of Decision	10
Decision Issued By	Amylee Simonovich, Commissioner

Petitioner Attorney	Roman Kuppart, Steven Hanagan
Respondent Attorney	Julie Webb, Kenneth Werts

DATE FILED: 8/15/2024

/s/Amylee Simonovich, Commissioner

Signature

24IWCC0392

STATE OF ILLINOIS)
) SS.
COUNTY OF MADISON)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Gary Ward,

Petitioner,

vs. NO: 19 WC 018485

Knight Hawk Coal,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by Respondent herein and notice given to all parties, the Commission, after considering the issues of occupational disease and permanent partial disability, and being advised of the facts and law, reverses the Decision of the Arbitrator as stated below.

Factual Background

Petitioner was employed by Respondent as an underground mechanic. T.11. He had been employed in coal mines for 43 years, beginning in 1971. T.13. He worked for several different coal mines through the years, working from 2009 to 2019 with Respondent. T.13-16.

Petitioner had numerous studies of his chest and abdomen throughout the years due to unrelated health issues. RX5 and RX6. Those included:

On February 25, 2002, Petitioner underwent a chest x-ray to rule out pneumonia. RX5, p. 474. The impression was that of a normal chest. *Id*.

On April 6, 2004, Petitioner underwent a CT of the abdomen and pelvis, due to abdominal pain and a left renal mass. RX5, p. 464. The CT scan showed an approximately 6 cm size predominantly solid left renal mass consistent with renal cell carcinoma. *Id*.

On June 1, 2005, Petitioner underwent chest x-ray at Herrin Hospital for renal cell carcinoma. RX6, p. 216. The study was interpreted as normal. *Id*.

On July 12, 2005, Petitioner was seen at Herrin Hospital with complaints of cough and congestion. Chest x-rays were performed. RX 6, p. 211. The studies were compared to June 1, 2005 chest x-ray. *Id*. There was no significant change and no active lung disease. *Id*.

On October 11, 2005, Petitioner underwent a chest x-ray at Herrin Hospital, which was unremarkable. RX6, p. 176.

On February 24, 2006, Petitioner underwent a CT of the chest and CT of the abdomen and pelvis at Herrin Hospital for follow up after his history of renal cell carcinoma. RX6, p. 170-171. The CT of the chest was interpreted as revealing no pulmonary of parenchymal abnormality. The CT of the abdomen and pelvis showed the lung bases, which were noted to be clear. *Id*.

Petitioner underwent a chest x-ray at Herrin Hospital on August 19, 2006 which revealed no evidence of lymphadenopathy or pulmonary mass. RX6, p. 167.

On February 28, 2007, Petitioner underwent a chest x-ray at Herrin Hospital which showed diffuse chronic appearing interstitial change without discrete evidence suggesting an obvious pathologic lesion. RX6, p. 155. The impression was no acute cardiopulmonary abnormality or evidence of a suspicious pulmonary nodule/lymphadenopathy. *Id*.

Petitioner also underwent a CT of the chest on the same date which showed no pulmonary parenchymal abnormality. RX6, p. 157. There was no change in comparison to the CT performed on February 24, 2006. *Id*.

On August 28, 2007, Petitioner underwent a chest x-ray at Herrin Hospital for follow up after Petitioner's renal cell carcinoma and cough. RX6, p. 147. The findings were clear lungs and chest within normal limits. *Id*. Petitioner underwent a CT of the chest the same day which showed no pulmonary parenchymal abnormality. RX6, p. 148.

On February 14, 2008, Petitioner underwent a CT of the chest at Herrin Hospital due to his history of renal cell carcinoma. RX6, p. 143. Both lungs appeared unremarkable without any consolidation, atelectasis or mass lesion. There was no evidence of metastatic disease or change since previous exam. *Id*.

On March 5, 2009, Petitioner underwent a chest x-ray at Herrin Hospital for a pre-employment physical. RX6, p. 134. The study was interpreted as no acute cardiopulmonary abnormality. *Id*.

Petitioner underwent a CT of the chest on July 11, 2009 at Herrin Hospital which showed no suspicious pulmonary nodules. RX6, p. 125. The impression was no acute pulmonary disease. *Id*.

On November 9, 2009, Petitioner underwent a CT of the abdomen at Herrin Hospital which showed the lung bases were clear bilaterally. RX6, p. 119-120.

On November 12, 2009, Petitioner underwent a chest x-ray due to his history of renal cell carcinoma. RX6, p. 115. The impression was that of a normal chest without evidence of pulmonary metastases. *Id*.

On September 27, 2010, Petitioner was seen at Herrin Hospital for a chest x-ray due to his history of renal cell carcinoma. RX6, p. 108. His lungs were noted to be clear and the impression was no active pulmonary disease. *Id*.

On April 26, 2011, Petitioner underwent a chest CT at Herrin Hospital. RX6, p. 104. No pulmonary nodules were identified. *Id*.

On June 5, 2012, Petitioner underwent a chest x-ray at Herrin Hospital for kidney cancer. RX6, p. 97. The study was compared to the September 27, 2010 study and revealed no suspicious pulmonary densities or evidence of metastatic disease. *Id*.

On June 6, 2012, Petitioner underwent a CT of the abdomen and pelvis at Herrin Hospital. RX6, p. 95-96. It was noted that the lung bases appeared unremarkable, and no pleural effusions were noted. *Id*.

On October 27, 2012, Petitioner underwent studies at Herrin Hospital, which included a CT of the chest, CT of the abdomen and pelvis, CT of the sinuses, and CT of the head. RX6, p. 85-86. The CT of his chest was noted to be for a history of renal carcinoma, weight loss, weakness, and headache. *Id*. There were no pulmonary nodules or masses. *Id*. The CT of the sinuses revealed the paranasal sinuses to be clear with no suspicious lesions. *Id*.

On December 5, 2013, Petitioner was seen at Washington University for abdominal pain. RX6, p. 83-84. CT of the abdomen and pelvis caught the lung bases which were clear. *Id*.

On July 26, 2014, Petitioner was seen at Washington University for chest pain and dizziness. RX6, p. 56-62, 68. Petitioner noted a history of chest pain for the past two to three weeks. *Id*. A differential diagnosis was acute coronary syndrome, costochondritis, and unstable angina. *Id*. A chest x-ray revealed the lungs were clear. *Id*.

On April 14, 2015, Petitioner underwent a chest x-ray at Washington University for a persistent cough. RX6, p. 18. His lungs were noted to be clear. *Id*.

On May 1, 2016, Petitioner underwent a CT of the abdomen at Herrin Hospital due to his history of renal cell carcinoma. RX6 p. 7. The lung bases were noted to be clear. *Id*.

Petitioner retired from his job with Respondent, with his last date of exposure being February 1, 2019. T.10.

On May 6, 2019, Petitioner underwent a chest x-ray at Ferrell Hospital. This x-ray was evaluated for the presence of coal workers' pneumoconiosis (hereinafter "CWP") by B-reader's Dr. Smith and Dr. Meyer, who had differing readings of the imaging study, as further discussed below.

Petitioner was examined by Dr. Istanbouly at the request of Petitioner's attorney on September 6, 2019.

On January 6, 2021, Petitioner was seen in the emergency room at Memorial Hospital of Carbondale for abdominal and left groin pain after working in his barn and putting up Christmas decorations. RX9, p. 233. Petitioner underwent a CT of the abdomen and pelvis on January 6, 2021, which demonstrated clear lung bases. RX9, p. 254.

Petitioner was seen at Barnes Jewish Hospital on April 4, 2022 for blood in his urine. RX10, p. 29. He underwent a CT of the abdomen and pelvis. The scanned lung bases were noted to be normal. RX10, p. 9.

Petitioner's Testimony

At the time of hearing, Petitioner testified he had first noticed problems with his breathing 12 years prior. T.17. He described getting winded when he was walking or lifting heavy things, both at the mines and at home. T.18. He noted that he would walk approximately 500-600 feet and he would notice a little breathing problem. *Id*. He reported to Dr. Istanbouly that he was able to walk about a half mile. T.19. Petitioner testified that his condition at the time of trial had worsened since his discussion with Dr. Istanbouly. *Id*.

Petitioner testified he had issues with climbing the stairs at home, as he was winded by the time he reached the top of the stairs. *Id*. He also noticed breathing problems when walking up a hill and had difficulty with activities around the house like maintenance, mowing the yard, weed eating, etc. T.20. He testified that while he did a little gardening, he had problems breathing and had to take breaks. Id. Petitioner testified that he was no longer able to do hobbies, sports and other things of that nature. T.21.

Petitioner testified he had not seen a doctor for his breathing problems, as he figured it was from being in the coal mines for so many years. *Id*. He never smoked. T.22. Petitioner testified his health, other than his breathing was in overall decent shape. *Id*. He had kidney and prostate cancer in the past, which were both stable. *Id*. He had surgery on both his knees and a hernia in the past. T.22-23.

Petitioner testified he was able to complete his work with Respondent everyday, but it was harder at the end of his career. T.23. He did not think he would be able to do the last coal mining job he had due to the physical nature and breathing issues. *Id*.

B Readings of Petitioner's May 6, 2019 Chest X-ray

On May 26, 2019, Dr. Smith provided his report detailing his B-reading of the Petitioner's chest x-ray from May 6, 2019. PX2, p. 93. He found the study to be a quality 1. *Id*. He found interstitial fibrosis of classification p/p, upper, mid and lower zones of the lungs were involved bilaterally of a profusion of 1/1. *Id*. He found evidence of simple coal worker's pneumoconiosis in all zones bilaterally. *Id*.

On February 19, 2020, Dr. Meyer issued a report following his B-reading of the same x-ray. He found the study to be a quality 2. He disagreed with Dr. Smith's reading of the x-ray, noting the reading showed Petitioner's lungs were clear and there were no radiographic findings of CWP. RX1, p. 87.

As part of his records review for Respondent, Dr. Rosenberg also reviewed the x-ray from May 6, 2019. He opined the study was a quality 1 and revealed no parenchymal changes of pneumoconiosis. He rated the study as 0/0 and noted no other abnormalities. RX2, p. 71.

Dr. Istanbouly Testimony

Dr. Istanbouly provided his deposition testimony on December 14, 2021. PX1. Dr. Istanbouly was a pulmonologist who both practiced in southern Illinois and provided Section 12 examinations. PX1, p.5-8. He obtained an occupational and medical history from Petitioner, reviewed a pulmonary function test and chest x-ray and performed a physical examination. PX1, p. 8.

At the time of the evaluation with Dr. Istanbouly, Petitioner provided a consistent history of his work in the coal mines. PX1, p. 9. Petitioner advised Dr. Istanbouly he left the coal mine because it was planned retirement. *Id*. Petitioner reported coughing on a daily basis for the past few years and the cough was mild to moderate in intensity. *Id*. The cough was aggravated by exertion. *Id*. It was occasionally productive of slight clear sputum. *Id*. Petitioner mentioned mild exertional dyspnea. *Id*. He was getting short of breath by walking half a mile and his exertional dyspnea had not progressed over the six months prior to the evaluation. *Id*.

Dr. Istanbouly testified that the presentation of CWP would vary depending on the intensity of the patient's lung disease. PX1, p. 10. They could be asymptomatic or having mild to significant respiratory symptoms, like a cough, wheezing, sputum production or dyspnea. *Id*. He testified it was not unusual for a person with early stages of coal workers' pneumoconiosis to be asymptomatic. *Id*. He did not believe a person needed abnormalities on a physical examination of the chest to have simple coal worker' pneumoconiosis. *Id*. He testified it was not unusual for someone with that condition to have no abnormalities on physical examination of the chest. *Id*.

Dr. Istanbouly testified that the pulmonary function studies were valid. PX1, p. 11 They were within the normal limits per ATS Guidelines. *Id*. He testified it was possible, and not unusual that a pulmonary function test could be normal in a person with simple CWP. *Id*. He testified that having pulmonary function within a normal range did not necessarily mean the lungs had not been damaged, only they had not been damaged enough to be revealed on the pulmonary function test. PX1, p. 11-12.

Dr. Istanbouly reviewed and interpreted the chest x-ray taken at Ferrell Hospital on May 6, 2019 and found it to be of diagnostic quality. PX1, p. 13. The x-ray revealed mild bilateral interstitial changes in the upper, mid, and lower zones consistent with simple CWP. *Id*. He testified that the profusion was 1/1 per the B-reader, Dr. Henry Smith. *Id*.

Dr. Istanbouly testified that he diagnosed Petitioner with CWP which was caused by his long-term coal dust inhalation. PX1, p. 16. Dr. Istanbouly opined that Petitioner had clinically significant pulmonary impairment based upon his reported cough, sputum production, and exertional dyspnea. PX1, p. 19. He testified that it was advisable for Petitioner to not have any further coal dust exposure to prevent the progression of his lung disease. Id.

On cross-examination, Petitioner admitted he told Dr. Istanbouly that his retirement was planned. PX1, p.22. Petitioner was 65 years old at the time of his retirement. *Id*. Dr. Istanbouly acknowledged that there are causes for exertional dyspnea other than respiratory disease, including heart disease and deconditioning. PX1, p.23.

Dr. Rosenberg Testimony

Dr. David Rosenberg conducted a review of medical records and chest x-ray regarding Petitioner at the request of Respondent's counsel. Dr. Rosenberg testified he is a board-certified physician of internal medicine. RX2, p.3-4. He performed both evaluations and treatment of black lung conditions in private practice. RX2, p.34-35. Dr. Rosenberg testified he had been a B-reader since July 2000. RX2, p.35.

Dr. Rosenberg testified that cough is not considered an objective determinant of pulmonary impairment. RX2, p.22. Dr. Rosenberg testified that one looks to the FEV1/FVC ratio of the spirometry part of the pulmonary function testing to determine whether an obstruction exists. RX2, p.24. Dr. Rosenberg testified that based upon the results of that testing there was no indication of restriction in Petitioner. RX2, p.25.

Dr. Rosenberg testified that the pulmonary function spirometry testing performed at Stat-Care on March 16, 2020 was not valid because of variability. RX2, p. 25. However, he testified that the results were nevertheless normal and showed the minimum that Petitioner could do. *Id*. Dr. Rosenberg testified that based upon the results from pulmonary function testing on Petitioner, from a respiratory standpoint, he was capable of heavy manual labor. RX2, p.25.-26.

Dr. Rosenberg read the chest x-ray of Petitioner dated May 6, 2019 and found it to be quality 1. RX2, p.26. He testified that the film revealed no parenchymal changes of pneumoconiosis, and it had a profusion of 0/0. *Id*. There were no other abnormalities observed. *Id*.

Dr. Rosenberg testified that for a positive finding the profusion rating must be 1/0 or higher. *Id*. A 0/1 profusion is technically a negative interpretation. *Id*. Dr. Rosenberg testified that the distinction between a category 1 pneumoconiosis and the film that is negative for pneumoconiosis is a fine one. RX2, p.29. Dr. Rosenberg agreed that the reading of chest x-rays for CWP was variable, based upon the reader. RX2, p.43. Similarly qualified, educated physicians could disagree on the findings of the x-rays. Id. He testified in the low-grade profusion changes, like in the borderline 0/1, 1/0 cases, there was a lot of variability. *Id*. He agreed that it was not necessary to be a B-reader to diagnose CWP. *Id*.

Dr. Rosenberg found a fairly good correlation between a chest x-ray and pathologic

evidence of pneumoconiosis. RX2, p.30. However, he also testified that CTs and high resolution CTs of the chest are more sensitive than plain films in detecting the opacities of pneumoconiosis and emphysema. RX2, p.29. Dr. Rosenberg testified that his opinion was supported by the CT scan, which he noted were a more medically accepted diagnostic study, as they were much more accurate than chest x-rays to determine the presence or absence of a pneumoconiosis. RX2, p.31-32. He conceded that while there were several mentions of CT scans noting the lung bases were clear, CWP did not usually start in the lung bases. RX2, p.51.

Dr. Rosenberg testified that Petitioner's medical problems over the years have included renal cell carcinoma, prostate cancer, seasonal allergies, intermittent sinus infections, and a monoclonal gammopathy of undetermined significance. RX2, p.31. Over the years Petitioner had intermittent sinus infections and intermittently has described some shortness of breath. *Id*. Radiographically, Petitioner did not have the features of pneumoconiosis. *Id*. Dr. Rosenberg opined he had no pulmonary functional abnormalities and no respiratory impairment related to past coal mine dust exposure. RX2, p.32.

Dr. Rosenberg admitted that a person with simple CWP radiographically could have normal diffusion capacity, normal pulmonary function studies and a normal physical examination of the chest. RX2, p.47-48. A person with simple CWP radiographically could also be asymptomatic. RX2, p.48. Dr. Rosenberg admitted that despite all the testing he noted was normal with Petitioner, Petitioner could still have radiographic CWP. *Id*.

Finally, Dr. Rosenberg testified it was significant that Petitioner was obtaining CT scans successively over time. RX2, p.53. He noted that a radiologist would be looking for parenchymal abnormalities or nodules if looking for cancer. *Id*.

Legal Analysis and Conclusions

The claimant in an occupational disease case has the burden of proving both that he suffers from an occupational disease and that a causal connection exists between the disease and his employment. *Anderson v. Indus. Comm'n*, 321 Ill.App.3d 463, 467 (2001).

The evidence in this case reflected appropriate testing for CWP, including physical examination findings, pulmonary function testing, and radiographic studies. Both the physical examination and pulmonary function testing were negative in this case. However, this does not necessarily rule out a diagnosis of CWP. Both Dr. Istanbouly and Dr. Rosenberg agreed that a person with negative findings may still suffer from simple CWP, particularly if it was early in its manifestation. PX1, p. 10, RX2, p. 48. The study which those experts differ on and which likely holds the most weight with regard to whether Petitioner suffers from a work related occupational disease is the x-ray of May 6, 2019. This x-ray was examined by B-readers retained by both Petitioner and Respondent. An opinion regarding the interpretations of the x-ray were provided by Dr. Smith, Dr. Meyer and Dr. Rosenberg. All of the B-readers had different findings, with only Dr. Smith finding the presence of simple CWP.

The Commission finds Petitioner's extensive history of CT scans and chest x-rays over the years make this case unique. This history impacts the weight afforded the various expert opinions.

Medical records going back to 2002 were submitted into evidence. Those records demonstrated Petitioner had a history of cancer going back to April 2004 and underwent repeat imaging testing on or around the lungs routinely afterward. This was usually for the sole purpose of ruling out a worsening or return of cancer. As Dr. Rosenberg noted, a radiologist would have been looking for parenchymal abnormalities or nodules if looking for cancer. RX2, p. 53.

The medical records submitted showed Petitioner underwent fifteen (15) chest x-rays and twelve (12) CT scans of either the chest or abdomen. This is a noteworthy number of imaging studies. All of these scans were noted to demonstrate clear lungs or lung bases, depending upon what was being visualized within the scan. For instance, while some of the scans of the abdomen were not intended to review the lungs, the findings nonetheless noted a visualization of the bases of the lungs.

Petitioner's expert, Dr. Istanbouly, relied upon the B-reading of Dr. Smith to determine the profusion visualized in the x-ray. PX1, p. 14. Dr. Smith found interstitial fibrosis of classification p/p in the upper, middle and lower zones of the lungs, bilaterally of a profusion of 1/1. PX2, p.93. The Commission specifically notes his findings of CWP in the lower zones of the lungs, as this directly conflicts with the CT scans of Petitioner's abdomen and pelvis, which were taken *after* the May 6, 2019 study. The studies of January 6, 2021 and April 4, 2022 both demonstrated clear lung bases. RX9, p.254 and RX10, p.9.

Dr. Rosenberg testified that while an x-ray was an acceptable study to correlate with pathologic evidence of pneumoconiosis, a CT scan was more sensitive than plain films in detecting the opacities of pneumoconiosis and emphysema and were more accurate than chest x-rays to determine the presence or absence of a pneumoconiosis. RX2, p.29. Likewise, Dr. Istanbouly admitted that CTs of the chest are more efficacious for the diagnosis of parenchymal disease than plain films of the chest. PX1, p.30. As the findings of the "more efficacious" CT scans, performed after the May 6, 2019 x-ray, were negative, the Commission does not find Dr. Smith's opinion of radiographic evidence of simple CWP to be credible. As Dr. Istanbouly relied upon Dr. Smith's findings and did not have the requisite B-reader certification to interpret the x-ray himself, we find the weight to be afforded his opinion is likewise affected negatively. Dr. Rosenberg's reading of the May 6, 2019 chest x-ray more closely correlated with the findings of the CT scans of January 6, 2021 and April 4, 2022 CT scans, therefore, we find his opinion to be more persuasive.

Both Dr. Istanbouly and Dr. Rosenberg agree that one does not need to be a B-reader to diagnose CWP. However, the Commission again notes the physical examination and pulmonary testing in this case were negative, thereby placing greater emphasis on the radiographic interpretations to determine the presence of CWP.

Finally, the Commission also notes that Dr. Istanbouly's opinion was confined to the findings on the one chest x-ray from May 6, 2019, as he was not provided with any of the prior CT scans for review. PX1, p. 98. In contrast, Dr. Rosenberg had the opportunity to review all the relevant CT scan studies, as such the Commission finds his opinion carries more weight.

After a thorough review of the evidence, the Commission finds that Petitioner failed to meet his burden of proof as to show he suffered from an occupational disease arising out of and in the course of his employment.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed on January 24, 2023, is reversed in its entirety and all benefits are denied.

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.

August 15, 2024
O: 7/9/24
AHS/kjj
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/s/ *Amylee H. Simonovich*
Amylee H. Simonovich

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	22WC002073
Case Name	John Stewart v. Effingham Equity
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b) Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	24IWCC0393
Number of Pages of Decision	14
Decision Issued By	Deborah Simpson, Commissioner

Petitioner Attorney	John Bays
Respondent Attorney	Marcy Bennett

DATE FILED: 8/15/2024

/s/ Deborah Simpson, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF)
JEFFERSON

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

John Stewart,

Petitioner,

vs. NO: 22 WC 2073

Effingham Equity,

Respondent.

DECISION AND OPINION ON REVIEW

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

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed May 2, 2023, is hereby affirmed and adopted.

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

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

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

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

August 15, 2024

o7/24/24
DLS/rm
046

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

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	22WC002073
Case Name	John Stewart v. Effingham Equity
Consolidated Cases	
Proceeding Type	19(b) Petition
Decision Type	Corrected Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	11
Decision Issued By	Maureen Pulia, Arbitrator

Petitioner Attorney	Fred Johnson
Respondent Attorney	Marcy Bennett

DATE FILED: 5/2/2023

THE INTEREST RATE FOR THE WEEK OF MAY 2, 2023 4.90%

/s/Maureen Pulia, Arbitrator

Signature

3STATE OF ILLINOIS)
)SS.
COUNTY OF **JEFFERSON**)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
CORRECTED ARBITRATION DECISION
19(b)

JOHN STEWART,
Employee/Petitioner

v.

EFFINGHAM EQUITY,
Employer/Respondent

Case # **22** WC **2073**

Consolidated cases: _____

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Maureen Pulia**, Arbitrator of the Commission, in the city of **Mount Vernon**, on **3/17/23**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On the date of accident, **2/24/21**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $**59,800.00**; the average weekly wage was $**1,150.00**.

On the date of accident, Petitioner was **53** years of age, ***married*** with **2** dependent children.

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

Respondent shall be given a credit of $**00.00** for TTD, $**00.00** for TPD, $**00.00** for maintenance, and $**00.00** for other benefits, for a total credit of $**00.00**.

Respondent is entitled to a credit of $**00.00** under Section 8(j) of the Act.

ORDER

Respondent shall pay the reasonable and necessary medical services of Dr. Stewart on 6/1/21 in the amount of $314.00, and on 9/1/21 in the amount of $204.00, as provided in Sections 8(a) and 8.2 of the Act.

Respondent shall be given a credit for medical benefits that have been paid, and Respondent shall hold petitioner harmless from any claims by any providers of the services for which Respondent is receiving this credit, as provided in Section 8(j) of the Act.

Respondent shall pay the reasonable and necessary medical services associated with the L5-S1 microdiscectomy recommended by Dr. Stewart.

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

MAY 2, 2023

THE ARBITRATOR HEREBY MAKES THE FOLLOWING FINDINGS OF FACT:

Petitioner, a 53 year old custom applicator, alleges he sustained an accidental injury to his low back that arose out of and in the course of his employment by respondent on 2/24/21. Petitioner's highest level of education completed was high school. Petitioner has worked for respondent for 23 years.

Petitioner's duties as a custom applicator include spraying and spreading fertilizer on fields. Petitioner's duties require him to lift 50+ pounds. Petitioner sprays with a machine.

On 2/24/21, petitioner was removing an insulation tarp made of nylon with a fiber filling, that was covering concrete. The tarp had some rain on it. The tarp was 4-5 wide, by 15-20 feet long, weighing 50-75 pounds. Petitioner grabbed one end of the tarp with his right hand and proceeded to drag it into the warehouse. As he was dragging it, there was precipitation on the ground outside, so he was gathering moisture on the bottom of his shoes. As he walked onto the concrete warehouse floor, his wet shoes slipped on the floor and he fell to the ground landing on his right shoulder and hip. Petitioner testified that when he landed he jarred his spine. He experienced immediate pain in his right hip and shoulder. After he landed, he laid there for a bit before rolling over, and crawling out from underneath the tarp and getting up. As he got up, he felt his back tightening up. Petitioner reported the incident to his supervisor Bowman, within 10 minutes of the injury. Petitioner testified that following the injury he had pain in his left leg, and tingling in both legs.

After the injury, petitioner presented to the Bonutti Clinic at Sarah Bush Lincoln, on the referral of respondent. Petitioner was seen by Stacia Fallert, APN. Petitioner provided a consistent history of the injury and his complaints. Following an examination and x-rays of the lumbar spine and right shoulder that showed degenerative findings, Fallert assessed low back pain and right shoulder pain. Petitioner was started on various medications.

On 3/1/21 petitioner followed-up with Fallert. He reported that his right shoulder was much improved. However, he reported significant pain down the left lower extremity, as well as numbness and tingling. Following an examination, Fallert assessed lumbar radicular pain, and sciatica on the left side. An MRI of the lumbar spine was ordered. Petitioner was released with restrictions of no lifting over 10 pounds, limited standing, no bending/twisting, no climbing, and no squatting, and alternate sitting/standing.

On 3/5/21 petitioner underwent a DOT medical examination that he passed.

On 3/17/21 petitioner underwent an MRI of the lumbar spine. The impression was overall mild lumbar degenerative changes. He also returned to Fallert. Fallert told petitioner that there were no

absolute acute findings with herniated disc or anything noted on the MRI. Petitioner continued to complain of sciatic type pain and lumbar radiculopathy type symptoms. Fallert continued his medications and recommended a course of physical therapy. Petitioner's work restrictions were continued. Petitioner began physical therapy on 3/23/21.

On 4/14/21 petitioner followed up with Fallert. Petitioner complained of low back pain, and rated it at a 5/10. He also reported numbness and tingling down his left leg. Petitioner reported that physical therapy was not really helping. Fallert examined petitioner and assessed sacroiliac joint inflammation, and lumbar radiculopathy. Fallert referred petitioner to Dr. Ogan for an epidural steroid injection. Petitioner was continued on the same work restrictions.

On 5/25/21 petitioner returned to Fallert. Petitioner reported that he had not seen much improvement with his symptoms. He also stated that he was unable to tolerate the prescription strength anti-inflammatory she prescribed. Fallert assessed lumbar radiculopathy and sacroiliac joint inflammation. Fallert returned petitioner to work with restrictions of no lifting greater than 10 pounds, and alternating sitting and standing. She continued him in physical therapy.

On 6/1/21 petitioner presented to Dr. Todd Stewart, a neurosurgeon for evaluation of lumbar radiculopathy. Petitioner was referred to Dr. Stewart by Dr. Ogan. Petitioner gave a consistent history of the injury, and reported that he had immediate tingling in his bilateral legs. He reported that his symptoms had worsened since the date of injury. He also reported constant tingling in his right leg from his knee down posteriorly, intermittent burning in his left calf, and weakness in his left leg. He noted that he had numbness and tingling in his right leg since his last microdiskectomy at L5-S1 on the right. Following an examination and review of the MRI and x-rays, Dr. Stewart's assessment was posterior leg pain in the left S1 distribution; residual numbness on the right; and, compression of the transversing S1 nerve rote on the right. He recommended injections performed by Dr. Ogan. Dr. Stewart was of the opinion that his current condition of ill-being seemed temporally related to the injury on 2/24/21.

On 6/10/21 petitioner was discharged from physical therapy. Petitioner attended 28 sessions. His physical therapy goals were only partially met, or were considered ongoing. None of petitioner's goals were fully met.

On 6/29/21 petitioner underwent bilateral transforaminal epidural steroid injections at L5-S1 performed by Dr. Brian Ogan. On 6/30/21 he followed up with Fallert. Petitioner reported that he had not received any significant relief from the injections, and that he also stopped physical therapy because his symptoms were not improving. Petitioner reported no pain, but still has numbness and tingling to the

bilateral lower extremities, especially with prolonged standing and sitting, bending, walking, and activity. Following an examination, Fallert assessed lumbar disc displacement without myelopathy, and lumbar radiculopathy. Fallert continued petitioner's restrictions. On 8/2/21 petitioner reported that he had zero relief from the injections. Fallert referred petitioner back to Dr. Ogan and Dr. Stewart. She continued his light duty restrictions and indicated that she would see him on an as needed basis.

On 9/1/21 petitioner followed up with Dr. Stewart for his lumbar radiculopathy. Petitioner complained of some intermittent tingling in the right leg that was not bothersome enough to warrant intervention. He reported that his left posterior leg pain had less than 24 hours of relief following the injections. Petitioner stated that the pain down the back of his left leg significantly limited his activities of daily living. He reported weakness in the left leg. He stated that he was still working light duty. An examination revealed continued left posterior leg pain with a positive straight leg raise. Dr. Stewart was of the opinion that petitioner had compression of the S1 nerve root that was confirmed by the MRI. As a result, he offered petitioner a left L5-S1 microdiskectomy.

On 9/2/21 petitioner presented to Dr. Opilka for a med check and to discuss his diabetes. Dr. Opilka noted that petitioner was not at goal for his Type 2 diabetes mellitus. He indicated that there were a number of contributing factors to his uncontrolled blood sugars, such as the epidural steroid injections he received, and his inactivity due to his restrictions. Dr. Opilka added a new medication in an effort to get petitioner's A1c reduced.

On 9/14/21 petitioner underwent a Section 12 examination by Dr. Chintan Sampat, at the request of the respondent. Petitioner reported that he was asymptomatic prior to the injury on 2/24/21. His chief complaint was low back pain radiating down the lower extremities since the injury. Petitioner provided a consistent history of the injury, and his treatment for his low back before, and after the injury. Following a physical examination, and record review that included the MRI of 3/17/21, Dr. Sampat diagnosed a lumbar strain with possible onset of left lower extremity radiculopathy, related to the injury on 2/24/21. Dr. Sampat noted that these left lower extremity symptoms were not present prior to the injury. Dr. Sampat was of the opinion that petitioner's right lower extremity symptoms predated the injury, and are not related to the injury. Dr. Sampat was of the opinion that petitioner's left lower extremity symptoms may come from the L5-S1 foraminal stenosis that likely predated the alleged work injury, but was asymptomatic prior to the injury, and then became symptomatic after the injury, and thus may represent an aggravation of a prior asymptomatic degenerative condition. Dr. Sampat did not see any obvious indications for surgery based on his review of the MRI. He recommended an EMG of the lower extremities. If the study showed left lower extremity lumbar radiculopathy, then petitioner may benefit

from left-sided L5-S1 laminectomy and microdiscectomy procedure. Dr. Sampat was of the opinion that if this was the case, then the need for surgery would be related to the injury on 2/24/21. Dr. Sampat recommended that petitioner continue his light duty restrictions.

On 11/4/21 Dr. Sampat drafted a second report after reviewing the results of the EMG of petitioner's lower extremities. Dr. Sampat noted that Dr. Nemani found petitioner had mild diffuse, length dependent, predominantly sensory polyneuropathy with axonal features. He also noted that Dr. Nemani could not rule out S1 radiculopathy, although no denervation was seen and there was no definitive findings of radiculopathy. Based on these findings, Dr. Sampat opined that surgical intervention was not required for petitioner. Dr. Sampat was of the opinion that petitioner had reached maximum medical improvement, and further treatment was not needed. He was also of the opinion that petitioner could return to work on a full time basis without restrictions.

On 7/7/22 the evidence deposition of Dr. Todd Stewart, a neurological surgeon, was taken on behalf of the petitioner. Dr. Stewart opined that petitioner had radiculopathy, based on his objective test of the petitioner. He further opined that petitioner had some trace weakness in plantar flexion, which is innervated by the S1 nerve root. Dr. Stewart was of the opinion that the MRI of the lumbar spine showed a lot of recessed stenosis, left greater than right, and that this is consistent with radiculopathy. Dr. Stewart opined that petitioner's radiculopathy and the compression of the transversing S1 nerve root on the left was causally related to the injury on 2/24/21. Dr. Stewart opined that the fall on 2/24/21 aggravated some preexisting pathology at L5-S1. Dr. Stewart was of the opinion that petitioner had gotten about 24 hours of temporary relief from the injections. Dr. Stewart opined that the microdiscectomy at L5-S1 he was recommending for petitioner is reasonable and necessary and causally related to the injury on 2/24/21. Dr. Stewart was of the opinion that Nemani's findings on the EMG bolstered his opinions because he noted that there was a mild H reflex abnormality in the S1 distribution on the left, which matches the S1 nerve root that petitioner was asymptomatic from. Dr. Stewart was of the opinion that petitioner had failed all conservative treatment measures, so the recommended surgery would be reasonable and necessary.

On cross examination Dr. Stewart testified that after petitioner talked with Nicole Trankle in his office and told her that he had "No relief at all with injections- increased back pain -no relief in leg pain," that he went and discussed this further with petitioner and asked him if he even got a little relief from the numbing medicine, and he replied "Well, I did get it initially, but it did not last beyond 24 hours."

On 10/11/22 petitioner underwent a second Section 12 examination performed by Dr. Sampat. Following an examination and record review, Dr. Sampat reiterated that he did not believe that surgical

intervention was required. He noted that petitioner had no relief from the injection; that the EMG did not show any significant radiculopathy; and, that the MRI did not show any herniation. Dr. Sampat was of the opinion that the surgery is not indicated because there is no disc herniation to resect, and there is no disc compression on the nerve root. He was further of the opinion that the foraminal stenosis was not causing petitioner's symptoms. Dr. Sampat was of the opinion that the numbness in the dorsal part of his foot and all of his toes on both feet was consistent with peripheral neuropathy and not related to any type of spine pathology. He also noted that petitioner's diabetes was poorly controlled, and that this is a significant risk factor for peripheral neuropathy. Dr. Sampat diagnosed low back pain with spondylosis and lumbar pain. Dr. Sampat causally related a back strain to the injury on 2/24/21 that should have resolved in 12 weeks. Dr. Sampat again reiterated that petitioner was at maximum medical improvement and able to work full duty without restrictions.

On 11/29/22 the evidence deposition of Dr. Chinan Sampat, an orthopedic surgeon, was taken on behalf of the respondent. Dr. Sampat testified that when he examined petitioner and did a straight leg raise test on the left, and petitioner had some buttock pain, but no pain going down the left lower extremity. Dr. Sampat did not believe the foraminal stenosis and left sided lateral recess stenosis at L5-S1 was causing petitioner's symptoms. He was of the opinion that they were degenerative findings, and there was no disc herniation at L5-S1.

On cross examination Dr. Sampat testified that when he first saw petitioner he was of the opinion that petitioner had left L5-S1 foraminal stenosis that was asymptomatic prior to the injury on 2/24/21, and had become symptomatic thereafter, and this could represent an aggravation of a prior asymptomatic degenerative condition. He also testified that petitioner complained of pain radiating to his left buttock and lower extremity, and there were objective findings of mild positive straight leg raising on the left lower extremity and left L5-S1 foraminal stenosis noted on the MRI. Dr. Sampat also testified that petitioner a had an antalgic gait on his first exam, that was not present on the second exam. Dr. Sampat agreed that if a trauma is superimposed on a degenerative disc disease, a previously asymptomatic degenerative disc can become symptomatic. Dr. Sampat testified that he saw no records prior to 2/24/21 that show petitioner was treating for neuropathy in either leg.

Petitioner testified that he wants to undergo the surgery recommended by Dr. Stewart. Petitioner testified that following his discectomy in 2014, he had no further treatment for his lumbar spine until after the injury on 2/24/21. Petitioner testified that his employer was still honoring his light duty restrictions.

Petitioner testified that he currently has pain in his leg and low back. He stated that his pain went away slightly after the injection. He stated that it lasted for less than 24 hours, and that his pain returned to his baseline. Petitioner testified that his current symptoms continue to be pain radiating down the buttock and thigh and sometimes shooting clear to the foot, which also has tingling. Petitioner testified that these symptoms are there all the time. Petitioner testified that his diabetes is currently under control. Petitioner reported trouble climbing stairs, bending over, and riding on rough surfaces. Petitioner stated that at home everything is a struggle, including sleeping.

Michelle Stewart, petitioner's wife, was called as a witness of behalf of petitioner. Michelle testified that when petitioner came home from work on 2/24/21 she could tell he was not feeling well. She testified that petitioner's face looked like pain, he could not get out of the recliner, and he could hardly work. She testified that petitioner's left leg gives out at times and he falls. Michelle testified that following the 2014 surgery she never noticed petitioner having difficulty walking and performing his activities of daily living. However, since the injury on 2/24/21, on most nights she hears petitioner moving around in the bed at night, and sees him getting out of bed because he cannot get comfortable. On these occasions, Michelle testified that petitioner goes and sleeps in the recliner or goes outside and walks around. Michelle stated that petitioner no longer mows the yard which is on a slope, does not play basketball with his sons, does not take far walks, and cannot sit in the car for too long.

F. IS PETITIONER'S CURRENT CONDITION OF ILL-BEING CAUSALLY RELATED TO THE INJURY?

It is unrebutted that petitioner sustained an accidental injury that arose out of and in the course of his employment by respondent on 2/24/21. It is also unrebutted that petitioner had numbness and tingling in his right leg since a prior microdiscectomy on the right at L5-S1, and petitioner is not attributing these symptoms to the accident on 2/24/21.

Both Dr. Stewart and Dr. Sampat offered causation opinions. Dr. Stewart on behalf of petitioner and Dr. Sampat on behalf of respondent. A disagreement exists as to whether or not petitioner received any relief from the epidural steroid injections at L5-S1 on 6/29/21. The arbitrator notes that on 6/30/21, one day after the injection, petitioner reported to Fallert that he received "no significant relief" from the injection. During a later visit petitioner told Fallert and Dr. Stewart's nurse that he did not receive any relief from the injections, and Dr. Stewart noted that petitioner had less than 24 hour relief from the injections. Based on these notations in the medical records, the arbitrator reasonably infers that petitioner had some relief from the injection, especially since this was what the petitioner reported most contemporaneous to the injection.

Following the injury petitioner underwent an MRI of the lumbar spine. The impression was overall mild lumbar degenerative changes. Petitioner also underwent an EMG that showed mild diffuse, length dependent, predominantly sensory polyneuropathy with axonal features. Dr. Sampat noted that Dr. Nemani could not rule out S1 radiculopathy.

After Dr. Sampat examined petitioner on 9/14/21, and reviewed the MRI of 3/17/21, he diagnosed petitioner with a lumbar strain with possible onset of left lower radiculopathy, related to the injury on 2/24/21. He was of the opinion that petitioner's left lower extremity symptoms may be coming from the L5-S1 foraminal stenosis that likely predated the injury on 2/24/21, but was asymptomatic prior to the injury, and became symptomatic after the injury, and thus may represent an aggravation of a prior asymptomatic degenerative condition. He noted that the left lower extremity symptoms were not present prior to the injury. He also noted that petitioner's right lower extremity symptoms predated the injury, and were not related to the injury on 2/4/21.

However, after reviewing the EMG, on 11/4/21 Dr. Sampat drafted a second report and was of the opinion that petitioner did not need surgery and had reached maximum medical improvement.

During his deposition Dr. Sampat testified that he did not believe the foraminal stenosis and left sided lateral recess stenosis were causing petitioner's symptoms. He believed they were just degenerative findings. However, on cross examination, Dr. Sampat agreed that there were objective findings of mild positive straight leg raising on the left lower extremity and left L5-S1 foraminal stenosis noted on the MRI, and that if a trauma is superimposed on a degenerative disc disease, a previously asymptomatic degenerative disc disease can become symptomatic. Dr. Sampat also testified that he saw no records prior to 2/24/21 that show petitioner was treating for neuropathy in either leg.

Given the changes in Dr. Sampat's causal connection opinions from the first time he saw petitioner to the time of his deposition, the arbitrator does not find Dr. Sampat's opinions, as they relate to the causation between the petitioner's current condition of ill-being as it relates to his lumbar spine, and the injury on 2/24/21, very persuasive given that the only diagnostic test he did not have when he first saw petitioner was that of the EMG, that showed an S1 radiculopathy could not be ruled out. The arbitrator finds it significant that although Dr. Sampat only wanted the EMG results to make a determination as to whether or not he believed the surgery being recommended by Dr. Stewart was reasonable and necessary, he then used the findings of the EMG to rescind his prior causal connection opinion and place petitioner at maximum medical improvement and release him to full duty work without restrictions, despite there being no change in petitioner's condition.

Dr. Stewart was of the opinion that petitioner's current condition of ill-being is causally related to the injury on 2/24/21. He opined that petitioner had radiculopathy based on his objective test of petitioner. He further opined that petitioner had some trace weakness in plantar flexion, which is innervated by the S1 root. He was also of the opinion that the MRI showed a lot of recessed stenosis, left greater than right, which was consistent with radiculopathy. He opined that the fall on 2/24/21 had aggravated some preexisting pathology at L5-S1, and that petitioner's current radiculopathy and compression of the S1 nerve root on the left are causally related to the injury on 2/24/21.

Based on the above, as well as the credible evidence, the arbitrator finds the opinions of Dr. Stewart more persuasive than those of Dr. Sampat and finds the petitioner's current condition of ill-being as it relates to his lumbar spine is causally related to the injury he sustained on 2/24/21.

J. WERE THE MEDICAL SERVICES THAT WERE PROVIDED TO PETITIONER REASONABLE AND NECESSARY? HAS RESPONDENT PAID ALL APPROPRIATE CHARGES FOR ALL REASONABLE AND NECESSARY MEDICAL SERVICES?

The only medical services in dispute are the services of Dr. Stewart on 6/1/21 in the amount of $314, and the services of Dr. Stewart on 9/1/21 in the amount of $204.00.

Having found the petitioner's current condition of ill-being as it relates to his lumbar spine is causally related to the injury he sustained on 2/24/21, the arbitrator finds the medical services of Dr. Stewart on 6/1/21 in the amount of $314.00, and on 9/1/21 in the amount of $204.00, that were provided to petitioner were reasonable and necessary to cure or relieve petitioner from the effects of his injury.

Respondent shall pay reasonable and necessary medical services in the amount of $314.00 for services rendered by Dr. Stewart of 6/1/21, and $204.00 for services rendered by Dr. Stewart on 9/1/21, as provided in Sections 8(a) and 8.2 of the Act.

Respondent shall be given a credit for medical benefits that have been paid, and Respondent shall hold petitioner harmless from any claims by any providers of the services for which Respondent is receiving this credit, as provided in Section 8(j) of the Act.

K. IS PETITIONER ENTITLED TO ANY PROSPECTIVE MEDICAL CARE?

Having found the petitioner's current condition of ill-being as it relates to his lumbar spine is causally related to the injury he sustained on 2/24/21, the arbitrator finds the petitioner is entitled to the L5-S1 microdiscectomy recommended by Dr. Stewart.

Respondent shall pay reasonable and necessary medical services associated with the L5-S1 microdiscectomy recommended by Dr. Stewart.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	19WC007485
Case Name	Stephen P Cook v. State of Illinois – Illinois Department of Natural Resources
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	24IWCC0394
Number of Pages of Decision	12
Decision Issued By	Kathryn Doerries, Commissioner

Petitioner Attorney	Brian McGovern
Respondent Attorney	Joseph L. Moore

DATE FILED: 8/16/2024

/s/Kathryn Doerries, Commissioner

Signature

24IWCC0394

STATE OF ILLINOIS)	☐ Affirm and adopt (no changes)
) SS.	☒ Affirm with changes
COUNTY OF)	☐ Reverse Choose reason
SANGAMON	
	☐ Modify Choose direction

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

STEPHEN P. COOK,

Petitioner,

vs. NO: 19 WC 007485

STATE OF ILLINOIS, DEPARTMENT OF NATURAL RESOURCES,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the Arbitrator's denial of Respondent's motion to reopen proofs and the issue of nature and extent of disability, and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof. The Commission only writes to provide additional analysis.

This matter proceeded to trial before Arbitrator Edward Lee on September 29, 2022. Petitioner claimed a loss of occupation due to permanent restrictions which resulted from a leg injury while working as a Well Inspector for the Department of Natural Resources. Petitioner testified he enrolled in the State's alternative employment program and obtained a physically less demanding position with the Illinois Environmental Protection Agency. Petitioner further testified regarding his wages with the agency. Proofs were closed. On October 18, 2022, Respondent brought a motion to reopen proofs before the Arbitrator based on Petitioner's failure to disclose pertinent facts regarding a recent change in employment status.

As set forth in Respondent's motion and supporting affidavit, Petitioner resigned his job with the Illinois Environmental Protection Agency exactly 21 days prior to trial and accepted a new position with the Office of the State Fire Marshall, which commenced effective October 1, 2022. Respondent's supporting affidavit from the State Fire Marshall's human resource manager represented that Petitioner was now employed as a Storage Tank Safety Specialist. The affidavit

set forth the job duties and physical demands for the new position and divulged Petitioner's increased salary. Petitioner did not disclose the pending change in employment while testifying. Petitioner filed his written response to the motion contending Respondent failed to show good cause to reopen proofs and rhetorically asking why did Respondent not know of Petitioner's job change. On November 15, 2022, the Arbitrator entered an Order in CompFile denying the motion. On December 29, 2022, the Arbitrator issued an award for 20% loss of the person as a whole. In his decision, the Arbitrator commented regarding the motion having been considered and denied but did not provide any analysis or the reasons for the ruling.

The decision whether to grant a motion to reopen proofs lies within the arbitrator's discretion. *Freeman United Coal Mining Co. vs. Illinois Workers' Comp. Comm'n*, 386 Ill. App. 3rd 779, 785-786, 901 N.E.2d 906 (2008) A motion to reopen proofs must be filed before the arbitrator issues the decision on the claim; otherwise jurisdiction passes from the arbitrator to the Commission. *Diaz vs. Smalley Steel Ring Co*., 6 IWCC 947; 2006 Ill. Wrk. Comp. LEXIS 907. Motions requesting a continuance or to extend time for closing proofs may be allowed on a showing for good cause. *Lefebvre v. Industrial Comm'n*, 276 Ill. App. 3d 791, 795, 659 N.E.2d 1 (1995). Section 9030.20(g) of the Commission's Rules provides that bifurcated hearings shall be allowed only for good cause. 50 Ill. Adm. Code 9030.20. Good cause is also required to reopen proofs. Motions to reopen proofs may be denied where the evidence sought to be admitted was readily available prior to trial. See *Holt vs. Northshore University Health*, 12 IWCC 511; 2012 Ill. Wrk. Comp. LEXIS 653, affirming arbitrator's finding that "while defense counsel had only recently become aware of its existence, the Respondent had a duty to turn that evidence over to its attorney in a timely manner." See also *Johnson vs. Safelight Fulfillment Inc.*, 17 IWCC 557; 2017 Ill. Wrk. Comp. LEXIS 612.

Respondent timely filed its motion to reopen proofs and provided an offer of proof in the form of Petitioner's letter of resignation and a supporting affidavit by Lori Schrage, a human resources manager with the State Fire Marshall, which was duly considered. Per the attached affidavit of Lori Schrage, Petitioner interviewed for the new job opening on July 14, 2022. She emailed Petitioner an offer of employment on behalf of the State Fire Marshall's office on September 2, 2022. That same day, Petitioner accepted the new position. The affidavit, and emails attached thereto, memorialize discussions during the employment hiring process concerning Petitioner's assurances he could handle the physical demands of the new job and his promise to procure a physician's note stating he had no physical restrictions. According to Ms. Schrage's affidavit, Petitioner never produced the promised doctor's note; however, Petitioner remained employed with the State Fire Marshall as of the date she executed the affidavit. On September 8, 2022, Petitioner tendered his letter of resignation addressed to Pam Smith, a human resources representative at the Environmental Protection Agency, formally resigning from his employment as a Life Sciences Career Trainee effective September 30, 2022. As noted in Lori Schrage's affidavit and the attached emails, the effective date of new position was October 2, 2022.

Having reviewed Petitioner's trial testimony discussing his employment and wages with the Environmental Protection Agency, the Commission finds Petitioner was less than forthright and disingenuous. Petitioner testified regarding permanent restrictions issued by his doctor on March 16, 2021, which pertained to the use of ladders, stairs, kneeling, crouching, uneven surfaces, and lifting. (T. 11) Petitioner testified that the Department of Natural Resources was unable to

accommodate those restrictions. (T. 11) Petitioner testified he found new employment with the Illinois Environmental Protection Agency as a Life Sciences career trainee. (T. 12) Petitioner testified he began working in his new position in February 2022. Petitioner testified he was still working with the agency. (T. 12) Technically, this statement was true as of the date of the trial; however, Petitioner knew he had already resigned and was set to start working for the State Fire Marshall's office on October 2, 2022. When questioned regarding the duration of the training program, Petitioner testified, "I have to be a trainee for a year." (T. 12) This statement created the false impression that Petitioner intended to continue working for the Environmental Protection Agency. Additionally, Petitioner testified he will lose "longevity pay" as a result of his job change without divulging his upcoming salary increase. (T. 14)

Viewed in its entirety, Petitioner presented an incomplete picture regarding his employment status and his failure to divulge his new job with the State Fire Marshal omitted information relevant to Petitioner's current abilities and limitations. Had this been more fully developed at trial, the changed employment and physical demands for the new Storage Tank Safety Specialist position may have potentially impacted Petitioner's loss of occupation claim. Nevertheless, the Commission must be mindful that the issue before us is a motion to reopen proofs which requires a showing of good cause. As noted *Holt vs. Northshore University Health*, supra, employers have a responsibility to timely turn over evidence in their possession to defense counsel. The letter of resignation attached to the motion demonstrates that the Environmental Projection Agency was aware of the change in employment status as of September 8, 2022, and the affidavit shows that the Office of the State Fire Marshal was aware of Petitioner's interest in changing jobs as far back as July 2022 and was aware of the pending job change on September 2, 2022. The Commission finds the evidence in question was readily available prior to trial. The Commission therefore affirms the Arbitrator's denial of Respondent's motion to reopen proofs. In so finding, the Commission makes clear it does not condone Petitioner's portrayal of his employment status. The Commission further affirms and adopts the Arbitrator's disability determination and award for permanent partial disability.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent's motion to reopen proofs is denied.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $813.87 per week (max rate) for a period of 100 weeks, as provided in §8(d)2 of the Act, for the reason that the injuries sustained caused 20% loss of the person as a whole.

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

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall have credit for all amounts paid, if any, to or on behalf of Petitioner on account of said accidental injury. Respondent shall keep Petitioner safe and harmless from any insurance subrogation claim, if applicable, under Section 8(j).

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

August 16, 2024
KAD/swj
O 7/9/24
42

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

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	19WC007485
Case Name	Stephen P Cook v. State of Illinois – Illinois Department of Natural Resources
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	7
Decision Issued By	Edward Lee, Arbitrator

Petitioner Attorney	Brian McGovern
Respondent Attorney	Chelsea Grubb

DATE FILED: 12/29/2022

THE INTEREST RATE FOR THE WEEK OF DECEMBER 28, 2022 4.60%

/s/ Edward Lee, Arbitrator

Signature

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

December 29, 2022

/s/ Michele Kowalski

Michele Kowalski, Secretary
Illinois Workers' Compensation Commission

STATE OF ILLINOIS)
)SS.
COUNTY OF SANGAMON)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
NATURE AND EXTENT ONLY

Steven Cook
Employee/Petitioner

v.

Illinios Department of Natural Resources
Employer/Respondent

Case # 19 WC 007485

Consolidated cases: _____

The only disputed issue is the nature and extent of the injury. An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Edward Lee**, Arbitrator of the Commission, in the city of **Springfield** on **09/29/2022**. By stipulation, the parties agree:

On the date of accident, **01/23/2019**, Respondent was operating under and subject to the provisions of the Act.

On this date, the relationship of employee and employer did exist between Petitioner and Respondent.

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

Timely notice of this accident was given to Respondent.

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

In the year preceding the injury, Petitioner earned $**77,304.00** and the average weekly wage was $**1,486.62**.

At the time of injury, Petitioner was **50** years of age, ***married*** with **2** dependent children.

Necessary medical services and temporary compensation benefits have been provided by Respondent.

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

After reviewing all of the evidence presented, the Arbitrator hereby makes findings regarding the nature and extent of the injury, and attaches the findings to this document.

ORDER

Respondent shall pay Petitioner the sum of $**813.87/week (max rate)** for a further period of 100 weeks, as provided in Section **8(d)2** of the Act, because the injuries sustained caused **20% person as a whole.**

Respondent shall pay Petitioner compensation that has accrued from **04/28/2021(MMI date)** through **9/29/22**, and shall pay the remainder of the award, if any, in weekly payments.

Respondent is entitled to credit for any PPD, TTD, and medical paid prior to the trial date.

Respondent shall keep Petitioner safe and harmless from any insurance lien or subrogation or repayment claim under Section 8(j).

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

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

Edward Lee_____
Signature of Arbitrator

December 29, 2022

PROCEDURAL HISTORY

This case was originally tried as a 19(b) on August 27, 2019. I rendered my decision on December 5, 2019 which was affirmed by the Commission (IWCC) June 26, 2020. Following Petitioner's treatment and release at MMI this matter proceeded to trial on September 29, 2022. The sole issue in dispute is the nature and extent of the Petitioner's injury.

Respondent made a post-trial Motion to Reopen Proofs. After considering Respondent's Motion and attachments and Petitioner's Response the Respondent's Motion to Reopen Proofs is denied.

FINDINGS OF FACT

On January 23, 2019 the Petitioner was employed as a well inspector in the Oil and Gas division of the Department of Natural Resources(DNR) with the State of Illinois. On that day he suffered a left distal quadriceps tendon rupture that was surgically repaired by Dr. Wolter's on January 25, 2019.

Petitioner testified that following the 19(b) trial Respondent continued to deny his medical treatment with Dr. Wolter's until June 26, 2020 when the IWCC affirmed. He further testified that the Respondent denied his occupational therapy after June 26, 2020.

Petitioner testified that on March 16, 2021, following a functional capacity exam (FCE), Dr. Wolter's placed permanent restrictions on him and put him at maximum medical improvement(MMI) on April 28, 2021. Petitioner's permanent restrictions are no half-kneeling or half-crouching; limited stair and ladder climbing; limited walking on uneven surfaces and various lifting restrictions. The Respondent did not accommodate those restrictions and he was terminated from his employment.

Petitioner testified he began looking for work and enrolled in the State's alternative employment program (AEP). He found new employment with the State on February 1, 2022 as a life sciences career trainee with the Illinois environmental protection agency (EPA).

Petitioner testified that he had been a well inspector for 26 years and "loved it."

He testified that the injury and losing his job as a well inspector was very stressful for him and he was losing sleep not knowing his and his families' future. He testified that although he is getting the same pay, there was a time he was worried about getting a pay cut. He testified that he was comfortable with his job as a well inspector because he was good at it and

enjoyed it. Now, in a completely different position he doesn't always know what he is doing on some things and that is stressful. He testified that Respondent has paid all his benefits except some medical bills. Namely, his occupational therapy bills in Petitioner's exhibit 5, $240.00 of his out of pocket expenses when he was using his group insurance with Dr. Wolter's, and one bill with Wolter's for $294.00.

Petitioner testified that although he is used to the condition of his knee he still has to think about it every time he goes up and down stairs. He has to be conscious of which leg to put down first when stepping down from places. He cannot run anymore and that precludes him from playing softball like he did before the injury. He now uses a long shoe horn to put on his shoes, little things like that. Sometimes it hurts, especially after walking up hills and going hunting.

On cross examination he testified he is 54 years old and has been employed by the state for 29 years. He is a tier 1 employee and next year will be eligible to retire under the rule of 85.

He admitted he is not taking any prescription medicine for his knee and that he did not seek counseling while in the AEP program. He has been evaluated as good or exceeds in his new job. He testified that he filled zero deer tags last hunting season and he had not killed any turkey's in quite a while and he hunts with his son behind his house and takes a 4 wheeler to his hunting hut.

CONCLUSION

Issue 10: **What is the nature and extent of the petitioner's injury?**

If a Petitioner is elects to pursue, and proves, a wage differential award under 8(d)1 court's are obligated to make such an award. In order to prove entitlement to 8(d)1 benefits the Petitioner must prove that he is "partially incapacitated from pursuing his usual and customary line of employment," and that he has suffered an impairment of earning capacity . 820 ILCS 305/8(d)1.

But the law also acknowledges and appreciates those cases where the Petitioner's "injuries partially incapacitate him from pursuing his usual and customary line of employment but **do not** result in an impairment of earning capacity." 820 ILCS 305/8(d)2.

This is one of those cases.

Permanent restrictions were placed on the Petitioner following a FCE and the Respondent refused to accommodate his restrictions. Thus, at that moment, Petitioner became partially incapacitated from pursuing his usual and customary line of employment as a well inspector with the DNR. However, following his enrollment in the AEP with the

Respondent he found new employment in a completely difference capacity with the EPA that paid him the same as he was making in his usual and customary profession. This case falls squarely within 8(d)2.

By definition, there is no impairment of earnings in a case under 8(d)2. Moreover, 8(d)2 mandates that the Petitioner "**shall** receive…compensation at the rate provided in subparagraph 2.1 of paragraph (b) of this section for that percentage of 500 weeks that the partial disability resulting from the injuries covered by this paragraph bears to total disability." In other words, the award must be a body-as-a-whole award, not a loss of use award under 8(e)12.

In O'Leary v. City of Chicago, the Petitioner was employed as an ironworker when she suffered an injury to her right foot that precluded her from returning to work as an ironworker. The Respondent did accommodate her permanent restrictions by keeping her employed in a sedentary position at her regular pay. 2007 WL 2464248, para. 3. The IWCC affirmed the Arbitrator who found that "this is a loss of career case" and because there was no loss of earning capacity "her permanency award should be predicated upon partial whole body impairment under 8(d)2 rather than specific loss under 8(e)." Id.

The Arbitrator cataloged 5 similar cases; four of which awarded 40% MAW and one which awarded 60% MAW. In O'Leary, the Petitioner was awarded 40% MAW.

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

Factor (i)—Level of impairment

Neither party submitted an impairment rating, therefore, the Arbitrator gives no weight to this factor.

Factor (ii)—Occupation

Petitioner was issued permanent restrictions that the Respondent determined would not allow him to return to his usual and customary line of employment as a well inspector in which he had 26 years of experience. Although making the same rate of pay, the Petitioner testified losing his job and having to learn a new one was stressful for both him and his family. The Arbitrator gives moderate weight to the Petitioner's loss of career.

Factor (iii)—Age

Petitioner was 50 years old the time of the injury and had been employed with the State of Illinois for 29 years. He had moderate work life ahead of him. The Arbitrator places some weight on this factor.

Factor (iv)—Earnings capacity

Petitioner's career choices outside of employment with the State of Illinois are diminished due to his restrictions. This may affect Petitioner's earning capacity earning capacity in the future. But, at the time of trial, Petitioner was earning the same amount with the EPA as he was with Respondent, therefore, is no impairment of Petitioner's earing capacity. The Arbitrator places little weight on this factor.

Factor (v)—Disability

The previous 19(b) Decision in this case as well the additional medical records submitted herein substantiate Petitioner's permanent restrictions. Petitioner suffered a distal quadriceps tendon rupture that was surgically repaired on January 25, 2019. After rehabilitation and a valid FCE the Petitioner was released with permanent restrictions that caused him to change his work after 26 years, but not his employer, being the State of Illinois.

Based on the foregoing evidence and factors the Arbitrator awards the Petitioner 20% person as a whole

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	20WC021950
Case Name	Victor Krus v. Marshall County Sheriff's Department
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	24IWCC0395
Number of Pages of Decision	11
Decision Issued By	Maria Portela, Commissioner

Petitioner Attorney	Todd Strong
Respondent Attorney	Michael Rusin, R Mark Cosimini, Nicole Breslau

DATE FILED: 8/16/2024

/s/Maria Portela, Commissioner

Signature

24IWCC0395

STATE OF ILLINOIS)
) SS.
COUNTY OF PEORIA)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

VICTOR KRUS,

Petitioner,

vs. NO: 20 WC 21950

MARSHALL COUNTY SHERIFF'S DEPT.,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petitions for Review having been filed by the Respondent and Petitioner herein and notice given to all parties, the Commission, after considering the issues of causation, medical expenses, wage and benefits rates, temporary total disability benefits, maintenance benefits 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 and adopts the decision of the Arbitrator on all issues but modifies the rate of the awards of temporary total disability benefits and maintenance benefits from $688.76 weekly to $688.42 weekly, as the calculation was incorrect.

Additionally, the Commission corrects the scrivener's error contained in the second sentence of the third paragraph on page 3 of the Arbitrator's Decision and strikes the word "shits" and replaces it with "shifts".

All else is affirmed and adopted.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $688.42 per week for a period of 73-2/7 weeks, from May 19, 2020 through October 14, 2021, that being the period of temporary total incapacity for work under §8(b) of the

Act.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $688.42 per week for a period of 20-3/7 weeks, from October 15, 2021 through March 6, 2022, that being the period of maintenance for work under §8(a) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $619.58 per week for a period of 250 weeks, as provided in §8(d)2 of the Act, for the reason that the injuries sustained caused the 50% loss of the person as a whole.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the reasonable, necessary and related medical treatment, as outlined in Px18 for medical expenses under §8(a) of the Act, subject to the fee schedule in §8.2 of the Act.

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

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

The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

August 16, 2024

MEP/dmm
O: 70924
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	20WC021950
Case Name	Victor Krus v. Marshall County Sheriff's Department
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	8
Decision Issued By	Adam Hinrichs, Arbitrator

Petitioner Attorney	Todd Strong
Respondent Attorney	R. Mark Cosimini

DATE FILED: 3/13/2023

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

/s/ Adam Hinrichs, Arbitrator

Signature

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

VICTOR KRUS
Employee/Petitioner

v.

MARSHALL COUNTY SHERIFF'S DEPARTMENT
Employer/Respondent

Case # **20** WC **021950**

Consolidated cases: **N/A**

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Adam Hinrichs**, Arbitrator of the Commission, in the city of **Peoria**, on **2/15/2023**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On **5/11/2020**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $**53,696.76**; the average weekly wage was $**1,032.63**.

On the date of accident, Petitioner was **54** years of age, ***married*** with **0** dependent children.

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

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

Respondent shall be given a credit of $**65,422.02** for TTD, and maintenance paid.

Respondent is entitled to a credit for any bills paid by Respondent's group insurance carrier which are demonstrated to be causally related to Petitioner's work injury under Section 8(j) of the Act.

ORDER

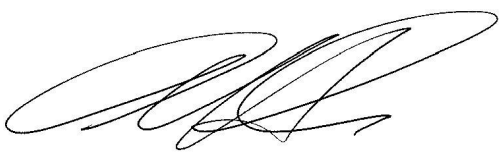
Respondent shall pay Petitioner temporary total disability benefits of $688.76 per week for 73 2/7 weeks commencing 5/19/2020 through 10/14/2021, as provided in Section 8(b) of the Act. Respondent shall pay Petitioner maintenance benefits of $688.76 per week for 20 3/7 weeks, commencing 10/15/2021 through 3/6/2022, as provided in Section 8(a) of the Act. Respondent shall be given a full credit for all TTD and Maintenance payments.

Respondent shall pay any outstanding medical charges for Petitioner's reasonable, necessary and related medical treatment, as outlined in Petitioner's Exhibit 18. Respondent shall pay all medical charges consistent with the medical fee schedule, and pursuant to Sections 8(a) and 8.2 of the Act. Respondent shall make this payment directly to Petitioner's attorney in accordance with Section 9080.20 of the Rules Governing Practice before the IWCC. Respondent shall be given a full credit for all medical charges previously paid.

Respondent shall pay Petitioner permanent partial disability benefits of $619.58 per week for 250 weeks because the injury sustained caused the 50% loss of use to Petitioner's person as a whole, as provided in Section 8(d)2 of the Act. Respondent shall pay Petitioner compensation that has accrued from 10/14/2021 through 2/15/2023, and shall pay the remainder of the award, if any, in weekly payments.

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

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



Signature of Arbitrator

MARCH 13, 2023

FINDINGS OF FACT

Petitioner was employed by Respondent beginning in 1996 as a part-time officer. (T 16). Petitioner worked full time as a city police officer for 10 years while moonlighting for Respondent. (T 48). Petitioner left the Lacon City Police Department and began working full time as a Sheriff's deputy for Respondent on August 23, 2011, eventually attaining the rank of sergeant for the Respondent. (T 16, 48). Petitioner has a GED and received training from the police academy for his position. (T 16).

As a sergeant, Petitioner testified he was in charge of training and scheduling. If someone called in sick or was called off, Petitioner testified he was responsible for either filling the hours or working those hours himself. (T 17).

Petitioner further testified the schedules were set monthly. If one of the other deputies was going to be off for a shift, Petitioner would post the available hours, and other deputies could volunteer to work those shits. If an available shift remained unfilled, Petitioner testified he would work with the deputies to try and get the shifts covered, and if none of the other deputies were available to cover the available shifts, Petitioner covered the shifts himself. (T 19-20).

Petitioner testified he was a member of the union and was covered by the collective bargaining agreement. Petitioner testified that deputies were covered by the agreement could not be forced to work overtime hours. (T 45-48).

Petitioner submitted a wage statement which documents Petitioner's earnings for the 52-week period prior to the work accident. The Arbitrator notes the wage statement includes 27 pay periods, but the pay period identified as number 27 includes a period after the accident date, so the earnings set forth in week number 27 in the wage statement will not be considered. Of the remaining 26 pay periods, Petitioner worked overtime hours during 20 of those periods. During the pay periods when Petitioner did work overtime, the hours ranged from 3 to 32 hours. (PX 14).

The undisputed work accident occurred May 11, 2020. Petitioner responded to a call from a parent about someone who was out of control. The individual was thought to be under the influence. (T 24). Petitioner testified that deputies had to wrestle the individual to get him contained, and during the process, the individual struck Petitioner in the neck with his knee. The individual also elbowed Petitioner. Petitioner testified he thought he was struck in the left shoulder, but it was later determined to be in the neck. (T 25).

Petitioner first sought medical treatment on May 19, 2020. Advanced practice nurse ("APN") Stacy Neubart evaluated Petitioner. Petitioner complained of left shoulder pain. The clinical exam revealed diffuse tenderness about the left shoulder, and positive impingement signs. APN Neubart diagnosed Petitioner with left shoulder pain. (PX 3).

Dr. Michael Merkley from Midwest Orthopaedic Center evaluated Petitioner on May 27, 2020. Petitioner provided a history of injuring his left shoulder on May 11, 2020. Petitioner also reported his pain began at his neck and involved his arm, with no radiating pain. Petitioner also complained of some numbness in the hand, but Dr. Merkley noted it was diffuse. X-rays of the left shoulder did not reveal any abnormalities. Dr. Merkley diagnosed Petitioner with a cervical strain and a left rotator cuff strain.

Following an evaluation on June 17, 2020, Dr. Merkley ordered MRIs of the cervical spine and the left shoulder. Petitioner underwent each MRI July 7, 2020. The MRI of the cervical spine revealed moderate disc

displacement at C4-5 and C5-6. Disc displacement was also noted at C7-T1, and degenerative disc disease was identified at C3-4 and C6-7. The MRI of the left shoulder revealed tendinosis in the rotator cuff and moderate AC joint arthrosis. (PX 4).

On July 14, 2020, Petitioner began treating with Dr. Patrick O'Leary at Midwest Orthopaedic Center for his cervical spine. Dr. O'Leary recommended surgery on the cervical spine that included a three-level fusion. Dr. O'Leary opined that "I do think he has a problem in his neck. Unfortunately, it is a multilevel issue, not a single-level, acute appearing finding. I think he has degenerative change, which was aggravated by the apprehension of that suspect on May 11." (PX 4).

At Respondent's request, pursuant to Section 12, Dr. Frank Phillips evaluated the Petitioner on October 2, 2020. Following his exam of Petitioner, and review of the medical records and diagnostic films, Dr. Phillips opined that Petitioner's primary issue was with his left shoulder. Dr. Phillips opined that the mechanism of injury was most consistent with a shoulder injury. Dr. Phillips further explained the recommendation by Dr. O'Leary for surgery on the cervical spine was reasonable based on the chronic degenerative changes, but based upon the clinical exam performed by Dr. Phillips he thought surgery might not be appropriate. Dr. Phillips also commented he could not explain Petitioner's subjective complaints based upon the objective findings noted on the cervical MRI. Dr. Phillips found that Petitioner's pain was focused on a number of non-anatomic pain behaviors. (PX 12).

Dr. O'Leary performed surgery on Petitioner's cervical spine on January 6, 2021. The procedures included diskectomies and fusions at C4-5, C5-6, and C6-7. (PX 4).

After five months of recovery including a course of physical therapy, Dr. O'Leary evaluated Petitioner on June 8, 2021. Petitioner complained of difficulties with range of motion of his neck. More specifically, Petitioner indicated looking side to side quickly bothered him at times. On exam, Petitioner demonstrated good strength but he had limited voluntary cervical spine range of motion. Dr. O'Leary opined that Petitioner was approaching maximum medical improvement. He commented Petitioner may continue to make slow steady improvements with time, but he was approaching a healing plateau. Dr. O'Leary ordered a functional capacity evaluation ("FCE") to determine any work restrictions. (PX 4)

Petitioner underwent the FCE on June 25, 2021. Petitioner demonstrated an ability to lift 70 pounds from floor to waist on an occasional basis, and 80 pounds from 12 inches to waist level on an occasional basis. Petitioner also demonstrated an ability to lift 40 pounds from waist height to shoulder height and an ability to lift 30 pounds overhead. Additionally, Petitioner demonstrated an ability to carry 70 pounds for a distance of 50 feet. The FCE report also identified several activities for which no functional limitations were observed. This included no functional limitations on crawling or reaching. (PX 10).

Following the functional capacity evaluation, Dr. O'Leary imposed permanent restrictions on Petitioner's activities. The restrictions included the following:

- No lifting greater than 50 pounds
- No reaching and lifting more than 25 pounds
- No neck range of motion or bending the neck more than 5 times per hour
- No crawling under machines
- No police tactics nor police work

On October 14, 2021, Petitioner returned to Dr. O'Leary with continued complaints of pain in his neck and shoulders. Petitioner reported that the surgery did, however, provide significant relief. Petitioner reported

numbness in the front of his neck which will cause him to cut himself shaving. Dr. O'Leary noted that Petitioner already had permanent work restrictions in place from his FCE, and made clear that Petitioner was not to partake in any policing tactics, and that restriction was also permanent. Dr. O'Leary placed Petitioner at MMI and released him to follow up with his primary care for medication, and to follow up with him PRN. (PX 4).

On July 5, 2022, Petitioner returned to Dr. O'Leary and reported that he was doing okay. Dr. O'Leary confirmed Petitioner's permanent restrictions and discharged Petitioner from care. (PX 11).

Respondent was unable to accommodate Petitioner's permanent restrictions, and provided vocational assistance to Petitioner. (PX 15). Petitioner also conducted a job search. (PX 16). Petitioner's job search logs indicate he applied for positions as a material handler, forklift operator, welder fabricator, machine operator, millwright, transport driver, industrial painter, and general laborer. (PX 16).

Petitioner returned to work at J.T. Fennell Co., Inc. His position is that of a machinist. The wage records offered by Petitioner show the initial hourly rate was $18.50. The most recent earnings statement offered by Petitioner was for the pay period ending July 2, 2022. At that point, Petitioner was earning $20.50 per hour. (PX 17). At hearing, Petitioner testified he was currently earning $21.50 per hour. (T 38, 50).

Petitioner testified to pain when he wakes up in the morning and when he goes to bed. He also testified to numbness on his throat requiring him to use an electric razor. He further testified to an inability to look up and significant limitations with looking to the left. Looking to the right is not restricted. (T 40).

CONCLUSIONS OF LAW

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

Petitioner sustained an undisputed work accident on May 11, 2020. Petitioner's initial complaints involved the shoulder. However, it quickly became apparent that Petitioner's injury had affected his cervical spine.

Petitioner's treating physician, Dr. Patrick O'Leary, rendered an opinion the need for surgery on the cervical spine was causally related to the work accident. Dr. O'Leary opined that "I do think he has a problem in his neck. Unfortunately, it is a multilevel issue, not a single-level, acute appearing finding. I think he has degenerative change, which was aggravated by the apprehension of that suspect on May 11." (PX4).

Respondent's examining physician, Dr. Frank Phillips, rendered an opinion that he was leaning against Petitioner undergoing surgery on his cervical spine. However, he also opined that the recommendation by Dr. O'Leary to perform surgery on the cervical spine was not unreasonable. Dr. Phillips attributed the need for surgery to the degenerative condition in Petitioner's cervical spine.

The Arbitrator observed the Petitioner and found him to be sincere, consistent and credible. All of the medical histories support the Petitioner's testimony of a work-related accident resulting in his complaints of ongoing neck pain that were mostly resolved through surgical intervention.

The Arbitrator finds it significant that Petitioner did not have any similar complaints before the work accident as compared to his symptoms after the accident. Additionally, the post-operative notes from Dr. O'Leary suggest Petitioner's symptoms resolved, to a significant degree, with the surgery.

Based on the foregoing, the Arbitrator finds Petitioner has met his burden of proof, and established a causal relationship between the May 11, 2020 work accident and the current condition of his cervical spine.

Given the chain of events, the persuasive opinion of Dr. O'Leary, and the record taken as a whole, the Arbitrator finds that the Petitioner's current condition of ill-being in his cervical spine is causally related to his work accident.

Issue (G): What were Petitioner's earnings? The Arbitrator finds as follows:

Section 10 of the Workers' Compensation Act expressly states overtime earnings are not to be included in the average weekly wage calculations. However, the Act does not define overtime earnings.

The appellate court set forth a complete analysis of overtime earnings and the standard by which they may be included in the average weekly wage calculations. See *Airborne Express, Inc. v. Illinois Workers' Comp. Comm'n,* 372 Ill. App. 3d 549 (1st Dist. 2007).

In *Airborne Express*, the appellate court defined "overtime" as working time in excess of a minimum total set for a given period. The appellate court further stated "overtime" consists of compensation for hours beyond those the employee regularly works each week. After analyzing previously decided cases, the appellate court held "overtime" includes those hours in excess of and an employee's regular weekly hours of employment that he or she is not required to work as condition of his or her employment or which are not part of a set number of hours consistently worked each week.

The claimant in *Airborne Express* worked overtime hours during 31 of 32 weeks. The court commented that while the claimant's overtime was consistent, it was not regular. The appellate court noted the claimant's overtime hours ranged from 0.8 hours to 28.43 hours during a pay period.

Here, Petitioner's overtime hours ranged from 3 to 32 hours per pay period. As with the claimant in *Airborne Express*, the Petitioner consistently worked overtime, but his overtime hours were not regular.

Additionally, the collective bargaining agreement between the union and Respondent provides that a deputy cannot be forced to work overtime hours. While Petitioner may have felt obligated to fill the uncovered shifts, his own union agreement provides those hours were not mandatory. (T 46).

In *Airborne Express* the appellate court held the claimant's overtime earnings were not to be included in the average weekly wage calculations. The decision was based upon the claimant not being required to work the overtime hours as a condition of his employment as well as the overtime earnings not being regular.

Here, just like the claimant in *Airborne Express*, Petitioner's overtime earnings were not mandatory, and they were not regular. With Petitioner failing to meet either of the two required criteria for the inclusion of overtime earnings, the Arbitrator finds the overtime earnings should not be included in Petitioner's average weekly wage calculations.

Pursuant to the stipulation between the parties, with the overtime earnings being excluded, the Arbitrator finds the Petitioner's average weekly wage is $1,032.63.

Issue (L): What is the nature and extent of the injury? The Arbitrator finds as follows:

Pursuant to Section 8.1(b) of the Act, the Arbitrator, in determining the level of permanent partial disability, must use the following factors:

i. The reported level of impairment;
ii. The occupation of the injured employee;
iii. The age of the employee at the time of the injury;
iv. The employee's future earning capacity; and
v. Evidence of disability corroborated by the medical records.

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

With regard to subsection (ii) of §8.1b(b), the occupation of the employee: At the time of the accident, Petitioner was employed as a Sheriff's Deputy for Respondent. Based upon the restrictions imposed his physician he is no longer able to work in his prior vocation as a police officer. Petitioner is currently employed as a machine operator. Petitioner's current employment does not require the ability to engage in physical altercations and it does include the lifting requirements required by the Respondent. The Arbitrator assigns significant weight to this factor.

With regard to subsection (iii) of §8.1b(b), the age of the employee at the time of the injury: Petitioner was 54 years old on the date of accident. The Arbitrator assigns some weight to this factor.

With regard to subsection (iv) of §8.1b(b), the employee's future earning capacity: Petitioner's current job does not pay him as much as he was earning for the Respondent. However, the amount of wage loss is not so significant that Petitioner wanted to pursue wage differential benefits. The Arbitrator assigns some weight to this factor.

With regard to subsection (v) of §8.1b(b), evidence of disability corroborated by the treating medical records: The medical records establish Petitioner has permanent restrictions imposed on his activities which required that he change his vocation. Petitioner testified to significant limitations with range of motion of his neck, ongoing pain, and numbness at the front of his neck causing difficulty shaving. These permanent restrictions and current complaints are corroborated by the treating medical records. The Arbitrator gives significant weight to this factor.

Based on the above factors, and the record taken as a whole, the Arbitrator finds that Petitioner sustained a permanent partial disability to the extent of 50% loss of use to his person as a whole pursuant to §8(d)(2) of the Act.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	22WC008801
Case Name	Amanda Rodriguez v. Express Staffing
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b) Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	24IWCC0396
Number of Pages of Decision	19
Decision Issued By	Deborah Simpson, Commissioner

Petitioner Attorney	Gary Stokes
Respondent Attorney	Greg Norgle

DATE FILED: 8/16/2024

/s/ Deborah Simpson, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF)
VERMILION

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Amanda Rodriguez,

Petitioner,

vs. NO: 22 WC 8801

Express Staffing,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of accident, benefit rates, medical expenses and temporary disability and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof. 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 30, 2023, is hereby affirmed and adopted.

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

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

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

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $22,400.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

August 16, 2024

o7/24/24
DLS/rm
046

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

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	22WC008801
Case Name	Amanda Rodriguez v. Express Staffing
Consolidated Cases	
Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	16
Decision Issued By	Dennis OBrien, Arbitrator

Petitioner Attorney	Gary Stokes
Respondent Attorney	Greg Norgle

DATE FILED: 10/30/2023

THE INTEREST RATE FOR THE WEEK OF OCTOBER 24, 2023 5.32%

/s/ Dennis OBrien, Arbitrator

Signature

22WC008801

STATE OF ILLINOIS)
)
COUNTY OF VERMILION)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
19(b) ARBITRATION DECISION

AMANDA RODRIGUEZ
Employee/Petitioner

v.

EXPRESS STAFFING
Employer/Respondent

Case # **22** WC **008801**

Urbana

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Dennis O'Brien** , arbitrator of the Commission, in the city of **Springfield, Illinois** , on **August 22, 2023** . After reviewing all of the evidence presented, the arbitrator hereby makes findings on the disputed issues checked below and attaches those findings to this document.

DISPUTED ISSUES

A. ☐ Was the 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 the petitioner's employment by the respondent?

D. ☐ What was the date of the accident?

E. ☐ Was timely notice of the accident given to the respondent?

F. ☒ Is the petitioner's present condition of ill-being causally related to the injury?

G. ☒ What were the petitioner's earnings?

H. ☐ What was the petitioner's age at the time of the accident?

I. ☐ What was the petitioner's marital status at the time of the accident?

J. ☒ Were the medical services that were provided to petitioner reasonable and necessary?

K. ☒ What amount of compensation is due for temporary total disability?

L. ☐ Should penalties or fees be imposed upon the respondent?

M. ☐ Is the respondent due any credit?

N. ☒ Other **Prospective Medical.**

FINDINGS

- On **March 15, 2022** , the respondent **Express Staffing** ***was*** operating under and subject to the provisions of the Act.
- On this date, an employee-employer relationship ***did*** exist between the petitioner and respondent.
- On this date, the petitioner ***did*** sustain injuries that arose out of and in the course of employment.
- Timely notice of this accident ***was*** given to the respondent.
- In the year preceding the injury, the petitioner earned $ **2,226.00** ; the average weekly wage was $ **445.20** .
- At the time of injury, the petitioner was **35** years of age, ***single*** with **0** children under 18.
- Necessary medical services ***have not*** been provided by the respondent.
- To date, $ **11,977.14** has been paid by the respondent for TTD and/or maintenance benefits.

ORDER

Petitioner suffered an accident on March 15, 2022, which arose out of and in the course of his employment by Respondent.

Petitioner's medical conditions, partially torn rotator cuff, impingement and partially torn glenohumeral ligament, are causally related to the accident of March 15, 2022.

Petitioner's average weekly wage while working for Respondent in the year prior to his accident was $445.20, resulting in ten week earnings of $2,226.00.

All of the bills included in Petitioner's Exhibits 9 and 10, are related to Petitioner's injuries, are reasonable and were necessitated to treat or cure Petitioner's injuries suffered in this accident, and are to be paid pursuant to the Medical Fee Schedule, with the exception of the following unrelated treatments:

- **May 20, 2022 electrocardiogram report by Dr. Patel**
- **May 20, 2022 chest x-rays by Dr. Eubanks**
- **May 20, 2022 blood draw venipuncture by Danville Lab**
- **May 20, 2022 blood lab work**
- **August 16, 2022 electrocardiogram report by Dr. Patel**
- **August 16, 2022 blood lab work**

Petitioner was temporarily totally disabled as a result of the accident from March 17, 2022 through August 22, 2023, a period of 75 weeks, at a weekly rate of $296.80.

Petitioner is entitled to prospective medical treatment as recommended by Dr. Eubanks, to wit, right shoulder arthroscopy and rotator cuff repair with debridement.

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

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

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

OCTOBER 30, 2023

Signature of arbitrator

FINDINGS OF FACT:

TESTIMONY AT ARBITRATION

Petitioner

Petitioner testified that she has been employed with Respondent, Express Staffing beginning in January 2022. Petitioner said she is approximately 5'2" tall and weighs approximately 110 pounds. When applying for a job with Respondent, Petitioner specifically requested light work because she is a small person and could not do heavy jobs. Petitioner was initially assigned by Respondent to a canning factory known as Work Source in January 2022. Petitioner's first job was to press red caps down onto Old Spice deodorant cans. The next job entailed removing Microban cans from boxes and repacking them into other boxes. Finally, commencing in March, 2022, Petitioner was assigned to a job shortening plastic tubes used in pump bottles by cutting them with a utility knife. She described the process for doing so, identifying items used in the process in photographs identified as in Petitioner's Exhibits 11 and 12.

Petitioner testified that she is right-handed and would cut the plastic tubes with her right upper extremity while sitting in a chair and reaching out at mid to lower chest high to a table with her right arm. Petitioner said she would cut the excess tube from each plastic pump with a utility knife while holding a block gauge with her left hand and arm. Petitioner estimates that she cut between 1,000 and 1,500 tubes per day, every day for approximately one and one-half weeks prior to the date of accident on March 15, 2022.

Petitioner demonstrated the repetitive movements she would employ to perform the job, reaching down and into a box on her right to pull an individual pump, placing the pump into the gauge, cutting the excess tubing protruding out of the gauge and then placing the cut pump into a box on her left. Petitioner explained that she would cut down and away from her body and that it sometimes took more than one cut because the knives were not good. Petitioner described the knives as dull and loose, very old and they rattled during use. Petitioner testified that the pressure necessary to make the cuts was really hard and sometimes she would have to saw on the plastic to get it off. Petitioner said that the plastic tubes were kind of thick, not thin-walled. She said cutting them was not like cutting a straw. Petitioner noted that her right hand would hurt from repeatedly smacking it onto the gauge as she cut through the tubes.

Petitioner testified that on March 15, while cutting the tubes, she felt, and heard, something rip in her right shoulder. Petitioner indicated the location as the anterior shoulder up near the clavicle. Petitioner went to the floor supervisor, Kevin, and asked if she could be moved from the tube cutting job, but he instructed Petitioner to continue. Petitioner testified that she had never had problems or pain of this nature in her right arm and shoulder before she was performing the plastic tube job while working for Respondent. Petitioner said she was able to complete her shift, though she worked very slowly and paused for several minutes. On the following day, March 16, 2022, Petitioner again asked to be taken off of the cutting job. Petitioner was then asked to leave Work Source and report to Respondent's place of business. She said she believed she filled out an accident form while at Express, talked to a woman named Tabitha, and at Tabitha's request spoke with a Telehealth doctor and nurse via a computer screen. She was told to take over-the-counter medications and not to use her right arm.

Petitioner said that after leaving the Express office she went to OSF where x-rays were ordered, and she was referred to Dr. Eubanks, which she did. She said that doctor ordered an MRI, prescribed a steroid pack, and took her off work. After the MRI was done, Dr. Eubanks ordered surgery for her, but it did not occur, it was canceled twice, and it was not her who canceled it. She said she later went to physical therapy from July 7 through August 2, but her right shoulder did not improve, and Dr. Eubanks again ordered surgery, and kept her off work. She said Dr. Eubanks kept her off work every time she saw him.

Petitioner said she saw Dr. Li at the request of the insurance company. She said in 2023 she has been seeing her primary care physician, Dr. Skimehorn,, who has prescribed medication and injections. She said the injections helped her shoulder for a week or two. She said she had not improved since the last time she saw Dr. Eubanks, her pain is a five to six out of ten. Petitioner testified that if the trial resulted in surgery being ordered, she intended to have the surgery.

Petitioner said she has a history of epileptic seizures, but it had been about three years since her last seizure, and she had never had shoulder pain after a seizure, only pain from biting her tongue.

Petitioner said that she has sustained no new or intervening injuries since leaving Work Source on March 16, 2022.

On cross examination Petitioner agreed that when she applied for work with Respondent she asked for easy work with no lifting, and she knew that the work with Work Source would be light duty work. She said she wanted light work as she is a small person and cannot do a lot of heavy jobs. She said she wanted full time work but was willing to work part time. Her last job had been with Burger King, as a fry cook, and it was part time and her hours were decreased as she was not working fast enough.

Petitioner testified that she had to use an old, "junky," box cutter to cut the tubes with, and at times it would not be sharp enough and that she would at times complain about it and ask for another box cutter. She said all the box cutters were old. She said to cut the tube she would take the box cutter and slice away from her body, occasionally saw it off. She said she worked next to her boyfriend, John Harmon. She said the whole process of taking a pump and tube from a box to her right, put it in the gauge, cut it, remove it, and put it in the box to her left took 20 to 25 seconds.

Petitioner identified Respondent Exhibit 4 as her time sheets which she signed. She agreed with the number of hours shown on the sheets and the number of days show to have been worked. She agreed that she would work when Work Source had work for her to do, and would not work if they ran out of product.

Petitioner said her last day of work at Work Source was March 16, 2022, and that following that date Respondent offered her work at AutoZone, but she told them she could not do it, as she could not lift 80 pounds, she could hardly lift 10 pounds.

Petitioner said that on March 16 she and her boyfriend went to Respondent's office, and while there she filled out an accident report indicating she had injured her right hand. She said she had hurt the right hand smacking the side of her hand on the thing she cut the tubes on.

Petitioner testified she had previously injured her right hand in 2020 when she got off the couch and tripped over her dog, falling forward and to the right, resulting in some kind of minor little fracture. She did not recall injuring a ligament. She said she treated the hand with Aleve cream. She saw an orthopedist, Dr. Shima, but surgery was not necessary. She said she had also injured her left shoulder

many years earlier, as it had dislocated. She said that when she was in her 20's she might have had an MRI of her left shoulder. She said she did not fall when it dislocated.

Petitioner said that Dr. Bane had recommended a shoulder replacement in the past, noting she had not seen him in seven years or longer. Petitioner said that she did not fill out the accident report, as she was in too much pain, her boyfriend filled out what she told him to write, and then she signed it. She said it was filled out at the desk of a representative of Respondent, Tabitha.

Petitioner testified that she had a telehealth conference while in Respondent's office on March 16, 2022, performed a self-examination during that conference, and the telehealth medical provider then put her on restrictions of not using her right upper extremity. Petitioner said she was not offered work within those restrictions, saying she was told by Tabitha to come back when she was healed. She said Tabitha offered her light duty work, but she was aware Petitioner could not do it. She said the work was at the AutoZone warehouse. When asked if she was offered work in the office Petitioner said somebody did mention something n the office, but she did not go to work n the office as she would not know how to do anything.

Petitioner said she told the doctor during the Telehealth visit that she had been cutting tubes at work and what had happened. She said Dr. Eubanks at her second visit, after her MRI, suggested she needed surgery. She said after she was denied for surgery, Dr. Eubanks suggested physical therapy again. She said Dr. Eubanks said steroid packs, and her primary care physician, Dr. Skimehorn, injected her shoulder. She said she last saw Dr. Eubanks about a year prior to arbitration.

Petitioner said she was examined Dr. Li in Bloomington, Illinois. She said she occasionally had to cut the tubing using a saw-like back and forth motion.

Respondent Exhibit 8, a short video of a person cutting a tube using the piece of wood with clamps, was shown in the hearing room. Petitioner said it showed the motion she used to cut the tube, but added that it was not as easy as was shown on the video. The video showed the cut being at an angle with the motion being away from the person's body, using an angled pipe to follow to cut the tubing uniformly at the same angle. Petitioner said the razor knife she used daily was like the one present at arbitration, but that the one she used was grey, old, junky, with a dull blade. She said she and other workers complained about the box cutters, but she was never given a new razor blade. She said it was difficult to cut through the tubing.

Petitioner agreed that she performed the cutting of the tubes for no more than 58 hours.

On redirect examination Petitioner testified that she only finished the 10th grade, and that while she had tried multiple times to get a GED, she had a hard time focusing and concentrating on school, and she failed the GED exams.

Petitioner testified that Tabitha said there was an office job available for two days. Petitioner said she told Tabitha she was not allowed to be on a computer, she was not a secretary, and did not know how to do paperwork. She said she believed this conversation was before she had the TeleHealth conference.

Petitioner said the cutting of the tube in the video appeared to be much easier than what it was when she did it, that it was a much newer appearing box cutter in the video. She noted that it was cut once in the video, but she had to make the cut 1,000 to 1,500 times each day.

Shannon Risken

The owner of Express Staffing, Ms. Shannon Risken, testified that she employs approximately 215 people working in over 60 different companies. Ms. Risken said that in the event of a work-related injury, it is company policy to have the employee come in and complete an incident report and to then speak with a telehealth doctor. She said in the event work restrictions are issued, company policy is to offer a light duty position consistent with those restrictions and they offer light duty "almost 100 percent of the time." She said this work could be either in their office or at one of the companies they partnered with who had light duty work. The in office work could be highlighting, listening to radio adds for advertising of competitors, count cars, things to keep them busy and engaged. Ms. Risken testified that she instructed her staff twice to extend an offer of light-duty to the Petitioner, and that was done by Dillon Turner. Ms. Risken said she could not recall when they received the Telehealth report and that she did not make the offer of light-duty herself, nor was any written offer of light-duty employment ever made to Petitioner.

Ms. Risken said that following the accident Petitioner did not call in on a weekly basis or after doctor's visits to see if work was available, the last time they spoke with Petitioner was on March 23, 2022.

Ms. Risken identified Petitioner's time card records, and said that Petitioner was not full time, she was par time as Work Source was considered part time as they only needed flexible staffing. She said Petitioner was not promised a certain number of hours per week. She said that not-for-profit that needed workers to supplement the work being performed by people who were mentally or physically disabled. She said the work there was light, and they modified it for people who work there.

Ms. Risken said she was familiar with the work Petitioner had been performing, and at arbitration she provided a video of herself using a green utility knife to cut a single pump bottle tube. (RX 8) Ms. Risken admitted that the knife used in the video was a brand-new knife with a brand-new blade that she purchased to make the video, she did not get it from Work Source. She said she probably practiced cutting tubes with it ten times. The height of the table upon which she cut was approximately at her mid-abdomen, about 32 inches from the floor. In her opinion a person could get materials, cut a tube, and take the tube out in 30 seconds, so 120 times per hour.

Ms. Risken said Work Source had never complained to her about the number of tubes Petitioner had cut.

On cross examination Ms. Risken stated that she is 5'7" tall and weighs approximately 165 pounds. She testified that she has no problems with her right arm or shoulder and has never performed the depicted action 1,000 or 1,500 times in one day. She said to the best of her knowledge Petitioner had never been sent written communications about light duty job availability.

On redirect examination Ms. Risken said Tabitha was not involved with light duty offers.

MEDICAL EVIDENCE

Petitioner initially saw Respondent's telehealth Nurse Practitioner (NP) Teressa Hassard, on March 16, 2022 when she reported to Respondent's place of business. The telehealth record notes a history of Petitioner repeatedly picking up an item and using a utility knife in her right hand to cut it, a history

consistent with her testimony at arbitration. It also notes her history of sometime during her shift that day feeling something ripping in her shoulder twice, causing pain from her hand, to her shoulder and to her neck. As this was a telehealth appointment from Respondent's offices, Petitioner was directed to perform a self-exam when seen. Respondent's telehealth nurse practitioner concluded that Petitioner's injury was considered consistent with her reported work-related incident, and restricted Petitioner to no use of her right arm. (RX 1, p.3,4,6,7)

Petitioner then went to OSF urgent care that same day, March 16, 2022, and was seen in person by NP Wadsworth. She gave a history at that time which was consistent with her testimony at arbitration and to NP Hassard. She noted her pain was 8/10 and was worsened by all activity. X-rays were taken and interpreted as normal. Referral to an orthopedist was discussed, and Petitioner noted she had an orthopedist at Carle, and she was told to follow up with that doctor. (PX 1, p.2-4)

Petitioner was seen Dr. Eubanks on March 29, 2022, and gave a history of acute pain to the right shoulder located in the anterior superior aspect right shoulder, Physical examination showed pain with palpation of the right shoulder, reduced right shoulder motion, and reduced right rotator cuff strength. Dr. Eubanks restricted Petitioner from all work until follow-up appointment. (PX 2, p.1,5,6)

On April 15, 2022, Dr. Eubanks noted Petitioner was complaining of persistent 6/10 pain, even after Medrol Dosepak. His examination on that date revealed reduced range of motion of the right shoulder and reduced rotator cuff strength. Dr. Eubanks ordered an MRI of the right shoulder and ordered that Petitioner remain off work. (PX2, p.7,10; PX4)

An MRI of the right shoulder was performed on April 28, 2022, and disclosed a partial tear of the supraspinatus tendon, rotator cuff impingement syndrome, edema in the humeral head and partial tear and fraying of the glenohumeral ligament. Dr. Eubanks reviewed the MRI images and on May, 17, 2022 ordered right shoulder arthroscopy to include extensive debridement with possible rotator cuff repair. Petitioner was directed to remain off work until her follow up appointment further notice (PX 3, p.1,2; PX 2, p.12; PX 4, p.3)

Petitioner was seen by her primary care physician, Dr. Skimehorn, on June 2, 2022, with continued complaints of right shoulder pain. During the physical examination of that date, it was noted Petitioner had decreased range of motion of the right shoulder and pain with palpation. (PX 5, p.1,6,8)

Respondent then submitted the matter to utilization review. Per Dr. Eubanks' deposition testimony, utilization review recommended additional conservative care in the form of physical therapy before surgery approval. Petitioner attended therapy from July 7, 2022 through August 2, 2022. On that final date the therapist noted Petitioner had reached his maximum benefit from said therapy and referred him back to Dr. Eubanks. Physical therapy proved to be of no benefit. Respondent's peer-to-peer review then approved Dr. Eubanks' surgical plan, noting it met established criteria for medical necessity. (PX 8, p.11; PX 6; PX 7)

Dr. Eubanks saw Petitioner on August 16, 2022, post her physical therapy, and she reported 6/10 pain and continuing weakness. His physical examination on that date continued to show pain on palpation, reduced rotator cuff strength and reduced range of motion. He continued to order surgery for rotator cuff impingement of the right shoulder. (PX 2, p.22,27)

Respondent then had Petitioner undergo an IME with Dr. Li in Bloomington, Illinois, on October 7, 2022. Dr. Li reported that the Petitioner complained of right shoulder pain about the entire shoulder that was worse with any kind of movement with numbness and tingling down the right arm. Petitioner denied

any pre-existing problems with the right shoulder but said she had left shoulder problems since she was a child. Dr. Li's examination found Petitioner stood 5' 2" inches tall and weighed 100 pounds. Strength testing was felt to be unreliable due to purposeful giving out. Petitioner complained of forearm pain during testing with limited range of motion due to anxiety and tenderness throughout the entire shoulder and arm. Dr. Li disagreed with Dr. Eubanks' surgical recommendations and concluded that Petitioner's diagnosis was a right cervical and right shoulder strain due to the repetitive nature of Petitioner's work. Dr. Li felt Petitioner's complaints were non-physiologic and out of proportion with objective examination findings, however, he added that he felt Petitioner believed her symptoms and was truly anxious about her condition. (RX 2, Deposition Exhibit 2, p.2,3,6).

Petitioner then returned to see Dr. Skimehorn on January 24, 2023. She continued to complain of right shoulder pain. Dr. Skimehorn has provided a shoulder injection and prescribed Naproxen and muscle relaxers for ongoing right shoulder pain. She saw Dr. Skimehorn again on April 4, 2023, due to her right shoulder pain, which she reported she had experienced since the time of her accident. She was again found to have decreased range of motion and pain with palpation. She last saw Dr. Skimehorn prior to arbitration on July 13, 2023, still reporting right shoulder pain, which had increased in the last few days. He prescribed Naproxen and a muscle relaxer. (PX 5, p.12,17,19,22,26)

DEPOSITION TESTIMONY OF DR. AARON EUBANKS

Dr. Eubanks testified that he is a board-certified orthopedic surgeon practicing in central Illinois. Dr. Eubanks performs approximately 15 surgeries per week, with approximately 20% to 25% of those being surgeries of the shoulder. (PX 8, p.5)

Dr. Eubanks initially saw Petitioner on the 29th of March with complaints of shoulder pain of two-weeks duration. Dr. Eubanks's testimony in regard to complaints, history, physical findings, and restrictions was consistent with the medical summary, above. His initial diagnosis was that of a strain of the right shoulder, but he ordered an MRI after Petitioner's condition failed to improve. The MRI reflected a high-grade partial thickness rotator cuff tear in Petitioner's right shoulder with impingement, edema and fraying of the glenohumeral ligament. Dr. Eubanks recommended surgery that was initially denied by Respondent's peer-to-peer utilization review. Therapy was then ordered as directed by the peer-to-peer review. (PX 8, p.8-11)

Dr. Eubanks was presented with a detailed hypothetical question incorporating the history of Petitioner's repetitive work duties, cutting plastic tubes, and her having experienced a tearing sensation in her right shoulder on March 15, 2022. Dr. Eubanks testified that in his opinion, based upon a reasonable degree of medical and surgical certainty, the work Petitioner was performing on March 15, 2022 caused and/or aggravated the right shoulder condition he had diagnosed and was attempting to treat. (PX 8, p.13-15, Deposition Exhibit 7)

On cross examination Dr. Eubanks was asked about numerous possible other causes for Petitioner's right shoulder condition. Dr. Eubanks replied that several of them could cause the type of problem Petitioner had, but he had no evidence indicating any of them. He then noted that, "more likely than not based on the timing of her complaints and the associated self-reported injury at that time that it is more likely than not associated with work injury than age, but I can't say with 100 percent specificity. But I do think it is more probably related to her work injury." He said he thought that given enough repetition,

slight resistance could be enough to cause Petitioner's damage. When asked if, using the hypothetical, it was just as likely that Petitioner had a degenerative tear of the supraspinatus as opposed to a repetitive trauma type of tear, Dr. Eubanks said he respectfully disagreed, that based on the knowledge he had, he did not believe it was just a generic, degenerative tear. He said his diagnosis of impingement is not something he would relate to the hypothetical work incident. (PX 8, p.27-29,35)

Dr. Eubanks said that Petitioner had not been able to work, which is why he restricted her from work, she had not improved, and surgery was being scheduled, but he was not aware it would take a year to get the surgery, he had assumed it would be two or three weeks until surgery, and she would then recuperate and be back to work, otherwise he might have found her capable of some kind of gainful employment. (PX 8, p.31,32

DEPOSITION TESTIMONY OF DR. LAWRENCE LI

Dr. Li testified that he is a board-certified orthopedic surgeon practicing in central Illinois. Dr. Li treats all upper and lower extremity conditions, operatively and non-operatively, and spinal conditions non-operatively. (RX 2, p.5)

Dr. Li saw Petitioner on only one occasion, October 6, 2022, but did review medical records of Dr. Eubanks, OSF and the MRI of April 28, 2022. Petitioner provided a history of hurting her shoulder and experiencing a ripping sensation while she was cutting tubing at her employment. (RX2, p.8-10)

Petitioner complained of pain from her neck, all the way down to her right wrist with pain around the entire shoulder that was worse with movement. Petitioner also complained of numbness and tingling involving her right arm and the front and back of her hands. Petitioner denied having prior issues with her right shoulder but said she had experienced problems with her left shoulder since childhood. Petitioner also gave a history of anxiety, irritable bowel syndrome and epilepsy. (RX 2, p.11,12)

Dr. Li interpreted the MRI to show a partial tearing of the supraspinatus tendon and fraying or partial tear of the inferior glenohumeral ligament and down-sloping of the acromion. Dr. Li did not believe that Petitioner's job involved a lot of repetitive work. (RX2, p.13-15)

Dr. Li testified that in his opinion, the job described by Petitioner did not cause the tears reflected in the MRI. Dr. Li was of the opinion that the right shoulder pathology was caused by Petitioner's history of epilepsy and seizures. Dr. Li believed Petitioner had suffered a right paracervical strain and right shoulder strain, that Petitioner was already at maximum medical treatment, and that she could return to work full duty. (RX 2, p.17,18)

ARBITRATOR CREDIBILITY ASSESSMENT

Petitioner was a cooperative witness, answering all questions with no apparent attempt to evade or exaggerate. Petitioner did appear to be confused at times, and had to ask that questions be rephrased or repeated. She made it clear in her testimony that she had not graduated from high school and had attempted to complete her GED on a number of occasions, but had failed to pass the GED examination. Petitioner's testimony was consistent with the contemporaneous medical records and her testimony in

regard to her prior medical state was not contradicted by pre-accident medical records or witness testimony. The Arbitrator finds Petitioner to be a credible witness.

Shannon Risken was also a cooperative witness, also answering all questions put to her by both attorneys. As the owner of a sizeable business, she had no difficulty answering any of the questions put to her, and she did so in an apparently honest manner. She readily admitted that the box cutter knife she used in the video was new, not one which had been used by Petitioner or any of her co-workers, that she had purchased it herself. The Arbitrator finds Ms. Risken to be a credible witness.

CONCLUSIONS OF LAW:

In support of the Arbitrator's Decision relating to whether an accident occurred which arose out of and in the course of Petitioner's employment by Respondent on March 15, 2022 and whether Petitioner's current condition of ill-being, torn rotator cuff, impingement syndrome, edema and partial tear/fraying of the glenohumeral ligament is causally related to the accident of March 15, 2022, the Arbitrator makes the following findings:

The findings of fact, above, are incorporated herein.

The summary of medical evidence, above, is incorporated herein.

The summary of deposition testimony, above, is incorporated herein.

The Arbitrator's credibility assessment, above, is incorporated herein.

The two board-certified surgeons disagreed on the extent of the injury suffered by Petitioner on March 15, 2022. Dr. Li opined that Petitioner suffered a right paracervical strain and right shoulder strain as a result of the repetitive nature of her job duties. Dr. Li concluded that Petitioner's symptoms, other than shoulder pain, were not consistent with the partial tear of the supraspinatus and impingement syndrome. Dr. Li testified that Petitioner's rotator cuff tear and the tear in the glenohumeral ligament were due to past epileptic seizures suffered by Petitioner. Petitioner testified that she has not had an epileptic seizure for approximately three years and has never experienced right shoulder pain after a seizure. Dr. Li admitted that there is no history of any complaints or medical treatment for the right shoulder and Petitioner specifically reported, in sworn testimony, that she has never had any issues with her right shoulder. The Arbitrator gives little weight to Dr. Li's opinions in regard to causation as they are unsupported by medical evidence of Petitioner's condition prior to March 15, 2022, and appear to be supposition, conjecture, or guesswork on the part of Dr. Li.

Dr. Eubanks testified that after his review of Petitioner's medical records, including the MRI of April 28, 2022, and considering the highly repetitive nature of Petitioner's work duties and the experience of a tearing sensation on March 15, 2022, he concluded that Petitioner's partially torn rotator cuff, impingement and partially torn glenohumeral ligament were caused and/or aggravated by the accident of March 15, 2022.

As noted above, the Arbitrator finds Petitioner to be a credible witness, and notes her testimony is consistent with the medical records and histories given to a number of different physicians beginning immediately following her onset of pain on March 15, 2022. No medical evidence or testimonial

evidence was admitted at arbitration of any injury to the right shoulder prior to March 15, 2022. Though Respondent's IME concluded that Petitioner must have torn her rotator cuff and glenohumeral ligament in some prior epileptic seizure, there is no evidence of that. Nor is there any evidence of any intervening injury to the right shoulder subsequent to March 15, 2022.

While the video introduced of Ms. Risken cutting a plastic tube in such a manner as to imply the action is very light in nature, the video shows Ms. Risken making a single cut, and not under the conditions described by Petitioner, as Ms. Risken only made the cut once, not 1,000 to 1,500 times in a day, and she was using a box cutter she had purchased new, not an old, dull box cutter, as described by Petitioner as being used on a daily basis. No evidence was introduced to contradict Petitioner's description of the box cutters actually used to perform the work. In addition, Petitioner testified that she was repetitively reaching down with her right arm to grasp the plastic pumps, placing those pumps into a block gauge and then grasping a utility knife with her right hand and, while holding the gauge with her left hand, cutting the plastic tubes with her right hand in a downward motion away from her body. Petitioner had to use so much force, she repeatedly banged her right hand on the block and table. That action was repetitive in nature, as it was performed anywhere from 1,000 to 1,500 times per workday, every workday for a week or two prior to March 15, 2022.

The Arbitrator finds that Petitioner suffered an accident on March 15, 2022, which arose out of and in the course of his employment by Respondent.

The Arbitrator finds that Petitioner's medical conditions, partially torn rotator cuff, impingement and partially torn glenohumeral ligament, are causally related to the accident of March 15, 2022. This finding is based upon Petitioner's testimony reference her repetitive work which resulted in injuries to her right shoulder manifesting on March 15, 2022 while performing the job of repetitively cutting plastic tubes for insertion in lotion bottles, the medical records and testimony summarized above and the testimony of both Dr. Eubanks, Petitioner's treating surgeon, and Dr. Li, Respondent's IME physician, that Petitioner suffered a work-related injury on that date.

The Arbitrator further finds that the chain-of-events also support a finding of causal connection. This finding is based upon Petitioner's unrebutted testimony to a pre-accident state of asymptomatic good health in the right shoulder, her performing repetitive work and the sudden onset of symptoms on March 15, 2022, and her immediately after said accident having sudden pain, immediate medical treatment and new diagnoses based on diagnostic testing and physical examinations. Certi-Serve, Inc. vs. Industrial Commission, 101 Ill.2d 236,244 (1984)

In support of the Arbitrator's Decision relating to Petitioner's earnings and Average Weekly Wage, the Arbitrator makes the following findings:

The findings of fact, above, are incorporated herein.

The summary of medical evidence, above, is incorporated herein.

The summary of deposition testimony, above, is incorporated herein.

The Arbitrator's credibility assessment, above, is incorporated herein.

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

Petitioner began her employment with Respondent on January 19, 2022. Petitioner's date of accident is March 15, 2022. Wage records produced by Respondent establish that Petitioner worked a total of 25 days during the period January 19 through March 11, 2022 ("last day of the employee's last full pay period immediately preceding the date of injury . . .," 820 ILCS305/10). A normal work week was five days per week.

Section 10 of the Act provides that when an employee's employment prior to the injury extended over a period of less than 52 weeks, the method of dividing the earnings during that period by the number of weeks and parts thereof remaining after the time lost has been deducted shall be followed. Petitioner worked a total of 185.5 hours during the relevant 25 day period. Petitioner was paid $12.00 per hour (T60). Total gross earnings during the period are $2,226.00. Dividing gross earnings by five weeks (25 days divided by 5 days/week), yields an average weekly wage of $445.20. *D. J. Masonry Co. v. Commission*, 295 Ill.App.3d 924,933 (1998)

The Arbitrator finds that Petitioner's average weekly wage while working for Respondent in the year prior to his accident was $445.20, resulting in ten week earnings of $2,226.00. This finding is based upon the facts stated above.

In support of the Arbitrator's Decision relating to reasonable and necessary Medical Services, the Arbitrator makes the following findings:

Treatment records of Dr. Skimehorn, Dr. Eubanks, and OSF introduced by Petitioner correspond with dates of service for treatment of the right shoulder and arm contained in the medical bill exhibits, Petitioner Exhibits 9 and 10, with the exception of Petitioner Exhibit 10, page 6, 7, 8, 9, 11, and 13 (5/20/2022 electrocardiogram report by Dr. Patel, 5/20/2022 chest x-rays by Dr. Eubanks, 5/20/2022 blood draw venipuncture by Danville Lab, 5/20/2022 blood lab work, 8/16/1011 electrocardiogram report by Dr. Patel, 8/16/2022 blood lab work). No medical records indicate any relationship between said bills and Petitioner's right shoulder injuries. Dr. Li, Respondent's IME agreed that all of the medical treatment to Petitioner's right shoulder injuries rendered to date has been reasonable and related to Petitioner's injuries (PX 2; PX 5; RX2, Deposition Exhibit 2, p.5; PX 9; PX 10).

The Arbitrator finds that all of the bills included in Petitioner's Exhibits 9 and 10, are related to Petitioner's injuries, are reasonable and were necessitated to treat or cure Petitioner's injuries suffered in this accident, and are to be paid pursuant to the Medical Fee Schedule, with the exception of the following unrelated treatments:

- **May 20, 2022 electrocardiogram report by Dr. Patel**
- **May 20, 2022 chest x-rays by Dr. Eubanks**
- **May 20, 2022 blood draw venipuncture by Danville Lab**
- **May 20, 2022 blood lab work**
- **August 16, 2022 electrocardiogram report by Dr. Patel**

- **August 16, 2022 blood lab work**

This finding is based upon the medical records introduced into evidence and the deposition testimony of Dr. Eubanks and Dr. Li.

In support of the Arbitrator's Decision relating to what amount of compensation is due for temporary total disability, the Arbitrator makes the following findings:

The findings of fact, above, are incorporated herein.

The summary of medical evidence, above, is incorporated herein.

The summary of deposition testimony, above, is incorporated herein.

The Arbitrator's credibility assessment, above, is incorporated herein.

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

Dr. Eubanks, Petitioner's treating surgeon restricted Petitioner from all work effective April 1, 2022 Dr. Eubanks restricted Petitioner from all work on each successive visit thereafter, and after receiving MRI results confirming tears in Petitioner's right rotator cuff, ordered surgery and restricted Petitioner from all work "until further notice.".

Petitioner also claims temporary total disability for the period from March 16, 2022, through March 31, 2022. On March 16, 2022, Respondent required Petitioner speak with a physician through an internet service Respondent utilized known as "Tap-to-Treat." After Respondent's telehealth physician interviewed Petitioner, the doctor restricted Petitioner from any use of the right upper extremity. Ms. Risken testified that though it was company policy to offer light-duty employment to injured employees consistent with physician restrictions, she did not personally offer light-duty employment to Petitioner and no written offer of light-duty employment appears to have been made.

Respondent testified that a Mr. Dillon Turner would have been tasked with the responsibility to make offers of light-duty employment to Petitioner consistent with physician restrictions (T187). Respondent failed to present Mr. Turner to testify, and no document authored by Mr. Dillon or any other individual from Respondent regarding any accommodated work was introduced into evidence.

Petitioner testified that before the appointment with the telehealth medical provider, Tabitha, one of Respondent's office workers, offered Petitioner a job at AutoZone which Petitioner testified would have required her to lift 80 pounds. Ms. Risken, who was present during Petitioner's testimony, did not contradict Petitioner's statement in regard to the work requirements of AutoZone. Petitioner testified that Tabitha ultimately instructed Petitioner to come back when she was healed and rested. It is noted that Petitioner did not appear to be sophisticated in human resources practices. While she did not testify that she made regular contact with Respondent to determine if accommodate work might be available, it likewise does not appear that Respondent made contact with Petitioner to determine if she could work accommodated work, and did not make any such accommodated work offers to Petitioner after the date of injury.

Petitioner has been restricted from work from March 16, 2022 through date of arbitration on August 22, 2023 for a total of 75 weeks.

The Arbitrator finds that Petitioner was temporarily totally disabled as a result of the accident from March 17, 2022 through August 22, 2023, a period of 75 weeks, at a weekly rate of $296.80. This finding is based upon the testimony of Petitioner and Ms. Risken, the medical records introduced into evidence,

In support of the Arbitrator's Decision relating to Prospective Medical, the Arbitrator makes the following findings:

The findings of fact, above, are incorporated herein.

The summary of medical evidence, above, is incorporated herein.

The summary of deposition testimony, above, is incorporated herein.

The Arbitrator's credibility assessment, above, is incorporated herein.

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

Dr. Eubanks has testified that, based upon the MRI dated April 28, 2022, Petitioner suffers from a high-grade partial thickness rotator cuff tear in her right shoulder with rotator cuff impingement, edema and fraying of the glenohumeral ligament. After receiving the results of the MRI, Dr. Eubanks ordered surgery of the right shoulder. That surgery did not take place because Respondent refused to approve the procedure and demanded a peer-to-peer review.

The peer-to-peer review directed that additional conservative care proceed, specifically physical therapy, before any recommended surgery. Dr. Eubanks thereupon ordered physical therapy, and Petitioner participated in the therapy from July 7, 2022 through August 2, 2022. Therapy notes consistently report moderate to severe difficulty with activities of daily living. Petitioner was discharged from therapy on August 2, 2022, with Petitioner having displayed limited progress. Petitioner was said to have reached maximum benefit from therapy and was discharged and referred back to Dr. Eubanks.

Dr. Eubanks acknowledged that there was no improvement from the therapy, and he again ordered surgery. After receiving the results of the failed physical therapy program, Respondent's peer-to-peer review evaluators concluded that the surgery recommended by Dr. Eubanks, "Right Shoulder Arthroscopy, RCR w/Extensive Debridement" did now meet established criteria for medical necessity and was being approved by the utilization review physician.

Petitioner testified that despite ongoing conservative care from her family physician, including injections and prescription Naproxen and muscle relaxers, there has been no improvement in her condition, her pain levels remain at a 5 to 6 on a daily basis and she intends to have the surgery recommended by Dr. Eubanks and confirmed by Respondent's peer-to-peer if awarded by the Arbitrator.

The Arbitrator finds that Petitioner is entitled to prospective medical treatment as recommended by Dr. Eubanks, to wit, right shoulder arthroscopy and rotator cuff repair with debridement. This finding is based upon the medical opinions of Dr. Eubanks, the per-to-peer review acknowledgment that the surgery met established criteria for medical necessity, the testimony of Petitioner, and the medical records, as summarized above**.**

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	09WC045946
Case Name	Bonnette Brooks v. City of Chicago
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	24IWCC0397
Number of Pages of Decision	16
Decision Issued By	Amylee Simonovich, Commissioner

Petitioner Attorney	Matt Walker
Respondent Attorney	Katharine Gainer

DATE FILED: 8/20/2024

/s/ Amylee Simonovich, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

BONNETTE BROOKS,

Petitioner,

vs. NO: 09 WC 45946

CITY OF CHICAGO,

Respondent.

DECISION AND OPINION ON REVIEW

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

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed July 25, 2023 is hereby affirmed and adopted.

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

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

The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

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

August 20, 2024

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AHS/ldm
051

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

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	09WC045946
Case Name	Bonnette Brooks v. City of Chicago
Consolidated Cases	
Proceeding Type	Request for Hearing
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	13
Decision Issued By	Ana Vazquez, Arbitrator

Petitioner Attorney	Matt Walker
Respondent Attorney	James Byrnes

DATE FILED: 7/25/2023

/s/Ana Vazquez, Arbitrator
Signature

INTEREST RATE THE WEEK OF JULY 25, 2023 5.27%

STATE OF ILLINOIS)
)SS.
COUNTY OF Chicago)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Bonnette Brooks
Employee/Petitioner

v.

City of Chicago
Employer/Respondent

Case # **09** WC **045946**

Consolidated cases:

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Ana Vazquez**, Arbitrator of the Commission, in the city of **Chicago**, on **January 6, 2023**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On **October 2, 2009**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $**71,994.00**; the average weekly wage was $**1,384.97**.

On the date of accident, Petitioner was **49** years of age, ***married*** with **5** dependent children.

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

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

Respondent shall be given a credit of $**310,478.05** for TTD, $**0** for TPD, $**277,916.31** for maintenance, and $**0** for other benefits, for a total credit of $**588,394.36**.

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

ORDER

Per stipulation, Petitioner is entitled to temporary total disability benefits of **$923.31/week** for **393 4/7 weeks**, commencing on **October 5, 2009** through **April 20, 2017**, as provided in Section 8(b) of the Act. Per stipulation, Respondent is entitled to a credit in the amount of **$310,478.05** for temporary total disability benefits paid to Petitioner.

Respondent shall pay to Petitioner maintenance benefits of **$923.31/week** for **182 5/7 weeks**, commencing on **April 21, 2017** through **October 20, 2020**, as provided in Section 8(a) of the Act. Per stipulation, Respondent is entitled to a credit in the amount of **$277,916.31** for maintenance benefits paid to Petitioner.

Permanent Total Disability

Respondent shall pay Petitioner permanent and total disability benefits of **$923.31/week** for life commencing **October 21, 2020**, as provided in Section 8(f) of the Act.

Commencing on the second July 15th after the entry of this award, Petitioner may become eligible for cost-of-living adjustments, paid by the Rate Adjustment Fund, as provided in Section 8(g) of the Act.

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

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

Ana Vazquez

JULY 25, 2023

Signature of Arbitrator

PROCEDURAL HISTORY

This matter proceeded to arbitration on January 6, 2023 in Chicago, Illinois before Arbitrator Ana Vazquez. The issues in dispute are whether Petitioner is entitled to maintenance benefits from April 21, 2017 through January 6, 2023 and the nature and extent of the injury. Arbitrator's Exhibit ("Ax") 1. All other issues have been stipulated.

FINDINGS OF FACT

Petitioner began working at Respondent on November 2, 2002. Tr. at 12. Petitioner testified that prior to working at Respondent, she worked as a cashier for the Chicago Park District, as a mail handler, as an outreach worker at Tasc, at a transportation company, and at a home care agency. Tr. at 13.

Petitioner testified that she attended elementary school at Avalon Park. Tr. at 10. Petitioner testified that she attended Hirsch High School until sophomore year, and then attended Loreta Educational Adult School, where she received her high school diploma in 1979. Tr. at 11. Petitioner then attended an EMT program at Truman College and obtained her certification. Tr. at 11. Petitioner then attended Chicago State University for two years and did not receive a degree. Tr. at 11-12.

Petitioner is left-handed. Tr. at 12.

Duties

Petitioner's position at Respondent was a cement mixer, which is a laborer. Tr. at 13-14. Petitioner's duties as a cement mixer/laborer consisted of forming and building sidewalks, curbs, and gutters. Tr. at 14. Petitioner testified that she handled wood, nails, hammers, lumber, and a taper machine, which grinds dirt and smooths out rocks before pouring cement. Tr. at 14. Petitioner testified that her duties involved the use of her hands. Tr. at 14. Petitioner testified that hammering, cleaning excess cement, and breaking up framing after the cement dried was also involved. Tr. at 14-15. Petitioner explained that after the cement was dry, they would go back and break up all the wood framing, which included taking nails out, pulling the ten by four blocks out, stacking the blocks, putting stakes in a bundle, using a shovel to scrape cement, and using a broom and shovel to sweep up residue. Tr. at 15.

Accident

Petitioner testified that on October 2, 2009, she was working at a job site after a different crew had broken up all the curbs. Tr. at 17. Petitioner testified that they had to shovel the rocks, dirt, excess old curb, and cement and pile it out of the way. Tr. at 17. Petitioner testified that after a few hours of shoveling, she felt an aching pain in her left hand, and noticed that it was swollen. Tr. at 17-18. Petitioner testified that she showed her hand to a co-worker and supervisor, and that her supervisor immediately sent her to Mercy Works. Tr. at 18.

Medical records summary

Petitioner presented at Mercy Works on October 5, 2009 and was seen by Dr. Homer Diadula. Petitioner's Exhibit ("Px") 1 at 7. A consistent accident history is noted. X-rays of Petitioner's left wrist and hand were obtained and were normal. Px1 at 15-17. Dr. Diadula's diagnoses were strains of the left hand and wrist. Px1at 7. Dr. Diadula prescribed Ibuprofen and recommended use of a wrist brace. He placed Petitioner on restrictions, including no lifting more than 10 pounds with the left hand, limited use of the left hand, and no repetitive left wrist movements.

Petitioner returned to Dr. Diadula on October 9, 2009, and his diagnoses were unchanged, and he kept Petitioner on limited duty restrictions. Px1 at 8.

Petitioner presented to Dr. Robert Goldberg on October 14, 2009. Px2 at 7. Dr. Goldberg noted a consistent accident history. Dr. Goldberg's diagnoses were a left wrist sprain and a left-hand sprain due to a work injury on October 2, 2009 and aggravation of a pre-existing condition. Dr. Goldberg prescribed physical therapy and light duty work.

On October 30, 2009, Petitioner returned to Dr. Diadula, at which time Dr. Diadula noted triggering in Petitioner's left index finger. Px1 at 8. Dr. Diadula diagnosed Petitioner with strains of the left hand and wrist and flexor stenosing tenosynovitis of the left index finger. Dr. Diadula maintained Petitioner on restrictions, including no lifting more than 10 pounds with the left hand, limited use of the left hand, and no repetitive left wrist movements.

Petitioner returned to Dr. Goldberg on November 2, 2009 and November 9, 2009. Px2 at 8. On November 2, 2009, Dr. Goldberg diagnosed Petitioner with left index finger stenosing tenosynovitis due to strain injury at work on October 2, 2009. Px2 at 8. On November 16, 2009, Dr. Goldberg ordered an MRI of Petitioner's left hand. Px2 at 9. On November 30, 2009, Dr. Diadula noted that swelling in Petitioner's left index finger metacarpophalangeal ("MCP") joint had spread to the left middle finger MCP joint dorsal aspect. Px1 at 8-9. Petitioner followed up with Dr. Goldberg on December 9, 2009 and December 23, 2009. Px2 at 9-10.

Petitioner underwent a left-hand MRI on December 29, 2009. Px1 at 31-32, 34-35; Px3 at 4-5. The MRI revealed (1) significant bone marrow and soft tissue edema about the second MCP joint with associated joint fluid and possible synovitis, (2) cystic change of the second metacarpal head with possible cortical disruption, and (3) differential considerations included post traumatic changes with bone contusions and a potential fracture through an underlying degenerative cyst, osteomyelitis/septic joint, and inflammatory arthritis with synovial proliferation.

After reviewing the MRI of the left hand, Dr. Diadula diagnosed Petitioner with synovitis of the MCP joint of the left index finger and strain and sprain of the left wrist/hand. Px1 at 10. Dr. Diadula maintained Petitioner on limited duty restrictions, including no use of the left hand.

After reviewing the MRI of the left hand, Dr. Goldberg's diagnosis was left hand MCP joint sprain at work. Px2 at 10. Dr. Goldberg referred Petitioner for an infectious disease consultation.

On January 11, 2010, Dr. Diadula referred Petitioner to Dr. William Heller for a second opinion. Px1 at 10. Petitioner saw Dr. Heller on January 18, 2010, at which time he noted that Petitioner was most likely suffering from left hand second MP joint synovitis. Px8 at 433-434. Dr. Heller recommended surgical synovectomy. Petitioner followed up with Dr. Diadula on January 18, 2010. Px1 at 10.

Petitioner presented for an infectious disease consultation on January 20, 2010, at which time Dr. David Simon noted that Petitioner's synovitis was non-infectious in origin. Px4 at 2-6. Dr. Simon referred Petitioner to Dr. Andrew Ruthberg for a rheumatology consult. Petitioner saw Dr. Ruthberg on January 21, 2010, at which time Dr. Ruthberg noted that Petitioner had synovitis at the left second MCP joint and that an indolent infection was one explanation, and that other forms of inflammatory disease had to be considered including atypical rheumatoid arthritis, rheumatoid variants, and crystal induced disease. Px5 at 4-6. Petitioner followed up with Dr. Goldberg on January 25, 2010, January 29, 2010, and February 3, 2010. Px2 at 12-13. Petitioner followed up with Dr. Diadula on January 25, 2010 and February 3, 2010. Px1 at 10-11. Petitioner returned to Dr. Ruthberg on February 17, 2010. Px5 at 8-9. Dr. Ruthberg's impression was that Petitioner was having a monoarticular or oligoarticular pattern of early rheumatoid arthritis ("RA") and a history of work-related injuries to the left hand and wrist area.

An injection was administered into Petitioner's left second MCP joint. Petitioner continued to treat with Dr. Ruthberg for her RA diagnosis through 2010. Px5.

Petitioner next saw Dr. Goldberg on February 24, 2010. Px2 at 13. Dr. Goldberg's diagnosis was left second MCP strain due to work injury on October 2, 2009 and underlying rheumatoid arthritis. Dr. Goldberg noted that Petitioner's left-hand condition was initiated and caused by the work injury of October 2, 2009, and that rheumatoid arthritis was contributing to her left-hand condition. Dr. Goldberg further noted that without the trauma of October 2, 2009, there would be no disability. Dr. Goldberg maintained Petitioner on the restriction of no use of the left hand. Petitioner followed up with Dr. Diadula on February 24, 2010, March 24, 2010, April 7, 2010, and April 19, 2010. Px1 at 11-12.

On April 23, 2010, Dr. Goldberg prepared a "Summary of Medical Care" wherein he noted that "[t]o a reasonable degree of medical certainty, I believe [Petitioner] sustained a left [MCP] joint sprain at work on October 2, 2009, which ultimately developed posttraumatic arthritis. Superimposed on this traumatic condition has been a diagnosis of rheumatoid arthritis. Her current state of ill being, left second [MCP] joint posttraumatic arthritis is being aggravated, but was not caused by rheumatoid arthritis." Px2 at 15. Dr. Goldberg further noted that Petitioner was capable of only 15-pounds maximum lift, push or pull. Px2 at 15. Petitioner followed up with Dr. Diadula on April 28, 2010. Px1 at 12-13.

Dr. Goldberg placed Petitioner at maximum medical improvement ("MMI") on June 23, 2010 and placed Petitioner on a permanent restriction of 15 pounds max. Px2 at 16. Petitioner's permanent restrictions were maintained by Dr. Goldberg on July 28, 2010, November 8, 2010, and January 19, 2011. Px2 at 17.

On February 1, 2012, Dr. John Fernandez conducted a Section 12 exam on behalf of Respondent. Px8 at 3-8. At that time, Dr. Fernandez's diagnoses were (1) left index finger metacarpal joint degeneration, severe and (2) left wrist scapholunate ligament widening with early scapholunate advanced collapse ("SLAC") and positive ulnar variance with distal radioulnar joint ("DRUJ") degeneration. Px8 at 6. Dr. Fernandez opined that based on Petitioner's description of the injury, it appeared that there was a causal relationship between her work injuries and the development of her current conditions. Px3 at 6. Dr. Fernandez further opined that Petitioner was not at MMI and that she was capable of working in a light capacity under 20 pounds with regards to force with restrictions on the use of tools or more forceful use particularly with repetitive exposure. Px3 at 7. He noted that Petitioner's prognosis for a return to heavy work was very guarded or poor. Px6 at 7. He further noted that Petitioner may require future treatment for the wrist, including a partial fusion or proximal row carpectomy. Px3 at 7. Petitioner subsequently began to treat with Dr. Fernandez, and she followed up with him on April 10, 2012. Px8 at 13-14.

On May 11, 2012, Petitioner underwent a left index finger metacarpal joint fusion with tension band technique. Px6 at 12-13; Px8 at 16-17. Petitioner's postoperative diagnosis was left index finger metacarpal joint instability with degeneration. Dr. Fernandez noted that intraoperative findings included findings consistent with posttraumatic instability at the metacarpal joint and significant degeneration at the metacarpal head and proximal phalanx with a posttraumatic component indicative of instability of the ligament. On June 12, 2012, Dr. Fernandez removed the k-wire from Petitioner's left index finger. Px8 at 32-33, 405.

On October 25, 2012, a CT scan of the left hand was obtained, which showed postsurgical changes related to the fusion of the index MCP with no evidence of bone bridging, suggestive of non-union. Px8 at 55. On November 8, 2012, Dr. Fernandez recommended a revision fusion utilizing bone graft. Px6 at 119-120; Px8 at 60-61.

On January 11, 2013, Petitioner underwent (1) left index finger revision metacarpal joint fusion, (2) left index finger tenolysis, flexor tendons, and (3) left index finger removal of deep plate and screws. Px8 at 388-390.

Petitioner's postoperative diagnoses were (1) left index finger metacarpal joint fusion nonunion and (2) left index finger flexor tendon adhesions.

Petitioner was given an injection into the A1 pulley on May 13, 2013. Px8 at 83, 403. On June 6, 2013, a CT scan of the left hand was obtained, which showed (1) an almost complete fusion of the second MTP joint, (2) advanced osteoarthritis at the base of the first metacarpal, distal radioulnar joint and to a lesser degree at the distal interphalangeal ("DIP") joints, and (3) widening of the scaphoulnate interval, reflecting scaphoulnate ligament injury. Px8 at 88. On June 10, 2013, Dr. Fernandez administered a left index finger A1 pulley injection. Px8 at 89-90, 402.

On July 11, 2013, Dr. Fernandez recommended Petitioner begin a formal therapy program for strengthening since her fusion had completely healed. Px8 at 93-94. Dr. Fernandez noted that he wanted Petitioner to return to work on August 26, 2013, and that Petitioner would be considered at MMI at that point. Px8 at 94. Dr. Fernandez noted that he wanted Petitioner to return to work with a permanent restriction of limiting repetition force and use of tools to less than 30 pounds. Px8 at 94. Dr. Fernandez also noted that Petitioner might require surgery in the future if the hardware became bothersome or uncomfortable, but that he wanted Petitioner to wait a full year before any sort of surgical intervention was done. Petitioner was instructed to follow up as needed.

Petitioner returned to Dr. Fernandez on May 12, 2015, at which time he recommended removal of the dorsal hardware with dorsal extensor tenolysis, as well as a separate volar incision at the A1 pulley with the V-shaped incision and a local flexor tenolysis. Px8 at 97-99. On June 22, 2015, Petitioner underwent (1) left hand and index finger removal of deep plate and screws metacarpal fusion site, (2) left hand and index finger extensor tenolysis, and (3) left hand and index finger flexor tenolysis, profundus, and superficialis tendons. Px8 at 385-387. Petitioner's postoperative diagnoses were (1) left hand and index finger retained deep hardware plate and screws metacarpal joint fusion site, (2) left hand and index finger extensor tendon adhesions, and (3) left hand and index finger flexor tendon adhesions. Petitioner continued to follow up postoperatively with Dr. Fernandez through November 2015. Px8 at 106-141.

Petitioner underwent an MRI arthrogram of the left wrist on November 30, 2015, which revealed (1) sequelae of chronic ulnar abutment with osseous fusion of the lunotriquetral bones, (2) tear of the radial triangular fibrocartilage complex ("TFCC") attachments, (3) chronic tear of the dorsal and volar bands of the scapholunate ligament, (4) loose joint capsular deficiency most prominent at the volar ulnar aspect, and (5) osteoarthritis at the triscaphe joint. Px8 at 248-249. On December 22, 2015 and February 2, 2016, a left wrist ulnar-sided injection was administered into the ulnar snuffbox of the distal ulna. Px8 at 400-401. Petitioner continued to follow up with Dr. Fernandez through July 2016. Px8 at 146-163.

On July 11, 2016, Petitioner underwent a (1) left wrist arthroscopy with debridement of the TFCC tear, central and (2) a left forearm ulna shortening osteotomy, Wright osteotomy system. Px8 at 164-165. Petitioner's postoperative diagnoses were (1) left wrist ulnocarpal impaction with chondromalacia of the lunate and triquetrum and (2) left wrist central TFCC tear. Petitioner continued to follow up with Dr. Fernandez through January 2017, at which time he recommended an FCE after completion of therapy. Px8 at 168-225.

Petitioner underwent a functional capacity evaluation ("FCE") on March 1, 2017. Px8 at 23-242. It was noted that Petitioner demonstrated physical capabilities and tolerances to function at least in the medium physical demand level. On April 20, 2017, Dr. Fernandez noted that regardless of the FCE results, Petitioner would need a permanent light duty restriction in the five-pound to 10-pound range due to continued pain and dysfunction. Px8 at 228-229. Petitioner was administered a steroid injection into her left small finger MCP joint. Dr. Fernandez recorded Petitioner's active diagnoses at that time as (1) left wrist TFCC pain, (2) left wrist ulnar

positive variants with LT coalition, and (3) left wrist TFCC pain status post-surgery. Petitioner testified that she last saw Dr. Fernandez on April 20, 2017. Tr. at 42.

On December 27, 2019, Petitioner was seen by Dr. Tom Kiesler. Px9. On exam, Dr. Kiesler noted soft swelling over the dorsum of the left index small finger metacarpal head of unclear etiology. Dr. Kiesler recommended an MRI of the left hand to evaluate the mass at the left index MP joint. Dr. Kiesler opined that given the location of the mass, it was associated with previous surgical treatment and that it may require surgical treatment in the future. Dr. Kiesler agreed with the restrictions given to Petitioner by Dr. Fernandez.

On cross examination, Petitioner testified that she has not seen any other doctor for her left wrist and left hand since 2019. Tr. at 43. Petitioner also testified that neither Dr. Fernandez, Dr. Kiesler, nor any other doctor had told her that she could not return to work. Tr. at 43-44.

Vocational rehabilitation

Petitioner testified that she began vocational rehabilitation with Thomas Grzesik in November 2013. Tr. at 24. Petitioner last met with Mr. Grzesik in October 2020. Tr. at 24, 44. Petitioner testified that her vocational rehabilitation with Mr. Grzesik consisted of her researching and looking for jobs. Tr. at 25. She would meet with Mr. Grzesik every two weeks for four or five hours and review 60 jobs. Tr. at 25. Petitioner testified that she would perform job searches or apply for jobs in-person. Tr. at 25. Petitioner testified that Mr. Grzesik would coach her for job interviews. Tr. at 25. Petitioner testified that she and Mr. Grzesik would review 120 jobs a month. Tr. at 25. Petitioner kept a log of her job searches and would show her logs to Mr. Grzesik. Tr. at 25-26. Petitioner also attended job fairs as part of her vocational rehabilitation. Tr. at 26-27.

Petitioner testified that she applied to become a security guard and Respondent refused to pay for the certification course. Tr. at 27. Petitioner testified that she applied for computer classes at Harold Washington College and that Respondent refused to pay for the course. Tr. at 28. Petitioner testified that she did not receive a work offer from any of the employers that she contacted during her vocational rehabilitation with Mr. Grzesik. Tr. at 32.

Petitioner was shown Px13, which she identified as job leads given to her by Respondent's vocational expert. Tr. at 29. Petitioner testified that she contacted each employer listed, and that she applied at Howard Brown Healthcare, LBW Supplies, and Roseland Community Hospital. Tr. at 30. Petitioner testified that the positions at each of those employers had been filled. Tr. at 30-31. Petitioner testified that she did not receive any calls from the job leads listed offering her a job or an interview. Tr. at 32, 45. Petitioner testified that at the time of arbitration, she still had not found an employer who was willing to accommodate her restrictions. Tr. at 41, 45. On cross examination, Petitioner testified that she has not participated in vocational rehabilitation since October 2020, but that she continues to look for a job. Tr. at 44-45. Petitioner testified that she did not have any documentation of any self-directed job search at hand at arbitration. Tr. at 45-46. Petitioner testified that Respondent continued to pay her maintenance benefits from October 2020 to the date of arbitration. Tr. at 46.

Current condition

Petitioner testified that she continues to have pain in her left hand and left wrist. Tr. at 32. Regarding her right arm, Petitioner testified that she has a plate from her left wrist to left forearm that does not allow her to lean on it because of the pressure and because it is painful. Tr. at 33. Petitioner testified that she has sharp pains in her left hand daily, and that some days she has stiffness and aching pain in the left index finger. Tr. at 33-34, 35-36. Petitioner experiences sharp pain in her left hand three or four times a day. Tr. at 34. Petitioner described the stiffness in her finger as her finger locking up, and that she has to do an exercise with the left index finger for

about 30 minutes for relief. Tr. at 35-36. Petitioner testified that she experiences numbness and tingling in her left hand, fingers, and wrist when she wakes up. Tr. at 36. Petitioner testified that she has issues with gripping because she does not use her left index finger, and she tries to use the other fingers, which is uncomfortable. Tr. at 36. Petitioner testified that she has difficulty sleeping and is woken up by sharp pains. Tr. at 38. Petitioner testified that she takes Ibuprofen, Tylenol, or Aleve for pain every day. Tr. 37. Petitioner testified that she used to bowl, was on a softball league, and did a lot of gardening and ceramics prior to the injury. Tr. at 39. Petitioner testified that she misses her job at Respondent. Tr. at 39.

Evidence deposition testimony of Thomas Grzesik

Petitioner's vocational expert, Thomas Grzesik, testified by way of evidence deposition on February 26, 2021. Px10. Mr. Grzesik testified as to his education and credentials as a certified rehabilitation counselor. Px10 at 5-13.

Mr. Grzesik testified that as of November 25, 2013, his opinion, based on the restrictions set by Dr. Fernandez, was that Petitioner would not be able to perform the duties and responsibilities of her work injury occupation as a cement mixer. Px10 at 26. Mr. Grzesik testified that at the time of his November 25, 2013 evaluation, he commented that Petitioner would not be a good candidate for formal academic or vocational training, which led to the opinion that Petitioner was a candidate for only a job placement program. Px10 at 26-27. Mr. Grzesik testified that he met sporadically with Petitioner in 2013, 2014, and 2015. Px10 at 27.

Regarding authorization for Petitioner's training as a security guard, Mr. Grzesik testified that entry-level security jobs are readily available and require a 30-day training, that the training was recommended on more than one occasion, and that authorization was never provided by Respondent. Px10 at 29, 37-39. Regarding Petitioner undergoing a computer course and a customer service training program through the Illinois Department of Human Services, Mr. Grzesik testified that there was an issue with the customer service training program because of Petitioner's lack of computer skills and that Petitioner was supposed to look into computer courses at local colleges. Px10 at 30.

Mr. Grzesik testified that there was a two-year hiatus in vocational rehabilitation services from mid-2015 to mid-2017 and that vocational rehabilitation services recommenced in mid-2017, at which time Petitioner was under different restrictions by Dr. Fernandez. Px10 at 32. Mr. Grzesik testified that from mid-2017 through October 2020, they would meet with Petitioner every two weeks and Petitioner continued applying for jobs that they provided leads for, while she also applied for jobs on her own. Px10 at 32-34. Mr. Grzesik testified that he had not engaged in any type of vocational rehabilitation with Petitioner since October 30, 2020. Px10 at 43.

Mr. Grzesik prepared narrative responses on March 21, 2019 and October 21, 2020. Px10 at 43-44. Regarding his responses of March 21, 2019, Mr. Grzesik testified that at that time, he felt it would be worthwhile for Petitioner to continue a job search for an additional three months, and that if there was no success during that period, that Petitioner should be evaluated for an odd-lot permanent total disability. Px10 at 46. Mr. Grzesik testified that at the time of his March 2019 narrative responses, Petitioner was consistently diligent and had not secured employment. Px10 at 46.

Mr. Grzesik testified that Petitioner was diligent in her attempt to secure employment during the period of March 2019 and October 21, 2020. Px10 at 49. Mr. Grzesik testified that Petitioner had no transferrable work skills that could assist her in securing employment in a well-known branch of the labor market as of October 2020. Px10 at 51-52. Mr. Grzesik testified that as of October 21, 2020, it was his opinion that Petitioner was not employable, given her postinjury vocational profile, her age, her education, her lack of transferrable work skills, her work experience, her academic and learning potential as tested, and the work restrictions given by Dr.

Fernandez. Px10 at 53-54. Mr. Grzesik explained that taking Petitioner's profile along with testing the labor market on a very diligent job search over months, led him to believe and opine that a reasonably stable labor market does not exist for Petitioner and that she is not employable. Px10 at 54.

On cross examination, Mr. Grzesik testified that the leads provided to Petitioner were from the internet through different job search engines that were available to the public. Px10 at 60-61. Mr. Grzesik testified that there was follow up contact with the leads where Petitioner applied and with jobs that she applied to on her own. Px10 at 61. Mr. Grzesik testified that Petitioner did not have any interviews. Px10 at 62. Mr. Grzesik believed that Petitioner attended orientation with the Department of Human Resources. Px10 at 62. Mr. Grzesik did not recall if Petitioner applied for any jobs based on that orientation. Px10 at 62. Mr. Grzesik testified that he was not providing Petitioner with vocational services at the time of his deposition, and that vocational services ended in October 2020. Px10 at 63. Mr. Grzesik testified that he concluded that Petitioner was no longer employable in October 2020. Px10 at 64.

On redirect examination, Mr. Grzesik testified that Petitioner remained engaged and motivated to seek alternative employment through her last visit in October 2020. Px10 at 68.

Evidence deposition testimony of Heather Mueller

Respondent's vocational expert, Heather Mueller, testified by way of evidence deposition taken on November 8, 2022. Respondent's Exhibit ("Rx") 1. Ms. Mueller testified as to her education and credentials as a certified rehabilitation counselor. Rx1 at 6-8.

Ms. Mueller testified that MedVoc Rehabilitation became associated with Petitioner in 2017. Rx1 at 9. Ms. Mueller did not prepare the report drafted by MedVoc Rehabilitation dated August 21, 2017. Rx1 at 9. Ms. Mueller reviewed the August 21, 2017 MedVoc Rehabilitation report in conjunction with her deposition and subsequent reports that she prepared. Rx1 at 9.

Ms. Mueller testified that she believed that Diamond Warren, of MedVoc Rehabilitation, met with Petitioner on August 21, 2017. Rx1 at 10. Ms. Mueller testified that as of August 21, 2017, Ms. Warren had recommended specific positions for Petitioner, including entry-level customer service, front desk clerk, greeter, construction supply sales, and home improvement. Rx1 at 12-13. Ms. Mueller testified that as of August 21, 2017, Ms. Warren had also recommended computer training in addition to job placement services. Rx1 at 13.

Ms. Mueller prepared an Updated Labor Market Survey Report dated September 27, 2021. Rx1 at 13. Ms. Mueller testified that she reviewed Ms. Warren's report, records from Grzesik & Associates, responses to interrogatories from Mr. Grzesik dated October 21, 2020, and an Updated Labor Market Survey Report of September 21, 2017 in conjunction with her drafting of the September 27, 2021 report. Rx1 at 13-14. Ms. Mueller testified that 50 prospective employers were contacted in preparation of the report, but only spoke to 16. Rx1 at 15. Ms. Mueller testified that based on the data that she received from the 16 prospective employers, the wages ranged from $14 per hour to $26 per hour for the targeted positions, with a mean entry-level range of $18.73 per hour. Rx1 at 15. Ms. Mueller explained that the section titled "Job Search Critic" within her report contained her review of the reports from Mr. Grzesik's office and her opinions as to whether the positions Petitioner applied for were appropriate and whether Petitioner was contacting an appropriate number of employers per week. Rx1 at 16. Ms. Mueller testified that she found that Petitioner was averaging 14 contacts per week for an extensive period from September 2014 through August 2020, which was within what MedVoc Rehabilitation would suggest, however, it seemed that Petitioner had applied for several positions that did not seem appropriate. Rx1 at 16.

Ms. Mueller testified that at the time of her September 27, 2021 report, her opinion was that Petitioner could work in positions such as construction sales, home improvement sales, customer service clerk, and greeter, and that Petitioner could anticipate earning an entry-level mean wage of $18.73 per hour. Ms. Mueller testified that it was also her opinion that Petitioner should contact appropriate positions given her background. Rx1 at 17.

Ms. Mueller prepared an Updated Labor Market Survey Report dated August 30, 2022. Rx1 at 18. Ms. Mueller testified that she utilized the same positions as in in the previous Updated Labor Market Survey and just updated employers that would accommodate Petitioner's restrictions and obtained an updated wage. Rx1 at 19. Ms. Mueller testified that she contacted 56 employers in preparation of the Updated Labor Market Survey and received responses from 16 prospective employers. Rx1 at 19. Ms. Mueller testified that her opinion at that time was that Petitioner could work in positions such as construction sales, home improvement sales, customer service clerk, and greeter, and that the mean entry-level wage had increased to $20.69 per hour. Rx1 at 19.

On cross examination, Ms. Mueller agreed that she did not meet with or speak to Petitioner in preparation of her September 27, 2021 report or after preparation of the September 27, 2021 report. Rx1 at 22. Ms. Mueller agreed that one prospective employer out of the 16 employers that responded in preparation of her September 27, 2021 indicated that Petitioner did not have the appropriate experience for the position and only 10 of the employers were hiring. Rx1 at 24-25. Ms. Mueller agreed that she did not meet with or speak to Petitioner in preparation of her August 30, 2022 report or after preparation of the August 30, 2022. Rx1 at 27. Ms. Mueller agreed that she contacted 56 prospective employers in preparation of her August 30, 2022 report and that 16 responded. Rx1 at 27. Ms. Mueller testified that one of the employers that responded was not interested due to Petitioner's residual functional capabilities and that only 10 of the employers were hiring. Rx1 at 28.

On redirect examination, Ms. Mueller testified that only one of the employers out of the 16 that responded in preparation of her September 27, 2021 report indicated that it was not interested in hiring someone of Petitioner's background. Rx1 at 30. Ms. Mueller testified that similarly, only one of the employers out of the 16 that responded in preparation of her August 30, 2022 report indicated that it was not interested in hiring someone of Petitioner's physical capabilities. Rx1 at 30.

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's behavior and conduct 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 K, whether Petitioner is entitled to maintenance benefits, the Arbitrator finds as follows:

Petitioner claims that she is entitled to maintenance benefits from April 21, 2017 through January 6, 2023, the date of arbitration. See Ax1, No. 8. Respondent disputes Petitioner's claim and claims that Petitioner is entitled to maintenance benefits from April 21, 2017 through October 30, 2020. See Ax1, No. 8.

The evidence demonstrates that Petitioner was given permanent restrictions on April 20, 2017, which precluded Petitioner from returning to her position as a cement mixer/laborer with Respondent and that Petitioner was actively engaged in vocational rehabilitation efforts from April 21, 2017 through October 22, 2020, the date that Petitioner last met with Mr. Grzesik. Mr. Grzesik's report of October 30, 2020 reflects that vocational rehabilitation services were terminated at that time. The Arbitrator notes, however, that on October 21, 2020, Mr. Grzesik opined that Petitioner was unemployable.

Based on the record as a whole, the Arbitrator finds that Petitioner is entitled to maintenance benefits from April 21, 2017 through October 20, 2020.

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

A claimant is totally and permanently disabled when she is unable to make some contribution to the work force sufficient to justify the payment of wages. *Ceco Corp. v. Industrial Com.*, 95 Ill. 2d 278, 286 (1983). A claimant, however, need not be reduced to total physical incapacity before a permanent total disability award may be granted. *Id*. Instead, the claimant must show that she is unable to perform services, except those that are so limited in quantity, dependability, or quality that there is no reasonable stable market for her. *A.M.T.C. of Ill., Inc. v. Indus. Comm'n*, 77 Ill. 2d 482, 487 (1979).

Where a claimant's disability is of a limited nature such that she is not obviously unemployable, or where there is no medical evidence to support a claim of total disability, the claimant has the burden of establishing that she falls into the "odd-lot" category. *Ceco Corp. v. Industrial Com.*, 95 Ill. 2d 278, 287 (1983). There are two ways a claimant can ordinarily satisfy her burden of proving that she fits into the "odd-lot" category: (1) by showing a diligent but unsuccessful job search, or (2) by demonstrating that because of her age, training, education, experience, and condition, she is unable to engage in stable and continuous employment. *Westin Hotel v. Indus. Comm'n*, 372 Ill. App. 3d 527, 544 (2007). Once the claimant has initially established the unavailability of employment to a person in her circumstances, the burden then shifts to the employer to show that suitable work is regularly and continuously available to the claimant. *Econ. Packing Co. v. Ill. Workers' Comp. Comm'n (Navarro)*, 387 Ill. App. 3d 283, 293 (2008).

On April 20, 2017, Dr. Fernandez assigned Petitioner permanent restrictions in the five-pound to 10-pound range due to continued pain and dysfunction. Px8 at 228. On December 27, 2019, Dr. Kiesler agreed with the permanent restrictions assigned to Petitioner by Dr. Fernandez. The Arbitrator finds that the overall evidence demonstrates that Petitioner's physical abilities did not meet the physical requirements of her job as a cement mixer/laborer with Respondent and that the accident caused an ongoing condition which prevented Petitioner from returning to her job as a cement mixer/laborer at Respondent.

Petitioner offered the opinions of Certified Vocational Counselor, Thomas Grzesik, who prepared a vocational assessment of Petitioner, and provided vocational services to Petitioner sporadically in 2013, 2014, 2015, and again from mid-2017 through October 22, 2020. Mr. Grzesik credibly testified that at the time of his November 25, 2013 evaluation, he opined that Petitioner was not a good candidate for formal academic or vocational training, but that she was a candidate for a job placement program. Mr. Grzesik testified that there was a two-

year hiatus in vocational rehabilitation services from mid-2015 to mid-2017 and that vocational rehabilitation services resumed in mid-2017. Mr. Grzesik testified that from mid-2017 through October 2020, he would meet with Petitioner every two weeks and that Petitioner continued to apply for jobs on her own and through leads provided to her. Mr. Grzesik testified that Petitioner's job search efforts were diligent, that she had not had any interviews, and that she had not been able to secure employment. The Arbitrator notes that Petitioner's testimony as to her vocational rehabilitation efforts is corroborated by Mr. Grzesik's testimony.

Mr. Grzesik credibly testified that Petitioner had no transferrable work skills that could assist her in securing employment in a well-known branch of the labor market as of October 2020. Mr. Grzesik's opinion, as of October 21, 2020, was that Petitioner was not employable given her postinjury vocational profile, her age, her education, her lack of transferrable work, skills, her work experience, her academic and learning potential as tested, and the work restrictions given by Dr. Fernandez. Mr. Grzesik credibly explained that considering Petitioner's profile along with testing the labor market with a very diligent job search over months, led him to opine that a reasonably stable labor market does not exist for Petitioner and that she is not employable.

Respondent offered the opinions of Certified Vocational Counselor, Heather Mueller, who prepared an Updated Labor Market Survey Report on September 27, 2021 and an Updated Labor Market Survey Report on August 30, 2022. Ms. Mueller did not meet with or speak to Petitioner in preparation of her two Updated Labor Market Survey reports or after preparation of her reports. Ms. Mueller opined that as of August 30, 2022, Petitioner was employable in the positions in construction sales, home improvement sales, customer service clerk, and greeter, and that the mean entry-level wage had increased to $20.69 per hour.

Ms. Mueller testified that during the preparation of her Updated Labor Market Survey Report of September 27, 2021, she reviewed the records of Mr. Grzesik, and found that Petitioner was averaging 14 contacts per week for an extensive period from September 2014 through August 2020, which was within what MedVoc Rehabilitation would suggest. Ms. Mueller also testified that 50 potential employers had been contacted in preparation of that report and only 16 had responded. Ms. Mueller testified that only 10 of those 16 employers were hiring. Ms. Mueller testified that during the preparation of her Updated Labor Market Survey Report of August 30, 2022, 56 potential employers had been contacted and only 16 had responded. Ms. Mueller testified that only 10 of those 16 employers were hiring. Petitioner testified that she applied for the job leads given to her by Ms. Mueller and that she did not receive any job offers or interview opportunities from them. The Arbitrator has considered the opinions of Ms. Mueller and finds them less persuasive than those offered by Mr. Grzesik.

Having considered all the evidence, the Arbitrator finds that Petitioner has met her burden in satisfying an odd-lot permanent total disability award pursuant to Section 8(f) of the Act and that Respondent failed to prove the existence of a stable labor market available to Petitioner. Therefore, Respondent shall pay Petitioner permanent and total disability benefits of $923.31/week for life, commencing October 21, 2020, as provided in Section 8(f) of the Act. Commencing on the second July 15th after the entry of this award, Petitioner may become eligible for cost-of-living adjustments, paid by the Rate Adjustment Fund, as provided in Section 8(g) of the Act.

Ana Vazquez

ANA VAZQUEZ, ARBITRATOR

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	18WC026066
Case Name	Christopher Morphew v. Chief Construction Inc
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	24IWCC0398
Number of Pages of Decision	27
Decision Issued By	Maria Portela, Commissioner

Petitioner Attorney	Luis J. Magaña
Respondent Attorney	Brad Antonacci

DATE FILED: 8/20/2024

/s/Maria Portela, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF WILL)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Chris Morphew,

Petitioner,

vs. NO: 18 WC 026066

Chief Construction,

Respondent.

DECISION AND OPINION ON REVIEW

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

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed May 31, 2022 is hereby affirmed and adopted.

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

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

Bond for removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $100.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

August 20, 2024

O073024
MEP/yp
049

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

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	18WC026066
Case Name	MORPHEW, CHRIS v. CHEIF CONSTRUCTION
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	24
Decision Issued By	Paul Cellini, Arbitrator

Petitioner Attorney	Luis Magana
Respondent Attorney	Brad Antonacci

DATE FILED: 5/31/2022

THE INTEREST RATE FOR THE WEEK OF MAY 24, 2022 1.53%

/s/ Paul Cellini, Arbitrator

Signature

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

CHRIS MORPHEW
Employee/Petitioner

v.

CHIEF CONSTRUCTION
Employer/Respondent

Case # **18** WC **26066**

Consolidated cases: _____

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Paul Cellini**, Arbitrator of the Commission, in the city of **Joliet**, on **March 15, 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 **Vocational Rehabilitation; Reimbursement of IME Fee**

FINDINGS

On **July 19, 2018**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $**130,000.00**; the average weekly wage was $**1,706.25**.

On the date of accident, Petitioner was **43** years of age, ***single*** with **2** dependent children.

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

Respondent ***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 $**TO BE SHOWN** under Section 8(j) of the Act.

ORDER

The Petitioner sustained accidental injury which arose out of and in the course of his employment with Respondent on July 19, 2018.

The Petitioner failed to prove that his lumbar condition is causally related to the July 19, 2018 accident.

No benefits are awarded.

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

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

Signature of Arbitrator

MAY 31, 2022

STATEMENT OF FACTS

Petitioner, a member of union Local 150, was hired by Respondent on 7/11/18 to operate heavy equipment in preparing for a building foundation. He was hired to operate a dirt compactor, a large machine with two large rubber tires and a large metal wheel in the front used to compact the earth, as well as a blade in front of the wheel for leveling. He testified he had operated similar machines in the past, and that this machine had a padded seat but no "air-ride" or other type of shock absorbing mechanism. He testified that driving the machine was therefore "rough."

Prior to working for Respondent, Petitioner testified he worked in 2018 for EBI Drilling, M&S Construction, and Richie Brothers operating heavy equipment. He testified he began seasonal work in March 2018 in temporary jobs he was called to via the union. He testified he was working full duty in these jobs and that his back condition did not prevent him from performing his full work duties. Petitioner acknowledged he did not work in the two to three years prior to 2018 due to back problems/pain and drug rehabilitation. On cross-exam, Petitioner testified that he worked in June 2018 for Performance Construction and Engineering, EBI Drilling and BS&T. He worked a total of 2 to 3 hours one day for Performance and worked only one day for BS&T. He agreed he had not been working at all since approximately 2006 related to chronic low back pain. He testified that a doctor in 2007 had determined he was permanently disabled from a heavy equipment operating position. He testified he underwent a 2008 functional capacity evaluation (FCE) supporting this, putting him at the sedentary to light demand level with inability to return to operating heavy equipment. His pension board in 2008 or 2009 found him to be permanently disabled from operating and he began receiving a disability pension. The summer of 2018 was the first time he had attempted to work as an operator since 2006.

The records of Operating Engineers Local 150 indicate that the Petitioner worked through December 2006 and was granted a disability pension in March 2008, which appears to have been effective back to 4/1/07.

Following an FCE on 1/16/08, he was determined to be at the sedentary to light work level and unable to return to work as an operator without significant restrictions, including no more than 15 pounds lifting, no climb/squat/kneel/crouching, alternating stand/sit/walk, use of a cart to move items at 20 to 30 pounds and work for no more than 4 hours per day. Petitioner was required to have updated medical exams yearly to prove ongoing disability, and his benefits were to end in 2012 unless he also became disabled via Social Security, in which case a separate type of pension could be considered. A number of handwritten work records were not completely understandable to the Arbitrator, but typed documentation indicate he did not work again via Local 150 until June 2018. In addition to Respondent, for whom he worked 79 hours, he worked for 3 other employers: EBI Drilling (31 hours in June and 45 hours in July), BS&T Construction (8 hours in June) and PCE (3 hours in July). (Px5; Px6; Px7).

Starting on 7/11/18, Petitioner testified he was working 12-hour days for Respondent at a job in New Lenox. He did not recall if he worked a total of four or five days with Respondent, but indicated he was able to do all his job activities. A time sheet indicates Petitioner worked for Respondent from 7/11/18 to 7/19/18, working three 12 hour days (7/11/18 to 7/13/18); was paid show-up time on 7/14/18; and working four 8 hour days from 7/16/18 to 7/19/18. (Rx19).

On 7/19/18, he started at 5 a.m. or 6 a.m., testifying he was not having any low back problems. His job that day involved removing black dirt at an industrial park and moving it to other areas in preparation of the installation of concrete pads. Because scraper machines had already been through, he testified the area where he was working was rough terrain with more clay than dirt. He was to compact areas where clay had been dumped to smooth them out. These clay piles were no higher than 6 inches. He testified that it was mid-morning when he

went over a large clump of clay, the compactor jumped, and it jarred him up and down back onto the seat. He immediately stopped the machine due to back pain shooting down his left leg with numbness and tingling, along with right leg symptoms. He testified that when he stood up in the machine, he wet himself, and he was unable to bear weight on the left leg without severe pain, which he described as the worst pain he'd ever experienced. He flagged down his boss, Respondent owner Jim Loucks, who drove over on his machine. Petitioner testified he told him what happened, that he just hurt his back and wet himself and needed to go to the hospital. No one else was present for this conversation. He testified that Loucks told him not to claim the injury on his insurance and had his son drive Petitioner back to his car. Petitioner testified he left the machine where he stopped it and had difficulty walking. Neither Jim Loucks nor his son asked him to complete an accident report.

Petitioner drove to Edward Hospital, reported what happened at work and his excruciating symptoms. He testified that he underwent diagnostic testing and that prescribed morphine and fentanyl did not really help his symptoms. He did not recall if he had a neurosurgical consult, but that he left the hospital because they weren't helping him as he felt he needed, as he and his wife knew from prior surgeries that something was very wrong. On cross-examination, Petitioner agreed that they would not treat him at Edward Hospital because they believed he was seeking drugs.

He then went to Advocate Good Samaritan Hospital where, after undergoing an MRI, neurosurgeon Dr. Doppenberg performed surgery the next day, 7/20/18. Petitioner testified he developed a hematoma and underwent a second surgery, remaining in the hospital for over a week. Upon his release, Petitioner testified that the surgery had helped "some" with his symptoms, but he had ongoing problems. When he followed up with Dr. Doppenberg he was not referred for therapy as he "wasn't ready." Ultimately, he underwent hardware removal surgery with Dr. Doppenberg a few months later. He testified his symptoms remained fairly consistent between the two surgeries. Petitioner testified that his prior attorney had advised him to contact Respondent to indicate he was going to file a workers' compensation claim for the 7/19/18 incident. When he called Jim Loucks about three to four weeks after the incident, he testified that Loucks told him to do what he had to do. He has not heard from Loucks since then and Respondent has not offered him a job.

Petitioner testified regarding his pre-2018 back surgeries and problems, agreeing he underwent lumbar fusion and revision surgeries in the early 2000's. He had been on Social Security Disability starting in 2007 due to his back condition. He did work sporadically from 2007 to 2018, involving work as a mechanic, and did not obtain any work through the union hall. He treated with spine surgeon Dr. Kuo for his low back in 2016, acknowledging the doctor recommended lumbar surgery that was canceled due to Petitioner having illegal drugs in his system. He testified he never underwent the surgery because he felt he could push through without it. He also treated for back pain in 2017 with Dr. Schuler. Petitioner testified he started having problems with drugs in the early 2000's after being prescribed narcotics at the time of his initial back surgery. He was in drug rehab in 2017, testifying that he continued to abuse drugs after rehab ended. Petitioner initially returned to work in March 2018, testifying he was not abusing drugs at that time. However, his testimony also indicated he had only been clean since 8/3/19. The Respondent did not require that he be tested for drugs prior to starting work.

Petitioner testified he received no temporary total disability benefits while off work after the alleged accident and is currently on Medicare, which required him to pay co-pays on his bills. He noted that Medicare only paid some of his medical expenses and that he did not have any group health coverage through the union. He testified he stopped seeing Dr. Doppenberg due to co-pays and enormous bills and had never been released from care or told he could return to full duty work. He has had flare ups since he last visit with Dr. Doppenberg but hasn't seen any other "major doctors." He was examined by Dr. Darwish at his attorney's request, noting they discussed his back and drug histories. His recommendation was pain treatment, which Petitioner hasn't sought because he can't afford it. His only income is Social Security Disability, and he cannot afford prescription medications. He underwent a November 2021 FCE. Other than working for a week performing a maintenance

job in 2022, which he left due to his pain level, he hasn't had any other jobs since 7/19/18. He testified he would like to work but does not think he could return to work as an operator, though he is willing to try. While on SSDI he is allowed to work a certain number of hours per week.

Petitioner testified that he was not taking any medications when he started working for Respondent, and while he had "some" pain before 7/19/18, he had been able to do the jobs he worked in summer 2018, including with Respondent. He acknowledged that he did have some daily pain while working with Respondent and would take over the counter medications and use ice/heat at night, but that his pain was no worse than when he started working the job. Petitioner denied any other back injuries between seeing Dr. Kuo in 2016 and starting work with Respondent. As to a slip and fall mentioned in the records of Dr. Doppenberg, Petitioner did not recall such incident.

Currently, Petitioner testified he still has throbbing and aching daily low back pain, severe enough that he has to take breaks during activities, including walking. He sleeps in a recliner because he can't lay flat. He testified that his pain after 7/19/18 was and is worse than it was prior to that date, including shooting pain and weakness in his legs. He was able to do long distance driving before 7/19/18 but now has more severe pain. He denied any left leg symptoms when he returned to work in 2018. He is generally uncomfortable, with pain shooting into his leg and pain just from sitting. His activities are limited by pain and he cannot do most activities he would like to do. He was not in any type of pain management program prior to starting work with Respondent and testified that he would like to have pain management if it was paid for.

On cross-examination, Petitioner testified that following his February 2001 lumbar fusion surgery he had severe low back pain in November 2001 radiating down the left leg and he underwent revision surgery in April 2002. Due to continued low back pain, he underwent hardware removal surgery in 2004. He acknowledged he continued to have and treat for chronic low back pain into both legs, left greater than right, after 2004.

Petitioner initially did not recall having an episode of low back pain in 2011/2012 and treatment with Dr. Hurley, but he agreed he was using a wheelchair at some point prior to 2018, though he could not recall exactly when. He did not recall if Dr. Hurley indicated he would need further surgery. He did have ongoing chronic back pain and at one point had a temporary spinal cord stimulator implanted, though he could not recall where this was performed, or which doctor performed it. He testified it did not help and ultimately was removed. Petitioner agreed he saw Dr. Kuo in January 2016 after going to the ER with chronic low back pain after lifting a radiator out of a car, and at that time reported severe 9 out of 10 (9/10) level pain radiating down the left leg with numbness, tingling and weakness. He had bladder issues in 2016 and was using a catheter. He agreed he returned to Dr. Kuo in April 2016 and further lumbar fusion surgery was prescribed but ultimately canceled due to a positive cocaine test. Petitioner testified he was continuing to have severe low back pain into the left leg and in October 2017 underwent testing which resulted in hospitalization for heroin and cocaine abuse. He agreed he also was hospitalized for alcohol abuse in May 2018.

Following the 7/20/18 surgery, Petitioner testified he had moderate improvement in his left sided symptoms, including the leg. He agreed he had increased low back pain and symptoms in March 2019 bending to pick up sticks in his yard and underwent April 2019 fusion revision surgery, after which he again had some improvement but still had ongoing left leg symptoms. He testified he did fall out of bed while in prison in 2019 and had increased low back pain, difficulty walking and urinary incontinence, which was followed by symptoms down the right leg. Petitioner did not recall a July 2019 slip and fall incident. In August 2019, he agreed he stood up while taking groceries out of a car and had a pop in his back with severe low back pain radiating into his groin and left leg. He

After the April 2019 surgery, Petitioner testified he first tried to work as a truck and trailer driver for a landscaper in Shorewood some time in 2020 for approximately three to four weeks. He was the foreman of the landscaping team. He agreed he had a pop in his back with back pain into the leg after lifting a blower backpack. He testified he also worked for Morphe Windows in Jan 2022, performing maintenance work for about a week. He stopped working there because his boss kept trying to put more and more work on him. He denied any other employment since the 7/19/18 injury date and has not sought further employment. He has been receiving SSDI benefits since 2007 or 2008 and has continued to receive these benefits since that time, even after returning to work.

Petitioner does drive, noting he has not been restricted from doing so by a doctor, but he does not drive long distances. He is a high school graduate and has had welding training. He could not recall the last time he had seen a physician for his back but estimated it was probably about eight months prior to his testimony that he went to the ER at National Park Hospital.

On redirect exam, Petitioner acknowledged he had some low back pain while operating the compactor for Respondent prior to 7/19/18 but was able to work and did not seek any treatment until the 7/19/18 incident. He testified he only sought treatment then because his condition had changed and became a lot more severe, different than his normal day to day problems. He was not having any bladder problems prior to 7/19/18. He denied seeking drugs when he went to the Edward ER, noting he was tested for drugs prior to Dr. Doppenberg's surgery. As to returning to work in 2018, he testified he felt his symptoms were good enough to do so and that he could push the pain, as it was not severe – "that's the difference."

Maxwell Loucks, Jim Loucks' son, was also working for Respondent as a machine operator in July 2018. The company does heavy excavation and dirt moving and in July 2018 he was running a scraper machine that scrapes dirt off the ground to move it. He did not know the Petitioner before he started with Respondent in July 2018. The only machine Petitioner operated while working for Respondent was the compactor. He would bring a load of dirt with the scraper and Petitioner would compact it down on the building pad. Petitioner worked for respondent for two weeks at the Bailey Ridge site in Monee. Loucks testified that the cab is in the middle of a compactor, above the engine. He testified that all machines have a shock absorption system, and he believed Petitioner's involved pressurized air. He also testified the seat was cushioned, noting they added a cushion because it's an old machine and the original padding was low, and still rides fine. To his knowledge this system was working in July 2018 and he had no complaints from anyone that it wasn't.

Mr. Loucks testified that when clay is moved into a site, the compactor moves back and forth over it. The clay is crumbly, and at that site it was no harder than any other site he's been on. The clay layer put down is 6" thick. He did not notice anything unusual or particularly rough that day, and there were no rocks in the clay that he can recall being on site. On 7/19/18, his dad called and told him to park his scraper and pick up Petitioner to take him to his car. As he approached the compactor, the Petitioner got out of the machine, walked to Loucks' car, and got in. He recalled Petitioner saying his back hurt and that he couldn't drive the machine anymore but didn't recall him saying anything about what caused the back pain. He brought Petitioner to his car, Petitioner got in and drove away. He did not assist Petitioner that day and he hasn't spoken to Petitioner since that time.

On cross, Mr. Loucks agreed that Petitioner operated the compactor for the 8 days he worked, which included some 12 hour shifts, and never indicated he couldn't operate it until 7/19/18. He was not aware of Petitioner having any problems operating the machine prior to 7/19/18. He didn't recall his dad's exact words when he called him other than to pick up Petitioner because his back hurt.

The 7/19/18 admission report from the Edward Hospital ER notes Petitioner's complaints as acute onset of low back pain with left leg numbness and weakness: "The patient said he was in a truck with his compatriots at

work going over bumps when he felt something crunch in his low back with immediate pain and loss of bladder control. He had difficulty ambulating and had to be assisted by co-workers, noting all he feels in his leg is numbness and tingling." He had a long-standing history of low back surgeries and medical history notes cocaine and heroin abuse. Exam reflected decreased left leg sensation and inability to dorsiflex and plantarflex the great toe with limited foot range of motion. Dr. Wilson noted that while Petitioner was in the ER he "was incontinent of urine in the bed." MRIs and neurosurgical consult were ordered. (Px3).

Thoracic and 7/19/18 lumbar MRIs performed on 7/19/18 reflected stable post-surgical changes at L5/S1 with fusion hardware and stable Grade 1 to 2 spondylolisthesis. There was a diffuse L3/4 disc bulge superimposed on facet and ligamentum flavum hypertrophy with a small amount of fluid in the bilateral facet joints and stable central canal stenosis and bilateral neuroforaminal stenosis without significant change versus October 2017 films. There were no thoracic herniations or central canal stenosis, and there was normal signal throughout the spinal cord. While waiting for the MRI it was noted that Petitioner reported being claustrophobic and that he previously had done them with anesthesia. He had been given two doses of morphine but was still reporting 10 out of 10 pain. (Px3).

The history and physical documented by Dr. Tailor notes Petitioner had chronic back pain, typically soreness, but that day was driving a truck on uneven ground, went over some bumps and felt a pop in his back with subsequent severe back pan, bladder incontinence, numbness and tingling in the left leg and shooting pain in the right leg. Petitioner reported he did not use alcohol or drugs. The doctor's impression was acute on chronic back pain with radiculopathy and saddle anesthesia, along with hypertensive crisis due to pain and diabetes.

Petitioner was referred for a psychological evaluation on 7/20/18 with Dr. Hung "for factitious disorder, history of polysubstance abuse." Because the MRI showed no evidence of cord compression to explain his neurologic presentation, they wanted to rule out somatization disorder vs. conversion disorder vs. malingering. It was noted that Petitioner was known to the Edward Hospital psychological department, as he had been a user for 20 years. This included a June 2017 hospitalization in late June 2017 for two weeks for severe withdrawal involving alcohol/opiates/cocaine, and a relapse days after release with use of alcohol and snorting cocaine, heroin, fentanyl, as well as a horse tranquilizer and he was readmitted for detox on 7/3/17. Due to increasing withdrawal scores he was admitted to intensive care and was discharged on 7/8/17. He was advised to follow up at a pain clinic. Dr. Peng noted that Petitioner left Edward against medical advice. (Px3).

Petitioner saw Dr. Peng at the pain clinic on 11/2/18 on referral for possible facet injections. Petitioner indicated he did not want an injection and that he had been prescribed methadone which he was not taking. When Peng advised he was not comfortable putting him on an opiate, Petitioner became irate and left before any exam was performed. He noted that Petitioner had reported to Dr. Hung that he had been sober for a year. Dr. Peng's impressions were: 1) Axis 1: rule out malingering for pain medications versus factitious disorder with unconscious feigning of symptoms, and ruling out conversion disorder if the left leg weakness and numbness persisted; 2) Axis 2: deferred; 3) Axis 3: chronic back pain. Dr. Peng adamantly recommended against opioids given the substance abuse history and that Petitioner should be limited to over the counter medications or steroids for now, noting he suspected Petitioner would leave the hospital against medical advice. He reports that Petitioner said he felt fine with no anxiety or depression, and he didn't want to restart Cymbalta. An addendum states Petitioner left against advice, that he was able to stand and turn his body sideways to get into the wheelchair, and "I suspect malingering and pain med seeking more than factitious disorder." (Px3).

Neurosurgical evaluation with Dr. Tailor, based on possible radiculopathy, referenced Petitioner's lumbar surgeries between 2001 and 2004. Petitioner reported he was working running a compactor and his back had been sore for a couple days: "On the machine, states was bouncing up and down roughly, and he suddenly felt immediate pain in the mid low back (approximately L3). . . States a few minutes later he lost control of his

bladder. His left leg became numb and tingly. Pain in the left anterior and outer thigh. His right leg had 'shocks' going down it." Petitioner also had lost his bladder while at the ER and was catheterized. Dr. Tailor further states: "(Petitioner) states he has had similar radicular episodes, like the one he presents with today. Had a severe episode back in 2011/2012 which "left him in a wheelchair and unable to walk." After that Petitioner treated with Dr. Hurley, who he indicated provided medication to him and told him he would most likely need further surgery but wanted to hold off due to Petitioner's young age. Dr. Tailor went on: "(Petitioner) feels physicians are afraid to operate on him. States he was once told he would need a surgery with 'rod and screws' from just above his previous surgery up to his thoracic spine. (He) saw Dr. Schueler, last October 2017. States he had an episode very similar to the one he presents with today, but the pain is much more severe today." Petitioner reported he did not use drugs or alcohol. There were multiple left leg abnormalities noted on exam, several due to severe pain. Noting agreement with the MRI radiology reports, Dr. Tailor recommended a re-examination once Petitioner's pain was under better control, including Morphine, Norco. (Px3).

A consult with Dr. Przbyl notes a history of 2005 back surgery and that this was Petitioner's second episode of severe back pain that required hospitalization. He reported back pain with radiation down the left leg and bowel/bladder symptoms. Morphine "didn't seem to help much." (Px3).

A therapy note indicated that Petitioner had inconsistent findings on left leg exam – he reported DF instability but with passive motion exam he was physically resisting, and while he reported being unable to do a left straight leg raise, he actively assisted going from supine to seated. During a 7/3/17 admission for alcohol and cocaine detox Petitioner was put into ICU due to withdrawal. Petitioner indicated it felt like someone was driving a screwdriver into his back and "if they would adjust the medication then I could feel better."

Petitioner's 7/20/18 discharge noted a history of substance abuse and drug-seeking behavior, and his MRI showed no spinal cord injury and didn't support the clinical findings. Pursuant to the psych consult, Petitioner was noted to have been on methadone and per the pain service would not be prescribed opiates. His discharge was rated high risk and states: "Patient's lumbosacral radiculopathy was initially serious enough to expect a lengthier hospitalization but patient improved faster than expected." The full discharge note indicates Petitioner was a chronic back pain patient who presented reporting a pop in is back when he went over some bumps driving a truck on uneven ground with subsequent severe back pain and bladder incontinence some numbness and tingling in the left leg and sharp shooting pains to the right leg. Despite morphine, he still complained of 9 out of 10 back pain. The report of Dr. Tailor further states: "Patient evaluates in the ER for acute back pain with concern for cord compression/injury. MRI without injury to cord. Patient's clinical picture not supported by imaging. . . Patient declined ESI in the past. Patient was seen by Pysch due to substance abuse and opiates were discontinued. Patient signed out against medical advice." (Px3).

Petitioner next presented to the Advocate Good Samaritan Hospital ER on 7/20/18, reporting multiple prior back surgeries and symptoms of back pain, left leg numbness, decreased sensation in the genital area and bladder incontinence. He reported operating a compactor at work the day prior moving dirt when he felt a pop in his back that led to the symptoms. Petitioner denied alcohol or drug abuse. He was referred for a neurosurgical consultation. (Px12). A lumbar MRI obtained was read to show a stenotic spinal canal at L3/4 with crowding of the cauda equina nerve roots and a possible small synovial cyst in the canal Also noted at this level was degenerative subchondral marrow edema, facet hypertrophy with bilateral facet effusions, ligamentum flavum thickening and mild L3 over L4 retrolisthesis. (Px4).

A 7/21/18 Lumbar CT indicated mild L3 over L4 retrolisthesis with vacuum disc phenomenon, and multilevel moderate facet joint hypertrophy at L2 to L4 and "lucent tracks traversing the pedicles of L4 suggesting prior transpedicular bone screw placement. (Px4). 7/20/18 Lumbar x-ray showed prior L4 to S1 fusion, grade 2 spondylolisthesis of L5 on S1, mild retrolisthesis of L3 on L4. 7/20/18 lumbar MRI impression was post-fusion

with decompressive laminectomy at L4 to S1, and spinal stenosis at L3/4. A 7/21/18 lumbar CT showed multilevel moderate facet joint hypertrophy at L2/3 and L3/4 and lucent tracks traversing the pedicles of L4 suggesting prior screw placement.

Dr. Doppenberg performed a neurosurgical evaluation on 7/21/18, noting worsening low back pain with left leg radiculopathy and episodes of urinary incontinence: "Patient states that yesterday he was at work riding on a heavy machinery when he felt a 'pop' in his lower back and had acute onset low back pain radiating into his left (leg). Patient states that the pain was 7/10 at that time and has been persistently worsening. He has since developed weakness in the left foot and ankle to the level of the knee. Noted is a history of L4 to S1 fusion in 2004." Dr. Doppenberg noted exam abnormalities in the left leg, including sensation and strength, and after review of films the plan was L3/4 decompression and fusion in the morning. The assessment was spinal stenosis at L3/4 with crowding of the cauda equina. (Px4).

A 7/21/18 addendum from Dr. Doppenberg's assistant Kevin Lage indicates: "CT and MRI reviewed – no evidence of cauda equina on MRI; suspect herniated disc syndrome." The 7/21/18 surgery was postponed due to very high sugar levels. Dr. Doppenberg performed surgery on 7/22/18, involving an L3/4 decompression and fusion with resection of a left-sided synovial cyst using interbody pedicle screws and posterior lateral fusion with hemilaminectomy and a complete medial facetectomy on the left at L3/L4. The doctor stated the surgery was indicated by severe L3/4 central canal stenosis, moderate foraminal stenosis and apparent severe facet arthropathy: "All in all, this adjacent level disease resulting in neurological deficit." Following surgery, Petitioner complained of symptoms at the incision site as well as in his left leg. (Px5). A 7/22/18 post-op CT scan, performed due to complaints of back pain, indicates it was difficult to analyze the spinal canal at the L3/4 level due to hardware artifact. (Px4). Due to ongoing complaints of pain and failure of a drain tube, Dr. Doppenberg performed a hematoma evacuation surgery on 7/25/18. On 7/26/18, an epidural steroid injection was performed at L5/S1. (Px5; Px12).

Reports of Advocate Good Samaritan Hospital on 7/26/18 are interesting. There is a nurse's note indicating that when the Petitioner was examined on the day he had undergone the hematoma evacuation, he was using chewing tobacco and was advised of the negative effects of tobacco on healing, which the records indicate he had been previously advised of. A note of Dr. Sugrue states that Petitioner reported needing to use a wheelchair for a prolonged period of time following his fusion surgery many years prior but was ultimately able to return to his regular daily activities and to work. The doctor indicated he was asked to examine Petitioner by Dr. Doppenberg due to ongoing complaints of severe pain. Dr. Sugrue noted that films showed no obvious etiology for his continued pain: "His pain is definitely out of proportion to his imaging and clinical history. . ." He recommended pain management work up. (Px12).

On 7/27/18, Dr. Doppenberg indicated that it was not clear whether the hematoma that was removed was actually symptomatic as there was no compression. Petitioner's symptoms were diffuse, including back pain radiating into the groin and anterior thigh, as well as pain in the buttocks extending to the big toe. The doctor stated: "This does not follow a radicular distribution. There is no clear focal weakness at this point." A new MRI was ordered, though the doctor noted that even an L3 compression would not explain all of the symptoms, stating that Petitioner could be suffering from femoral neuropathy "as he is a brittle diabetic." The 7/27/18 lumbar MRI noted postsurgical changes with epidural heterogeneous signal likely corresponding to a combination of blood and early granulation tissue contributing to moderate to severe thecal sac narrowing at L3/4 as well as severe lateral recess narrowing possibly compressing the traversing L4 nerve roots. (Px12).

On 9/17/18, Dr. Doppenberg indicated that Petitioner had presented at the ER in July with acute left sided leg pain and weakness, and imaging showed significant adjacent level disease at L3/4 along with a synovial cyst. Due to his neurologic deficits, surgery was recommended. Petitioner was overall doing well since surgery,

noting significant improvement in left leg pain and slight improvement in left leg weakness. He was limited to 10 pounds of lifting and to limiting activity to walking. (Px6).

On 1/31/19, Petitioner reported that his acute left-sided pain and weakness had moderately improved since surgery, but he continued to have significant low back pain. While Dr. Doppenberg indicated x-ray showed stable appearance of the hardware, the 1/31/19 x-ray report noted a possible lucency of the screws at L4, suggesting possible loosening. Petitioner was continued off work. (Px4; Px7).

At Good Samaritan on 2/1/19, Petitioner reported he was doing well after 7/22/18 surgery until about a month ago, when he developed worsening low back pain and left leg pain and numbness. A lumbar MRI showed improvement versus prior films. (Rx20).

A 2/12/19 CT scan showed the L3/4 hardware was intact but that there was considerable artifact from the hardware without significant spinal or foraminal stenosis. A 2/14/19 lumbar MRI reflected mild to moderate bilateral facet hypertrophy without foraminal narrowing but apparent "mild canal stenosis on a congenital basis from short pedicle morphology and mild prominence of the posterior epidural fat." The post-surgical changes at L3/4 had an improved appearance since prior films. A 2/21/19 CT scan indicated no significant spinal or foraminal stenosis at L3/4. 3/24/19 lumbar MRI showed that the central canal was decompressed/widely patent throughout. A 3/26/19 lumbar x-ray notes there was spinal fusion indicated from L3 to S1. (Px4).

On 2/18/19, Petitioner again complained of worsening low back and left leg symptoms and a neurosurgical evaluation was prescribed. On 3/3/19, Petitioner reported he had been dealing with the leg weakness for two yeas and would manage it fine at home. On 3/24/19, Petitioner reported that he was picking up sticks in the yard and felt a pop with intense back pain into the legs, left worse than wight. It was noted that Petitioner had fractured L3 pedicle screws. This report also states: "He states that prior to July, he did experience similar radicular pain in his left leg, which resolved after surgery." A 3/28/19 EMG showed diabetic polyneuropathy and chronic bilateral L5/S1 radiculopathy. Petitioner appears to have been hospitalized from 3/25 to 4/1/19 at Advocate Lutheran, where Dr. Weinhoff noted the broken hardware but also that the MRI findings did not support his complaints of numbness. (Rx20).

Dr. Doppenberg performed a revision surgery on 4/2/19, involving removal and reinsertion of hardware at L3/4, insertion of S1 pedicle screws and redo of the posterolateral fusion from L3 to S1. The report history notes regarding the July 2018 surgery: "He developed a synovial cyst at L3/4 with significant degeneration of the facet joints and for this reason, the above-described procedure was offered to the patient." Intraoperatively, Dr. Doppenberg noted that the L4 to S1 fusion was solid but there was insufficient bone graft in the lateral gutters at L3/4. He noted the L4 screws were loose but the L3 screws were reasonably solid. All of these were replaced, along with screws at S1, and new rods were installed. (Rx20).

Postoperatively, Petitioner reported his back pain was "different" but ongoing, and that his left leg pain was unchanged. Petitioner's sugar levels were high, and it was noted that he was noncompliant with diet and was drinking sodas and eating outside food. By the time of 4/5/19 discharge he was reporting improvement in back and leg pain. While Petitioner was advised of the need for intensive skilled therapies a minimum of three hours per day by at least two disciplines, he refused and wanted to go home, indicating his girlfriend only worked 10 hours per week and she could assist him as needed. (Rx20).

On 6/23/19, Petitioner reported falling out of bed while in jail and landing on his right hip. He complained of shooting pain down the right leg and 4 episodes of incontinence. It was also noted that an intrathecal pain pump had been removed at this facility about 6 years prior. Petitioner was advised to see Dr. Doppenberg. On 6/29/19, Petitioner complained of passing out 4 times in the prior week, hitting the front of his head that day when he

lost consciousness. He complained of severe pain in his back between the shoulder blades. Testing was essentially normal. On 7/16/19, Petitioner reported a two day history low back pain, left leg numbness and incontinence. He had been released from jail three days prior. A note indicated that while Dr. Doppenberg had been called, his nurse indicated that Petitioner had a normal CT myelogram in June and that no spinal cord injury was seen: "suspects that there is other underlying issue that may be present", and that the worsening paresthesias and incontinence could not be explained. (Rx19).

Petitioner ended up being admitted from 7/16 to 7/22/19, with the note indicating he was there for "back pain/cocaine use." He was complaining of chest pain, and he had developed a very high heart rate while he had been out walking, claiming he did coke the day before but not that day. He indicated that he was recently out of jail and that he was not allowed into his home because he had been violent with his wife and that his girlfriend broke up with him. He denied a history of opiate abuse. Petitioner was admitted for a cardiac evaluation. Toxicology testing was positive for alcohol, cocaine, and benzos despite claiming he had been clean for over a year. The note of NP Alexander states: "He has given different information to the nurses and myself." Petitioner was diagnosed with an acute kidney injury, noting this could be related to heat exhaustion. Dr. Singla wrote: "Chris is well known to me for a number of years. He presents frequently with the same complaints. He used his chronic pain in the past as a reason to continue using. He has not maintained any meaningful sobriety in the last 1-1/2 years. At this time, his motivation is questionable." Petitioner ultimately left the hospital on 7/22/19 against medical advice, stating "just don't feel like I need to be here." (Rx19)

On 7/24/19, Petitioner presented to the Edward Hospital ER with complaints of shaking, vomiting and body ache, indicating he was withdrawing from heroin, cocaine, and alcohol. He had been drinking over a fifth of vodka a day and was injecting heroin and snorting cocaine. Noting that his screening indicated these substances were not in his system, the hospital indicated they were comfortable discharging Petitioner for outpatient follow up, but that Linden Oaks would determine if they wanted to admit him for detox. (Rx14).

Petitioner returned to Edward Hospital on 7/25/19 from Linden Oaks due to complaints of severe low back pain, reporting that he slipped and fell four days prior. He reported 4 urine accidents that day and was concerned his hardware had slipped out of place. He "states he just needs something stronger for his pain at this time." He was noted to be shaking both legs constantly without difficulty. After being discharged back to Linden Oaks, Petitioner again returned to the Edward ER on 7/27/19, this time saying he passed out while walking across his room after getting out of bed with increased back pain into the left foot and numbness in the left leg. He did not fall but rather sat down on the floor, and he reported incontinence. He was unable to follow breathing instructions with CT angiography testing, so it was inconclusive. The workup was essentially negative, Petitioner refused an MRI due to claustrophobia. He was diagnosed with bilateral low back pain, bilateral sciatica and vasovagal syncope and he was returned to Linden Oaks. (Rx14).

On 8/1/19, Petitioner went to the ER with severe low back pain. He indicated he had been off narcotics since May. He was prescribed medication for withdrawal, noting his pain score would be reevaluated after this. Petitioner then called pain management on 8/2/19 indicating he did a lot of drugs and "partied hard" the night before and so hadn't started the suboxone medication, and he was requesting inpatient treatment. On 8/319, he went to the ER with complaints of low back and left leg pain, noting he had a pop in his back getting out of a car at the store. He continued to have pain despite multiple doses of pain medication, and he ultimately left against medical advice because "I'm still in pain and I can be in pain at home." He returned to the ER again later that day and was diagnosed with epididymitis. He returned on 8/4/19 with the same complaints and wanting pain medication. On 8/13/19, Petitioner was indicated to be noncompliant with suboxone, claiming that it caused stomach upset and fatigue. On 8/19/19, Petitioner calls again and denied that he had ever called regarding drinking and doing drugs, claiming it was his ex-wife who called. He denied any craving for drugs or having requested inpatient rehab. On 9/23/19, Petitioner complained of low back and leg pain for the past one

and a half weeks. At that time, he was diagnosed with diabetic polyneuropathy and radiculopathy. On 10/28/19, Petitioner returned with complaints of low back pain and right sciatica: "States he was away last week and was carrying some heavy equipment. He drove for 11 hours after which symptoms got worse." On 1/7/20, Petitioner reported slipping and falling in his garage and landing on his right wrist and hand with severe pain in that area. (Rx19).

Petitioner was to be evaluated by orthopedic surgeon Dr. Bergin on 4/21/20 at the Respondent's request. The doctor ultimately issued a 7/6/20 record review opinion, noting the Petitioner did not show up for the appointment. The history reviewed included: February 2001 decompression and posterior fusion of L4 to S1; a failure of fusion and a revision fusion of the same levels in April 2002 with a different surgeon; pain management recommendation from the latter surgeon noting pain and drug abuse issues; removal of the fusion hardware on some unknown date after this; Petitioner being on disability due to back pain; complaints of low back and left leg pain with incontinence in January 2016; findings of Dr. Kuo of stenosis and instability at the L3/4 level, just above the prior fusions, and recommendation of decompression and fusion of L3/4; surgery being canceled due to Petitioner's use of cocaine with no rescheduling until a negative cocaine test; Petitioner's alleged current July 2018 accident and refusal to issue narcotics at Edward Hospital with suspected malingering and drug seeking; Dr. Doppenberg's July 2018 decompression and fusion surgery of L3/4, followed by hematoma evacuation days later; revision fusion of all levels from L3 to S1 in April 2019 with indication of chronic L4 to S1 radiculopathy and diabetic neuropathy; and, Petitioner's long history of alcohol, prescription drug and illicit drug abuse. Dr. Bergin indicated the surgery performed by Dr. Doppenberg was essentially the equivalent procedure as Dr. Kuo had recommended and scheduled in 2016. He opined that the adjacent segment degeneration at L3/4 is a common problem following fusion, with instability and stenosis as evidenced by the retrolisthesis and effusions at that level going back to 2016. Dr. Bergin stated: "It is my opinion . . . (Petitioner) had well-established adjacent segment degeneration, instability and stenosis at L3/4 that required surgical intervention prior to 7/19/18. Once symptomatic, as in (Petitioner's) case, surgery is a foregone conclusion. He was symptomatic as far back as 2016. The alleged injury of going over bumps on July 2018 in no way aggravated, exacerbated, or accelerated his pre-existing condition. Medical treatment to this point has been appropriate but is in no way related to any work injury that may have occurred on 7/19/18." He further opined that Petitioner's prognosis was poor due to his history of alcohol and drug abuse, as well as his multiple lumbar surgeries. (Rx4).

Petitioner agreed on cross-exam that he did not attend the Section 12 exam scheduled for him by Respondent with Dr. Bergin. On redirect, he testified the exam had already been scheduled twice, and one of those times he had driven to Chicago for it and was told the appointment had been changed. As to the missed visit, he testified that he had a fever and called in to Dr. Bergin's office and was told they would reschedule, but they never called him. An 11/20/19 fax from Dr. Bergin's office, which references a 12/20/19 Section 12 exam, states that cancelations must be provided at least three business days in advance of an appointment or a $850 charge will occur, and if a patient fails to show up for a scheduled visit the charge will be $1,000. (Rx2).

On 6/1/20, Petitioner reported he had been working as a landscaper since April and was now working as the foreman. He indicted he had been clean, only taking the suboxone, and that his back and legs were improved. (Rx13).

On 7/7/20, Petitioner appeared at the Riverside Medical Center ER in Kankakee with complaints of acute exacerbation of chronic back pain, stating he was picking up a backpack blower at work, twisted to put in on and felt a pop with immediate pain and some incontinence. The report states: "Patient has had previous injury similar to this and has had the same effect with the urine loss. Patient states that this is nothing new when he develops acute exacerbation of chronic back pain." He was requesting pain medication "to help me get over this." It was noted that Petitioner had been prescribed suboxone with naloxone on 6/3/20, then was subsequently

prescribed valium later in June for chronic back pain. X-rays noted no acute changes, and a positive Waddell sign was noted. He was prescribed non-narcotic medications and advised to follow up with his PCP and neurosurgeon. (Rx18).

On 7/14/20, Petitioner reported he was placing a blower backpack 10 days ago and felt a pop with severe pain and an increase in right leg pain – the left leg was the same. On 7/18/20, Petitioner complained of a two day history of low back pain into the left leg, along with incontinence, indicating it happened at work. On 9/11/20, Petitioner admitted he had violated his prescription drug contract and had been obtaining medications from three different doctors since January 2020.

Orthopedic surgeon Dr. Darwish examined the Petitioner on 4/30/21 at the request of his attorney. The only records he reviewed were from 7/18/18 to 7/21/18, the 7/22 and 7/25/18 operative reports, MRI and CT scans between July 2018 and March 2019, Dr. Doppenberg's 9/17/18 to 2/18/19 reports, Doppenberg's 3/4/19 letter and Dr. Bergin's 7/6/20 report. Petitioner reported operating a compactor on 7/18/118, hitting a spot of clay that was harder than the rest of the dirt and getting jolted up and down, causing a popping sensation n the low back. He reported immediately losing control of his bladder and having significant pain and numbness down the left leg. His prior fusions were noted, and that he had hardware removed "sometime" between 2004 and 2015. Dr. Darwish noted Petitioner had left Edward Hospital against medical advice due to inadequate treatment, and that he had a psychiatric evaluation due to history of polysubstance abuse. Petitioner denied drinking or using illicit drugs. Neurologic exam notes decreased sensation in the left L4 and L5 distributions. X-rays showed no evidence of hardware failure. Dr. Darwish diagnosed low back pain, lumbar radiculopathy, lumbar stenosis, lower extremity weakness and post-laminectomy syndrome. He opined that the diagnosis was not related to the work accident, but that the work accident aggravated his condition and contributed to the need for surgery. He further opined that the July 2018 surgery with Dr. Doppenberg was reasonable and necessary given the severity of Petitioner's subjective symptoms. He recommended pain management and a functional capacity evaluation to assess his ability to work. He found no evidence of malingering and found him to be "honest and forthcoming regarding his history of low back pain prior to the injury." (Px8).

Dr. Darwish testified via deposition on 9/8/21. He acknowledged that a review of Petitioner's medical records was important as an examining physician. He testified consistent with his report of 4/30/21. As to what could cause a loss of bladder control, Dr. Darwish indicated it could be due to severe pain, or due to impingement of "neural elements" in the lumbar spine with potential to cause cauda equina syndrome. Petitioner reported that he was working full duty without restrictions on 7/19/18. Noting that MRIs obtained at Edward Hospital and then Dr. Doppenberg showed no evidence of the severe stenosis that would result in cauda equina, Dr. Darwish believed the incontinence was due to the severity of Petitioner's pain. While he noted moderate improvement after surgery, Petitioner continued to have pain and ultimately underwent the L3 to S1 revision surgery in 2019. On exam, Petitioner had reduced lumbar range of motion, which Dr. Darwish attributed to the extensive fusion and Petitioner's pain. He also found weakness in the left quadriceps, tibialis anterior muscle, and gastric. He also had decreased sensation in the left L4 and L5 nerve root distributions. He testified: "I think it verifies that he had some pathology in the lumbar spine that's causing some neurologic deficits." Any foraminal stenosis has the potential to cause radicular symptoms. Dr. Darwish opined that the 7/27/18 and 3/24/19 MRIs showed findings of scar tissue at left L3/4 that corresponds to Petitioner's complaints and exam findings. (Px9).

When Dr. Darwish saw Petitioner on 4/30/21, his complaints were of low back and left leg pain with numbness and weakness. Exam indicated a positive left straight leg raise and some weakness and sensory deficit in the left L4/5 and L5/S1 distributions, which corresponds to the MRI films, and the doctor reiterated the diagnoses he made on 4/30/21. Asked if he believes the diagnoses are related to the work accident, Dr. Darwish testified: "I think its hard to answer that question, but I could say that I think that he had – it's obvious from the records that he had lumbar pathology pre-dating the accident, but certainly I believe the accident did change his condition in

the way where he ended up requiring more aggressive treatment or more invasive treatment." He further opined that the diagnosis of having post-laminectomy syndrome or having low back pain is "certainly not related to this accident", as there is evidence he had these symptoms before the accident. However, he testified, "you can have these diagnoses and these conditions but still have it – have them in a way where you do not require surgical intervention." He believed the accident took Petitioner's baseline manageable low back pain and aggravated it to where it became much more difficult to tolerate, resulting in fairly urgent surgical intervention. Asked to elaborate, the doctor stated that this conclusion was based on Petitioner being able to work a fairly strenuous job full time without restrictions prior to the accident despite his long history of lumbar symptoms. Petitioner then went on to develop pseudoarthrosis or non-fusion, which occurs in 5% to 8% of fusion cases where it requires further treatment. Noting the MRI findings of scar tissue, Dr. Darwish opined that Petitioner would likely need pain management for the rest of his life. Noting he's only seen Petitioner once, Dr. Darwish opined that it would be difficult for Petitioner to work a strenuous job, and that an FCE would be appropriate to determine any specific restrictions. He testified: "if you look before his accident, he was working what I thought was a fairly strenuous job without restrictions, and I think after the accident and after the multiple surgeries that he had, that I believe has changed." He did not find any positive Waddell signs on exam and did not see signs of malingering. (Px9).

On cross, Dr. Darwish agreed he did not review any medical records which predated the 7/19/18 work accident but did get some information from the report of Dr. Bergin and was aware of the prior lumbar surgeries. The prior hardware removal, which is not commonly done, was likely due to symptom complaints. He agreed that, per Bergin's report, a May 2014 CT scan showed degenerative changes at L3/4 and retrolisthesis, and that such findings could involve no pain or could involve fairly significant back pain. He could not say if those films were taken based on pain complaints at that time or not without reviewing the records. While he wasn't aware of a history of lifting a radiator in 2016, Dr. Darwish agreed Petitioner treated with Dr. Kuo for back pain in 2016. As he had not reviewed those records, he couldn't say if Petitioner had first gone to the ER or if he complained of severe low back pain into the left leg with numbness and weakness with incontinence at that time, again agreeing this is indicated in Dr. Bergin's report. He agreed the incontinence then was also most likely due to pain. Per Bergin, he agreed that Dr. Kuo diagnosed L3/4 stenosis and instability and that in April 2016 she indicated Petitioner had exhausted conservative care and recommended L3/4 lateral interbody fusion. Dr. Darwish agreed that it is fairly common to develop adjacent-level degeneration after a prior fusion surgery, estimating about 30% do when viewed 10 years post-surgery. Based on Bergin's report, the surgery was not performed at that time due to a positive cocaine test. He testified that Petitioner had been forthcoming with him about his history of drug abuse. Dr. Bergin did interpret 9/19/16 CT scan as showing L3/4 degeneration, retrolisthesis and severe facet degeneration. He did not recall or review any records of Petitioner treating in October 2017 for similar symptoms. (Px9).

As to Dr. Kuo in 2016 prescribing the same L3/4 fusion he underwent in 2018, Dr. Darwish testified that there was some variation in the recommended surgeries, in terms of lateral versus posterior approach, with the latter being recommended with a sudden change in symptoms and a motor deficit, with the former being more of an elective approach. He agreed Petitioner had chronic low back pain prior to 7/19/18 and that he had no evidence that Dr. Kuo's surgical recommendation had ever changed. Dr. Darwish agreed that Petitioner's July 2018 complaints of low back pain and left leg symptoms were the same ones made to Dr. Kuo – as to the whether he complained of incontinence at both times, he testified there was only one line of info about this in Dr. Bergin's report. Dr. Darwish agreed that the 7/19/18 Edward Hospital records indicated the clinical picture was not supported by the imaging obtained and that a psychological evaluation was obtained, noting he didn't have the record in front of him, but that Petitioner told him they found evidence of malingering and pain medication seeking behavior, but that Petitioner said he left because he was getting in adequate care. He agreed the 7/19/18 MRI films showed no significant change versus the prior MRI films. There was no acute finding of like a disc herniation on 7/19/18 "but we seldomly see that after an injury." Dr. Doppenberg then performed surgery at the

same level Dr. Kuo had recommended surgery in 2016. Assuming Petitioner had chronic low back pain prior to the accident and the same radiological findings before and after the accident, Dr. Darwish still opined that the accident aggravated the condition to where urgent surgery was needed. He agreed Edward Hospital neurosurgery did not find the condition needed urgent surgery. He had no knowledge of Petitioner's pre-accident work history other than what was noted in his report, but that he had worked a short period of time for Respondent. He had no record or memory of Petitioner having a slip and fell in July 2019 with severe back pain or taking groceries out of his car in August 2019 with a pop in his back with pain. Dr. Darwish agreed Petitioner reported improvement after the 2019 revision surgery but testified he wasn't sure if Petitioner told him he had returned to work as a landscaper in 2020 and he had no record of Petitioner then going off work again after lifting a blower backpack. He testified however that it would show difficulty for Petitioner to remain employed in such a job. (Px9). On redirect, Dr. Darwish agreed that the high blood pressure numbers Petitioner had at Edward Hospital on 7/19/18 could be a sign of severe pain. Had he seen the Petitioner at that time, he testified he would have recommended the same thing that Dr. Doppenberg did. Asked if he had ever seen patients with Petitioner's pre-accident diagnosis go on to have emergency surgery without an accident occurring, he testified "I see them both with and without accidents, but the ones that have a change in symptoms without some sort of offending activity, its usually more of a gradual increase in symptoms and not a sudden increase in symptoms. . ." On re-cross, he also agreed he likely would have recommended the same surgery Dr. Kuo did in 2016. (Px9).

Dr. Bergin was deposed on 10/13/21, on direct mainly reiterating the findings in his report. He agreed that he was asked to perform a record review without an examination after Petitioner missed his scheduled 4/21/20 visit. He testified that urinary incontinence raises questions of whether there is severe nerve compression. After Dr. Kuo recommended surgery at L3/4 in 2016, canceled due to cocaine use, Dr. Bergin saw no evidence that Petitioner's symptoms had abated or that a surgeon indicated the surgery was no longer necessary: "He's been symptomatic for many years ad he was recommended surgery by a reasonable orthopedic spine surgeon, and he had failed all of his conservative care, so it's unlikely that his pain would magically go away." Petitioner's 7/19/18 symptoms noted at Edward Hospital are the same symptoms he presented with to Dr. Kuo in 2016. He opined that the lateral approach recommended by Kuo and the surgery performed by Dr. Doppenberg in July 2018 are meant to accomplish the same thing, reestablishing disc height and improving fusion rates, disagreeing with Dr. Darwish's explanation: "I think you can accomplish the same thing either way." Dr. Bergin testified that the records he reviewed documented a long history of prescription and illicit drug abuse, as well as alcohol abuse, including hospital admissions for drug and alcohol withdrawal as well as suicidal ideation. There also are numerous references to drug-seeking behavior mostly related to his lumbar condition. (Rx3).

Dr. Bergin testified that a 5/16/14 abdominal CT scan showed degenerated L34 disc with retrolisthesis and severe facet hypertrophy with a degenerative gap in the facets consistent with instability. A 9/19/16 lumbar CT scan showed solid fusion from L4 to S1 and retrolisthesis with severe disc degeneration at L3/4, again with the severe facet degeneration with a gap consistent with instability. An MRI from the same date showed the same thing, including fluid in the facet joints that was consistent with instability and central and bilateral recess stenosis at that level. When comparing these films to the July 2018 films prior to Dr. Doppenberg's surgery, he did not see any relevant differences or anything reflecting an acute injury. Dr. Bergin opined that the Petitioner had a preexisting condition that was not affected in any way by the 7/19/18 accident. He explained how the levels adjacent to a prior fusion surgery can have accelerated degeneration due to increased mobility and stress at those levels, "and that's what we see here with (Petitioner)." This led to instability at L3/4 and stenosis both centrally and in the lateral recesses. Any need for surgery was just due to his longstanding severe degenerative condition from the prior fusion, not anything that happened going over bumps on 7/19/18. Again, the same surgery had been recommended in 2016 and he would have had it then but for a positive cocaine test. Based on this opinion, he also opined that the Petitioner did not need any work restrictions that would be related to the 7/19/18 incident or subsequent surgery. Any restrictions would be related to the preexisting condition. Given

the multiple surgeries and Petitioner's alcohol, drug and opioid abuse, Dr. Bergin believed his prognosis remains poor. (Rx3).

On cross exam, Dr. Bergin testified that he used to work in excavating, and while he hasn't used a compactor, excavation sites all have bumps everywhere. He did not doubt that Petitioner had back pain while using the machine and testified: "I would say (Petitioner) has pain every day and had pain every day before that as well. He was recommended surgery two years before for a severe condition, so I don't doubt that he has pain every day. Maybe every minute of every day." He agreed Petitioner was working full duty on 7/19/18 and has surgery within three days afterwards. He agreed that he had to have severe pain to go to the ER and have a spine consult. He agreed Petitioner did not go to the ER in the morning on 7/19/18, but rather after he had been working. He did not know how long Petitioner had been working full duty prior to 7/19/18 as he didn't show up for his evaluation. He could not say why Petitioner did not show up. Dr. Bergin agreed that the July 2018 surgery was reasonable and necessary for Petitioner's condition. (Rx3).

On re-direct exam, Dr. Bergin testified that he has an intimate knowledge of the excavation industry having worked in it for five years, which includes jumping on all sorts of heavy equipment when needed. He agreed that going over bumps doing excavation can cause someone to experience symptoms if they already have severe chronic low back pain, but that doesn't mean it accelerated or aggravated the back condition. In this case, he had a severe degenerative condition and surgery had already been recommended to address instability and nerve compression, and "it's a foregone conclusion that this gentleman is going to require surgery." It doesn't change the time frame for needing surgery because it had already been needed two years before. Some people can gut it out, either with prescription medication or illicit drugs and/or alcohol to control symptoms. On recross, Dr. Bergin agreed that he doesn't know why Petitioner didn't get the surgery in July 2018 prior to 7/19/18, and he saw no record of Petitioner complaining of severe back pain going over bumps at home.

On 11/15/21, Petitioner underwent FCE testing with Joseph Santillo at Independent Worksite Solutions. The report notes Petitioner was referred by Dr. Verser of the St. Vincent Clinic in Mount Ida, Arkansas. The Arbitrator has no record of treatment or evaluation by this physician in evidence. The FCE placed Petitioner at the sedentary work level, limiting him to 10 pounds lifting/carrying and 50 pounds push/pulling, which did not meet his job description of medium level work as a heavy equipment operator. It was noted that Petitioner's body mechanics were poor despite corrective mild cueing. (Px10).

On 11/17/21, based on the FCE results, Petitioner demanded either a work accommodation or vocational rehabilitation services. (Px11).

A large number of medical exhibits were submitted into evidence by Respondent. Records from Twin Cities Spine Center in Minnesota reflect the 4/16/02 fusion revision surgery from L4 to S1. This was performed due to ongoing complaints and what appeared to be pseudoarthrosis and possible arachnoiditis, and surgery confirmed a failed prior fusion. He'd done well for 6 or more weeks after the initial surgery and then he again developed back and left leg symptoms that continued to worsen. A 6/10/10 lumbar MRI findings included lumbosacral spondylolisthesis and exaggerated lordosis, post-op changes from L4 to S1, and granulation/scar tissue in the left L4 and L5 epidural space with no herniation or canal/foraminal stenosis at L3/4. It was noted that the Petitioner had been traveling for treatment from another state. A separate note indicates Petitioner's blood tested positive for Hepatitis C. Pain control was a problem for Petitioner, and he was noted to have had a history of prior "apparently resolved" drug usage. He was referred for chronic pain treatment in Illinois at the end of April, and in May was hospitalized for what Petitioner verbalized was suspicion of infection. On 5/20/02, Petitioner requested a release to return to work and Dr. Parra provided this with restrictions (15 pounds with no bending, twisting, kneeling, squatting, or reaching overhead with the need to change positions every 30 minutes). In September 2002, Petitioner contacted Dr. Parra requesting an appointment due to increased pain. In

August 2004, Petitioner contacted Dr. Parra, indicating he'd undergone a very painful discogram, along with MRI and CT scan, and Parra indicated it appeared that Petitioner had a solid fusion. Hardware removal surgery was performed on 11/9/04. Neither operative report is included in these records. (Px8).

Petitioner underwent lumbar and thoracic MRIs on 10/20/17. The thoracic MRI showed very mild degenerative disc disease in the mid and lower thoracic spine with no stenosis. The lumbar films showed the prior surgical changes and at L3/4 showed mild to moderate disc desiccation with mild disc height loss and annular disc bulge with moderate to extensive bilateral facet arthritic changes including facet hypertrophy and ligamentum flavum thickening. The radiologist also noted mild central canal stenosis, mild to moderate bilateral subarticular stenosis and mild bilateral foraminal stenosis. There was mild to moderate bilateral facet arthropathy with ligamentum flavum thickening and no evidence of stenosis at L2/3. An additional lumbar MRI was performed on 10/25/17, just days later, which indicated no disc herniations or stenosis at L2/3 or L3/4. (Rx15).

The records of Local 150 include October 2007 medical documentation from Rush University Medical Center noting Petitioner complained of his left leg giving out often the prior week and right leg problems as well. Petitioner also reported a two to three day loss of bladder control, saddle anesthesias, lack of bowel movement and decreased sensation in the right leg and genital area. A history of 2000 and 2001 lumbar fusion surgeries and a 2003 hardware removal surgery was noted. Petitioner indicated a Fentanyl patch wasn't helping him and that he had already gone to an Aurora facility where "nuthin done." He was limping and denied trauma. He denied alcohol, tobacco, or drug abuse. He was noted to be fidgety and very anxious. Exam noted weakness and loss of sensation in the face bilaterally and both legs. Due to cauda equina concern, Myelogram/CT and MRI scans were performed. None of the testing reflected any significant spinal canal stenosis/cord compression. The pension report notes Petitioner also had been hospitalized for pain control in September 2007. (Px5, Px6, Px7).

On 11/29/06, Petitioner called Dr. Parra reporting increased symptoms for two weeks. On 8/13/09, Petitioner called Dr. Parra asking him to review new MRI films that had been obtained due to increased pain. The history notes back pain and extreme weakness with reported 6 weeks of progressive symptoms, as well as indication an MRI had been obtained on 4/27/10. The Arbitrator notes that the records in this exhibit are clearly not the original progress noted and are not complete – they appear to be some visit summaries. (Px8).

Records from Rezin Orthopedics indicate that on 8/30/02 Petitioner reported he was working at Channahon Tractor, four months after fusion surgery, and complained of a piece of metal entering his right knee, which ended up being behind the patellar tendon, and this was not removed. He was admitted to Morris Hospital on 1/8/04 for back pain down both legs, left greater than right. MRI noted the prior surgical changes and L5/S1 spondylolisthesis, with normal L1 to L3 levels. (Px9).

On 7/16/10, Petitioner sought treatment with Optima Medical Associates and reported a 4.5 month history of a lot of back pain radiating into the legs, with Petitioner also reporting an MRI was done 4.5 months ago and was told he had another bulging disc. He had been referred to Optima by Dr. Chema for possible suboxone treatment because he went through Norco (which included a Methadone prescription) in a week. He tested positive for those drugs, as well as unreported Xanax, another benzodiazepine and alcohol. (Rx7).

Petitioner saw orthopedic surgeon Dr. Kuo on 1/19/16 with a three week history of back pain when he was helping to pull a radiator out of a car. He had 1/11/16 x-rays and returned to the ER recently due to pain. He reported sharp low back pain radiating down the back of the left leg, with leg numbness, tingling and weakness. He also reported bladder issues and that he was currently catheterized. She noted: "He claims he has lost bladder control but denies any bowel control loss. He also denies any saddle anesthesia. He has some numbness and tingling straight down the back right to his foot." Dr. Kuo indicated MRI showed mild to moderate stenosis at L3/4, while L4 to S1 appeared patent. Petitioner was referred for an epidural and advised to follow up two

weeks after that. However, the next record is dated 4/12/16, at which point Petitioner indicated he had been to the ER on Sunday with groin numbness and the inability to urinate, and he wanted to discuss surgery, noting he was told an MRI showed a mass. Dr. Kuo obtained an MRI and saw no mass and no significant change versus January films. The Arbitrator notes Dr. Kuo's records indicate "never" as to whether he used smokeless tobacco. Noting stenosis from ligamentum hypertrophy at L3/4, Dr. Kuo scheduled an L3/4 decompression and fusion (ALIF), however on 6/7/16 she noted that a drug test was positive for cocaine and surgery would not be scheduled until there was a clean test in advance and at the time of the surgery. That is the last report from this physician in evidence. (Rx12).

Respondent submitted documentation of a 5/9/15 felony charge against the Petitioner for aggravated battery of a peace officer. Ultimately a warrant was issued in February 2016 due to Petitioner's failure to appear, and it appears he was taken into custody. He ultimately then pled guilty in March 2016. Petitioner remained on probation until March 2017. (Rx1). Petitioner acknowledged this conviction in his testimony.

CONCLUSIONS OF LAW

WITH RESPECT TO ISSUE (C), DID AN ACCIDENT OCCUR THAT AROSE OUT OF AND IN THE COURSE OF THE PETITIONER'S EMPLOYMENT BY THE RESPONDENT, THE ARBITRATOR FINDS AS FOLLOWS:

The Arbitrator finds that the Petitioner sustained accidental injury which arose out of and in the course of his employment with Respondent on 7/19/18. He testified that on that date he was operating a compacting machine. As he was traversing an area to compact clay, he indicated he hit a bump which jolted him up in the air and back down on the seat, after which he developed low back pain into the left leg with weakness and numbness, and experienced incontinence.

The Arbitrator finds that this activity increased the risk of injury within the meaning of the Act. He was riding in a piece of heavy equipment machinery, not any normal vehicle, and he was using this machine to compact dirt and clay. He testified that this involved a rough ride, something a person generally is not exposed to.

While there is a dispute as to whether the Petitioner reported a work injury to Respondent at the time of the injury, its clear the Respondent was aware that he had a back problem and had to leave the job, as this was confirmed by Maxwell Loucks. There also was a dispute as to whether the seat in the machine had "air ride" involved or other shock absorbing system. However, the Petitioner's description of the incident and his immediate presentation to the ER at Edward Hospital the same day, as well as a consistent history in the contemporaneous medical records, support that the Petitioner experienced the incident as he testified.

WITH RESPECT TO ISSUE (E), WAS TIMELY NOTICE OF THE ACCIDENT GIVEN TO THE RESPONDENT, THE ARBITRATOR FINDS AS FOLLOWS:

As noted above, there is a question as to whether the Petitioner reported his back problems as related to a work injury. The Petitioner testified he did inform the owner, Jim Loucks, that he reported what had occurred in the compactor right after it happened. While Maxwell Loucks indicated that the Petitioner did not discuss a work injury with him when he drove Petitioner to his car on 7/19/18, Maxwell as also not the boss at that time. Jim Loucks was not called by Respondent to testify. Petitioner also testified, unrebutted, that he called Jim Loucks within a few weeks of the incident to indicate he was making a workers' compensation claim, which would have been within he 45 day notice requirement. Again, Jim Loucks was not called to testify to rebut the Petitioner's testimony in this regard. The Arbitrator finds that the Petitioner provided sufficient notice of the accident under the Act.

WITH RESPECT TO ISSUE (F), IS THE PETITIONER'S PRESENT CONDITION OF ILL-BEING CAUSALLY RELATED TO THE INJURY, THE ARBITRATOR FINDS AS FOLLOWS:

While the Arbitrator has found that the Petitioner sustained accidental injury on 7/19/18, the Arbitrator finds that the Petitioner's lumbar condition is not related to that accident.

Normally in a case like this, a claimant will attempt to prove causation via a "chain of events" analysis, basically meaning they were working regular duty at the time of an accident and then had ongoing problems with one or more body parts thereafter with no evidence of any other possible cause of the change in condition. In this case, the Petitioner clearly reported to the Edward and Good Samaritan Hospitals on 7/19/18 and 7/20/18 that he developed an increase in low back pain, left leg pain and weakness/numbness and had incontinence following the accident. The problem for Petitioner in this case is he had a clearly significant ongoing lumbar problem that began in 2000 or 2001, he has had an ongoing significant drug and alcohol abuse problem for the past 20 years or more, and the evidence presented at hearing puts the Petitioner's credibility at issue. The greater weight of the evidence does not support any real change in Petitioner's condition. Additionally, a lack of credibility with this claimant makes it unclear if there was actually any change in his condition at all.

The Petitioner initially underwent a lumbar fusion at L4 to S1 in 2001, subsequently undergoing a revision surgery due to fusion failure, followed in 2003 or 2004 by a hardware removal surgery. The evidence in the record indicates that between 2004 and July 2018, the Petitioner has had multiple visits to the ER or to other medical personnel complaining of the exact same symptoms he complained of on 7/19/18 – severe low back pain, left leg pain and numbness/weakness, and incontinence. He testified that he was found to be permanently disabled from working as an operator and obtained a disability pension through his union going back to 2007 or 2008. He also testified that he obtained Social Security Disability at some point. He testified that he did not work at all between 2006 and the spring of 2018. Additionally, the evidence supports, despite there being no complete records of when they occurred, that the Petitioner at some point prior to the accident had to use a wheelchair (2011/2012), had a spinal cord stimulator implanted, and had a medication pain pump installed.

The evidence indicates that Petitioner reported essentially identical symptoms to spine surgeon Dr. Kuo in January and April of 2016 as he did in July 2018. When Dr. Kuo recommended surgery in April 2016, the Petitioner was complaining of severe, constant, chronic lower back pain with numbness, tingling and weakness radiating down his left leg. He was having urinary incontinence because of his symptoms. He rated his pain at a level of 9 on a 10-point scale. Following the 7/19/18 accident, when Petitioner presented to Edward Hospital emergency room on the date of the alleged accident, he was complaining of chronic back pain with radiculopathy and bladder incontinence, Petitioner testified that after the accident, the symptoms were radiating down his left leg. He also rated his pain at a level of 9 on a 10-point scale, the exact same level he rated his pain prior to the accident.

The same surgery that was performed by Dr. Doppenberg, on what he indicated to be an emergent basis, in July 2018 was what had been recommended and scheduled by Dr. Kuo in April 2016. The only reason that surgery was not performed in 2016 was the Petitioner having a positive cocaine test. No explanation was offered by Petitioner as to why he didn't go back for surgery. Dr. Kuo, despite symptoms that could lead one to diagnose causa equina such as severe leg numbness and tingling as well as incontinence, did not perform surgery at that time on an emergent basis and did not indicate that the surgery was an emergency. At the Petitioner's initial post-accident ER visit on 7/19/18, Edward Hospital determined that the Petitioner's diagnostic films did not support his neurologic complaints. A psychiatric evaluation determined a likelihood of malingering and drug seeking behavior, noting Petitioner's long history of drug abuse. Thus, despite the complaints, this facility also did not determine that the Petitioner had any emergency need for surgery. It was only when he presented to Dr.

Doppenberg, who, based on the evidence presented, had no knowledge of Petitioner's prior medical treatment and subjective complaints, that it was determined that surgery was needed right away.

Petitioner's diagnosis remained the same both before and after the accident. In 2016, Dr. Kuo diagnosed left leg radiculopathy secondary to degenerative changes at L3/4, and spinal stenosis at L3/4. At Advocate Good Samaritan Hospital, Petitioner was diagnosed with spinal stenosis at L3/4 with crowding of the cauda equina, and possible synovial cyst. During surgery on 7/22/18, Dr. Doppenberg noted an operative diagnosis of left-sided leg weakness. There also was no change in the radiographic findings both before and after the accident, and no acute findings after 7/19/18. Even after the 2016 surgery was cancelled due to the positive drug test, Petitioner underwent additional MRIs in 2017 due to his severe low back pain radiating into his left lower extremity. The MRIs noted mild to moderate degenerative disc changes and extensive bilateral facet arthritic changes at L3/4. The MRI performed at Edward Hospital after the accident noted essentially the same findings, according to both Petitioner's expert, Dr. Darwish and Respondent's expert, Dr. Bergin

The Arbitrator finds the opinion of Dr. Bergin regarding causation to be more persuasive than that provided by Dr. Darwish. The Arbitrator finds it significant that Dr. Darwish reviewed no records of Petitioner's treatment prior to the alleged accident date, other than Dr. Bergin's report referencing such prior treatment. Reviewing these records and understanding the Petitioner's prior medical treatment is critical in this case given the significant amount and nature of the prior treatment. In large part, Dr. Darwish based his opinions in part on the claim that Petitioner was able to work full duty, full time prior to the alleged date of accident, but was no longer able to do so after the accident. Dr. Darwish indicated he was aware that Petitioner had worked for Respondent for a short time prior to 7/19/18, but he clearly had no knowledge that the Petitioner had only returned to work briefly in 2018 and had been off work for at least 12 years prior to the incident due to being found permanently disabled by his preexisting back condition. Based on this, Dr. Darwish's causation opinion lacks foundation. While Dr. Darwish attempted to differentiate the surgery performed by Dr. Doppenberg and that recommended in 2016 by Dr. Kuo, this opinion does not carry a lot of weight. The surgery performed was the same – an L3/4 fusion and decompression added onto the already existing L4 to S1 fusion. The Arbitrator finds no significant difference between the surgery recommended before the accident compared to the surgery performed after the accident. While Dr. Darwish referenced the surgery would be performed in a slightly different manner after the accident due to the urgent nature of the surgery, this discounts the fact that the greater weight of the evidence in this case does not support this surgery being an emergency. Dr. Bergin, Respondent's expert, testified that there was no evidence that Dr. Doppenberg's L3/4 fusion surgery was performed in a different manner based on the urgent nature of the surgery. His opinion is supported by the fact that Petitioner presented to Edward Hospital days prior to the surgery being performed, and the doctors at Edward Hospital determined there was no urgent need for surgery. Similarly, despite virtually identical complaints in April 2016 and no significant change in radiologic findings since then, Dr. Kuo also did not determine the surgery to be an emergency. As Dr. Bergin testified, Petitioner had the same, severe lower back and left lower extremity symptoms both before and after the alleged accident. Petitioner was experiencing urinary incontinence both before and after the alleged accident, which was caused by severe compression of the lumbosacral nerves that pre-existed the accident. The radiological studies were essentially the same both before and after the alleged accident, and there were no additional findings to indicate an acute injury. Petitioner had a recommendation for a lumbar spinal fusion before the accident and underwent that same surgery after the alleged accident.

The Arbitrator relies on Dr. Bergin's opinion that Petitioner did not suffer any acute injury on 7/19/18, and that his preexisting condition of ill-being in his lumbar spine was not aggravated or accelerated by the act of going over bumps in his excavating machine. As Dr. Bergin testified, and as the Arbitrator agrees, the need for surgery was present before the accident and it was a foregone conclusion that Petitioner needed the surgery before the accident. While driving over bumps may cause someone who already has a severe, chronic lower

back condition to experience symptoms, that activity does not necessarily aggravate or accelerate the underlying condition, as was the case with Petitioner.

A significantly greater weight of the evidence supports that Petitioner's neurologic complaints have not been supported by the diagnostic testing. Additionally, it must be noted that this is in the context of someone who has been diagnosed with diabetic neuropathy, which was supported by EMG testing, which itself reflected chronic radiculopathy related to the L5/S1 level, not the L3/4 level that was operated on by Dr. Doppenberg. All of the medical evidence supports that the L3/4 level has degenerated based it having been adjacent to the previously fused L4 to S1 levels. None of the post-7/19/18 diagnostic testing has been read to show any acute injury to the lumbar spine. Taking all of this together, it does not appear that the Petitioner's complaints of numbness and weakness in his legs relate to a true spinal injury beyond ongoing natural degeneration following three surgeries between 2000 and 2004.

The Petitioner returned to work as a heavy equipment operator in June 2018. In 2007, Dr. Singla determined Petitioner was permanently and totally disabled from regular operator engineering work. Dr. Singla's opinions were confirmed by the 1/16/08 functional capacity evaluation (FCE). While he obviously was performing work, there is no evidence that any physician had determined that he was able to perform such work or had removed the permanent restrictions that his union had determined prevented him from returning to work as an operator. Thus, the Petitioner returned to a job that he knew he was not capable of performing, indicating he figured he could essentially tough it out.

Petitioner testified that he didn't think he'd be able to return to work, though he would be willing to try. It appears to the Arbitrator that this is the exact same position he was in in 2018 when he tried to return to work for Respondent. While the Arbitrator finds that he sustained accidental injury arising out of and in the course of his employment, this incident does not appear to have aggravated or accelerated his lumbar condition in any significant way. The surgery he underwent had been recommended going back to 2016, and the only thing that stopped it from occurring was his drug addiction.

Petitioner testified that he did not work in the two to three years prior to 2018. It is clear from the evidence that he was also in jail for a period of this time. As he did not testify to it, the period of time he was in jail is not clear. Nor was it disclosed why he was in jail. Lastly, and importantly, the Petitioner has clearly been dealing with addictions to alcohol, pain medication and illicit drugs like cocaine, crack and/or heroin for decades. While there are references in the records to Petitioner claiming he has been clean for significant periods of time, the records also indicate discrepancies in his stories, which are noted by some of the medical personnel. He has had multiple hospitalizations, which have included complaints of pain in the low back and left leg, that ended up essentially being periods of trying to get past withdrawal symptoms. He has numerous times where he has left medical facilities against medical advice, often because he wasn't getting the pain medications he felt he should be getting. There are references following surgery to him using chewing tobacco in the hospital, as well as obtaining soft drinks and food in opposition to the diet he was supposed to be on for uncontrolled diabetes, as well as later on for kidney damage. In the latter case, while he was being treated for acute kidney injury, he left the hospital against medical advice. Way too often the medical records in this case indicate that the Petitioner is his own worst enemy when it comes to his health.

Even subsequent to the July 2018 accident and surgery, the Petitioner has had repeated visits for treatment, again with the same symptoms he has complained of since the mid-2000's – low back pain into the left leg with neurologic symptoms. This includes incidents of getting his groceries out of a car and picking up sticks in his yard. Each time the Petitioner's pain was not controlled well with multiple doses of medication, and he seeks more.

Also of note to the Arbitrator is the fact that Petitioner's prior medical history is being pieced together because so many records of the claimant's 2000 to 2018 treatment are not in the evidentiary record. Given the Petitioner's lack of credibility, the Arbitrator cannot give the Petitioner the benefit of the doubt as to whether such records would be supportive or unsupportive of his claim in this case.

Petitioner suffered from a severe, chronic degenerative condition in his lumbar spine with significant symptoms that permanently prevented him from working as a full time, full duty operating engineer prior to the date of accident. There was no real change in his symptoms both before and after the alleged accident, other than subjective complaints which have been questioned by a number of medical personnel in terms of their veracity given the diagnostic testing. There was no change in the radiographic findings both before and after the accident. There was no change in his diagnosis both before and after the accident. He had been recommended for the same surgery before the accident that was performed after the accident but was unable to undergo the surgery before the accident due to drug abuse. Petitioner was attempting to return to his former employment after years of absence but was unable to "push through and just deal" with his symptoms, as he admitted he was attempting to do with the return to work. Frankly, it is unclear how or if Petitioner even obtained medical clearance to return to work in July of 2018 based on his prior, permanent, and significant work restrictions or whether his union was aware of his prior disability determination. While the Arbitrator empathizes with the Petitioner and truly hopes he has gotten his life onto a good and better path, as he has testified to, the greater weight of the evidence simply does not support causation relative to the 7/19/18 accident. Based on the above, the Arbitrator finds that Petitioner did not sustain an accident that arose out of and in the course of employment, and his current condition of ill-being is not causally related to the alleged accident.

WITH RESPECT TO ISSUE (J), WERE THE MEDICAL SERVICES THAT WERE PROVIDED TO PETITIONER REASONABLE AND NECESSARY AND HAS RESPONDENT PAID ALL APPROPRIATE CHARGES FOR ALL REASONABLE AND NECESSARY MEDICAL SERVICES, THE ARBITRATOR FINDS AS FOLLOWS:

Based on the Arbitrator's findings regarding causal connection, this issue is moot.

WITH RESPECT TO ISSUE (K), WHAT AMOUNT OF COMPENSATION IS DUE FOR TEMPORARY TOTAL DISABILITY, TEMPORARY PARTIAL DISABILITY AND/OR MAINTENANCE, THE ARBITRATOR FINDS AS FOLLOWS:

Based on the Arbitrator's findings regarding causal connection, this issue is moot.

WITH RESPECT TO ISSUE (L), WHAT IS THE NATURE AND EXTENT OF THE INJURY, THE ARBITRATOR FINDS AS FOLLOWS:

Based on the Arbitrator's findings regarding causal connection, this issue is moot.

For purposes of any review of this decision that may be filed by the parties, the Arbitrator notes for the record that the parties stipulated and agreed at the time of the hearing that if the Petitioner's case was determined to be compensable and the Arbitrator found the Petitioner had reached maximum medical improvement, despite the request for vocational rehabilitation, the Arbitrator could make a determination regarding permanent partial disability, wage differential or permanent total disability.

WITH RESPECT TO ISSUE (O), IS RESPONDENT ENTITLED TO REIMBURSEMENT OF AN IME FEE, THE ARBITRATOR FINDS AS FOLLOWS:

While the evidence makes it clear that the Petitioner did not appear for a Section 12 examination with Dr. Bergin, the Arbitrator denies the Respondent's request for reimbursement. While the Petitioner's credibility is obviously an issue in this case, his testimony that he came to Chicago for an initial appointment was reasonable in terms of having made the travel and only then learned that the appointment had been moved. The documentation from Dr. Bergin's office appears to indicate an exam had been scheduled prior to the one the Petitioner acknowledged missing. No testimony in this regard was obtained from Dr. Bergin. The Respondent never attempted to reschedule the examination and instead obtained an opinion from Dr. Bergin based on a record review. The Arbitrator finds the Respondent is not entitled to reimbursement of the Section 12 exam fee of Dr. Bergin.

WITH RESPECT TO ISSUE (O), IS THE RESPONDENT DUE ANY CREDIT, THE ARBITRATOR FINDS AS FOLLOWS:

Based on the Arbitrator's findings regarding causal connection, this issue is moot.

WITH RESPECT TO ISSUE (O), IS THE PETITIONER ENTITLED TO PROSPECTIVE VOCATIONAL REHABILITATION, THE ARBITRATOR FINDS AS FOLLOWS:

Based on the Arbitrator's findings regarding causal connection, this issue is moot.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	22WC014003
Case Name	Nicholas Gorski v. Marquis, Inc.
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b) Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	24IWCC0399
Number of Pages of Decision	11
Decision Issued By	Amylee Simonovich, Commissioner

Petitioner Attorney	Mark Wilson
Respondent Attorney	Peter Havighorst

DATE FILED: 8/20/2024

/s/Amylee Simonovich, Commissioner

Signature

24IWCC0399

STATE OF ILLINOIS)
) SS.
COUNTY OF WILL)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Nicholas Gorski,

Petitioner,

vs. NO: 22 WC 14003

Marquis, Inc.,

Respondent.

DECISION AND OPINION ON REVIEW

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

In the Order section of the Arbitration Decision Form, the Arbitrator mistakenly calculated the period of TTD benefits awarded as 25 weeks. The Commission strikes "25 weeks" and replaces it with "25-2/7 weeks." Additionally, in the Order section of the Decision Form and on page 6 of the Decision, the Arbitrator awarded the recommended surgical consultation "…including any subsequent recommendations for surgery or other recommended non-surgical treatment for the Petitioner's back." The Commission modifies the above-referenced sentences to read as follows:

> Respondent shall authorize the surgical consultation recommended by Dr. Mikuzis regarding Petitioner's low back condition.

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

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed on May 8, 2023, is modified as stated herein.

IT IS FURTHER ORDERED that Respondent shall pay Petitioner temporary total disability benefits of $733.33/week for 25-2/7 weeks, commencing May 6, 2022, through July 28, 2022, and from October 6, 2022, through January 6, 2023, as provided in Section 8(b) of the Act.

IT IS FURTHER ORDERED that Respondent shall pay for reasonable and necessary medical services in the amount of $1,839.00 (contained in Petitioner's Exhibit 1) as provided in Sections 8(a) and 8.2 of the Act. Respondent shall hold Petitioner harmless from any claims by any providers of the services for which Respondent is receiving a credit, as provided in Section 8(j) of the Act. Respondent is to pay unpaid balances directly to Petitioner. Finally, Respondent shall reimburse Petitioner for out-of-pocket expenses in the amount of $775.00.

IT IS FURTHER ORDERED that Respondent shall authorize the surgical consultation recommended by Dr. Mikuzis regarding Petitioner's low back condition.

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

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

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $21,300.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

August 20, 2024
o: 7/9/24
AHS/jds
51

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

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	22WC014003
Case Name	Nicholas Gorski v. Marquis, Inc.
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	8
Decision Issued By	Jessica Hegarty, Arbitrator

Petitioner Attorney	Mark Wilson
Respondent Attorney	Peter Havighorst

DATE FILED: 5/8/2023

THE INTEREST RATE FOR THE WEEK OF MAY 2, 2023 4.90%

/s/ Jessica Hegarty, Arbitrator

Signature

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Nicholas Gorski
Employee/Petitioner

v.

Marquis, Inc.
Employer/Respondent

Case # **22** WC **014003**

Consolidated cases: _____

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Jessica A. Hegarty**, Arbitrator of the Commission, in the city of **Joliet**, on **1/6/23**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On **4/22/22**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $**3,300.00**; the average weekly wage was $**1,100.00**.

On the date of accident, Petitioner was **42** years of age, ***single*** with **0** dependent children.

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

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

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

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

ORDER

Respondent shall pay Petitioner TTD benefits of $733.33/week for 25 weeks, commencing May 6, 2022, through July 28, 2022, and from October 6, 2022, through January 6, 2023, as provided in Section 8(b) of the Act.

Respondent shall pay the reasonable and necessary medical services in the amount of $1,839.00 (contained in Petitioner's Exhibit 1) as provided in Sections 8(a) and 8.2 of the Act. Respondent is to hold Petitioner harmless for any claims for reimbursement from any health insurance provider. Respondent is to pay unpaid balances directly to Petitioner. Respondent shall pay any unpaid medical expenses according to the fee schedule and shall reimburse Petitioner for out-of-pocket expense in the amount of $775.00.

Respondent shall authorize the surgical consultation, including any subsequent recommendations for surgery or other recommended non-surgical treatment for the Petitioner's back.

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.

Jessica A. Klyntz

Signature of Arbitrator

MAY 8, 2023

ICArbDec p. 2

ADDENDUM TO THE DECISION OF THE ARBITRATOR

This matter proceeded to hearing before the Arbitrator on January 6, 2023, in Joliet, Illinois. (Arb. 1)

Petitioner testified that on the date of his alleged accident, April 22, 2022, he had been working for Respondent as an equipment operator for a few weeks. His job duties involved driving a skid steer/Bobcat and picking up trees from the ground that had been uprooted by Respondent.

Regarding the area where he worked, Petitioner stated, it was a big field with "trees all over" that had been ripped from the ground. Petitioner stated, "It was rough terrain out there. There was holes and hills and stuff like that."

Petitioner testified he had no experience driving a Bobcat before Respondent hired him and had no back problems before the date/incident in question.

Regarding his alleged accident, Petitioner testified he was driving the skid steer/Bobcat over a dry riverbed in the late morning/early afternoon of Friday, April 22, 2022. Petitioner testified he was "probably" driving the Bobcat too fast when the vehicle "went down" and then "came up". The front-end bucket and claws of the vehicle slammed on the ground and jerked Petitioner "up in the air and down and side to side." Petitioner testified the accident was unexpected. Immediately following the incident, Petitioner felt pain in his lower back and a bit embarrassed, according to his testimony. He continued working the reminder of his shift.

Petitioner testified that he didn't notify Respondent right away because he didn't think the incident was serious and he hoped the pain would go away. He further testified that he had just started his job and didn't want to get in trouble.

Over the weekend, Petitioner's back pain worsened. He returned to work operating the Bobcat the following Monday, April 25, 2022. After working a while that day, he felt his leg start to go numb, according to his testimony. Although his symptoms persisted, Petitioner continued working that week.

On May 3, 2022, Petitioner presented at OSF Prompt Care with a history of bilateral medial lower back pain and intermittent right leg numbness and tingling. (Px. 2) Petitioner reported that his right leg tends to go numb when he is sitting for prolonged periods of time, which he has to do at work. Petitioner denied any history of low back issues. He also denied any known injury or trauma preceded the onset of his symptoms. Petitioner reportedly started a new job three weeks ago driving a skid steer. Petitioner was diagnosed with acute bilateral low back pain with right-sided sciatica. He was instructed to follow up with his primary care provider if his symptoms did not resolve and prescriptions for Naproxen and Cyclobenzaprine were administered. (Px.2)

On May 6, 2022, Petitioner completed an Employee Statement/Witness Form stating, that on April 22, 2022, he was driving a Bobcat "across dry riverbed when going over hill the machine went up in the air and hit hard back down." (Px.7) Petitioner described his injuries as lower back pain, and right leg numbness especially when sitting down. (Id.)

On May 6, 2022, Petitioner presented to St. Margaret's Health Clinic with a history of back complaints following an injury on April 22, 2022. Petitioner reportedly was driving a Bobcat machine down a dry riverbed area when the Bobcat bounced which caused Petitioner to raise up out of the seat and when he landed, his body posture "landed wrong" causing pain. (PX 3) Petitioner continued working and the next week noticed increased low back pain and occasional radiation of pain into his right foot. (Id.) His pain ranged from a level 3-4/10 to 7-8/10. On exam, palpation elicited moderate lumbar pain with tight muscle spasms to both sides. A positive right leg raise was also noted. Lumbar spine x-rays showed no evidence of acute bony trauma or bone destruction, and very little degenerative changes. (Id.) Petitioner was diagnosed with an acute lumbar myofascial strain, and lumbar back pain with radiculopathy affecting his right lower extremity. He was instructed to continue use of

Naproxen and Cyclobenzaprine and released to light duty work consisting of no pulling, or carrying greater than 10 lbs., minimal kneeling, stooping, squatting, or bending, and siting and standing as tolerated. It was noted he may operate skid machine as tolerated. (Id.)

Petitioner testified Respondent was not able to accommodate the restrictions.

Petitioner's Exhibit 6 contains text exchanges between Petitioner and "Melanie from HR." On May 7, 2022, at 8:06 AM Melanie texted, "Hi Nick, this is Melanie from Marquis. Just wanted to confirm you have my number. I'm going to work with safety and your supervisors this weekend and I will be in touch about your return. Please confirm you have received this message and that this is the best number to reach you at." (Id.) Petitioner wrote back 24 minutes later stating, "Yes this is the best number" (Id).

On May 8, 2022, Melanie texted, "Hi Nick, we are going to have you stay off tomorrow. We are going to have a meeting to determine what we can have you do under your restrictions. I will then write up a restriction agreement and will be in touch later in the day." (Id.)

Petitioner testified that he was terminated by Respondent on May 9, 2022, for not being "a good fit".

On May 24, 2022, Petitioner followed up with St. Margaret's Health Clinic with complaints of persistent back pain. (PX 3) Petitioner reported that after sitting for extended periods he experienced tingling down his right leg. He had been applying ice for spasm and heat for stiffness and was taking Naproxen as needed but had stopped taking Cyclobenzaprine due to drowsiness. (Id.) He was walking every day for trunk support. On exam, palpation elicited mild pain to the low lumbar right and left musculature with muscle spasms on both sides. Range of motion continued to be slow, guarded, and painful. Bilateral leg raise test was negative. Petitioner's prior restrictions were continued. (Id.)

On June 7, 2022, Petitioner followed up with St. Margaret's Health Clinic with complaints of persistent back pain at a 6-7 out of 10. It was noted Petitioner still experienced muscle spasms "with ALDs and tasks". He was taking Cyclobenzaprine at night to help sleep and Naproxen as needed for pain. His work restrictions were continued. (Id.) Petitioner next followed up at St Margaret's Health Clinic on July 14, 2022, at which time he reported that daily walking was strengthening his back, although he reported stiffness and pain when he woke up in the morning. He rated his pain at 3-4/10. (Id.) Palpation to the right lumbar back elicited mild/moderate pain on exam. Range of motion was "smooth, and still guarded". Radiculopathy symptoms had resolved. Petitioner was instructed to continue Naproxen and Cyclobenzaprine, as needed, and his work restrictions were continued. (Id.)

On July 28, 2022, Petitioner followed up at St. Margaret's Health Clinic for the last time. (Id.) He reported his pain at a 2-3/10. No abnormalities were noted on exam. He was instructed to apply heat for stiffness followed by stretching and strengthening exercises. He was released to return to work full duty with no restrictions. (Id.)

Petitioner testified that he continued to experience intermittent back pain and leg numbness if he sat too long.
He testified that upon being released from the St. Margaret's Health Clinic he was told there was nothing more they could do for him.

On September 9, 2022, Petitioner attended a Section 12 examination with Dr. Carl Graf at the request of Respondent. (RX 3) Petitioner reported a history of an April 22, 2022, accident while driving a Bobcat down a dip when the machine "slammed down and jerked [him] all over inside" causing low back pain. Petitioner reportedly continued to work for Respondent while his pain progressively worsened. He developed numbness in his entire leg to his foot after sitting for a prolonged period of time. Petitioner rated his intermittent pain at a 3-4/10. He reportedly took Ibuprofen every couple of days. Dr. Graf noted Petitioner demonstrated a normal neurologic examination. Dr. Graf noted a

diagnosis of "vague complaints of low back pain currently improved". Regarding causation, Dr. Graf was unable to objectively substantiate Petitioner's condition as being work-related. (Id.)

On October 6, 2022, Petitioner presented for initial consult at Action Physical Medicine and Rehabilitation in Naperville where John Mikuzis, D.O., noted an accident history consistent with Petitioner's testimony. (Px.4) Petitioner reported a history of persistent low back pain which had worsened since the end of July. Petitioner reportedly was anxious about the ongoing pain and was concerned about his inability to increase his physical activity. (Id.) Petitioner reported persistent pain that increased with sitting greater than 30 minutes causing numbness into the right lower extremity. Bending forward at the waist increased low back pain. Lifting greater than 20 pounds increased the low back pain. The pain ranged from 4-5/10 to 5-6/10. On exam, Petitioner demonstrated a positive right Trendelenburg sign and a positive finding on the right iliac spine on seated and standing forward flexion. Moderate tenderness of the gluteal/pelvic and mild tenderness along the right gluteus medius at the iliac ridge was noted. Moderate tenderness along the hip external rotators, piriformis muscle, with mild radiation down to the proximal posterior thigh was noted along with mild radicular pain accompanying internal rotation on right side. Forward standing flexion was limited bilaterally.

Dr. Mikusis' assessment noted low back pain, mostly right-sided, that was causally connected to the April 22, 2022, work injury in which lumbar spine compression occurred due to the Petitioner being raised out of and then falling into the seat of the Bobcat. (Id.). The doctor's assessment further noted chronic lumbar myofascial strain, sciatica and right L4, L5 facet tenderness related to loading from the work-related injury. (Id.) Dr. Mikusis ordered a lumbar MRI, and physical therapy. Light duty work restrictions were instituted. (Id.)

On October 28, 2022, Petitioner underwent a lumbar MRI at Tinley Park Open MRI and Imaging Center that showed minimal left anterior canal encroachment and low to moderate grade foraminal encroachment with protruding disc at L4-L5 along with minimal anterior canal encroachment and low grade left, minimal right foraminal encroachment by small laterally protruding disc osteophytes into the interior foramina anteriorly protruding posterior element DJD into superior foramina at L5-S1. (Id.)

On November 4, 2022, Dr. Graf's evidence deposition was taken. (Rx.4) Dr. Graf testified consistent with his report and reiterated his opinion that he was unable to objectively substantiate Petitioner's condition as being related to the claimed work injury from April 22, 2022. (Id., p.20) When asked about his examination of Petitioner, Dr. Graf testified that Petitioner had no spine complications, and demonstrated "full ability to squat and raise from a squatting position," without holding onto anything (Id.). Petitioner also demonstrated "full hip range of motion, and no inconsistencies." (Id., p.16). On cross-examination, Dr. Graf testified that the only records he reviewed were the Urgent Care records and the St. Margaret's Community Health Clinic records. (Id., pp.23-24) He did not review any records after September 9, 2022. (Id., p.24) He agreed that a positive straight leg test was noted at Petitioner's first visit to St. Margaret's Community Health Clinic and agreed that a positive straight leg raising test may correlate with nerve root irritation and encroachment on the nerve. (Id.) He testified that Petitioner exhibited no Waddell signs during his exam. Dr. Graf was not aware of the Petitioner having any pre-existing back condition. (Id., p.25)

On December 5, 2022, Dr. Mikuzis reviewed the recent lumbar MRI and recommended that Petitioner see an orthopedic spine surgeon for further workup and treatment. The doctor opined that given "described mechanism of injury, it is quite likely that the excessive loading in the lumbosacral area from the incident involving the Bobcat may have exacerbated his previously existing spondylolisthesis and spondylolysis, as well as degenerative joint disease and degenerative disc disease by excessive loading of the posterior elements in the lumbosacral area." (Px.4)

Petitioner testified that he continues to be on light duty work restrictions. He still has lower back pain and right leg numbness when he sits for longer periods. He testified that he wants a surgical consultation to see what's wrong with his back.

CONCLUSIONS OF LAW

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

The Arbitrator found Petitioner's testimony at the hearing credible. He presented as an honest, sincere, individual. There are no allegations of malingering or secondary gain contained in the record. His testimony regarding his general state of good health prior to the accident is unrebutted.

With the exception of his initial treatment at Prompt Care on May 3, 2022, Petitioner's treating medical records corroborate his testimony regarding his accident. Petitioner also provided a consistent history of accident in the incident report he completed on May 6, 2022.

Although the history of injury provided to Prompt Care on May 3, 2022, was not specific to an injury having occurred on April 22, 2022, the record does mention a history of starting a new job three weeks ago driving a skid steer and that his complaints began "about 2-3 weeks ago". The Arbitrator finds it reasonably conceivable that Petitioner would not want to report a work accident having just begun his employment with Respondent if he did not think his injury was serious. Likewise, it would be reasonable to report the work accident once Petitioner believed his injury to be more serious than initially thought.

The Arbitrator finds that Petitioner has sustained his burden with respect to this issue.

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

It is uncontested that before his April 22, 2022, work accident, Petitioner had not experienced any significant back problems or received any medical treatment for his back. The treating medical records in evidence document Petitioner's consistent complaints from May 3, 2022, at OSF Prompt Care through his treatment at St. Margaret's Midtown Health Clinic from May 6, 2022, until July 28, 2022. Petitioner testified that on July 28, 2022, he was released from care because there was nothing more that could be done for his condition. He then sought further treatment on October 6, 2022, with Dr. Mikuzis who later opined that Petitioner's low back pain, sciatica, and right L4-L5 facet tenderness was causally related to the asymmetrical impact on Petitioner's right lower extremity when the Bobcat "jerked and fell backward" on April 22, 2022. After reviewing the October 28, 2022, lumbar MRI, Dr. Mikuzis noted that given the "described mechanism of injury, it is quite likely that the excessive loading in the lumbosacral area from the incident involving the Bobcat may have exacerbated his previously existing spondylolisthesis and spondylolysis, as well as degenerative joint disease and degenerative disc disease by excessive loading of the posterior elements in the lumbosacral area."

The Arbitrator finds the opinions of Dr. Mikuszis are substantiated by Petitioner's medical history and lumbar MRI. Further, the opinions of Dr. Mikuszis are uncontested as Dr. Graf did not review any records after September 9, 2022, which would include the records from Dr. Mikuszis and the lumbar MRI.

The Arbitrator finds that Petitioner has met his burden of proving his current condition of ill-being is causally related to the accident of April 22, 2022.

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

The Petitioner introduced evidence of medical expenses totaling $1,839.00 which he incurred during the course of his back treatment as follows: OSF Prompt Care - $262.00; St. Margaret's Midtown Health - $709.00; Central Illinois Radiology - $93.00; Action Physical Medicine & Rehab - $500.00;

and Tinley Park Open MRI - $275.00. Of this amount, Respondent paid $81.51; Medicaid paid $119.51; Insurance discounts of $257.98 were received; Petitioner paid $775.00; and $605.00 remains unpaid.

Having found the requisite causal connection, the Arbitrator finds that the medical services provided to Petitioner were reasonable and necessary. As such, Respondent is responsible for all the bills for the treatment received by Petitioner totaling $1,839.00, subject to the limitations of the Medical Fee Schedule provide for in the Act.

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

The Petitioner testified that he would like to consult with an orthopedic surgeon, consistent with the recommendations of Dr. Mikuzis. Having found causal a relationship, the Arbitrator finds the surgical consultation reasonable, necessary, and related to the April 22, 2022, work accident. Respondent shall pay for the surgical consultation, including any subsequent recommendations for surgery or other recommended treatment for the back.

Issue (I): What temporary benefits are due?

Incorporating the above, the Petitioner was on light duty work restrictions per the St. Margaret's Health Clinic from May 6, 2022, to July 28, 2022, and, pursuant to Dr. Mikuzis' recommendations from October 6, 2022, through January 6, 2023. The Petitioner testified that Respondent did not accommodate the restrictions and terminated his employment on May 9, 2022. This testimony was unrebutted.

The Arbitrator finds that the Petitioner was temporarily totally disabled from May 6, 2022, to July 28, 2022, and from October 6, 2022, through January 6, 2023, a period of 25 weeks.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC023987
Case Name	Andrew Tousant v. CJ Logistics America
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b) Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	24IWCC0400
Number of Pages of Decision	11
Decision Issued By	Maria Portela, Commissioner

Petitioner Attorney	Crystal B. Figueroa
Respondent Attorney	John McAndrews

DATE FILED: 8/20/2024

/s/Maria Portela, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Andrew Tousant,

Petitioner,

vs. NO: 21 WC 023987

CJ Logistics,

Respondent.

DECISION AND OPINION ON REVIEW

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

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed December 14, 2023 is hereby affirmed and adopted.

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

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

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

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $61,600.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

August 20, 2024
O081324
MEP/yp
049

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

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC023987
Case Name	Andrew Tousant v. CJ Logistics America
Consolidated Cases	
Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	8
Decision Issued By	Elaine Llerena, Arbitrator

Petitioner Attorney	Crystal B. Figueroa
Respondent Attorney	John McAndrews

DATE FILED: 12/14/2023

/s/Elaine Llerena, Arbitrator

Signature

THE INTEREST RATE FOR THE WEEK OF DECEMBER 12, 2023 5.19%

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

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

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

Andrew Tousant
Employee/Petitioner
v.
CJ Logistics
Employer/Respondent

Case # **21** WC **023987**

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Elaine Llerena**, Arbitrator of the Commission, in the city of **Chicago**, on **June 30, 2023**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On the date of accident, **July 21, 2021**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $**34,385.00**; the average weekly wage was $**661.25**.

On the date of accident, Petitioner was **55** years of age, ***single*** with **1** dependent children.

Respondent shall be given a credit of $**16,834.00** for TTD, $**0** for TPD, $**0** for maintenance, and $**0** for other benefits, for a total credit of $**16,834.00**.

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

ORDER

Respondent shall pay Petitioner temporary total disability benefits of $440.83 per week for 47-5/7 weeks, commencing October 27, 2021, through September 26, 2022, as provided in Section 8(b) of the Act.

Respondent shall pay reasonable and necessary medical services of $57,270.28, as provided in Sections 8(a) and 8.2 of the Act.

Respondent shall authorize and pay for a C3-C4 and C6-C7 anterior cervical discectomy and fusion as recommended by Dr. Chinton Sampat, pursuant to Sections 8(a) and 8.2 of the Act.

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

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

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

Signature of Arbitrator

December 14, 2023

ICArbDec19(b)

FINDINGS OF FACT

This matter proceeded to hearing on June 30, 2023, in Chicago, Illinois before Arbitrator Elaine Llerena on Petitioner's Request for Hearing. The issues in dispute were causal connection, medical expenses, temporary total disability benefits, and prospective medical care. Arbitrator's Exhibit 1 (AX1).

Job Duties

Petitioner testified that he worked for Respondent at a forklift operator. (T. 10) Petitioner drove a stand-up forklift. (T. 10-11) His job was to pick cases and build skids (T. 11) Petitioner explained that he picks the cases with his hands and places them on the skid, which is on the forklift. *Id.* Petitioner testified that the cases weigh anywhere from 15 to 75 pounds. (T. 11-12) On an average day, Petitioner picks between 1,300 to 2,000 cases a day. (T. 12)

Prior Medical Condition

Petitioner reported no previous neck problems. (PX1, pg. 26) Petitioner had previously injured his back on or about 2011 or 2012. (PX5, pg. 47)

Accident

Petitioner testified that on July 21, 2021, he kneeled down to pick up two boxes of juice and felt a pinch in his neck that went down to the middle of his back when he lifted the boxes. (T. 12) Petitioner did not finish his workday. *Id.* He reported the accident to his supervisor, who sent him to the company doctor. (T. 12-13)

Summary of Medical Records

Petitioner was seen at Physicians Immediate Care on July 21, 2021. (PX1) Petitioner reported that he was lifting two boxes, 15 pounds each, onto a pallet that was chest high when he felt pain in his neck and upper back. (PX1, pg. 26) Petitioner reported pain on both sides of his neck and upper back, which was worse with moving his neck, and shrugging his shoulders. Petitioner reported no previous neck problems. *Id.* Petitioner underwent an x-ray of the cervical spine, which revealed mild multilevel degenerative disc disease and facet arthropathy and mild spondylotic changes. (PX1, pg. 41) Eric Torres, PA diagnosed Petitioner as having a neck strain and other muscle spasm. (PX1, pg. 30) He prescribed Petitioner pain and anti-inflammatory medications and released Petitioner with lifting restrictions of no lifting more than 5 pounds above shoulder, 15 pounds from waist to shoulder, and 20 pounds below the waist. (PX1, pg. 29) On July 27, 2021, Petitioner reported ongoing neck and upper back pain. (PX1, pg. 45) Jessica Scurto, PA ordered physical therapy and continued Petitioner's restrictions. (PX1, pgs. 47-48)

Petitioner underwent physical therapy at Pain and Spine Institute with Dr. Darshan Ghandi, DC from September 1, 2021, through November 9, 2021. (PX2) Dr. Ghandi diagnosed Petitioner as having cervical and lumbar radiculopathy and cervical and lumbar sprains. (PX2, pg. 5) Dr. Ghandi also ordered cervical and lumbar MRIs which Petitioner underwent on September 23, 2021. (PX4) The lumbar MRI showed postsurgical changes of laminectomy and posterolateral fusion with intervertebral disc spacers at L4-L5-S1, a broad based central posterior disc protrusion extending into the bilateral foraminal zones and superimposed on diffuse uncovering the posterior disc due to the L3 anterolisthesis with resultant effacement and compression of the ventral sac, moderate central canal stenosis, moderate to severe bilateral recess narrowing, mild bilateral foraminal encroachment, L4-L5 posterior decompression and suspected diffuse posterior granulation tissue extending 3 mm posterior to the disc space with resultant mild effacement of the ventral thecal sac, and mild to

moderate bilateral neural foraminal narrowing. (PX4, pgs. 6-7) The cervical MRI revealed C6-C7 broad based central posterior disc protrusion extending into the right paracentral/foraminal zones measuring 4.5 mm AP with resultant effacement and compression of the ventral cord contributing to moderate central canal stenosis and moderate right lateral recess/neural foraminal narrowing and associated central/right paracentral annular fissure (tear), C3-C4 broad based central posterior disc protrusion measuring 4 mm AP with resultant effacement and compression of the ventral cord, moderate central canal stenosis, and mild to moderate bilateral foraminal encroachment. (PX4, pg. 9) Petitioner testified he still felt pain in his neck and mid back after physical therapy. (T. 20) Dr. Ghandi referred Petitioner to Illinois Orthopedic Network for pain management. (PX2, pg. 6)

On January 5, 2022, Petitioner underwent a Section 12 examination (IME) by Dr. Andrew Zelby at Respondent's request. (RX1-DX2) Petitioner described the July 21, 2021, work accident and complained of intermittent neck, shoulder and mid back pain with tingling that radiated down his arms about once or twice a week. Dr. Zelby examined Petitioner and reviewed his medical records and diagnostic exams. Dr. Zelby opined that Petitioner sustained an exacerbation of a preexisting degenerative condition on July 21, 2021, that was not aggravated or accelerated beyond its normal progression. Dr. Zelby opined that a course of physical therapy, a course of chiropractic treatment for 4-8 weeks and 1-2 cervical epidural steroid injections were reasonable and necessary and that after the injections, Petitioner would by at maximum medical improvement from the July 21, 2021, work accident and would be able to return to full duty work. Petitioner testified he was in the room with Dr. Zelby for maybe five minutes. (T. 27)

Petitioner had a telephonic appointment with Dr. Eugene Lipov on January 19, 2022. (PX3, pg. 12-13) Petitioner complained of ongoing neck and low back pain. *Id.* Dr. Lipov took Petitioner off work and discussed the need for injections. On January 27, 2022, Dr. Lipov administered an L2-L4 lumbar medial branch injection. (PX3, pg. 15) On March 2, 2022, Petitioner reported an 80% improvement in pain for about a week. (PX3, pg. 20) On March 22, 2022, Dr. Lipov administered a cervical epidural injection at C5-C6. (PX3, pg. 24) On April 6, 2022, Petitioner reported essentially no pain relief and occasional tingling. (PX3, pg. 26) Dr. Lipov diagnosed Petitioner as having cervical facet arthropathy. *Id.* Dr. Lipov started Petitioner on LidoPro ointment and cyclobenzaprine for muscle spasms. *Id.* On April 18, 2022, Dr. Lipov administered bilateral cervical facet medial branch injections at C3-C6. (PX3, pg. 29) On May 10, 2022, Petitioner reported complete pain relief for one week, but then the pain gradually returned. (PX3, pg. 30) Dr. Lipov recommended radiofrequency ablation and referred Petitioner to a spine surgeon. *Id.* Dr. Lipov kept Petitioner off work. (PX3, pg. 31)

Petitioner saw Dr. Chinton Sampat on May 20, 2022. (PX5, pg. 9) Dr. Sampat noted Petitioner had a prior history of lumbar fusion that appeared to be stable. *Id.* Petitioner reported an onset of neck pain after lifting two 15-pound boxes with some tingling down the biceps and radial forearms. *Id.* Dr. Sampat reviewed Petitioner's diagnostic exams and diagnosed Petitioner as having C3-C4 and C6-C7 cervical disc herniations, stenosis and radiculopathy. (PX5, pg. 11) Dr. Sampat was recommended a C3-C4 and C6-C7 anterior cervical discectomy and fusion. *Id.* Dr. Sampat opined that the need for surgery was related to Petitioner's work injury, as Petitioner was asymptomatic prior to the work injury and became symptomatic afterwards. *Id.*

On June 8, 2022, Dr. Zelby conducted another IME at Respondent's request. (RX1-DX3) Dr. Zelby examined Petitioner and reviewed Petitioner's medical records and diagnostic exams. Dr. Zelby noted that the MRI showed spondylosis most prominent at C3-4 and C6-7, but opined that the due to the absence of symptoms for findings of radiculopathy or myelopathy, surgical intervention was not reasonable or necessary. Dr. Zelby explained that while Petitioner's degenerative condition was not symptomatic prior to July 2021, that alone did not provide a medical basis to treat a radiographic abnormality with no identifiable symptoms or findings on exam. Dr. Zelby acknowledged that Petitioner had neck pain but did not find them referable to the C3-4 and C6-7 abnormalities on the MRI. Dr. Zelby stood by the opinions in the June 5, 2021, IME report. Dr. Zelby found

that Petitioner had reached MMI on March 22, 2022, and that Petitioner could return to work without restrictions.

Dr. Sampat ordered an EMG, which Petitioner underwent on July 8, 2022. (PX3, pg. 45-46) The EMG revealed left C7 radiculopathy that is acute on chronic and evidence of potential radiculopathy on the right, likely chronic. *Id.*

On August 11, 2022, Dr. Sampat reviewed Dr. Zelby's IME report and disagreed that Petitioner did not have objective findings of radiculopathy. (PX3, pg.13) Dr. Sampat explained that Petitioner's radiating symptoms corresponded well with the results of the MRIs and were consistent with cervical radiculopathy. *Id.* Petitioner last saw Dr. Sampat on September 23, 2022, and noted that the recommended surgery had not been approved. (PX3, pg. 16)

On November 1, 2022, Dr. Sampat's evidence deposition was taken. (PX6) Dr. Sampat's testimony was consistent with his medical notes/reports. Dr. Sampat testified that a lifting mechanism like the one described by Petitioner is a very common cause of disc herniation. (PX6, pg. 22) Dr. Sampat further testified Petitioner had signs of radiculopathy because his radiating symptoms correspond well with the MRI results that are consistent with the radiculopathy. (PX6, pg. 14) Dr. Sampat testified that the fact that Petitioner was working full duty prior to the date of the work accident is of significance in formulating his opinion as to causation because there is a temporal relationship between the onset of symptoms and the injury and, therefore, there is a casual relationship between the work injury and the symptoms that require treatment. (PX6, pg. 16)

Dr. Zelby's evidence deposition was taken on December 12, 2022. (RX1) Dr. Zelby's testimony was consistent with his IME reports.

Petitioner's Current Condition

Petitioner testified he has not undergone the cervical fusion surgery because it was not approved. (T. 27) Petitioner still wants to proceed with his neck surgery because he still has pain in his neck. *Id.* Petitioner testified he no longer works for Respondent because he was terminated while still in treatment for his work injury. (T. 28) Petitioner was terminated from Respondent's employ on October 25, 2021, while Petitioner was still actively treating for the July 21, 2021, work accident. (T. 28, 41) Petitioner currently works, full time, at Ryder (40 hours a week) and started working there September 27, 2022. (T. 28-29) Petitioner testified he is currently driving a stand-up dock stocker, which is a mini and shorter version of a forklift. (T. 28-29, 31) His current job title is load, as he just loads trucks all day. (T. 29) Petitioner specified he does not use his hands to load; he uses his dock stocker to load. *Id.* Petitioner does not do any bending or lifting at work. (T. 29) Petitioner testified that, after working a full workday, he feels tired and in pain. (T. 30) He started taking ibuprofen (800 millimeters), and takes two of them at night to relieve his feel pain. *Id.* Petitioner described the pain in his neck area a triangle and that his current pain level was an 8 out of 10, when standing and sitting. *Id.*

Petitioner testified that, prior to the work accident, he was able to help his 80-year-old mother with the care of his handicapped 41-year-old nephew who weighs about 200 pounds. (T. 31) Petitioner explained that he used to be able to help his mother pick up his nephew and take him to the washroom; however, he is unable to do so now, and his youngest daughters are the ones who help now. (T. 31-32) Petitioner also testified that, before the work accident, he used to go to the gym four times a week to exercise, but he can no longer do that due to his neck pain. (T. 32)

WITH RESPECT TO ISSUE (F), IS THE PETITIONER'S PRESENT CONDITION OF ILL-BEING CAUSALLY RELATED TO THE INJURY, THE ARBITRATOR FINDS AS FOLLOWS:

A casual connection between work duties and a condition of ill-being may be established by a chain of events including claimant's ability to perform job duties before the date of the accident and inability to perform the same duties following that date. *Peabody Coal Co v. Industrial Comm'n*, 213 Ill. App.3d 64. 65 (1991). It is the function of the Commission to resolve disputed questions of fact, including those of causal connection, to draw permissible inferences and to decide which of conflicting medical views is to be accepted. *Material Service Corp. v. Industrial Comm'n*, 97 Ill. 2d 382, 387 (1983).

The Arbitrator notes that Petitioner had not sustained any neck injuries until July 21, 2021. Petitioner acknowledged to having sustained a prior back injury, but that was around 2011 or 2012. The medical records show Petitioner had previously undergone a successful back surgery. Petitioner was asymptomatic regarding both his neck and back prior to the July 21, 2021, work injury.

The Arbitrator further notes that Dr. Sampat testified that the lifting mechanism that Petitioner described occurring on July 21, 2021, is a very common cause of disc herniation. Dr. Sampat further testified Petitioner had signs of radiculopathy because the radiating symptoms corresponded with the results on the cervical MRIs. Dr. Sampat also found the fact that Petitioner was working full duty prior to the date of the work accident showed a temporal relationship between Petitioner's onset of symptoms and the work injury. Therefore, Dr. Sampat opined that that Petitioner's condition of ill-being was causally related to the work accident and Petitioner's need for treatment.

The Arbitrator notes that Dr. Zelby conducted IMEs on Petitioner and testified at his evidence deposition consistent with his IME reports. Dr. Zelby found the cervical MRI showed spondylosis most prominent at C3-4 and C6-7, but opined that the due to the absence of symptoms for findings of radiculopathy or myelopathy, surgical intervention was not reasonable or necessary. Dr. Zelby opined that while Petitioner's degenerative condition was not symptomatic prior to July 2021, that alone did not provide a medical basis to treat a radiographic abnormality with no identifiable symptoms or findings on exam. Dr. Zelby acknowledged that Petitioner had neck pain but did not find them referable to the C3-4 and C6-7 abnormalities on the MRI. The Arbitrator finds Dr. Zelby's findings and opinions unpersuasive and contradictory of the objective evidence, Dr. Sampat's findings and opinions, and Petitioner's consistent and credible reports of symptoms following the July 21, 2021, work accident.

Based on the above, the Arbitrator finds that Petitioner's current condition of ill-being is causally related to the July 21, 2021, work accident.

WITH RESPECT TO ISSUE (J), WERE THE MEDICAL SERVICES THAT WERE PROVIDED TO PETITIONER REASONABLE AND NECESSARY AND HAS RESPONDENT PAID ALL APPROPRIATE CHARGES FOR ALL REASONABLE AND NECESSARY MEDICAL SERVICES, THE ARBITRATOR FINDS AS FOLLOWS:

Based on the findings above that Dr. Zelby's findings and opinions are unpersuasive and contradictory of the objective evidence and that Petitioner's condition of ill-being is causally related to the July 21, 2021, work accident, the Arbitrator finds that Petitioner's treatment following the July 21, 2021, work accident was reasonable and necessary. Therefore, Respondent shall pay the following outstanding medical bills, pursuant to Sections 8(a) and 8.2 of the Act: Parkview Orthopedics ($3,850.00), Bright Light Medical Imaging ($2,700.00), Illinois Orthopedic Network ($37,161.33), Midwest Specialty Pharmacy ($1,948.95), and (Regenerative) Pain Spine Institute ($11,610.00), totaling $57,270.28.

WITH RESPECT TO ISSUE (K), IS PETITIONER ENTITLED TO ANY PROSPECTIVE MEDICAL CARE, THE ARBITRATOR FINDS AS FOLLOWS:

The Arbitrator notes that the medical records and Petitioner's testimony indicate that conservative treatment has failed to resolve Petitioner's ongoing cervical symptoms. The Arbitrator further notes that Dr. Sampat has recommended surgery to resolve Petitioner's ongoing cervical spine problems. The Arbitrator again notes that she finds the findings and opinions of Dr. Sampat persuasive over those of Dr. Zelby.

Based on the above, the Arbitrator finds that Petitioner is entitled to prospective medical care under Section 8(a) of the Act. Therefore, Respondent shall authorize and pay for a C3-C4 and C6-C7 anterior cervical discectomy and fusion as recommended by Dr. Sampat, pursuant to Sections 8(a) and 8.2 of the Act.

WITH RESPECT TO ISSUE (L), WHAT AMOUNT OF COMPENSATION IS DUE FOR TEMPORARY TOTAL DISABILITY, TEMPORARY PARTIAL DISABILITY AND/OR MAINTENANCE, THE ARBITRATOR FINDS AS FOLLOWS:

The Arbitrator notes that Petitioner testified Respondent terminated him on October 26, 2021, while he was still actively treating for his work accident. Petitioner started working at Ryder on September 27, 2022. Petitioner's medical records show that from October 27, 2021, through September 26, 2022, Petitioner was still treating and had not reached MMI.

Based on the above, the Arbitrator finds that Petitioner is entitled to temporary total disability benefits from October 27, 2021, through September 26, 2022, pursuant to Section 8(b) of the Act.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC020418
Case Name	Candace Romanotto (aka Candace Rolando) v. Advanced Medical Transport of Central Illinois dba) Medics First
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	24IWCC0401
Number of Pages of Decision	18
Decision Issued By	Marc Parker, Commissioner

Petitioner Attorney	J Kevin Wolfe
Respondent Attorney	Ilir Imeri

DATE FILED: 8/20/2024

/s/Marc Parker, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF PEORIA)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Candace Romanotto (a/k/a Candace Rolando)

Petitioner,

vs. NO: 21 WC 020418

Advanced Medical Transport of Central Illinois
d/b/a Medics First,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of benefit rates, temporary total disability, and permanency and being advised of the facts and law, clarifies, and corrects the Decision of the Arbitrator as stated below and otherwise affirms and adopts the Decision of the Arbitrator which is attached hereto and made a part hereof.

The Commission finds that the record supports an award of 41.3 weeks of temporary total disability benefits and that Respondent is entitled to a credit of $27,616.03 of temporary total disability benefits paid. Because the Commission agrees with the Arbitrator's average weekly wage finding, there was no overpayment of temporary total disability payments.

All else is affirmed and adopted.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed May 1, 2023, is corrected as stated herein.

IT IS FURTHER ORDERED BY THE COMMISSION that Petitioner is entitled to 41.3 weeks of temporary total disability benefits and that Respondent is awarded a credit of $27,616.03 in temporary total benefits paid.

IT IS FURTHER ORDERED BY THE COMMISSION that, based on the average weekly wage finding, there has been no overpayment of temporary total disability benefits.

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

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

Bond for removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $68,900.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

August 20, 2024

MP: ns
o 7/11/24
68

/s/ *Marc Parker*
Marc Parker

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC020418
Case Name	Candace Romanotto (a/k/a Candace Rolando) v. Advanced Medical Transport of Central Illinois d/b/a) Medics First
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	15
Decision Issued By	Dennis OBrien, Arbitrator

Petitioner Attorney	J Kevin Wolfe
Respondent Attorney	Ilir Imeri

DATE FILED: 5/1/2023

THE INTEREST RATE FOR THE WEEK OF APRIL 25, 2023 4.84%

/s/ Dennis OBrien, Arbitrator

Signature

STATE OF ILLINOIS)
)SS.
COUNTY OF CHAMPAIGN)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Candace Romanotto (a/k/a Candace Rolando)
Employee/Petitioner

v.

Advanced Medical Transport d/b/a Medics First
Employer/Respondent

Case # 21 WC 020418

Consolidated cases: _____

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable Arbitrator Dennis O'Brien, Arbitrator of the Commission, in the city of Champaign, on February 10, 2023. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On October 18, 2019, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

On the date of accident, Petitioner was 36 years of age, 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.

ORDER

Petitioner's average weekly wage while working for Respondent in the year prior to her accident was $1,004.28 per week, resulting in annual earnings of $52.222.56.

All of the bills introduced into evidence in Petitioner's Exhibit 6 are related to Petitioner's bilateral L5 pars defects and subsequent fusion at L5-S1, which are causally related to the accident of October 19, 2019, are reasonable and were necessitated to treat or cure Petitioner's injuries suffered in this accident and that Respondent is responsible for any unpaid bills as reflected in Petitioner's Exhibit 6, pursuant to the medical fee schedule. Respondent shall receive credit for any amounts paid by it on account of this injury prior to the date of issuance of this decision.

Based upon the finding of average weekly wage and the stipulation as to 70 4/7 weeks of temporary total disability, there was no overpayment of TTD and Respondent will not receive a credit for such claimed overpayment.

Petitioner sustained permanent partial disability to the extent of 22.5% loss of use of person as a whole pursuant to §8(d)(2) of the Act, 112.5 weeks of permanent partial disability, at $625.68 per week.

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

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

_____ **MAY 1, 2023**

Signature of Arbitrator

Candace Romanotto, f/k/a Candace Rolando vs. Advanced Medical Transport of Central Illinois, d/b/a Medics First, 21 WC20418

FINDINGS OF FACT:

TESTIMONY AT ARBITRATION

Petitioner

Petitioner testified her name is Candace Rolando, she is divorced and in the process of legally changing her name back to her maiden name, Romanotto. Petitioner said she has been a paramedic for seven years, and is currently living in St. Petersburg, Florida. Prior to working in Florida she had worked for Medics First in Springfield, Illinois. She said she started as an EMT in 2014, and became a paramedic in 2016, working full-time until July 22, 2019, when she had non-work-related surgery which took her off of work.

At Medics First Petitioner worked 24 hours on and 48 hours off, which resulted in some mandatory overtime, and she would sometimes work a 36 hour shift, which resulted in overtime she chose to work.

After her non-work related surgery in July of 2019, she was taken off work for four to five weeks. When she returned in August of 2019 it was for Advanced Medical Transport (AMT), as AMT had taken over operation of the business prior to her return. When she returned it was her intention to return with the same 24 hours on, 48 hours off and mandatory overtime position, but Respondent asked her to build back up to full time work. Her intention was to return full time and she was released by the physician to do so; however, her supervisor, her supervisor's supervisor and the CEO would not allow her to come back at that level immediately. Petitioner's first pay period after she returned was August 4, 2019, and was 25 hours. The next period from August 18 to August 31, 2019, was 57.25 hours. Her next pay period was from September 1 to September 4, 2019, and was 64.25 regular hours and 9.5 overtime hours, though she was still working the restrictions per her employers' instructions. Her fourth pay period was September 15 to September 28, 2019. She worked 77.75 regular hours and 5.5 overtime hours. From September 29, 2019, to October 12, 2019, she worked 80 regular hours and 62.75 overtime hours, which was the level of work she expected to return.

The final work period was when she actually got back into the full-time position. The hours and position were similar to what she had worked for Medics First. When she came back it was the same coworkers, same supervisors and same location. The name on the door was different. Her rate of pay was $14.07 per hour. The overtime reflected during that final work period was the mandatory overtime. It does not reflect the additional 36 hours of overtime available, which was separate and apart from these calculations. The period covered by September 29 through October 12, 2019, was the normal work week that she had prior to her non work related surgery and what she expected return to following release from that surgery.

On October 18, 2019, her team picked up a patient and put the patient on a stretcher. She and a firefighter then boosted the patient up. She then bent over to secure the patient on the stretcher, then she became stuck and had

severe pain. Her right leg went paralyzed and she had pain. She testified that when she bent over the patient she felt the pain in her lower back, and her leg was paralyzed. She said she was not able to ambulate. Petitioner went to St. John's emergency room, at which point she was referred to the orthopedic surgeon on call, Dr. Graves. Petitioner testified she had no prior back injuries or problems, although she might have had some achiness. She said she want to avoid surgery, so she had a couple of lumbar epidural steroid injections at the L5 level. The first injection was on February 4, 2020, and it worked well. She said that during this period of time she had a weight restriction but was working light duty, and had a little aggravation in March of 2020. She said her second transforaminal epidural steroid injection was on May 20, 2020, and she did not believe it helped, she told Dr. Graves that it gave her no relief.

Dr. Graves then had her undergo an L5 pars steroid injection on July 22, 2020. She said that gave her had four days of relief, but her pain was exacerbated by doing some light cleaning. She returned to Dr. Graves in August of 2020, and on October 16, 2020, she had fusion surgery. She had postoperative follow-ups between October of 2020 and June 29, 2021. She said physical therapy waxed and waned, but she improved over time. She was released to return to work MMI on June 29, 2021. She said that she now has pain every day, and takes Aleve daily.

Petitioner testified that because she now works where there are power stretchers and auto loaders, this allows her to do her job as opposed to the manner in which it was performed prior to the injury, as it alleviates the need for lifting. Respondent did not have such power devices. She said without these devices she could not do her job. She stated she currently has no restrictions.

On cross-examination Petitioner testified she was bending over when she felt pain, she was not lifting. She said she sought treatment at St. John's Hospital and told them she had prior mild backaches but nothing as bad as she was experiencing on presentation at the hospital. She said her prior backaches were just standard backaches and she took nothing for them. Dr. Graves recommended conservative care and she had bilateral S1 transforaminal epidural steroid injection on February 4, 2020, with 60 to 80% pain relief. That relief continued until home cleaning and she had a sudden reaggravation. She said she returned to work full duty on March 31, 2020, and worked full duty for the next few months. She testified she had a second S1 transforaminal epidural steroid injection on May 20, 2020, and she did not believe she received any relief from this injection. She said on July 22, 2020, she had bilateral L5 pars steroid injection, and that her diagnosis throughout this time has been that of a pars deformity. She had about four days of pain relief. Although the records from August 11, 2020, state she had immediate relief after the pars injection and was feeling fantastic, she said she did not recall saying that, but she had no reason to dispute the record, questioning whether there might be more in the record that reflected her saying she had no relief about four days after the injection.

Petitioner testified that the surgery she had was a minimal posterior interbody fusion at L5-S1, and that it provided her with great relief. She agreed that on October 29, 2020, she told Dr. Graves she felt much better, and on December 17, 2020, she told him she had greatly improved and all her numbness and tingling had disappeared. She said that following her receiving physical therapy, Dr. Graves discharged her and she was to follow up with him if needed. Petitioner testified Dr. Graves released her at maximum medical improvement on June 29, 2021, allowing

her to work without restrictions. Petitioner said she only took anti-inflammatory medications. Petitioner said that she had returned to and was currently working her regular job as an EMT/paramedic, and was earning the same pay or more.

Petitioner said that when she started working for AMT she was rehired, as Medics First was a different company, but she did not go through a rehiring process, she did not have an interview or go through an orientation. She testified she made $14.00 and some change per hour and received a raise in August. She believed her starting pay for AMT was $14.08, not $13.89. Prior to her August accident she worked for Medics First, and after her non-work-related injury, she worked for AMT.

On redirect Petitioner said that she basically went back to her old job when she returned to work after this accident, 24 hours on, 48 hours off, some mandatory overtime, and an option of picking up additional overtime. It was the same for both Medics First and AMT. Petitioner testified that AMT bought Medics First, equipment, customers, and all.

Tim Beccue

Tim Beccue was called as a witness for Respondent. He said he is Vice President of Finance and Compliance at AMT and has worked there since October of 2013. He testified that he is aware of employees' hours of work and is privy to any acquisitions of AMT. He said AMT purchased Medics First through an Asset Purchase Agreement on August 1, 2019, and that transaction included all assets, buildings and assuming operations. He said the two companies had no relationship prior to the acquisition by AMT. Mr. Beccue said Medics First employees were interviewed for positions at AMT, so AMT could decide who to bring over, employment with AMT not automatic, AMT was, in essence, rehiring Medics First's employees. He said Petitioner would have been interviewed. As part of the transition, the agreement with the current owners was they would hire all of the employees prior to onboarding July 24, 25 and 26 of 2019. He said Petitioner's official hire date was August 12, though she had signed all paperwork on August 6, 2019. He said her starting pay was $13.89 per hour, and all employees got raised to $14.07 per hour on October 17, 2019.

Mr. Beccue stated that at AMT Springfield, EMT's were on duty 24 hours, then off 48 hours over a three-week period. They worked seven 24 hour shifts. In the first two weeks they would be at 8 hours of overtime as mandated. In the third or long week, there was 32 hours of overtime built in. Maximum overtime that was potentially mandatory was 32 hours. Additional shifts over that 32 would have been optional and not mandatory. Weighted overtime was strictly those hours above 40 hours work per week. Tr.59. From September 29, 2019 through October 12, 2019 there was 62.75 hours of weighted overtime. He felt 40 of those hours were mandatory without seeing exactly when the 8 hour and 32 hour time period fell.

When Petitioner started at AMT she had a personal leave which is why she missed the initial onboarding dates and technically she started after AMT took over in August. He doesn't know if she was out for a prior injury, she was out on personal leave. He testified that Respondent Exhibit 1 was a fair and accurate representation of the hours Petitioner worked at AMT, and her earnings for her hours worked. He said there was also a Board approved

bonus of $500.00, which netted approximately $320.00, based on how the company was doing. He said that was true bonus, it was not based on how well the employee performed, how much they worked, or anything of that sort.

On cross-examination Mr. Beccue agreed he had access to employees' earnings records but brought no hard copies with him. He said he had no access to Medics First records, as only the physical assets, equipment and buildings were purchased, they did not receive employment records. He said the bonus was only indirectly related to employee performance.

Mr. Beccue testified that he did not interview Petitioner, and he was not present when she was interviewed, nor did he have any notes obtained from the people who interviewed her. He said AMT has a pay table based on certification levels and years of service, but he had not brought that table to the hearing.

On re-direct examination, Mr. Beccue confirmed the bonus was not based on a specific employee's work or how well they did their job, but was a general bonus issued to everyone based on how well the company did yearly, with $500.00 being paid to all full-time hourly employees, and $250.00 being paid to all part-time hourly employees.

Answering questions posed by the Arbitrator, Mr. Beccue said that if people were out on a call when the 24 hour shift ended, they were to continue working that call until released, such as an emergency room having to turn over the patient. A 24 hour shift might therefore be longer, and a worker could work an extra two extra hours or more. The name of the company is Advanced Medical Transport of Springfield d/b/a AMT- Medics First. He said the company was not obligated to pay any bonus.

MEDICAL EVIDENCE

On October 18, 2019, patient provided history of seeking an evaluation for lower right back pain since the morning. She stated she bent over when she felt a sharp pain in her back. A CT scan of that date showed bilateral L5 spondylolysis defects and minimal diffuse disc bulge at L4-5. Emergency room diagnostic concluded she was an EMT complaining of severe back pain when she bent over. She denied back problems in the past although she had mild aches but not this bad. She had pain in her lower back and problems walking on her left leg. Exam showed tenderness in her lower back and pain on palpation. She was complaining of pain when walking. She was given pain medications. She was to see Dr. Graves the following week. She was discharged home on Norco, Prednisone and Flexeril. Clinical impression was severe back pain (primary) and sciatica. Emergency department care timeline lists this as work related. Discharge work excuse noted she was not to lift more than 10 pounds until she was seen and released by her orthopedic physician. (PX 1, p.1,6,7,9)

Petitioner was seen by Dr. Graves at the Orthopedic Center of Illinois on October 29, 2019. The history given by Petitioner on that date was of working as a paramedic on October 18, seeing an unresponsive patient, moving the patient to a cot with a team of EMT's and having a sudden onset of pain in the low back. She said she was unable to stand and had significant weakness in the right leg, without pain in the leg. She had been seen in the emergency room, was diagnosed with a pars defect, was given pain medication, which had helped, and as of the

date of this visit her pain was 4 out of 10. She was anxious to return to work as an EMT. Physical examination revealed limited range of lumbar motion with pain worse on extension. The CT images were reviewed, and Dr. Graves' impression was of bilateral L5 pars defects. An MRI was recommended, as was physical therapy. Impression following examination was of 36-year-old female with bilateral L5 pars defects with an onset of pain as a result of a work-related injury on October 18, 2019. Because of her young age, it was hoped that surgery could be avoided. (PX 2, p.9,11)

A January 24, 2020, MRI showed minor lumbar spondylotic changes including right subarticular disc protrusion at L2-L3, central disc protrusion with an annular fissure at L4-L5, and minimal left neuroforaminal disc protrusion at L5-S1. Follow up examination of January 28, 2020, with Dr. Graves noted symptoms post MRI were about the same. Petitioner advised the doctor that her symptoms had actually worsened a bit. She reported that she was unable to go back to work at full duty because of significant pain. Examination of the lumbar spine on that date was limited by pain, which was worsened with extension. Dr. Graves impression was L5 pars defect and some disc degeneration at L4-5. He recommended bilateral S1 transforaminal epidural steroid injections for both a diagnostic and therapeutic purpose. He was hesitant to perform multi-level fusion at this point. She was given a 25 pound lifting restriction elsewhere and physical therapy was put on hold. (PX 2 p.14,15,17)

A bilateral S1 transforaminal epidural steroid injection was performed by Dr. John Watson on February 4, 2020. (PX 2, p.18)

On March 3, 2020, Petitioner returned to Dr. Graves and reported that the epidural injection had helped 60 to 80 percent. Dr. Graves' impression was of a work-related injury to her low back, including bilateral spondylolysis L5. She was concerned about her ability to return to work as a paramedic, so she was to work through work hardening and she could return to light duty work with a 20 pound lifting restriction, no bending, twisting, excessive pushing or pulling. He felt she would ultimately she might benefit from an L5-S1 fusion, but Petitioner wanted to avoid this at this time. (PX 2, p.19,20)

Petitioner attended physical therapy from March 9, 2020 through April 3, 2020. (PX 4)

On March 31, 2020, Petitioner was again seen by Dr. Graves. She said she had been doing the work hardening program and was doing well. She reported that she had been cleaning over the weekend and her pain increased to a six out of 10, but when seen that date it was 3 out of 10. She wanted another epidural injection. Dr. Graves' impression was that had been doing well but had a small setback after doing some housework. She had been scheduled for a bilateral S1 transforaminal epidural steroid injection, but that injection had been delayed due to the (then) current pandemic. He returned her to work full of duty with a plan to see her back in one month. (PX 2, p.22,24)

Petitioner returned to see Dr. Graves on April 28, 2020, and reported that she had returned to work at full duty, was having discomfort, but was managing to get through her shifts. She was looking forward to an injection but that was still on hold due to the pandemic. She still had back pain although working full duty, though she had to take Tramadol for the pain. Dr. Graves' plan was to repeat a bilateral S1 injection as soon as COVID-19 related shutdowns were relaxed. PX 2, p.25,27)

On May 20, 2020, Petitioner underwent a bilateral S1 transforaminal epidural steroid injection performed by Dr. John Watson. (PX 2, p.28)

On June 25, 2020, Petitioner returned to Dr. Graves, and advised him she had not gotten any relief from the May 20, 2020, injection. She said her pain was always there, but some days were worse than others, and she had been taking Tramadol for pain relief. While Dr. Graves thought Petitioner would benefit from the fusion surgery, she advised him she was not ready to undergo surgery at that time. It was decided to try bilateral L5 pars injections in hopes of identifying the pars defect as the pain generator. Petitioner's pain medication was also changed from Tramadol to Meloxicam. She was to continue working full duty. (PX 2, p.29,31)

Dr. Watson performed bilateral L5 pars steroid injections on July 22, 2020. (PX 2, p.32)

On August 11, 2020, Petitioner was again seen by Dr. Graves, and she told him that she had experienced immediate relief after the pars injection and she felt fantastic following the injections, but a few days later she had an exacerbation of her pain and all the pain relief she had from the injections was gone, she was worse than her baseline, and working was nearly intolerable. She told Dr. Graves that back pain had required her to leave work early before finishing a shift. She told Dr. Graves that she was interested in discussing surgical options. Dr. Graves' noted Petitioner was unable to return to work at her previous level secondary to back pain and what appeared to be L5 radiculopathy, and he felt she would benefit from an L5-S1 minimally invasive TLIF surgery. Because she had 100 percent pain relief after her L5 pars injection, he felt this was the pain generator, and he recommended fusing only this one level understanding that she potentially might require an extension at some point in the future. Petitioner agreed to proceed with surgery. (PX 2. p.33,34)

Petitioner was examined by Dr. O'Leary, at the request of Respondent, on September 17, 2020. Petitioner described her work to Dr. O'Leary, saying she was an EMT paramedic, and was required to lift and carry items weighing up to 100 pounds. He reviewed numerous medical records and described them in his report. Petitioner provided Dr. O'Leary with a history, noting she was a 37-year-old paramedic for Medics First, having worked that position for four to five years. She told him she was injured when she was attempting to position a patient on a cot, move the patient to seat belt them, and she twisted and kind of bent over and developed superior severe pain in her back and down her right leg. She said her right leg would not work, and it was very painful. Dr. O'Leary performed a physical examination which he noted revealed significant low back tenderness to palpation, positive straight leg raising right more than left and aggravation of pain with lumbar extension. (RX 4, p.28,29)

Dr. O'Leary believe the work accident aggravated an underlying condition, rendering it symptomatic. He wrote that she reported no history of prior back pain, the imaging supported chronic bilateral pars fractures at L5, her symptoms fit with those findings, and she had received no lasting relief with bilateral pars injections. He felt those results were consistent with a pain generator and could have been aggravated by pulling a patient up in bed and trying to secure them to a cot as part of her work duties. He was of the opinion that her treatment and testing have all been reasonable and necessary as of the date of his exam. He also felt additional treatment could consist of an inter body fusion at L5-S1, and the surgery would be related to the work injury. At the time of this examination

Dr. O'Leary felt Petitioner could work light duty with occasional lifting of 20 pounds, frequent lifting of 10 to 15 pounds and avoiding repetitive bending, stooping or twisting from the waist. (RX 4, p.30)

On October 16, 2020, Dr. Graves performed a fusion at L5-S1 using an O-Arm/stealth navigation procedure. (PX 2 p.40,41; PX 3)

Petitioner was seen post-operatively on October 29, 2020, and stated she was doing much better after her surgery. Petitioner was told to continue to advance her activity, and was advised she could return to work at sedentary duty only. (PX 2, p.42,43)

Petitioner was improving greatly when next seen on December 17, 2020, noted she was improving greatly, denying any numbness or tingling. She was advised to return to work with sedentary duties only. On January 14, 2021, Petitioner was seen and again said she was improving greatly. On February 16, 2021, she began physical therapy and had great improvement. She did miss a couple of physical therapy appointments and had had increased discomfort. She was very eager to return to work. Imaging revealed a stable fusion. She noted she was doing well, but had a little bit of a setback and was frustrated at being unable to return to work. Dr. Graves said Petitioner could to return to light duty with a 20 pound lifting restriction. On March 18, 2021, Dr. Graves records reflect that Petitioner had returned to work on light duty, and that physical therapy had given her great improvement. She reported slight intermittent pain, but overall was doing very well. On this date Dr. Graves started Petitioner on a work hardening program. On May 18, 2021, she had returned to work on light duty. She had some slight intermittent pain but said overall she was doing very well. She was participating in work hardening, and said she was getting stronger, and she was starting a plan to return to work full time. On June 29, 2021, Petitioner advised Dr. Graves that she was doing very well, her radiographs showed stable fusion, and Dr. Grave's plan released Petitioner at MMI, noting she could return to work without restrictions. Dr. Graves felt she may continue to require some anti-inflammatory medicines. She was given a prescription for Celebrex. She was to be seen back as needed. (PX 2, p.44,46,48,51,54,58; RX 5)

WAGE, BENEFIT and PAYMENT RECORDS

Petitioner's Exhibit 5 shows wages paid for Petitioner when she began working for AMT. For the period August 4, 2019, through August 17, 2019, she was paid $347.25 for 25 regular hours. For the period August 18, 2019, through August 31, 2019, she was paid $795.20 for 57.25 regular hours. For the period September 1, 2019 through September 14 2019, she was paid $892.43 464.25 regular hours; $197.98 for 9.5 weighted overtime hours. For the period September 15, 2019, through September 28, 2019, she was paid $1,079.95 for 77.75 regular hours; $114.62 for 5.5 weighted overtime hours. For the period September 29, 2019, through October 12, 2019 she was paid $998.97 for 71 regular hours; an additional $126.63 for a further nine regular hours; $1,282.43 for 60.75 weighted overtime hour; and an additional $42.22 for two weighted overtime hours. Px.5. It should be noted the last pay period comports with an hourly rate of $14.07 per hour. This is confirmed by Respondent's wage statement. (PX 5; RX 1)

Respondent paid Petitioner temporary total disability benefits from October 19, 2019, through February 21, 2021. Those payments were typically in the amount of $669.50 per week. There were periods of temporary partial disability included. Respondent paid a total of $27,616.03 in temporary total disability benefits between the periods referenced above. Rx.2.

Medical bills submitted into evidence by petitioner include a summary of each provider, the billing amount, the amounts that were paid and by whom they were paid with supporting documentation. It appears all of the hospital charges from St. John's Hospital have been paid by workers' compensation. It appears the majority of charges by the Orthopedic Center of Illinois have been paid with the exception of dates of service of May 18, 2021, and June 29, 2021, per Petitioner's Exhibit. Each of those charges was $432.00. Px.6, pg. 2. Account inquiry shows dates of service of May 18, 2021, office visit and X-ray of lumbar spine with charges of $256.00 and $176.00 respectively. Px.6, pg.19. Similar charges were incurred on June 29, 2021, again for established patient office visit and lumbosacral X-rays with charges of $256.00 and $176.00 respectively. Px.6, pg.21. The remainder of charges appear to be completely paid. Respondent's Exhibit 3, which purports to show medical bill payments, does not appear to include these charges.

ARBITRATOR CREDIBILITY ASSESSMENT

Petitioner answered all questions posed to her by both attorneys, with no apparent attempt to evade answering any question. She did not appear to be exaggerating her injuries or her condition as of the date of arbitration. The Arbitrator finds Petitioner to have been a credible witness.

Tim Beccue also appeared to answer all questions posed to him by the attorneys and appeared to answer the questions to the best of his ability, and without hesitation, readily admitting lack of knowledge on occasions when he might have been able to bolster Respondent's position with artfully crafted answers. The Arbitrator finds Mr. Beccue to have been a credible witness.

CONCLUSIONS OF LAW:

In support of the Arbitrator's decision relating to what Petitioner's earnings were in the year preceding this October 18, 2019, accident, the Arbitrator makes the following findings:

The findings of fact, above, are incorporated herein.

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

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

When Petitioner returned to work from her pre accident, non-work related surgery, it was her intention to return full duty as she had done for Respondent's predecessor company, Medics First. Her unrebutted testimony was that while she had this desire and intention, her supervisor, her supervisor's supervisor and the CEO of Respondent

AMT wanted her to ease into the position. This is reflected in the wage statement submitted by both Petitioner and Respondent. When she finally began working the same hours that she normally would have worked without any restrictions, this was from September 29, 2019 through October 12, 2019. This reflected $1,125.60 in regular wages, a total of 80 hours, and $1,324.65 in overtime wages, representing 62.75 overtime hours. Petitioner testified this reflected her regular hours plus mandatory overtime. Tim Beccue testified he "felt" overtime would be more reflective of approximately 40 hours; however, he did not have the documentation as to exactly when this time period was in order to rebut Petitioner's testimony.

Compensation is to be computed on the basis of "average weekly wage." This can mean the actual earnings of the employee in the employment in which she was working at the time of the injury during the period of 52 weeks ending the last day of the employee's full pay period immediately preceding the injury, illness or disablement, excluding overtime and bonus divided by 52. If the injured employee lost five or more calendar days during such period, whether or not in the same week, then the earnings for the remainder of such 52 weeks shall be divided by the number of weeks and parts thereof remaining after the time so lost has been deducted. Where the employment prior to the injury extended over a period of less than 52 weeks, the method of dividing the earnings during that time shall be by the number of weeks and parts thereof during which the employee actually earned wages. Finally, where use of the above 3 methods is impractical, regard shall be had to the average weekly amount which would have been earned by the same grade of employment for the same work at the same number of hours per week by the same employer.

It is important to note the Petitioner's job was not a part time job, a casual job or a limited hour job. Petitioner did gradually return to work at Respondent's request. However, the two weeks prior to the accident, Petitioner performed full-time paramedic work, 24 hours on and 48 hours off, as shown in both parties wage statement. By using the last two weeks prior to the accident when Petitioner was working as a 24 hour on and 48 hour off full time paramedic, the average weekly wage would be based upon $1,125.60 of regular wages ($14.07 per hour) plus 62.75 overtime hours at straight time, which is $882.89. This is $2,009.49 over a two week period, which is an average weekly wage of $1,004.25. This is exactly the wage Respondent used in its TTD calculations as reflected in its payment records and is the amount that is a proper measurement of the true wages attributable to Petitioner in this case.

The Arbitrator finds that Petitioner's average weekly wage while working for Respondent in the year prior to her accident was $1,004.28 per week, resulting in annual earnings of $52.222.56. This finding is based upon unrebutted testimony of Petitioner, earnings records provided by both parties, and a lack of documentation from Respondent to rebut the established average weekly wage.

In support of the Arbitrator's decision relating to whether the medical services that were provided to Petitioner were reasonable and necessary as a result of the Accident of October 18, 2019, the Arbitrator makes the following findings:

The findings of fact, above, are incorporated herein.

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

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

While most of the services provided to Petitioner have been paid by Respondent as reflected in Petitioner's Exhibit 6, this exhibit and its attachments show $864.00 owing for two dates of service. Respondent's payment logs, Respondent's Exhibit 3, does not show payment for these amounts. Dr. O'Leary noted that the medical treatment up to the time of his examination was reasonable, and was necessitated by this accident. He further stated that the surgery which was ultimately performed was reasonable and necessitated by this accident. As the parties have stipulated as to accident and causation, payment of these outstanding bills per the rate schedule is appropriate.

The Arbitrator finds that all of the bills introduced into evidence in Petitioner's Exhibit 6 are related to Petitioner's bilateral L5 pars defects and subsequent fusion at L5-S1, which are causally related to the accident of October 19, 2019, are reasonable and were necessitated to treat or cure Petitioner's injuries suffered in this accident and that Respondent is responsible for any unpaid bills as reflected in Petitioner's Exhibit 6, pursuant to the medical fee schedule. Respondent shall receive credit for any amounts paid by it on account of this injury prior to the date of issuance of this decision. This finding is based upon the medical records of Dr. Grave as well as the opinions stated by Dr. O'Leary in his examination report.

In support of the Arbitrator's decision relating to Other, Temporary Total Disability Overpayment, the Arbitrator makes the following findings:

The Arbitrator's findings as to earnings/average weekly wage, above, are incorporated herein.

Based upon the finding of average weekly wage and the stipulation as to 70 4/7 weeks of temporary total disability, there was no overpayment of TTD and Respondent will not receive a credit for such claimed overpayment.

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

The findings of fact, above, are incorporated herein.

The summaries of medical evidence, above, is incorporated herein.

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

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

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

With regard to subsection (ii) of §8.1b(b), the occupation of the employee, the Arbitrator notes that the record reveals that Petitioner was employed as a paramedic at the time of the accident and that she able to return to work in her prior capacity as a result of said injury. The Arbitrator notes changes in equipment allow Petitioner to continue to work as a paramedic, although but for these equipment changes it is unrebutted she would not be able to continue.. Because of this limited reason, the Arbitrator therefore gives lesser weight to this factor.

With regard to subsection (iii) of §8.1b(b), the Arbitrator notes that Petitioner was 36 years old at the time of the accident. Because of her young age and length of time she must contend with the symptoms as testified at trial, the Arbitrator therefore gives greater weight to this factor.

With regard to subsection (iv) of §8.1b(b), Petitioner's future earnings capacity, the Arbitrator notes no evidence of impact on future earning capacity was presented, and Petitioner testified she was earning at the same level or more than prior to her injury.. Because of this testimony, the Arbitrator therefore gives no weight to this factor.

With regard to subsection (v) of §8.1b(b), evidence of disability corroborated by the treating medical records, the Arbitrator notes Petitioner was temporarily totally disabled for a period of 70 3/7 weeks as a result of this accident, and that as of the date of arbitration, Petitioner testified she has pain every day for which she takes the over the counter medication Aleve. She claims that without changes such as power stretchers and auto loaders she would not be able to do her job. Medical evidence reflects a person that Petitioner was trying to avoid surgery, did all she could to utilize conservative measures, but because of ongoing pain underwent a one-level lumbar fusion. Post operative care noted Petitioner's being anxious to return to work, indicating no attempt to portray herself as overly disabled as a result of this injury. While her fusion was stable upon release by Dr. Graves, he states in his record she would continue to require some anti-inflammatory medicines, and he noted that additional fusion levels might be required in the future, he was doing only one level in hopes that would not be true rather than perform multiple levels at this time. He provided her with a prescription for Celebrex, a non-steroidal anti-inflammatory medication. She takes over the counter medication instead. Because of the nature of the surgery performed on Petitioner as well as Petitioner's testimony regarding the residual effects, supported by the medical record, the Arbitrator therefore gives greater weight to this factor.

Based on the above factors, and the record taken as a whole, the Arbitrator finds that Petitioner sustained permanent partial disability to the extent of 22.5% loss of use of person as a whole pursuant to §8(d)(2) of the Act.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC030668
Case Name	Doug Schrock v. Marion Police Department
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	24IWCC0402
Number of Pages of Decision	16
Decision Issued By	Deborah Simpson, Commissioner

Petitioner Attorney	Thomas C Rich
Respondent Attorney	Andrew Keefe

DATE FILED: 8/21/2024

/s/ Deborah Simpson, Commissioner

Signature

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Doug Schrock,
Petitioner,

vs. NO: 21 WC 30668

Marion Police Department,
Respondent.

DECISION AND OPINION ON REVIEW

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

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed March 1, 2023, is hereby affirmed and adopted.

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

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

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

August 21, 2024

o7/24/24
DLS/rm
046

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

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC030668
Case Name	Doug Schrock v. Marion Police Department
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	14
Decision Issued By	Jeanne AuBuchon, Arbitrator

Petitioner Attorney	Thomas Rich
Respondent Attorney	Andrew Keefe

DATE FILED: 3/1/2023

/s/ Jeanne AuBuchon, Arbitrator

Signature

THE INTEREST RATE FOR THE WEEK OF FEBRUARY 28, 2023 4.94%

STATE OF ILLINOIS)
)SS.
COUNTY OF WILLIAMSON)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

DOUG SCHROCK
Employee/Petitioner

v.

MARION POLICE DEPARTMENT
Employer/Respondent

Case # **21** WC **030668**

Consolidated cases: _____

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Jeanne L. AuBuchon**, Arbitrator of the Commission, in the city of **Herrin**, on **October 20, 2022**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On **October 11, 2021**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $**70,386.68**; the average weekly wage was $**1,353.59**.

On the date of accident, Petitioner was **29** years of age, ***single*** with **0** dependent child(ren).

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

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

Respondent shall be given a credit of **$7,476.95** for TTD, $**0.00** for TPD, $**0.00** for maintenance, and - for other benefits, for a total credit of **$7,476.95 for TTD**.

Respondent is entitled to a credit of **any benefits paid** under Section 8(j) of the Act.

ORDER

Respondent shall pay the reasonable and necessary medical services as outlined in Petitioner's Exhibit 1, as provided in § 8(a) of the Act. Respondent shall be given credit for medical benefits that have been paid, and Respondent shall hold Petitioner harmless from any claims by any providers of the services for which Respondent is receiving this credit, as provided in § 8(j) of the Act.

Respondent shall pay Petitioner temporary total disability benefits of $**902.39**/week for **10 4/7** weeks, commencing 11/6/21 through 1/2/22, 8/5/22 through 8/19/22, and 8/27 through 8/28 as provided in Section 8(b) of the Act.

Respondent shall pay Petitioner the sum of $**812.15**/week for a further period of **87.8** weeks, as provided in Sections **8(d)2 and 8(e)10** of the Act, because the injuries sustained caused the **12.5%** loss of Petitioner's body as a whole as a result of serious and permanent injuries sustained to Petitioner's right shoulder and the **10%** loss of Petitioner's right arm as a result of the serious and permanent injuries sustained to Petitioner's right elbow.

Respondent shall pay Petitioner compensation that has accrued from 10/3/22 through 10/20/2022, and shall pay the remainder of the award, if any, in weekly payments.

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

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

Jeanne L. AuBuchon

Signature of Arbitrator

March 1, 2023

PROCEDURAL HISTORY

This matter proceeded to trial on October 20, 2022. The issues in dispute are: 1) the causal connection between the accident and the Petitioner's right ulnar neuropathy and Guyon's canal conditions; 2) liability for medical bills for these conditions; 3) entitlement to temporary total disability benefits from August 5, 2022, through August 19, 2022, and August 27, 2022, through August 28, 2022; and 4) the nature and extent of the Petitioner's injuries. The Respondent accepted an injury to the Petitioner's right shoulder.

FINDINGS OF FACT

At the time of the accident, the Petitioner, who was 29 years old, was employed by the Respondent as patrol officer. (AX1, T. 11) On October 11, 2021, the Petitioner was performing combat training as part of a special response team when he struck a punching bag awkwardly and felt something tear in his right shoulder. (T. 11-12) After completing training, he was sent to SIH Workcare Occupational Medicine Clinic, where he was seen on October 18, 2021. (PX3) He described the accident and complained of right shoulder pain. (Id.) He was diagnosed with strain of the muscles and tends of the rotator cuff of the right shoulder and strain of other muscles, fascia and tendons at the shoulder and upper arm level of the right arm. (Id.) An MRI and physical therapy were ordered, but the Respondent declined the therapy because he wanted to find out what was wrong with him first. (PX3, T. 13)

The Petitioner underwent a right shoulder MRI on October 21, 2021, that showed a labral tear, mild rotator cuff tendinosis and no rotator cuff tear. (PX5). The Petitioner was referred for orthopedic treatment. (PX3) He opted to treat with Dr. George Paletta, an orthopedic surgeon at The Orthopedic Center of St. Louis. (PX7) On October 27, 2021, the Petitioner complained of pain confined mainly to the right shoulder. He had no radiation below his elbow and no associated

numbness, tingling, or parathesias in his hand. (Id.) Dr. Paletta diagnosed a traumatic posterior labral tear and teres minor strain to the right shoulder. (Id.) Dr. Paletta recommended arthroscopic repair and imposed work restrictions. (Id.).

On November 9, 2021, Dr. Paletta performed an arthroscopic posterior labral repair. (PX7, PX8) Work restrictions were imposed following the procedure, and the Petitioner was placed in a sling. (PX7). The Petitioner returned to Dr. Paletta's office on November 22, 2021, and the physician assistant documented that the Petitioner was doing well overall and distal neurovascular status (evaluation of sensation, motor function and peripheral circulation) was noted to be intact. (PX7) Therapy was ordered, and the Petitioner was returned to work with restrictions. (Id.)

The Petitioner underwent therapy at Joyner Therapy Services from December 1, 2021, through March 10, 2022, for a total of 27 visits. (PX9) A December 8, 2021, therapy note indicated the Petitioner was compliant with orthopedic orders but rarely wore his sling. (Id.) The Petitioner denied saying he was not being compliant with Dr. Paletta's orders regarding use of the arm sling. (T. 36) He said Dr. Paletta told him he could rest his arm and take it out of the sling. (T. 36-37) A December 14, 2021, therapy note stated that the Petitioner developed some soreness because he did yard work that day. (PX9) The Petitioner did not recall reporting this and said it was not possible for him to use that arm. (T. 37) The Petitioner reported to the therapist on December 16, 2021, that he had numbness to the medial aspect of his right hand to the 5th digit for the past two weeks. (PX9) The numbness complaints continued throughout the therapy reports. (Id.)

The Petitioner testified that after the surgery, he felt abnormal and awkward. (T. 15) He said he previously believed that the nerve block or pain medicine he received was causing numbness and tingling into his hand and right pinky and ring fingers and ignored those symptoms,

believing they would go away. (T. 15, 43) He said he did not have these symptoms prior to the surgery nor prior to the work accident. (T. 18) He said he reported the symptoms to the physical therapist, Dr. Paletta's physician assistant or Dr. Paletta. (T. 38) He denied injuring his elbow or hand doing yard work or weight lifting. (T. 44)

The Petitioner returned to Dr. Paletta on January 5, 2022. Dr. Paletta documented that the Petitioner had a new complaint of numbness and tingling involving the ulnar nerve distribution of the right hand that started three or four weeks prior, and that he felt he might have slept on it wrong. (PX7) The symptoms did not extend above the wrist, and the Petitioner denied any pain at the elbow. (Id.) Nerve compression tests of the right elbow and wrist were positive, and a neurovascular exam revealed decreased sensation in the ulnar nerve distribution involving the fifth and fourth fingers. (Id.) Dr. Paletta diagnosed ulnar neuropathy with cubital tunnel syndrome and said these were clearly not related to the surgery. (Id.) He recommended observation and possible nerve conduction studies, which were not approved by the Respondent. (Id) The Petitioner was given reduced work restrictions and instructed to continue with therapy. (Id.) The Petitioner testified that he did not tell Dr. Paletta that the numbness in his fingers came from sleeping wrong but that he had asked Dr. Paletta if it could have come from sleeping wrong. (T. 42) He said he wore his sling to sleep and was not sleeping on his right upper extremity. (T. 45-46)

On February 21, 2022, the physical therapist added ASTYM treatment (a technique that utilizes specially designed tools to work on soft tissues to promote healing and tissue regeneration) for the Petitioner's numbness complaints. (PX9) Both the intensity and frequency of the numbness were reduced. (Id.)

Dr. Paletta last evaluated Petitioner on March 1, 2022, and documented that the Petitioner was doing well with regard to the shoulder. (Id.) The Petitioner felt that things were heading in

the right direction with respect to the numbness and tingling. (Id.) Dr. Paletta recommended an additional two weeks of therapy. (Id.) He said the Petitioner could resume working without restrictions on March 14, 2022, and would be considered at maximum medical improvement. (Id.)

The Petitioner testified that he continued to have symptoms in his arm, including his elbow and hand, and sought a second opinion from Dr. Matthew Bradley, an orthopedic surgeon at Metro East Orthopedics. (T. 21) He saw Dr. Bradley on June 27, 2022, and reported numbness and tingling along the ulnar aspect of his right forearm and into his fourth and fifth digits, which began after he awoke from the shoulder surgery. (PX10) Dr. Bradley diagnosed right cubital tunnel syndrome status post right arthroscopic shoulder labral repair and said it was unclear to him whether the condition was induced from a positional aspect during the time of surgery, or to a plexopathy from the preoperative nerve block. (Id.) He ordered EMG/NCS (electromyography/nerve conduction study) tests. (Id.) The tests performed that day by physiatrist Dr. Ravi Yadava showed moderate to severe Guyon's canal syndrome (a peripheral ulnar neuropathy involving injury to the distal portion of the ulnar nerve as it travels through the wrist), mild cubital tunnel syndrome, and mild carpal tunnel syndrome. (PX 11). On July 11, 2022, the Petitioner returned to Dr. Bradley, who diagnosed right cubital tunnel syndrome and Guyon's tunnel compression neuropathy. (PX10) The Petitioner reported that he tried bracing, anti-inflammatories and a home exercise problem that failed to provide significant relief. (Id.)

Dr. Bradley performed a right cubital tunnel decompression and right Guyon's canal release on August 5, 2022. (PX10, PX12) Petitioner resumed working consisting of training exercises on August 20, 2022. (T. 24) He returned to Dr. Bradley on August 22, 2022, reporting that the sensation along the ulnar aspect of his palm was almost completely normal, and the sensation in his fourth and fifth digits was significantly improved but was not quite normal yet.

(PX10) Dr. Bradley returned the Petitioner to light duty work. (Id.) Dr. Bradley last evaluated the Petitioner on October 3, 2022, at which time the Petitioner reported doing exceptionally well overall with some very light residual tingling in the tip of his small digit and the ulnar aspect of the tip of his ring finger. (Id.) Dr. Bradley released the Petitioner to full duty work without restrictions and found him to be at maximum medical improvement. (Id.)

Dr. Paletta testified consistently with his records at a deposition on October 12, 2022. (RX3) He described how the Petitioner was positioned during the shoulder surgery – on his left side with his right shoulder facing upwards with his right arm suspended at about a 45-degree angle from his body using 10 or 15 pounds of balanced suspension. (Id.) The Petitioner was anesthetized with a general anesthetic and a nerve block at the base of the neck. (Id.) Dr. Paletta said he has had some shoulder surgery patients manifest with carpal tunnel syndrome that was likely pre-clinical without prior symptoms but developing symptoms from sling immobilization or swelling after surgery. (Id.) He said he had never seen patients develop ulnar nerve symptoms. (Id.) As to the Petitioner's report of possibly sleeping on his arm wrong, Dr. Paletta said sometimes he uses a night splint to keep patients out of a position of maximum elbow flexion, which can cause symptoms at night. (Id.) He said he wanted to have nerve studies performed for evaluation independent of any causation. (Id.)

Dr. Paletta was unaware of the Petitioner seeing Dr. Bradley and had not seen any diagnostic or treatment records from after his surgery. (Id.) When he was informed of the Petitioner's report to Dr. Bradley that he developed the arm and hand symptoms when awakening from his shoulder surgery, Dr. Paletta said that was not consistent with what the Petitioner reported to him. (Id.) He disagreed with Dr. Bradley's opinion that the Petitioner's arm and hand conditions were induced by a positional aspect during the surgery or a plexopathy from the preoperative nerve

block. (Id.) He said that if there was a brachial plexopathy related to the nerve block administered during surgery, the nerve studies should have demonstrated evidence of brachial plexopathy. (Id.) Also, he said that in 25 years of performing shoulder surgery, he has never seen nor had a report of an ulnar nerve or Guyon's canal condition related to the type of position the Petitioner was in when his surgery was performed. (Id.) He said he has seen patients who present with carpal tunnel symptoms typically almost immediately after surgery. (Id.)

On cross-examination, Dr. Paletta testified that he did not initially perform tests on the Petitioner's elbow or wrist because he had no symptoms. (Id.) He said the Petitioner did not give any history of right peripheral compressive or entrapment neuropathy symptoms. (Id.) He said it was possible that the Petitioner's physical therapy aggravated underlying conditions only if he reported that those symptoms began with his physical therapy or with specific activities in physical therapy. (Id.) He did not review the nerve studies nor Dr. Bradley's records. (Id.)

Dr. Bradley testified consistently with his records at a deposition on October 14, 2022. (PX13) He reconciled his prior uncertainty of the etiology of the Petitioner's arm and hand conditions and stated he believe the conditions were induced by a positional aspect during the time of surgery. (Id.) He said medical literature that he researched a couple of days before the deposition had documented that the position in which the Petitioner was placed during his shoulder surgery can result in the kind of compression neuropathies from which the Petitioner suffered. (Id.) During the deposition, he performed a Google search and found a 2017 article that contained a case study regarding ulnar nerve injury due to lateral traction device during shoulder arthroscopy. (Id.) He opined that the positioning during the Petitioner's surgery directly resulted in a symptomatic compression neuropathy. (Id.) He said that in his 10-year career, he had seen at least one or two other compression neuropathies after shoulder surgeries similar to the Petitioner's. (Id.)

He stated that the Petitioner's condition being precipitated/caused by a surgery is evident by having no symptoms before surgery, having no intervening trauma or any other explanation and having documentation that the condition is a potential risk of surgery. (Id.) He said the Petitioner had no risk factors for idiopathic development of the conditions, and it was more likely they were surgical-induced. (Id.) He also said sleeping on an arm wrong on a single night does not lead to severe compressive neuropathy. (Id.)

When asked about the difference in the Petitioner telling him he had numbness immediately after the surgery as opposed to telling Dr. Paletta weeks after, Dr. Bradley stated that with a regional nerve block, patients are told that numbness and tingling in the upper extremity is normal. (Id.) He said the Petitioner may have awoken with numbness after the surgery, was told it was normal and didn't think it became abnormal until a couple weeks later. (Id.) He said he would have expected that symptoms would have been present at the time of the Petitioner's first follow-up visit with Dr. Paletta's physician's assistant two weeks after surgery. (Id.)

The Petitioner testified that after the second surgery, he felt a "night and day difference," with the symptoms in his hand being completely gone and the numbness and tingling in his fingers significantly better. (T. 23) At the time of arbitration, he still had slight tingling in the tips of his fingers. (Id) He said that if his elbow was pressed on a hard surface, he had pain in his elbow and that he had slight pain bending his wrist a certain way. (T. 25) The Petitioner testified that his right shoulder was "20,000 times better" than before that surgery, but there was slight pain or discomfort in certain positions. (T. 20) He said he had strength loss but was working on getting it back slowly. (T. 27) He said he had difficulty with typing and writing – especially when having his hand pressed on his laptop in his squad car – but it was getting better. (T. 27-28) He said the injuries have made working out, playing sports, throwing a ball, hunting, fishing and sleeping in

certain positions more difficult. (T. 28) The Petitioner said he was promoted to sergeant in January 2022 and that the work was not as physically demanding as being a patrol officer because he was not answering as many calls and was more supervising patrol officers and doing paperwork and computer work. (T. 43)

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

CONCLUSIONS OF LAW

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

The parties stipulated to a causal connection between the Petitioner's right shoulder condition and the work accident. The main issue in dispute is whether the development of cubital tunnel syndrome and Guyon's canal syndrome were sequalae of the surgery to repair the shoulder.

An accident need not be the sole or primary cause as long as employment is a cause of a claimant's condition. *Sisbro, Inc. v. Indus. Comm'n,* 207 Ill. 2d 193, 205, 797 N.E.2d 665, 278 Ill.Dec. 70 (2003). A causal connection may be based on a medical expert's opinion that an accident "could have" or "might have" caused an injury. *Consolidation Coal Co. v. Industrial Comm'n*, 265 Ill. App. 3d 830, 839, 639 N.E.2d 886, 892 (1994). "In addition, a chain of events suggesting a causal connection may suffice to prove causation even if the etiology of the disease is unknown." *Id*.

Dr. Paletta did not give a cause for the Petitioner's ulnar neuropathy or Guyon's syndrome other than to say it was not a result of the surgery. He had not previously had the experience of a patient developing ulnar neuropathy after shoulder surgery. However, Dr. Bradley was familiar with the phenomenon and researched the issue. Dr. Bradley also relied on the chain of events –

no arm or wrist symptoms before the surgery and no intervening trauma – in support of his causation opinion. Dr. Bradley was questioned about alternative sources of the Petitioner's conditions, such as sleeping on his arm, and was able to rule those out. As to the timing of the Petitioner's reports of arm and hand numbness, Dr. Bradley satisfactorily explained how that could occur.

In addition to researching the issue of nerve compression syndromes developing from positioning during shoulder surgery, Dr. Bradley had reviewed the prior medical records and Dr. Paletta's surgical report. Dr. Paletta appeared unaware of the pertinent research and did not review the nerve studies or Dr. Bradley's records.

For the above reasons, the Arbitrator gives greater weight to the opinions of Dr. Bradley.

Therefore, the Arbitrator finds that the Petitioner has met his burden of proving by a preponderance of the evidence that the cubital tunnel syndrome and Guyon's canal syndrome were sequalae of the shoulder surgery and, thus, causally connected to the work accident.

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

The right to be compensated for medical costs associated with work-related injuries is at the very heart of the Workers' Compensation Act. *Hagene v. Derek Polling Const*., 388 Ill. App. 3d 380, 383, 902 N.E.2d 1269, 327 Ill.Dec. 883 (2009). A claimant is entitled to recover reasonable medical expenses that are causally related to the accident and that are determined to be required to diagnose, relieve, or cure the effects of claimant's injury. *F & B Mfg. Co. v. Indus. Comm'n*, 325 Ill. App. 3d 527, 534, 758 N.E.2d 18, 259 Ill.Dec. 173 (1st Dist. 2001).

Based on the findings above regarding causation, the Arbitrator finds that the treatment for the Petitioner's cubital tunnel syndrome and Guyon's canal syndrome was reasonable and

necessary, and the Respondent has not paid the bills for this treatment. Therefore, the Respondent is ordered to pay the medical expenses contained in Petitioner's Exhibit 1 pursuant to Section 8(a) of the Act and in accordance with medical fee schedules.

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

According to the Request for Hearing (AX1), the Petitioner is seeking temporary total disability benefits for the periods of November 6, 2021, through January 2, 2022; from August 5, 2022, through August 18, 2022; and from August 27, 2022, through August 28, 2022.

An employee is temporarily totally incapacitated from the time an injury incapacitates him for work until such time as he is as far recovered or restored as the permanent character of his injury will permit. *Archer Daniels Midland Co. v. Indus. Comm'n*, 138 Ill.2d 107, 118 (1990).

The parties dispute the second two periods, during which the Petitioner was off work from his second surgery. Based on the findings above regarding causation, the Petitioner is entitled to TTD benefits for 10 and 4/7 weeks for the periods from November 6, 2021, through January 2, 2022; from August 5, 2022, through August 18, 2022; and from August 27, 2022, through August 28, 2022. The Respondent is entitled to a credit of $7,476.95 in TTD benefits paid.

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

Pursuant to Section 8.1b of the Act, permanent partial disability from injuries that occur after September 1, 2011, is to be established using the following criteria: (i) the reported level of impairment pursuant to subsection (a) of Section 8.1; (ii) the occupation of the injured employee; (iii) the age of the employee at the time of the injury; (iv) the employee's future earning capacity; and (v) evidence of disability corroborated by the treating medical records. 820 ILCS 305/8.1b.

The Act provides that, "No single enumerated factor shall be the sole determinant of disability." *Id.*

(i) **Level of Impairment.** No AMA impairment ratings were produced, therefore the Arbitrator gives this factor no weight.

(ii) **Occupation.** The Petitioner now works as a police sergeant for the Petitioner with fewer physical demands than at the time of the accident. The Arbitrator places some weight on this factor.

(iii) **Age.** The Petitioner was 29 years old at the time of the injury. He has many work years left during which time he will need to deal with the residual effects of the injuries. The Arbitrator places significant weight on this factor.

(iv) **Earning Capacity.** There was no evidence of limitation of the Petitioner's earning capacity. Therefore, the Arbitrator places no weight on this factor.

(v) **Disability.** The Petitioner testified that both surgeries gave him significant relief from his injuries. He still experienced slight tingling in the tips of his fingers, elbow pain when typing and hand and arm pain in certain positions. His hobbies and sleep have been adversely affected. The Arbitrator puts significant weight on this factor.

Therefore, the Arbitrator finds the Petitioner's permanent partial disability to be 12.5 percent of the body as a whole as it pertains to the Petitioner's right shoulder and 10 percent of the right arm.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	22WC021148
Case Name	Jorge Soto v. Cook County
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b) Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	24IWCC0403
Number of Pages of Decision	16
Decision Issued By	Christopher Harris, Commissioner

Petitioner Attorney	Carl Salvato
Respondent Attorney	Mark Rusin, Robert Newman

DATE FILED: 8/21/2024

/s/Christopher Harris, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

JORGE SOTO,

Petitioner,

vs. NO: 22 WC 21148

COOK COUNTY SHERIFF'S DEPARTMENT,

Respondent.

DECISION AND OPINION ON REVIEW

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

The Commission vacates the Arbitrator's award of penalties. A penalty under section 19(*l*) is in the nature of a late fee, and the Commission must assess this penalty if (1) a payment is late and (2) the employer lacks a reasonable justification for the lateness. *Ravenswood Disposal Services v. Illinois Workers' Compensation Comm'n*, 2019 IL App (1st) 181449WC, ¶ 30, 433 Ill. Dec. 981, 133 N.E.3d 1261. "Generally, an employer's reasonable and good-faith challenge to liability does not warrant the imposition of penalties." *Mechanical Devices v. Industrial Comm'n*, 344 Ill. App. 3d 752, 763, 800 N.E.2d 819, 279 Ill. Dec. 531 (2003). Further, penalties and fees under sections 16 and 19(k) are intended to address deliberate conduct, or that which is undertaken

in bad faith or for improper purposes. *McMahan v. Industrial Comm'n*, 183 Ill. 2d. 499, 702 N.E.2d 545, 234 Ill. Dec. 205 (1998).

Here, the Respondent obtained a Section 12 examination from Dr. Glantz and the parties agreed to a Section 12 examination from Dr. Itkin. Both Dr. Glantz and Dr. Itkin noted that their examination of the Petitioner was normal and opined that no further treatment was necessary as Petitioner was at maximum medical improvement. While the Commission agrees with the Arbitrator's finding that Dr. Ahmadian's opinion is more persuasive, Respondent's reliance on the opinions from Dr. Glantz and Dr. Itkin was not unreasonable or vexatious and provided Respondent with a good-faith challenge to liability such that penalties are not appropriate. Therefore, the Commission vacates the Arbitrator's award of penalties.

Finally, the Respondent argues that the Arbitrator awarded unspecified future medical treatment as no evidence was produced at trial showing a future medical treatment plan or the medical necessity of prospective medical care. Contrary to Respondent's argument, Dr. Ahmadian recommended Botox injections, continued physical therapy, and vestibular therapy as Petitioner was still experiencing symptoms related to his work injuries. While the Arbitrator found Petitioner was entitled to prospective medical care for the head and neck injuries as prescribed by Dr. Ahmadian, she inadvertently omitted an order for prospective medical treatment in the order section of her decision. Therefore, the Commission clarifies the order section of the decision to indicate that Petitioner is entitled to Botox injections, continued physical therapy, and vestibular therapy as recommended by Dr. Ahmadian.

All else is affirmed and adopted.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed November 15, 2023 is hereby modified as stated above and otherwise affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay to the Petitioner the sum of $971.73 per week for a period of 64.286 weeks, June 15, 2022 through September 8, 2023, that being the period of temporary total incapacity for work under §8(b), and that as provided in §19(b) of the Act, this award in no instance shall be a bar to a further hearing and determination of a further amount of temporary total compensation or of compensation for permanent disability, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that the Petitioner is entitled to prospective medical treatment as recommended and prescribed by Dr. Ahmadian including Botox injections, continued physical therapy and vestibular therapy pursuant to Sections 8 and 8.2 of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that the Arbitrator's award of penalties pursuant to Sections 16, 19(k) and 19(l) is hereby vacated.

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

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

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

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

August 21, 2024

CAH/tdm
d: 7/25/24
052

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

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

/s/ *Marc Parker*
Marc Parker

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	22WC021148
Case Name	Jorge Soto v. Cook County
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	12
Decision Issued By	Raychel Wesley, Arbitrator

Petitioner Attorney	Carl Salvato
Respondent Attorney	Megan Inskeep

DATE FILED: 11/15/2023

THE INTEREST RATE FOR THE WEEK OF NOVEMBER 14, 2023 5.27%

/s/ Raychel Wesley, Arbitrator

Signature

STATE OF ILLINOIS)
)SS.
COUNTY OF COOK)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Jorge Soto
Employee/Petitioner
v.
Cook County
Employer/Respondent

Case # **22** WC **21148**

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Raychel Wesley**, Arbitrator of the Commission, in the city of **Chicago**, on **September 8, 2023**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On **5/16/2022**, 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 **$75,793.12**; the average weekly wage was $**1,457.60**

On the date of accident, Petitioner was **57** years of age, ***Single*** with **0** dependent children.

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

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

Respondent shall pay Petitioner temporary total disability benefits of $**971.73**/week for **64.286** weeks, commencing **6-15-22** through **9-8-23**, as provided in Section 8(b) of the Act. Total **$62,468.63.**

Respondent shall continue to pay Petitioner temporary total disability benefits of $**971.73**/week for as provided in Section 8(b) of the Act.

Respondent shall be given a credit of **$55,389.33** for TTD, $**0.00** for TPD, and $**0.00** for maintenance benefits, for a total credit of $**55,389.33**.

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

ORDER

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

Respondent shall be given a credit of **$55,389.33** for TTD, $**0.00** for TPD, and $**0.00** for maintenance benefits, for a total credit of $**0.00**.

Respondent shall pay Petitioner temporary total disability benefits of $971.73/week for 64.286 weeks, commencing 6/15/22 through 9/8/23, for a total of $62,468.63, less TTD credit, as provided in Section 8(b) of the Act.

Nature and Extent is not an issue because Petitioner has not reached Maximum Medical Improvement (MMI).

Respondent shall pay to Petitioner penalties of $**1,415.86**, as provided in Section 16 of the Act; **$3,539.65** as provided in Section 19(k) of the Act; and $**10,000.00**, as provided in Section 19(l) 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.

/s/ *Raychel A. Wesley* **NOVEMBER 15, 2023**
Signature of Arbitrator

FINDING OF FACTS

On the date in question, May 16, 2022, the Petitioner Jorge Soto was working in the property room at the Cook County Jail (T. p. 15). At approximately 8:00p.m. on that date, while being assisted by a partner, a property recovery bag fell from a conveyor system from the ceiling and struck the Petitioner "right between the eyes." (T.p. 16-17). According to the Petitioner, the bag fell over thirty (30) plus feet before it struck the Petitioner between the eyes and at the bridge of his nose. (T. p. 18). Petitioner testified that he briefly lost consciousness but was able to stop himself from falling to the ground by bracing himself with a nearby wall and his partner caught and helped him into a chair. (T. p. 18-19).

Petitioner testified, while being disoriented, he was able to determine that the bag weighed approximately ten (10) pounds that fell thirty (30) feet (T.p. 19). Thereafter, a Sargent was called, and a wheelchair was brought to the scene and the Petitioner was taken to a triage center within the jail that they typically use for inmates. (T.p.20) After initial triage, an ambulance was called and the Petitioner was taken by ambulance to Mount Sinai Hospital, where an MRI of Petitioners brain was performed, and x-ray was taken of his nose. (T.p. 20-21). The MRI of the brain did not reveal any type of intercranial hemorrhage or bleeding or a fracture to the bridge of Petitioner's nose. (T. p. 21-22). Petitioner was eventually discharged that evening in a disoriented state and was picked up by a friend and taken home. (T.p. 22).

Petitioner has remained off work since May 16, 2022 and continues to remain off work as of the date of the hearing. As early as May 17, 2022, Petitioner's headaches began and since that time he continues to experience dizziness, nausea, light sensitivity, and vomiting. (T. p. 23-24).

On May 22, 2022 Petitioner went to another emergency room for evaluation at Alexian Brothers Hospital (T.p. 24). Petitioner experienced dizziness, nausea, vertigo, light sensitivity, and "losing words" (T.p.

24). Petitioner was diagnosed with the symptoms of a traumatic brain injury (TBI) at the emergency room at Alexian Brothers, given a prescription and was told to follow up with neurologist Dr. Patel. (T. P. 25).

After following up with Dr. Patel initially, Petitioner was diagnosed with post-concussion syndrome and ordered to start physical therapy, occupational therapy and speech therapy (T.p.26). Cymbalta and Depakote were eventually prescribed by Dr. Patel, as well. (T.p. 27) The Cymbalta and Depakote didn't help Petitioner, in fact, they made the symptoms worse at times. His symptoms became so bad at times, that on one occasion he fell down the stairs at his home and fractured his leg (tr. P. 27-28). The leg fracture was treated at Core Orthopedics and is the subject of a separate filing at the Industrial Commission (T. p. 30).

Dr. Patel continued to treat the Petitioner, however, Dr. Patel informed Petitioner he needs to transfer his case to another neurologist who specializes in post-concussion syndrome (T. p. 32).

Thereafter, the neurological therapist Petitioner was seeing referred Petitioner to Dr. Ahmadian (T. p. 32). As of the date of this hearing, Petitioner remains under the care of Dr. Ahmadian for the injuries he sustained herein. (TR.p.32)

On August 16, 2022, Respondent scheduled an Independent Medical Exam (IME) with Dr. Russell Glantz. (Tr. P. 33). The exam lasted a total of thirty (30) minutes. Petitioner informed Dr. Glantz of episodes he was experiencing wherein "the headaches became so strong it feels like a lightning bolt that goes from the back of my head to my left eye…..And then it's very disabling." (T.p.34) These severe episodes were happening three (3) times a week towards the end of 2022 and are still happening once a week on average, as of the date of the hearing. (T. p. 34).

These severe episodes result in nausea, occasional vomiting, light sensitivity and ringing in Petitioner's left ear (Tr.p.35). Currently, Petitioner injects himself with a medication (Ajovy) prescribed by Dr. Ahmadian and is required to carry an oral medication in case the episodes become so severe that they're debilitating. (Tr.

P.36). This oral medication takes roughly thirty (30) minutes to take effect, and nothing specifically can trigger the need for this medication according to Petitioner. (Tr. P. 27).

Neither Dr. Patel nor Petitioner's current neurologist returned Petitioner to work as a Cook County Sheriff assigned to the Cook County jail. (Tr. P. 37). Dr. Ahmadian doesn't believe it is safe for Petitioner to return to work in his current state of ill-being (Tr. P. 38). Petitioner stated if an episode were to occur that he is "pretty vulnerable" while carrying a weapon, a vest and OC spray (Tr. p. 38). Therefore, there is no way to return to work in the Cook County jail in any type of limited capacity. (Tr. P. 39). Petitioner has made attempts to return to work in a limited capacity since being returned to light duty by Dr. Ahmadian. These efforts have all been rendered futile. Petitioner would attempt to return to work in a light duty capacity, if in fact, Respondent would accommodate his current light-duty restrictions prescribed by Dr. Ahmadian (Tr. P. 40-41).

Dr. Ahmadian, a board-certified neurologist who specializes in traumatic brain injury and post-concussion syndrome prescribed a drug called Nurtec. (Tr. P. 41). Petitioner testified he would not be able to operate a motor vehicle or control a weapon while on this narcotic prescription (Tr. P. 42), nor defend himself (Id). Thereafter, Dr. Ahmadian injected Petitioner with Ajovy and now he self-administers the Ajovy injection himself every 15-20 days, as needed (Tr. P. 42).

As of the date of the hearing, (September 8, 2023) Petitioner had been administered Botox injections by Dr. Ahmadian, that consisted of approximately twenty-four (24) shots to the forehead, temple, base of his skull and shoulders, in addition to the Ajovy and Nurtec. (Tr. p. 44). Petitioner is currently scheduled for another series of Botox injections on November 22, 2023 by Dr. Ahmadian (T. p. 45).

Petitioner does feel like his symptoms are progressively improving with the current treatment however he is not well enough to return to full duty work as a Cook County Sheriff in a jailhouse setting as stated above. (Tr. p. 46).

Respondent also requested another IME with a Doctor Itkin, and this appointment was agreed to by Petitioner. On the date of that appointment Petitioner was having an episode of nausea, dizziness and vomiting but didn't want to miss the appointment. Petitioner was driven to this appointment by his roommate and attended the appointment despite having the episode as described above. (Tr. p. 47). Dr. Itkin's office, was in the same location as Dr. Glantz (Tr. p. 48), but not in the same office suite. Dr. Itkin turned off the light for the exam, and said "the guy upstairs, Glantz, already did it. So, hey whatever you guys want." Dr. Itkin appeared very annoyed and did not want to perform the exam according to Petitioner. (Tr. p. 49). The total exam time with Dr. Itkin was less than ten (10) minutes in total because Petitioner was unable to complete basic testing because he was in a middle of an "episode" during the exam. (Tr. p. 49-50).

CONCLUSIONS OF LAW

With the respect to the issue of (F), is Petitioner's current condition of ill-being casually related to the injury, the Arbitrator finds as follows:

Given the nature and mechanism of the accident in question, the medical histories, the testimony of Dr. Ahmadian, and all exhibits submitted herein, as well as the fact that Respondent has failed to submit any credible medical evidence to the contrary, the Arbitrator finds that Petitioner's traumatic brain injury and post-concussion syndrome and his present condition of ill-being are causally related to his job-related injury of May 16, 2022. Further, the Arbitrator finds that the accident of May 16, 2022 is compensable under the Worker's Compensation Act and Respondent is liable for all benefits allowable to the Petitioner as set forth in the Worker's Compensation Act, including but not limited to, all future medical.

The Arbitrator has based her findings that there is a compensable accident and the Petitioner's present condition of ill-being is causally related to the job-related injury, upon the testimony and facts set forth by the Petitioner herein. Additionally, the Arbitrator finds that the medical opinions of Dr. Ahmadian were based upon a reasonable degree of medical and surgical certainty outweigh and carry more weight than that of Dr. Glantz and Dr. Itkin, with respect to causation and the necessity for future and ongoing medical care and treatment.

With respect to the issue of (K) what temporary benefits are (in dispute) (TTD), the Arbitrator finds as follows:

It is well-settled principal that when a claimant seeks TTD benefits, the dispositive inquiry is whether the claimant's condition has stabilized, i.e., whether the claimant has reached MMI. Interstate Scaffolding, 236 ILL2nd at 142. Further, "to be entitled to TTD, a claimant must show not only that he did not work but that he could not work." Residential Carpentry v. Illinois Worker's Compensation Commission, 389 ILL App 3d, 975 at 981 (2009).

The Petitioner, Jorge Soto, has met both requirements to establish his claim for ongoing TTD benefits clearly and as testified to under oath by both Petitioner and Dr. Ahmadian, the Petitioner's condition has not stabilized. Petitioner continues to take medication and injects himself with Ajovy every 15-20 days. Additionally, Petitioner has periodic episodes where he becomes dizzy, nauseous, and unstable. When those incidents occur, Petitioner is required to take Nurtec, which he carries with him at all times, in case an episode should occur. These episodes remain debilitating. Accordingly, Petitioner is not at MMI and entitled to ongoing TTD benefits. Respondent is to reinstate TTD benefits in the amount of $971.73 per week from June 15, 2022 until September 8, 2023. That time is 64.286 weeks or the gross amount of $62,468.63. Further, the Arbitrator finds there was no overpayment of TTD due to an accounting error as the checks previously paid were not bi-weekly checks but were monthly checks per the dates set forth on the TTD ledger submitted by Respondent. (Resp. Ex. 3,4,5).

Finally, Arbitrator finds that Petitioner is entitled to receive TTD until Petitioner has reached MMI or until Respondent has accommodated the restrictions.

With respect to the issue of (L) what is the nature and extent of the injury, the Arbitrator finds as follows:

The hearing conducted herein was a 19(b) petition for the Arbitrator to determine whether Respondent should reinstate Petitioner's temporary total disability (TTD) benefits, order all TTD past amounts due to

Petitioner to be paid, to determine whether any future or prospective medical care for his injuries and to determine the issue of whether penalties or fees should be imposed upon Respondent. The nature and extent of the injury is not yet in dispute herein since the Petitioner continues to seek medical care and treatment for the injuries sustained herein. It is Petitioner's position that he has yet to reach maximum medical improvement (MMI) as of the date of the hearing conducted (9/8/2023). Accordingly, Arbitrator makes no determination at this time as of the nature and extent of Petitioner's injuries herein.

With respect to the issue of (M), whether penalties and/or fees be imposed upon Respondent, the Arbitrator finds as follows:

The Illinois Worker's Compensation Act allows for both penalties and fees under the Act where a Respondent's termination of benefits is both unreasonable and vexatious. Respondent relies upon an IME report that Petitioner testified consisted of less than thirty (30) minutes by Dr. Glantz. The second IME is deemed to be invalid since it was apparent that Dr. Itkin was unable to complete his exam because Petitioner was having a post-concussion episode while in the middle of the second IME. Accordingly, Dr. Itkin stopped and concluded his examination in less than four (4) minutes, per Petitioner's unrebutted testimony.

The Arbitrator finds that the failure of Respondent to authorize ongoing TTD benefits and current and prospective medical care as recommended by Dr. Ahmadian in her records and deposition testimony are both unreasonable and vexatious. The Respondent has failed to set forth any competent and credible evidence, either documentary or testimonial, to support its continued decision to deny Petitioner ongoing TTD benefits and future medical benefits under the Act.

Therefore, Arbitrator finds the Petitioner is entitled to both penalties and attorney's fees under the Act for Respondent's unreasonable and vexatious termination of Petitioner's ongoing benefits as a result of the work-related injury of May 16, 2022, until the present time.

With respect to the issue of (N), is Respondent due any TTD credit the Arbitrator finds as follows:

The only credible medical evidence considered by the Arbitrator herein is that of the testimony of Dr. Ahmadian. Dr. Ahmadian testified that Petitioner remains unable to return to work safely as a Cook County Sheriff as of the date of her deposition on August 29, 2023. Consequently, Petitioner is entitled to TTD benefits up to and including the date of hearing herein and going forward.

Respondent paid TTD benefits from June 15, 2022 until March 12, 2023 based upon an average weekly wage of $1,457.60 per week, resulting in TTD benefits of $971.73 per week. Respondent is claiming an overpayment which never occurred in the amount of $17,214.23. The Arbitrator finds that there was no overpayment to Petitioner herein. The Arbitrator does not find support for this in the TTD ledger provided (Resp. Ex. 3, 4, and 5). Consequently, there was no overpayment as set forth by the Respondent and all amounts paid until TTD benefits were terminated on March 14, 2023 were for the correct amounts.

Based on the totality of the credible testimony and the evidence submitted, the Arbitrator finds that this is more compelling than Respondent's reliance on the opinions of Dr. Glantz and Dr. Itkin. As such, Arbitrator finds there was no basis for the termination of TTD, no TTD overpayment and benefits from March 14, 2023 until the date of closing of proofs on September 8, 2023 are due and owing by Respondent.

With the respect to the issue of (O), is Petitioner entitled to prospective medical care for his traumatic brain injury sustained herein, the Arbitrator finds as follows:

Petitioner came under the care of two board-certified neurologists, Dr. Patel and Dr. Ahmadian, following his emergency room visits immediately following the accident in question on May 16, 2022. Petitioner's current treating physician Dr. Ahmadian, was deposed on August 29, 2023. Petitioner first came under the care of Dr. Ahmadian on April 12, 2023 for a consultation (Pet. Ex. 5, p.9). Petitioner was referred to Dr. Ahmadian by his primary care physician Dr. Nancy Derringer (Pet. Ex. 5, p. 10). At that first visit, Petitioner provided Dr. Ahmadian with a detailed history of the accident in question specifically informing Dr. Ahmadian that a heavy object struck him on the head on the date in question (Pet. Ex. 5, p.11). At that time Dr. Ahmadian conducted a thorough examination where Dr. Ahmadian observed that Petitioner nearly fell during

the initial exam, had abnormal reflexes, and had "something going on in the cervical spine" as well as tenderness below the head where the head connects to the occiput. (Pet. Ex. 5, p. 13). Dr. Ahmadian felt that this was a competent exam both historically and subjectively by the Petitioner (Pet. Ex. 5, p. 13-14).

Dr. Ahmadian continued to testify to the ongoing nature of the complaints by Petitioner during his continued course of treatment. Dr. Ahmadian prescribed Ajovy, an injectable medication and Nurtec. (Pet. Ex. 5, p.20). Eventually, Dr. Ahmadian prescribed and performed a series of Botox injections on Petitioner in various areas of his head, neck, and shoulders. Petitioner is scheduled to have another series of Botox injections on November 22, 2023. Dr. Ahmadian is further recommending continuing physical therapy and vestibular therapy (Pet. Ex. 5, p.33).

Dr. Ahmadian was of the opinion that Petitioner could not safely return to work as of the date of her deposition on August 29, 2022 (Pet. Ex.5, p.33-34). Finally, all objective findings by Dr. Ahmadian were causally related to the work-related accident of May 16, 2022 and based upon a reasonable degree of medical certainty. Finally, Dr. Ahmadian opined that the Petitioner is currently unable to return to work as a Cook County Sheriff and needs ongoing medical care (Pet. Ex. 5, p. 48).

The Arbitrator relies upon the testimony of Dr. Ahmadian, as the only credible medical evidence to rely upon in rendering a decision with respect to Petitioner's ongoing need for future medical care and treatment. The IME doctors, Dr. Glantz and Dr. Itkin's, reports carry little to no weight herein when rendering my decision particularly that of Dr. Itkin since he failed to complete his exam upon Petitioner. Finally, Arbitrator finds that the Respondent's reliance upon the IME reports of Dr. Glantz and Dr. Itkin are improper, unreasonable and vexatious. The Arbitrator places no evidentiary value on the opinions of Respondent's IME Dr. Glantz and no value on the opinions of Dr. Itkin.

For all of the aforementioned reasons, Arbitrator finds that Petitioner is entitled to prospective medical care for the head and neck injuries sustained herein, as prescribed by Dr. Ahmadian.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	20WC009655
Case Name	Richard Piecuch v. Chicago Transit Authority
Consolidated Cases	23WC022185;
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	24IWCC0404
Number of Pages of Decision	20
Decision Issued By	Deborah Simpson, Commissioner

Petitioner Attorney	Matthew Belcher
Respondent Attorney	Daniela Roehm

DATE FILED: 8/22/2024

/s/ Deborah Simpson, Commissioner

Signature

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Richard Piecuch,
Petitioner,

vs. NO: 20 WC 9655

Chicago Transit Authority,
Respondent.

DECISION AND OPINION ON REVIEW

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

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed October 2, 2023, is hereby affirmed and adopted.

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

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

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

August 22, 2024

o: O8/07/24
DLS/rm
046

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

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	20WC009655
Case Name	Richard Piecuch v. Chicago Transit Authority
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	18
Decision Issued By	Joseph Amarilio, Arbitrator

Petitioner Attorney	Jason Carroll, Matthew Belcher
Respondent Attorney	Daniela Roehm

DATE FILED: 10/2/2023

THE INTEREST RATE FOR THE WEEK OF SEPTEMBEER 26, 2023 5.31%

/s/ Joseph Amarilio; Arbitrator

Signature

STATE OF ILLINOIS)
)SS.
COUNTY OF COOK)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

RICHARD PIECUCH Case # **20** WC **009655**
Employee/Petitioner
v.
CHICAGO TRANSIT AUTHORITY
Employer/Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Joseph Amarilio**, Arbitrator of the Commission, in the city of **Chicago**, on **August 29, 2023**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On **April 18, 2020**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $**46,837.44**; the average weekly wage was **$900.72**.

On the date of accident, Petitioner was **42** years of age, ***single*** with **0** dependent children.

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

Respondent shall be given a credit of $**65,194.97** for TTD, $**0.00** for TPD, $**18,100.18** for maintenance, and $**7,938.12** for wage differential benefits, for a total credit of $**91,233.27**. Respondent is entitled to a credit of $**0.00** under Section 8(j) of the Act.

ORDER

By stipulation, Respondent shall pay reasonable and necessary medical services, pursuant to the medical fee schedule, of $255.25 directly to the provider for medical treatment provided by Piotrowski MD SC; $1,280.00 directly to the provider for medical treatment provided by Mark Sokolowski MD SC; and $6,775.00 directly to the provider for medical treatment provided at AKS Surgical, as provided in Sections 8(a) and 8.2 of the Act.

Respondent shall pay Petitioner temporary total disability benefits of $600.48/week for 111 3/7 weeks, commencing April 19, 2020, through February 10, 2022, and February 28, 2022, through June 24, 2022, as provided in Section 8(b) of the Act.

Respondent shall pay Petitioner maintenance benefits of $600.48/week for 30 2/7 weeks, commencing June 25, 2022, through January 22, 2023 , as provided in Section 8(a) of the Act.

Respondent shall pay Petitioner permanent partial disability benefits in the amount of $13,337.07, commencing January 23, 2023, through July 1, 2023, because the injuries sustained caused a loss of earnings of $20,005.60, as provided in Section 8(d)(1) of the Act.

Respondent shall pay Petitioner permanent partial disability benefits in the amount of $2,438.69, commencing July 2, 2023, through July 29, 2023, because the injuries sustained caused a loss of earnings of $3,658.03, as provided in Section 8(d)(1) of the Act.

Respondent shall pay permanent partial disability benefits to Petitioner as of July 30, 2023, in the amount of $587.39/week until Petitioner reaches age 67 or five years from the date of the final award, whichever is later, because the injuries sustained caused a loss of earnings as provided in Section 8(d)(1) of the Act.

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

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

/s/ *Joseph D. Amarilio* **OCTOBER 2, 2023**

Signature of Arbitrator Joseph D. Amarilio

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION
ATTACHMENT TO ARBITRATION DECISION

RICHARD PIECUCH,	)	
	)	
Petitioner,	)	
	)	
v.	)	**20 WC 009655**
	)	**23 WC 022185**
CHICAGO TRANSIT AUTHORITY,	)	
	)	
Respondent.	)	

FINDINGS OF FACT AND CONCLUSIONS OF LAW

I. PROCEDURAL HISTORY

Mr. Richard Piecuch (Petitioner), by and through his attorney, filed an Application for Adjustment of Claim under case number 20 WC 09655 seeking benefits under the Workers' Compensation Act (Act) (820 ILCS 305/1 *et seq.* (West 2014)). Petitioner alleged that he sustained an accidental injury on April 18, 2020 while employed by the Chicago Transit Authority (Respondent"). Shortly before the abirritation hearing, the parties agreed that Petitioner would file a second claim for possible accident on February 28, 2022 which was assigned the case number 23 WC 022185.

The parties jointly submitted a completed Request For Hearing Form for each claim. The Request For Hearing Form for the April 18, 2020 accident under case number 20 WC 009655 was admitted into evidence as Arb. Exhibit 1. The Request For Hearing Form for the February 22 2023 accident under case number 23 WC 22185 was admitted into evidence as Arb. Exhibit 2.

The parties stipulated on the record that the accident of February 28, 2022, involved a flare-up of Petitioner's symptoms on a trial return to work. (T. p. 6-7). The second incident was litigated with the original claim to resolve any and all potential dates of accident. (Id.). The parties further stipulated that Respondent would directly pay an unpaid medical bill. (Arb. Exhibit 1, Arb. Exhibit 2).

The two cases were consolidated, and hearing was held on August 29, 2023. Mr. Piecuch testified on his own behalf. Ms. Katharine Lunde testified on behalf of Respondent.

The same two (2) issues are in dispute in each claim: 1. The nature and extent of the injury. 2. Whether Petitioner is entitled to penalties and attorney fees. Based on the findings and conclusions stated below, the Arbitrator finds that Petitioner is not entitled to benefits and attorney fees.

Thus, the main disputed issue in Petitioner's claim for benefits centers on the proper method of calculating Petitioner's 8(d)1 wage differential benefits and, thus, the amount of the award Petitioner is entitled to receive under the Act as a result of April 18, 2020 accident.

The parties mutually requested a written decision, including findings of fact and conclusions of law. (Arb. X 1) A single transcript was prepared and reviewed by the Arbitrator in rendering the two arbitration decisions. Two separate decisions are being issued with one Statement of Facts and Conclusions of Law.

II. FINDINGS OF FACT

Petitioner testified he was born on August 16, 1977. (T. p. 8). As of April 18, 2020, he was forty-two-years old, single, and had no dependent children. (See Arb. Ex. 1).

Petitioner was employed by the Chicago Transit Authority (hereinafter referred to as "Respondent" or "CTA") on April 18, 2020. (T. p. 9). He began working for Respondent in July of 2017. (RX11 and T. p. 9). Petitioner testified that he first started out as a part time "customer service assistant." (T. p. 10). He remained in this position for eight or nine months. (Id.). He worked as a part time "flagger." (Id.). He remained in this second position for ten or eleven months. (Id.).

Petitioner testified that his third position while working for Respondent was a "rail operator." (T. p. 11). This is the job he was performing in April of 2020. (Id.). As of April 2020, Petitioner testified he was working full time in the rail or train operator position. (Id.). He testified he typically worked forty hours per week in this position. (Id.). Petitioner testified his normal shift as a train operator began between 4:00 and 5:00 p.m. (Id. at 11-12). He worked until around 2:00 a.m. the following morning. (Id. at 12). Petitioner operated a train on the CTA Brown Line. (Id. at 12).

Petitioner's Accident

Petitioner testified he was working as a train operator for Respondent on April 18, 2020. (T. p. 12-13). On that date, he was involved in an accident. (Id. at 13). Petitioner was operating the Brown Line train when a vehicle crashed into his train. (Id.). He was injured in this crash. An ambulance arrived at the scene of the accident and transported him to the emergency room at Swedish Covenant Hospital. (Id. at 13-14).

Petitioner's Medical Treatment

Upon arrival at Swedish Covenant Hospital, the medical records confirm Petitioner was injured while operating a train when a car struck the train. (PX3 p. 16). Petitioner complained of right hip pain. (Id.). He testified he had no feeling in his right leg. (T. p. 14). X-rays and a CT scan of his hip and pelvis were negative for fractures. (PX3 p. 19, 22-23). The hospital discharged Petitioner and advised him to follow-up with his primary care physician or an occupational medicine physician. (Id. at 39). He was advised to remain off of work until seen for the recommended follow-up visit. (Id).

Three days later, on April 21, 2020, Petitioner had his initial follow-up visit as instructed with his primary care physician, Dr. Miroslaw Piotrowski. (PX4 p. 2-7). Dr. Piotrowski noted Petitioner's work accident. (Id.). Dr. Piotrowski recommended Petitioner start physical therapy and referred him to Dr. Mark Sokolowski, an orthopedic surgeon, for continued care. (Id. at 5, 7).

On April 22, 2020, Petitioner had his initial visit with Dr. Sokolowski one day later. (PX5 p. 144-145). This visit was completed by way of video due to the ongoing "shelter in place order." (Id. at 144). Dr. Sokolowski noted Petitioner complained of neck pain with radiation to both periscapular regions, lumbar pain with radiation to his buttocks and knees, right greater than left thigh pain, left forearm pain, and bilateral knee pain. (Id.). He noted these symptoms all began following his car versus train collision. (Id.). He recommended he undergo MRIs, proceed in physical therapy, and remain off of work. (Id. at 145).

On April 23, 2020, Petitioner began physical therapy at ATI Physical Therapy. (PX7 p. 175). He also underwent the recommended MRIs of his left knee, pelvis, and lumbar spine on April 30, 2022, at Preferred Open MRI. (PX8 p. 2-8). He returned to Dr. Sokolowski's office for a follow-up visit on June 4, 2020. (PX5. 128-129). At that visit, Dr. Sokolowski referred Petitioner to Dr. Kevin Tu for his ongoing left knee complaints. (Id. at 128-129). He also advised Petitioner to proceed with a lumbar epidural steroid injection. (Id.). Lastly, he advised Petitioner to remain off of work. (Id. at 129).

Petitioner's Left Knee Surgery

On June 11, 2020, Petitioner's had his initial visit with Dr. Kevin Tu. (PX6 p. 10). Dr. Tu recorded Petitioner's history of a work-related accident on April 18, 2020. (Id.). Petitioner indicated therapy had not led to any improvement in his left knee symptoms. (Id.). Dr. Tu reviewed Petitioner's left knee MRI and noted it showed no signs of a meniscus tear. (Id.). He felt it revealed early degenerative changes, which had been aggravated. (Id.). He recommended and provided a cortisone injection into Petitioner's left knee at this initial visit. (Id.). Petitioner testified that the injection failed to alleviate his symptoms. (T. p. 17).

Petitioner returned to Dr. Tu's office for his second visit on July 9, 2020. (PX6 p. 9). Dr. Tu noted Petitioner sustained only minimal improvement of his symptoms following the cortisone injection. (Id.). Dr. Tu recommended proceeding with a left knee diagnostic arthroscopy to possibly include partial meniscectomy, synovectomy, and chondroplasty. (Id.).

Prior to surgery, Petitioner testified he was examined by Dr. Brian Cole at the request of the Respondent pursuant to Section 12 of the Act. (T. p. 17-18). Dr. Cole drafted a report following his examination of Petitioner on August 10, 2020. (PX6 p. 64-68). Dr. Cole concluded that Petitioner's bilateral knee complaints were directly related to his work accident. (Id. at 67). He also agreed with the recommendation of proceeding with left knee surgery. (Id.).

As recommended, Petitioner underwent left knee surgery performed by Dr. Tu at Elmhurst Hospital on September 29, 2020. (PX9 p. 37-38 and PX6 p. 41-42). Surgery confirmed the diagnoses of left knee inner tear of the lateral meniscus, synovial impingement with medial plica, and a grade 1 to grade 2 chondromalacia of the medial femoral condyle near the area of the abrasion from the medial plica. (Id.). Surgery included arthroscopic partial lateral meniscectomy, chondroplasty of the medial femoral condyle, and arthroscopic extensive synovectomy with plica excision. (Id.).

Following knee surgery, Petitioner underwent a course of physical therapy at ATI. (PX7 p. 81-127). He also continued to follow up with Dr. Sokolowski and Dr. Tu. (See PX5 p. 109 and PX6 p. 5-6). At his December 3, 2020, visit, Dr. Tu released Petitioner at maximum medical improvement with no restrictions related to his left knee. (PX6 p. 4).

One day earlier, on December 1, 2020, Petitioner had another follow-up visit with Dr. Sokolowski. (PX5 p. 103). Dr. Sokolowski noted Petitioner continued to complain of significant lumbar pain when bending or squatting. (Id.). He advised Petitioner to proceed with bilateral L5-S1 transforaminal epidural steroid injections under fluoroscopic guidance. (Id.). He also recommended a cervical MRI due to persistent neck pain with radiation to the right shoulder. (Id.).

One week later, he underwent the cervical MRI recommended by Dr. Sokolowski at Preferred Open MRI on December 8, 2020. (PX8 p. 9-10). He also underwent the recommended lumbar injection on January 6, 2021. (PX5 p. 172-173). Petitioner returned to Dr. Sokolowski's office following the cervical MRI and lumbar injection on January 12, 2021. (Id. at 93). Dr. Sokolowski advised Petitioner to proceed with a four-week course of work conditioning. (Id.). Work conditioning began at ATI Physical Therapy on January 18, 2021, and continued throughout January and February. (PX7 p. 7-56).

Functional Capacity Evaluation

After completion of work conditioning, Petitioner returned to Dr. Sokolowski's office again on February 24, 2021. (PX5 p. 86). Dr. Sokolowski recommended a lumbar MRI and completion of a functional capacity evaluation ("FCE"). (Id.). The lumbar MRI was completed at Preferred Open MRI on March 2, 2021. (PX8 p. 11-13). The FCE was completed at Vital Rehabilitation on March 11, 2021. (PX9 p. 2-26).

He returned again to Dr. Sokolowski's office on April 13, 2021. (PX5 p. 52). Dr. Sokolowski reviewed the results of the FCE with Petitioner at that visit. (Id.). He released Petitioner back to work with restrictions as outlined in the FCE. (Id.). Petitioner testified that Respondent did not offer him a position within the restrictions of the FCE. (T. p. 22).

Vocational Rehabilitation Assessment and Return to Work

Petitioner testified he met with certified vocational rehabilitation counselor Laura Belmonte on August 9, 2022. (T. p. 24). He testified that this initial meeting was completed by way of Zoom video meeting. (Id.). Following this meeting, Petitioner testified he performed a job search. (Id.). He testified he received maintenance benefits from Respondent while performing this job search, which the parties also stipulated to at arbitration. (T. p. 25 and Arb. Ex.1).

Petitioner testified he secured new employment with Hodgkins Truck Center ("Hodgkins"). (T. p. 25-26). He explained Hodgkins is a diesel truck shop and he was hired to perform front desk duties. (Id. at 26). His first day working for this new employer was January 23, 2023. (Id.). His work duties include opening work orders for mechanics, taking payments, invoices, and parking invoices. (Id.). Petitioner identified his paychecks from Hodgkins and they were admitted into evidence without objection by Respondent. (T. p. 27-29, 78 and PX11).

Beginning with his first day worked of January 23, 2023, through July 29, 2023, which is the last day of the final pay period included in Petitioner's Exhibit 11, Petitioner earned a total of $19,343.25 at Hodgkins. (See PX11). This is a period of 26 6/7 weeks. As of the date of arbitration, Petitioner remained employed with Hodgkins. (T. p. 27).

Current Train Operator Wages at Chicago Transit Authority

The Arbitrator notes that the parties in this claim agree that the occupation Petitioner was engaged in at the time of his accident was a Chicago Transit Authority train operator. (Joint Exhibit Number One). They also agree that the current wages for a train operator are governed by the most recent collective bargaining agreement between the Chicago Transit Authority and Petitioner's former union, the Amalgamated Transit Union 308. (Id.). Their dispute involves how to properly calculate what his wages would have been had he returned to his prior employment at Respondent. (Id.).

The parties stipulated to the proper wage scale in effect at the time of the arbitration hearing. (Joint Exhibit Number One). They also agreed to the proper wage scale for when Petitioner first returned to work at Hodgkins Truck Center in January of 2023. (Id.).

In January of 2023, the 100% pay rate for a train operator was $38.663 per hour. (Joint Exhibit Number One). As of July 1, 2023, that rate increased to $39.533 per hour. (Id.). The dispute between the parties is what level of the pay scale Petitioner's current wages should reflect. (Id.).

Testimony of Ms. Katharine Lunde

Respondent called Ms. Katharine Lunde to testify at arbitration. (T. p. 50). Ms. Lunde testified she is currently employed by Respondent and her job title is Director of Labor Relations, an attorney position. (Id. at 51). She explained Respondent has seventeen unions, and amongst them has twenty-five collective bargaining agreements (CBA). (Id.). She testified that she oversees all of those agreements. (Id.). She testified that the CBA in effect for train operators as of the date of arbitration was the agreement for January 1, 2020, through the end of 2023. (Id. at 52).

Ms. Lunde explained the Petitioner's union (Rail 308) had a Collective Bargaining Agreement (hereafter "CBA") in effect on the date of the accident dated 2016-2019. *T. 52.* After the accident, a new CBA was enacted dated 2020-2023. *T. 52.* The latter would be retroactively effective to the date of accident. *T. 53.* However, both CBAs are identical regarding the wage progression scale. *T. 60.* Union employees are paid according to a wage progression scale. *See Arb. Exhibit 1 and Respondent's Exhibit 3, page 2.*

Ms. Lunde reviewed and identified Respondent's Exhibit Number 3 as excerpts from the Wage and Working Conditions Agreement between Respondent and AG Local 308, which is the train operator's union. (Id. at 54). She reviewed this document and explained that union train operators are paid according to a pay progression scale. (Id. at 55). She explained the pay progressions scale as follows:

First 12 months – 65% of the actual paid rate of the classification.
Next 12 months – 70% of the actual paid rate of the classification.
Next 12 months – 75% of the actual paid rate of the classification.
Next 9 months – 80% of the actual paid rate of the classification.
Thereafter - 100% of the actual paid rate of the classification.

Ms. Lunde testified that if a union employee misses work for any reason for a period of time, that period missed from work is not included in the pay progression scale calculation. (T. p. 56). She explained to progress on this scale, an employee has to be working. (Id.). Ms. Lunde also reviewed and testified regarding Respondent's Exhibit

Number 11. (Id. at 61). She explained this exhibit was a screenshot from Oracle, which is one of the software programs the Respondent uses in its payroll department to track individuals' employment. (Id.).

Additionally, Ms. Lunde testified that the Respondent has a binding past practice that requires union employees to work to progress on the scale. *T. 60.* Ms. Lunde further testified that a labor arbitrator has exclusive jurisdiction over the interpretation of the CBA. *T. 57.*

Ms. Lunde testified that this particular screenshot pertained to Petitioner. (T. p. 61). She explained Petitioner would have completed his first twelve months of this pay progression scale in 2018 and his second in 2019. (Id. at 64). At the time of his April 18, 2020, accident, he would have been in the middle of the third period, which is the 75% progression rate. (Id.). She testified that full-time employees of Respondent "are assumed to work forty hours a week…" (Id. at 65).

The parties also admitted into evidence a joint exhibit, which the arbitrator notes is an agreed summary of the pay progression scale in effect at the time of arbitration and at the time Petitioner began working for his new employer in January of 2023. (See Joint Exhibit One). Joint Exhibit Number One reflects the pay progression scale and also contains additional information regarding wages in effect on relevant dates. (Id.). It reads in relevant part:

> *The Chicago Transit Authority and Amalgamated Transit Union 241 and Amalgamated Transit Union Local 308 reached an agreement amending the collective bargaining agreement, which increased wages beginning on January 1, 2021. The top hourly rate for train operators was increased as follows:*
>
> *(1) Increased by one percent (1.00%) on January 1, 2021 - $36.429 (75% = $27.321)*
>
> *(2) Increased by one percent (1.00%) on July 1, 2021 - $36.793 (75% = $27.594)*
>
> *(3) Increased by one and one-half percent (1.50%) on January 1, 2022 - $37.345 (75% = $28.007)*
>
> *(4) Increased by one and one-half percent (1.50%) on July 1, 2022 - $37.905 (75% = $28.427)*
>
> *(5) Increased by two percent (2.0%) on January 1, 2023 - $38.663 (75% = $28.995)*

(6) Increased by two and one-quarter percent (2.25%) on July 1, 2023 - $39.533 (75% = $29.647)

The parties to this claim are in agreement to these hourly wages, dates, and rates for service time. The parties dispute the level that Petitioner would be paid currently had he not been injured in the course and scope of his employment on April 18, 2020.

The parties are in agreement that Paragraph (5) above was applicable to Petitioner upon his return to work on January 23, 2023. The parties are also in agreement that Paragraph (6) above was applicable to Petitioner as of July 1, 2023. The parties dispute what percentage he would have been earning.

Had Petitioner not been injured and kept working, Ms. Lunde testified he would have reached the 100% pay progression level nine months after July of 2020. (T. p. 66). The Arbitrator notes that nine months after July of 2020 would have been April of 2021.

CONCLUSIONS OF LAW

The Arbitrator adopts the above Findings of Fact in support of the Conclusions of Law set forth below. Section 1(d) of the Act provides that, in order to obtain compensation under the Act, the employee bears the burden of showing, by a preponderance of the evidence, that he or she has sustained accidental injuries arising out of and in the course of the employment. *820 ILCS 305/1(d)*. To obtain compensation under the Act, Petitioner has the burden of proving, by a preponderance of the evidence, all of the elements of his claim *O'Dette v. Industrial Comm'n*, 79 Ill. 2d 249, 253 (1980) including that there is some causal relationship between his employment and his injury. *Caterpillar Tractor Co. v. Industrial Comm'n*, 129 Ill. 2d 52, 63 (1989) It is well established that the Act is a humane law of remedial nature and is to be liberally construed to effect the purpose of the Act - that the burdens of caring for the casualties of industry should be borne by industry and not by the individuals whose misfortunes arise out of the industry, nor by the public. *Shell Oil v. Industrial Comm'n,* 2 Ill.2nd 590, 603 (1954).

Decisions of an arbitrator shall be based exclusively on the evidence in the record of the proceeding and material that has been officially noticed. 820 ILCS 305/1.1(e). The Arbitrator, as the trier of fact in this case, has the responsibility to observe the witnesses testify, judge their credibility, and determine how much weight to afford their testimony and the other evidence presented. *Walker v. Chicago Housing Authority*, 2015 IL App (1st) 133788, ¶ 47. Credibility is the quality of a witness which renders his evidence worthy of belief. The Arbitrator, whose province it is to evaluate witness

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

The Arbitrator finds Petitioner testified credibly regarding his accident and injuries. His credibility was not reduced on cross examination or by any other means. The Arbitrator finds that Petitioner's testimony correlated fully with the contemporaneous medical records. The sole issue in dispute in this claim is the amount of Petitioner's Section 8(d)1 wage differential.

WITH RESPECT TO ISSUE (L), WHAT IS THE NATURE AND EXTENT OF THE INJURY, THE ARBITRATOR FINDS AS FOLLOWS:

The Parties stipulated that Petitioner sustained a loss of earnings as provided in Section 8(d)1 of the Act. The only dispute is how that wage loss should be properly calculated.

To qualify for a wage differential award, a claimant must prove 1) partial incapacity preventing them from pursuing their "usual and customary line of employment" and 2) an impairment of earnings. 820 ILCS 305/8(d)1 (West 2022); *Morton's of Chicago v. Indus. Comm'n*, 366 Ill.App.3d 1056, 1061 (2006).

To calculate a wage differential under Section 8(d)1 of the Act, the Commission must determine "the average amount which the claimant is able to earn in some suitable employment or business after the accident." *Crittenden v. Illinois Workers' Comp. Comm'n*, 2017 IL App (1st) 160002WC, ¶ 23. In calculating this average amount, if the claimant is working at the time of the calculation, the claimant must prove his actual earnings for a substantial period after he returns to work, and the Commission may apply his then current average weekly wage to the calculation. See *Gallianetti v. Indus. Comm'n*, 315 Ill. App. 3d 721, 730 (2000); *Levato v. Illinois Workers' Comp. Comm'n*, 2014 IL App (1st) 130297WC, ¶¶ 29-30; *Crittenden*, 2017 IL App (1st) 160002WC ¶ 23.

In the case at bar, Petitioner documented his actual earnings in his new employment after returning to work at Hodgkins Truck Center. Specifically, Petitioner entered into evidence his paycheck stubs dating back to his first day of work at Hodgkins Truck Center on January 23, 2023, through July 29, 2023. This is a period of 188 days or

26 6/7 weeks. The Arbitrator finds that this amounts to a "substantial period" and can be used to calculate his wage loss. Petitioner earned a total of $19,343.25 during this period. This equates to an average weekly wage of $720.23 in his new suitable employment ($19,343.25 / 26.857142 = $720.23).

The next issue that needs to be addressed to determine the actual weekly wage loss is the "average amount which he would be able to earn *in the full performance of his duties* in the occupation in which he was engaged at the time of the accident…" See 820 ILCS 305/8(d)1 (West 2022). [*Emphasis added*].

The parties agree that the occupation Petitioner was engaged in at the time of his accident was a Chicago Transit Authority train operator. They also agree that the current wages for a train operator are governed by the most recent collective bargaining agreement between the Chicago Transit Authority and Petitioner's former union, the Amalgamated Transit Union 308.

To determine the "average amount which he would be able to earn in the full performance of his duties in the occupation in which he was engaged at the time of the accident," the parties also stipulated to the proper wage scale in effect at the time of the arbitration hearing and when Petitioner first returned to work at Hodgkins Truck Center in January of 2023.

In January of 2023, the 100% pay rate for a train operator was $38.663 per hour. As of July 1, 2023, that rate increased to $39.533 per hour. The dispute between the parties is what level of the pay scale Petitioner's current wages should reflect. The parties stipulated the pay scale to be applied is the following:

First 12 months – 65% of the actual paid rate of the classification.

Next 12 months – 70% of the actual paid rate of the classification.

Next 12 months – 75% of the actual paid rate of the classification.

Next 9 months – 80% of the actual paid rate of the classification.

Thereafter - 100% of the actual paid rate of the classification.

Respondent's position is that Petitioner's pay rate is governed by the level he had obtained as of the date of his accidents, which was 75%. Petitioner's position is that he would have reached the 100% pay level had he not been injured and continued to work.

Mr. Piecuch's position was confirmed by Respondent's witness, Ms. Katherine Lunde, testified Petitioner would have reached the 80% pay level in approximately July

of 2020, and the 100% level nine months after that, which the Arbitrator notes would have been approximately April of 2021.

Respondent's position, however, is that the CBA does not allow for employees to accumulate credit for time worked while off of work for an injury. Respondent's position is Petitioner would have been placed back at the same pay level he was at when he left due to his work accident, which is 75%.

The Arbitrator finds Respondent's position is contrary to the plain reading of the Act and to a litany of Illinois Appellate court cases that have come before this. Reviewing courts have consistently held that the seniority level claimants would have achieved had they not been injured should be applied to determine the current wages they would be earning in the full performance of their duties in the occupation in which they were engaged at the time of the accident. See *Old Ben Coal Co. v. Indus. Comm'n*, 198 Ill.App.3d 485 (1990) (Union contract providing for quarterly wage increases used to determine claimant's current wages had he not been injured). See also *Greaney v. Indus. Comm'n*, 358 Ill. App. 3d 1002 (2005) (Wages for wage differential calculation should be based on wages claimant would have earned at time of hearing and not what he was earning at time of accident); *Morton's of Chicago*, 366 Ill.App.3d 1056 (2006) (Wage differential benefits awarded based on salary increases of similarly situated employees at time of arbitration with similar seniority); *Carter v. Illinois Workers' Comp. Comm'n*, 2023 IL App (1st) 221290WC (Bus driver's wage loss calculated using increased wages set forth in new collective bargaining agreement).

In *Old Ben Coal Company*, the claimant was a union mine worker and testified he was a "roof bolter…classified as a grade 5 employee" at the time of his accident. He introduced pages from the union contract as evidence at arbitration that detailed the daily wage rates and quarterly wage increases for his prior position over the last several years after his accident. *Id.*

The court held that a claimant's wage differential should be calculated on the presumption that but for the injury, the employee would be in the full performance of his duties. Simply stated, the question is how much a claimant would be earning at the time of arbitration had they not sustained their work-related accident.

The Arbitrator does not agree with Respondent's allegation that the Illinois Workers'; Compensation Commission, a judicial body mandated to follow the Illinois Workers 'Compensation Act, must follow a labor arbitration case involving the interpretation of the CBA regarding the wage progression. instructive nor controlling. Respondent cites *ATU, Local 308 and CTA, E. Martin, J. McDowell, and V. Pinkney, Grievants* (Grv. Nos. 0102-13, 0603-04, 1003-01 & 0204-14*),* decided by Arbitrator Aaron Wolff on May 19, 2005.[1] In that case, rail union employees alleged they should be

entitled to wage progression credit for the time they were off work due to workers' compensation injuries. The Arbitrator Wolff found, "…the key word, "works" is an essential ingredient to obtaining wage progression in whatever classification he works in.

The Arbitrator finds that Arbitrator Wolff's labor arbitration case is neither instructive, persuasive or controlling. The issues in the labor arbitration case and the case at bar are not identical. The legal issues, the legislative intent, applicable law and legal principles are totally different. Moreover, the Petitioner was not a party to the labor arbitration case.

The Arbitrator is mindful that the Act is a humane law of a remedial nature, whose fundamental purpose is to protect employees by providing efficient remedies and prompt and equitable compensation for their injuries. The Act is meant to compensate a claimant for economic disabilities that diminish his value in the labor market. Unlike Arbitrator Wolff's labor arbitration decision, in the case at bar, this Arbitrator finds that in a workers' compensation claim, Petitioner's wage differential should be calculated on the presumption that but for the injury, the employee would be in the full performance of his duties.

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The Arbitrator finds that Respondent's reliance on *Deichmiller v. Industrial Com'n of Illinois*, 147 Ill.App.3d 66, 74 (Ill.App. 1 Dist.,1986) is misplaced. The court noted that liability under the Act cannot be premised on speculation or conjecture but must be based solely on the facts. In *Deichmiller* the court noted that there is nothing in the Illinois Act which would have required the Commission to compute claimant's earnings-loss award based on the amount which he might have earned as a union journeyman plumber, a position he never attained.. The claimant was a temporary journeyman plumber at the time of the accident. To be entitled to union journeyman plumber wages and benefits, the temporary journeyman had to pass the union journeyman-plumber examination. The claimant had not taken the examination. Whether he could have passed the examination was not certain and, thus, he was not a union journeyman plumber. In the case at bar, unlike, the claimant in Deichmiller, Petitioner held the same position and job title at the time of the accident and when he returned to work. In the case at bar, in order for the Petitioner the 100% pay rate classification, he did not need to take an examination, he did not to be promoted, he only need to work. But, for his work, injury, Petitioner would have reached the 100% pay rate classification.

In the case at bar, Respondent's witness Ms. Lunde acknowledged that, but for Petitioner's work accident of April 18, 2020, he would have reached the 100% pay scale level approximately nine months after July of 2020, which the Arbitrator again notes would have been April of 2021.

Because Petitioner would have reached the 100% pay level in April of 2021, his base hourly rate would have been $38.663 per hour as of January 1, 2023. His base hourly rate would have been $39.533 per hour as of July 1, 2023. In the full performance

of his duties, Petitioner would have worked forty hours per week as explained by Respondent's witness Ms. Lunde. See *Forest City Erectors v. Indus. Comm'n*, 264 Ill.App.3d 436, 439-440 (1994) (The language of Section 8(d)1 of the Act "clearly evidences the legislature's intent that section 8(d)1 awards are to be based on the number of hours constituting 'full performance' of a particular occupation.").

Petitioner also received $0.50 per hour as a shift premium for working third shift for Respondent. Therefore, his full hourly rate would have been $39.163 per hour as of January 1, 2023. His fully hourly rate would have been $40.033 per hour as of July 1, 2023.

From January 1, 2023, through June 30, 2023, his weekly forty-hour wages had he not been injured would have been $1,566.52 ($39.163 * 40).

From July 1, 2023, through the date of arbitration, his forty-hour wages had he not been injured would have been $1,601.32 ($40.033 * 40).

Petitioner returned to work on January 23, 2023. From that date through July 1, 2023, he earned a total of $16,596.00 while working at Hodgkins Truck Center. This is a period of 22 6/7 weeks. Had he not been injured, he would have earned $36,601.60 while working for Respondent as a train operator ($1,566.52 * 22.857142). As a result of his work accident and resulting injuries, he sustained a wage loss for this period of $20,005.60. Respondent shall pay Petitioner wage differential benefits of $13,337.07 ($20,005.60 * 2/3) for this period pursuant to Section 8(d)(1) of the Act.

For the period of July 2, 2023, through July 29, 2023, he earned a total of $2,747.25 while working at Hodgkins Truck Center. This is a period of 4 weeks. Had he not been injured, he would have earned $6,405.28 while working for Respondent as a train operator ($1,601.32 * 4). As a result of his work accident and resulting injuries, he sustained a wage loss for this period of $3,658.03. Respondent shall pay Petitioner wage differential benefits of $2,438.69 ($3,658.03 * 2/3) for this period pursuant to Section 8(d)(1) of the Act.

Wherefore, Respondent shall pay Petitioner permanent partial disability benefits, commencing January 23, 2023, through July 29, 2023, as outlined above, because the injuries sustained caused a loss of earnings as provided in Section 8(d)(1) of the Act.

The Arbitrator again notes Petitioner earned $19,343.25 while working for Hodgkins Truck Center from January 23, 2023, through July 29, 2023 This equates to an average weekly wage of $720.23 ($19,343.25 / 26.857142 = $720.23).

Wherefore, Respondent shall pay permanent partial disability benefits to Petitioner as of July 30, 2023, in the amount of $587.39/week (($1,601.32 - $720.23 = $881.09) * 2/3 = $587.39)) until Petitioner reaches age 67 or five years from the date of

the final award, whichever is later, because the injuries sustained caused a loss of earnings as provided in Section 8(d)1 of the Act.

Respondent shall be given a credit of $7,938.12 for wage differential benefits previously paid.

WITH RESPECT TO ISSUE (M), WHETHER PETITIONER IS ENTITLED TO PENALTIES, THE ARBITRATOR FINDS AS FOLLOWS:

It is undisputed that Petitioner was unable return to his position as a rail operator. The Respondent was unable to accommodate his restrictions. The Petitioner was off work from April 19, 2020 through February 10, 2022 and February 28, 2022 to present. The Petitioner alleged the Respondent underpaid wage differential benefits. The Petitioner asserts wages at 100% of the Respondent's wage progression scale. Respondent disputes Petitioner's claim based on its interpretation of the CBA.

The Petitioner alleges he should have wage differential benefits at the 100% level of the wage progression scale. Petitioner agrees he was at the 75% level when the accident occurred. Petitioner alleges he should be given credit towards the progression for the time he was off work. Respondent relied upon the CBA in determining the appropriate wage scale. The CBA provides that a union employee must *work* to obtain progression on the scale. [*Emphasis added.*] This was confirmed by the testified by Ms. Lunde. Additionally, Ms. Lunde testified that Respondent has a binding past practice that requires union employees to *work* to progress on the scale.

For the reasons noted in Section L above, the Arbitrator is not persuaded by Respondent's claim but does find that it was made in good faith. Additionally, Respondent did believe that it was meeting its obligations under the Act. Accordingly, the Arbitrator finds that Petitioner has failed to prove by a preponderance of the evidence his entitlement to penalties and attorney fees under the Act.

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ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	23WC022185
Case Name	Richard Piecuch v. Chicago Transit Authority
Consolidated Cases	20WC009655;
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	24IWCC0405
Number of Pages of Decision	19
Decision Issued By	Deborah Simpson, Commissioner

Petitioner Attorney	Matthew Belcher
Respondent Attorney	Daniela Roehm

DATE FILED: 8/22/2024

/s/ Deborah Simpson, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Richard Piecuch,
Petitioner,

vs. NO: 23 WC 22185

Chicago Transit Authority,
Respondent.

DECISION AND OPINION ON REVIEW

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

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed October 2, 2023, is hereby affirmed and adopted.

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

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

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

August 22, 2024

o: 08/07/24
DLS/rm
046

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

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	23WC022185
Case Name	Richard Piecuch v. Chicago Transit Authority
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	17
Decision Issued By	Joseph Amarilio, Arbitrator

Petitioner Attorney	Jason Carroll, Matthew Belcher
Respondent Attorney	Daniela Roehm

DATE FILED: 10/2/2023

THE INTEREST RATE FOR THE WEEK OF SEPTEMBER 26, 2023 5.31%

/s/ Joseph Amarilio, Arbitrator

Signature

STATE OF ILLINOIS)
)SS.
COUNTY OF COOK)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

RICHARD PIECUCH Case # **23** WC **022185**
Employee/Petitioner
v.
CHICAGO TRANSIT AUTHORITY
Employer/Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Joseph Amarilio**, Arbitrator of the Commission, in the city of **Chicago**, on **August 29, 2023**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On **February 28, 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 $**46,837.44**; the average weekly wage was **$900.72**.

On the date of accident, Petitioner was **42** years of age, ***single*** with **0** dependent children.

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

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

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

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

ORDER

The parties stipulated on the record that the accident of February 28, 2022 involved a flare-up of Petitioner's symptoms on a trial return to work. It was litigated with the original claim filed under case number 20 WC 009655 to resolve any and all potential dates of accident. The Findings of Fact and Conclusions of Law for this case number are included in the Findings of Fact and Conclusions of Law in case number 20WC009655, a copy of which is attached hereto under the above-captioned cause number. No permanent partial disability benefits are awarded for this claim.

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

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

/s/ *Joseph D. Amarilio* **OCTOBER 2, 2023**

Signature of Arbitrator Joseph D. Amarilio

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION
ATTACHMENT TO ARBITRATION DECISION

RICHARD PIECUCH,	)	
	)	
Petitioner,	)	
	)	
v.	)	**23 WC 022185**
	)	**20 WC 009655**
CHICAGO TRANSIT AUTHORITY,	)	
	)	
Respondent.	)	

FINDINGS OF FACT AND CONCLUSIONS OF LAW

I. PROCEDURAL HISTORY

Mr. Richard Piecuch (Petitioner), by and through his attorney, filed an Application for Adjustment of Claim under case number 20 WC 09655 seeking benefits under the Workers' Compensation Act (Act) (820 ILCS 305/1 *et seq.* (West 2014)). Petitioner alleged that he sustained an accidental injury on April 18, 2020 while employed by the Chicago Transit Authority (Respondent"). Shortly before the abirritation hearing, the parties agreed that Petitioner would file a second claim for a possible accident on February 28, 2022 which was assigned the case number 23 WC 022185.

The parties jointly submitted a completed Request For Hearing Form for each claim. The Request For Hearing Form for the April 18, 2020 accident under case number 20 WC 009655 was admitted into evidence as Arb. Exhibit 1. The Request For Hearing Form for the February 22 2023 accident under case number 23 WC 22185 was admitted into evidence as Arb. Exhibit 2.

The parties stipulated on the record that the accident of February 28, 2022, involved a flare-up of Petitioner's symptoms on a trial return to work. (T. p. 6-7). The second incident was litigated with the original claim to resolve any and all potential dates of accident. (Id.). The parties further stipulated that Respondent would directly pay an unpaid medical bill. (Arb. Exhibit 1, Arb. Exhibit 2).

The two cases were consolidated, and hearing was held on August 29, 2023. Mr. Piecuch testified on his own behalf. Ms. Katharine Lunde testified on behalf of Respondent.

The same two (2) issues are in dispute in each claim: 1. The nature and extent of the injury. 2. Whether Petitioner is entitled to penalties and attorney fees. Based on the findings and conclusions stated below, the Arbitrator finds that Petitioner is not entitled to benefits and attorney fees.

Thus, the main disputed issue in Petitioner's claim for benefits centers on the proper method of calculating Petitioner's 8(d)1 wage differential benefits and, thus, the amount of the award Petitioner is entitled to receive under the Act as a result of April 18, 2020 accident.

The parties mutually requested a written decision, including findings of fact and conclusions of law. (Arb. X 1) A single transcript was prepared and reviewed by the Arbitrator in rendering the two arbitration decisions. Two separate decisions are being issued with one Statement of Facts and Conclusions of Law.

II. FINDINGS OF FACT

Petitioner testified he was born on August 16, 1977. (T. p. 8). As of April 18, 2020, he was forty-two-years old, single, and had no dependent children. (See Arb. Ex. 1).

Petitioner was employed by the Chicago Transit Authority (hereinafter referred to as "Respondent" or "CTA") on April 18, 2020. (T. p. 9). He began working for Respondent in July of 2017. (RX11 and T. p. 9). Petitioner testified that he first started out as a part time "customer service assistant." (T. p. 10). He remained in this position for eight or nine months. (Id.). He worked as a part time "flagger." (Id.). He remained in this second position for ten or eleven months. (Id.).

Petitioner testified that his third position while working for Respondent was a "rail operator." (T. p. 11). This is the job he was performing in April of 2020. (Id.). As of April 2020, Petitioner testified he was working full time in the rail or train operator position. (Id.). He testified he typically worked forty hours per week in this position. (Id.). Petitioner testified his normal shift as a train operator began between 4:00 and 5:00 p.m. (Id. at 11-12). He worked until around 2:00 a.m. the following morning. (Id. at 12). Petitioner operated a train on the CTA Brown Line. (Id. at 12).

Petitioner's Accident

Petitioner testified he was working as a train operator for Respondent on April 18, 2020. (T. p. 12-13). On that date, he was involved in an accident. (Id. at 13). Petitioner was operating the Brown Line train when a vehicle crashed into his train. (Id.). He was injured in this crash. An ambulance arrived at the scene of the accident and transported him to the emergency room at Swedish Covenant Hospital. (Id. at 13-14).

Petitioner's Medical Treatment

Upon arrival at Swedish Covenant Hospital, the medical records confirm Petitioner was injured while operating a train when a car struck the train. (PX3 p. 16). Petitioner complained of right hip pain. (Id.). He testified he had no feeling in his right leg. (T. p. 14). X-rays and a CT scan of his hip and pelvis were negative for fractures. (PX3 p. 19, 22-23). The hospital discharged Petitioner and advised him to follow-up with his primary care physician or an occupational medicine physician. (Id. at 39). He was advised to remain off of work until seen for the recommended follow-up visit. (Id).

Three days later, on April 21, 2020, Petitioner had his initial follow-up visit as instructed with his primary care physician, Dr. Miroslaw Piotrowski. (PX4 p. 2-7). Dr. Piotrowski noted Petitioner's work accident. (Id.). Dr. Piotrowski recommended Petitioner start physical therapy and referred him to Dr. Mark Sokolowski, an orthopedic surgeon, for continued care. (Id. at 5, 7).

On April 22, 2020, Petitioner had his initial visit with Dr. Sokolowski one day later. (PX5 p. 144-145). This visit was completed by way of video due to the ongoing "shelter in place order." (Id. at 144). Dr. Sokolowski noted Petitioner complained of neck pain with radiation to both periscapular regions, lumbar pain with radiation to his buttocks and knees, right greater than left thigh pain, left forearm pain, and bilateral knee pain. (Id.). He noted these symptoms all began following his car versus train collision. (Id.). He recommended he undergo MRIs, proceed in physical therapy, and remain off of work. (Id. at 145).

On April 23, 2020, Petitioner began physical therapy at ATI Physical Therapy. (PX7 p. 175). He also underwent the recommended MRIs of his left knee, pelvis, and lumbar spine on April 30, 2022, at Preferred Open MRI. (PX8 p. 2-8). He returned to Dr. Sokolowski's office for a follow-up visit on June 4, 2020. (PX5. 128-129). At that visit, Dr. Sokolowski referred Petitioner to Dr. Kevin Tu for his ongoing left knee complaints. (Id. at 128-129). He also advised Petitioner to proceed with a lumbar epidural steroid injection. (Id.). Lastly, he advised Petitioner to remain off of work. (Id. at 129).

Petitioner's Left Knee Surgery

On June 11, 2020, Petitioner's had his initial visit with Dr. Kevin Tu. (PX6 p. 10). Dr. Tu recorded Petitioner's history of a work-related accident on April 18, 2020. (Id.). Petitioner indicated therapy had not led to any improvement in his left knee symptoms. (Id.). Dr. Tu reviewed Petitioner's left knee MRI and noted it showed no signs of a meniscus tear. (Id.). He felt it revealed early degenerative changes, which had been aggravated. (Id.). He recommended and provided a cortisone injection into Petitioner's left knee at this initial visit. (Id.). Petitioner testified that the injection failed to alleviate his symptoms. (T. p. 17).

Petitioner returned to Dr. Tu's office for his second visit on July 9, 2020. (PX6 p. 9). Dr. Tu noted Petitioner sustained only minimal improvement of his symptoms following the cortisone injection. (Id.). Dr. Tu recommended proceeding with a left knee diagnostic arthroscopy to possibly include partial meniscectomy, synovectomy, and chondroplasty. (Id.).

Prior to surgery, Petitioner testified he was examined by Dr. Brian Cole at the request of the Respondent pursuant to Section 12 of the Act. (T. p. 17-18). Dr. Cole drafted a report following his examination of Petitioner on August 10, 2020. (PX6 p. 64-68). Dr. Cole concluded that Petitioner's bilateral knee complaints were directly related to his work accident. (Id. at 67). He also agreed with the recommendation of proceeding with left knee surgery. (Id.).

As recommended, Petitioner underwent left knee surgery performed by Dr. Tu at Elmhurst Hospital on September 29, 2020. (PX9 p. 37-38 and PX6 p. 41-42). Surgery confirmed the diagnoses of left knee inner tear of the lateral meniscus, synovial impingement with medial plica, and a grade 1 to grade 2 chondromalacia of the medial femoral condyle near the area of the abrasion from the medial plica. (Id.). Surgery included arthroscopic partial lateral meniscectomy, chondroplasty of the medial femoral condyle, and arthroscopic extensive synovectomy with plica excision. (Id.).

Following knee surgery, Petitioner underwent a course of physical therapy at ATI. (PX7 p. 81-127). He also continued to follow up with Dr. Sokolowski and Dr. Tu. (See PX5 p. 109 and PX6 p. 5-6). At his December 3, 2020, visit, Dr. Tu released Petitioner at maximum medical improvement with no restrictions related to his left knee. (PX6 p. 4).

One day earlier, on December 1, 2020, Petitioner had another follow-up visit with Dr. Sokolowski. (PX5 p. 103). Dr. Sokolowski noted Petitioner continued to complain of significant lumbar pain when bending or squatting. (Id.). He advised Petitioner to proceed with bilateral L5-S1 transforaminal epidural steroid injections under fluoroscopic guidance. (Id.). He also recommended a cervical MRI due to persistent neck pain with radiation to the right shoulder. (Id.).

One week later, he underwent the cervical MRI recommended by Dr. Sokolowski at Preferred Open MRI on December 8, 2020. (PX8 p. 9-10). He also underwent the recommended lumbar injection on January 6, 2021. (PX5 p. 172-173). Petitioner returned to Dr. Sokolowski's office following the cervical MRI and lumbar injection on January 12, 2021. (Id. at 93). Dr. Sokolowski advised Petitioner to proceed with a four-week course of work conditioning. (Id.). Work conditioning began at ATI Physical Therapy on January 18, 2021, and continued throughout January and February. (PX7 p. 7-56).

Functional Capacity Evaluation

After completion of work conditioning, Petitioner returned to Dr. Sokolowski's office again on February 24, 2021. (PX5 p. 86). Dr. Sokolowski recommended a lumbar MRI and completion of a functional capacity evaluation ("FCE"). (Id.). The lumbar MRI was completed at Preferred Open MRI on March 2, 2021. (PX8 p. 11-13). The FCE was completed at Vital Rehabilitation on March 11, 2021. (PX9 p. 2-26).

He returned again to Dr. Sokolowski's office on April 13, 2021. (PX5 p. 52). Dr. Sokolowski reviewed the results of the FCE with Petitioner at that visit. (Id.). He released Petitioner back to work with restrictions as outlined in the FCE. (Id.). Petitioner testified that Respondent did not offer him a position within the restrictions of the FCE. (T. p. 22).

Vocational Rehabilitation Assessment and Return to Work

Petitioner testified he met with certified vocational rehabilitation counselor Laura Belmonte on August 9, 2022. (T. p. 24). He testified that this initial meeting was completed by way of Zoom video meeting. (Id.). Following this meeting, Petitioner testified he performed a job search. (Id.). He testified he received maintenance benefits from Respondent while performing this job search, which the parties also stipulated to at arbitration. (T. p. 25 and Arb. Ex.1).

Petitioner testified he secured new employment with Hodgkins Truck Center ("Hodgkins"). (T. p. 25-26). He explained Hodgkins is a diesel truck shop and he was hired to perform front desk duties. (Id. at 26). His first day working for this new employer was January 23, 2023. (Id.). His work duties include opening work orders for mechanics, taking payments, invoices, and parking invoices. (Id.). Petitioner identified his paychecks from Hodgkins and they were admitted into evidence without objection by Respondent. (T. p. 27-29, 78 and PX11).

Beginning with his first day worked of January 23, 2023, through July 29, 2023, which is the last day of the final pay period included in Petitioner's Exhibit 11, Petitioner earned a total of $19,343.25 at Hodgkins. (See PX11). This is a period of 26 6/7 weeks. As of the date of arbitration, Petitioner remained employed with Hodgkins. (T. p. 27).

Current Train Operator Wages at Chicago Transit Authority

The Arbitrator notes that the parties in this claim agree that the occupation Petitioner was engaged in at the time of his accident was a Chicago Transit Authority train operator. (Joint Exhibit Number One). They also agree that the current wages for a train operator are governed by the most recent collective bargaining agreement between the Chicago Transit Authority and Petitioner's former union, the Amalgamated Transit Union 308. (Id.). Their dispute involves how to properly calculate what his wages would have been had he returned to his prior employment at Respondent. (Id.).

The parties stipulated to the proper wage scale in effect at the time of the arbitration hearing. (Joint Exhibit Number One). They also agreed to the proper wage scale for when Petitioner first returned to work at Hodgkins Truck Center in January of 2023. (Id.).

In January of 2023, the 100% pay rate for a train operator was $38.663 per hour. (Joint Exhibit Number One). As of July 1, 2023, that rate increased to $39.533 per hour. (Id.). The dispute between the parties is what level of the pay scale Petitioner's current wages should reflect. (Id.).

Testimony of Ms. Katharine Lunde

Respondent called Ms. Katharine Lunde to testify at arbitration. (T. p. 50). Ms. Lunde testified she is currently employed by Respondent and her job title is Director of Labor Relations, an attorney position. (Id. at 51). She explained Respondent has seventeen unions, and amongst them has twenty-five collective bargaining agreements (CBA). (Id.). She testified that she oversees all of those agreements. (Id.). She testified that the CBA in effect for train operators as of the date of arbitration was the agreement for January 1, 2020, through the end of 2023. (Id. at 52).

Ms. Lunde explained the Petitioner's union (Rail 308) had a Collective Bargaining Agreement (hereafter "CBA") in effect on the date of the accident dated 2016-2019. *T. 52.* After the accident, a new CBA was enacted dated 2020-2023. *T. 52.* The latter would be retroactively effective to the date of accident. *T. 53.* However, both CBAs are identical regarding the wage progression scale. *T. 60.* Union employees are paid according to a wage progression scale. *See Arb. Exhibit 1 and Respondent's Exhibit 3, page 2.*

Ms. Lunde reviewed and identified Respondent's Exhibit Number 3 as excerpts from the Wage and Working Conditions Agreement between Respondent and AG Local 308, which is the train operator's union. (Id. at 54). She reviewed this document and explained that union train operators are paid according to a pay progression scale. (Id. at 55). She explained the pay progressions scale as follows:

First 12 months – 65% of the actual paid rate of the classification.
Next 12 months – 70% of the actual paid rate of the classification.
Next 12 months – 75% of the actual paid rate of the classification.
Next 9 months – 80% of the actual paid rate of the classification.
Thereafter - 100% of the actual paid rate of the classification.

Ms. Lunde testified that if a union employee misses work for any reason for a period of time, that period missed from work is not included in the pay progression scale calculation. (T. p. 56). She explained to progress on this scale, an employee has to be working. (Id.). Ms. Lunde also reviewed and testified regarding Respondent's Exhibit

Number 11. (Id. at 61). She explained this exhibit was a screenshot from Oracle, which is one of the software programs the Respondent uses in its payroll department to track individuals' employment. (Id.).

Additionally, Ms. Lunde testified that the Respondent has a binding past practice that requires union employees to work to progress on the scale. *T. 60.* Ms. Lunde further testified that a labor arbitrator has exclusive jurisdiction over the interpretation of the CBA. *T. 57.*

Ms. Lunde testified that this particular screenshot pertained to Petitioner. (T. p. 61). She explained Petitioner would have completed his first twelve months of this pay progression scale in 2018 and his second in 2019. (Id. at 64). At the time of his April 18, 2020, accident, he would have been in the middle of the third period, which is the 75% progression rate. (Id.). She testified that full-time employees of Respondent "are assumed to work forty hours a week…" (Id. at 65).

The parties also admitted into evidence a joint exhibit, which the arbitrator notes is an agreed summary of the pay progression scale in effect at the time of arbitration and at the time Petitioner began working for his new employer in January of 2023. (See Joint Exhibit One). Joint Exhibit Number One reflects the pay progression scale and also contains additional information regarding wages in effect on relevant dates. (Id.). It reads in relevant part:

> *The Chicago Transit Authority and Amalgamated Transit Union 241 and Amalgamated Transit Union Local 308 reached an agreement amending the collective bargaining agreement, which increased wages beginning on January 1, 2021. The top hourly rate for train operators was increased as follows:*
>
> *(1) Increased by one percent (1.00%) on January 1, 2021 - $36.429 (75% = $27.321)*
>
> *(2) Increased by one percent (1.00%) on July 1, 2021 - $36.793 (75% = $27.594)*
>
> *(3) Increased by one and one-half percent (1.50%) on January 1, 2022 - $37.345 (75% = $28.007)*
>
> *(4) Increased by one and one-half percent (1.50%) on July 1, 2022 - $37.905 (75% = $28.427)*
>
> *(5) Increased by two percent (2.0%) on January 1, 2023 - $38.663 (75% = $28.995)*

(6) Increased by two and one-quarter percent (2.25%) on July 1, 2023 - $39.533 (75% = $29.647)

The parties to this claim are in agreement to these hourly wages, dates, and rates for service time. The parties dispute the level that Petitioner would be paid currently had he not been injured in the course and scope of his employment on April 18, 2020.

The parties are in agreement that Paragraph (5) above was applicable to Petitioner upon his return to work on January 23, 2023. The parties are also in agreement that Paragraph (6) above was applicable to Petitioner as of July 1, 2023. The parties dispute what percentage he would have been earning.

Had Petitioner not been injured and kept working, Ms. Lunde testified he would have reached the 100% pay progression level nine months after July of 2020. (T. p. 66). The Arbitrator notes that nine months after July of 2020 would have been April of 2021.

CONCLUSIONS OF LAW

The Arbitrator adopts the above Findings of Fact in support of the Conclusions of Law set forth below. Section 1(d) of the Act provides that, in order to obtain compensation under the Act, the employee bears the burden of showing, by a preponderance of the evidence, that he or she has sustained accidental injuries arising out of and in the course of the employment. *820 ILCS 305/1(d)*. To obtain compensation under the Act, Petitioner has the burden of proving, by a preponderance of the evidence, all of the elements of his claim *O'Dette v. Industrial Comm'n*, 79 Ill. 2d 249, 253 (1980) including that there is some causal relationship between his employment and his injury. *Caterpillar Tractor Co. v. Industrial Comm'n*, 129 Ill. 2d 52, 63 (1989) It is well established that the Act is a humane law of remedial nature and is to be liberally construed to effect the purpose of the Act - that the burdens of caring for the casualties of industry should be borne by industry and not by the individuals whose misfortunes arise out of the industry, nor by the public. *Shell Oil v. Industrial Comm'n,* 2 Ill.2nd 590, 603 (1954).

Decisions of an arbitrator shall be based exclusively on the evidence in the record of the proceeding and material that has been officially noticed. 820 ILCS 305/1.1(e). The Arbitrator, as the trier of fact in this case, has the responsibility to observe the witnesses testify, judge their credibility, and determine how much weight to afford their testimony and the other evidence presented. *Walker v. Chicago Housing Authority*, 2015 IL App (1st) 133788, ¶ 47. Credibility is the quality of a witness which renders his evidence worthy of belief. The Arbitrator, whose province it is to evaluate witness

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

The Arbitrator finds Petitioner testified credibly regarding his accident and injuries. His credibility was not reduced on cross examination or by any other means. The Arbitrator finds that Petitioner's testimony correlated fully with the contemporaneous medical records. The sole issue in dispute in this claim is the amount of Petitioner's Section 8(d)1 wage differential.

WITH RESPECT TO ISSUE (L), WHAT IS THE NATURE AND EXTENT OF THE INJURY, THE ARBITRATOR FINDS AS FOLLOWS:

The Parties stipulated that Petitioner sustained a loss of earnings as provided in Section 8(d)1 of the Act. The only dispute is how that wage loss should be properly calculated.

To qualify for a wage differential award, a claimant must prove 1) partial incapacity preventing them from pursuing their "usual and customary line of employment" and 2) an impairment of earnings. 820 ILCS 305/8(d)1 (West 2022); *Morton's of Chicago v. Indus. Comm'n*, 366 Ill.App.3d 1056, 1061 (2006).

To calculate a wage differential under Section 8(d)1 of the Act, the Commission must determine "the average amount which the claimant is able to earn in some suitable employment or business after the accident." *Crittenden v. Illinois Workers' Comp. Comm'n*, 2017 IL App (1st) 160002WC, ¶ 23. In calculating this average amount, if the claimant is working at the time of the calculation, the claimant must prove his actual earnings for a substantial period after he returns to work, and the Commission may apply his then current average weekly wage to the calculation. See *Gallianetti v. Indus. Comm'n*, 315 Ill. App. 3d 721, 730 (2000); *Levato v. Illinois Workers' Comp. Comm'n*, 2014 IL App (1st) 130297WC, ¶¶ 29-30; *Crittenden*, 2017 IL App (1st) 160002WC ¶ 23.

In the case at bar, Petitioner documented his actual earnings in his new employment after returning to work at Hodgkins Truck Center. Specifically, Petitioner entered into evidence his paycheck stubs dating back to his first day of work at Hodgkins Truck Center on January 23, 2023, through July 29, 2023. This is a period of 188 days or

26 6/7 weeks. The Arbitrator finds that this amounts to a "substantial period" and can be used to calculate his wage loss. Petitioner earned a total of $19,343.25 during this period. This equates to an average weekly wage of $720.23 in his new suitable employment ($19,343.25 / 26.857142 = $720.23).

The next issue that needs to be addressed to determine the actual weekly wage loss is the "average amount which he would be able to earn *in the full performance of his duties* in the occupation in which he was engaged at the time of the accident…" See 820 ILCS 305/8(d)1 (West 2022). [*Emphasis added*].

The parties agree that the occupation Petitioner was engaged in at the time of his accident was a Chicago Transit Authority train operator. They also agree that the current wages for a train operator are governed by the most recent collective bargaining agreement between the Chicago Transit Authority and Petitioner's former union, the Amalgamated Transit Union 308.

To determine the "average amount which he would be able to earn in the full performance of his duties in the occupation in which he was engaged at the time of the accident," the parties also stipulated to the proper wage scale in effect at the time of the arbitration hearing and when Petitioner first returned to work at Hodgkins Truck Center in January of 2023.

In January of 2023, the 100% pay rate for a train operator was $38.663 per hour. As of July 1, 2023, that rate increased to $39.533 per hour. The dispute between the parties is what level of the pay scale Petitioner's current wages should reflect. The parties stipulated the pay scale to be applied is the following:

First 12 months – 65% of the actual paid rate of the classification.

Next 12 months – 70% of the actual paid rate of the classification.

Next 12 months – 75% of the actual paid rate of the classification.

Next 9 months – 80% of the actual paid rate of the classification.

Thereafter - 100% of the actual paid rate of the classification.

Respondent's position is that Petitioner's pay rate is governed by the level he had obtained as of the date of his accidents, which was 75%. Petitioner's position is that he would have reached the 100% pay level had he not been injured and continued to work.

Mr. Piecuch's position was confirmed by Respondent's witness, Ms. Katherine Lunde, testified Petitioner would have reached the 80% pay level in approximately July

of 2020, and the 100% level nine months after that, which the Arbitrator notes would have been approximately April of 2021.

Respondent's position, however, is that the CBA does not allow for employees to accumulate credit for time worked while off of work for an injury. Respondent's position is Petitioner would have been placed back at the same pay level he was at when he left due to his work accident, which is 75%.

The Arbitrator finds Respondent's position is contrary to the plain reading of the Act and to a litany of Illinois Appellate court cases that have come before this. Reviewing courts have consistently held that the seniority level claimants would have achieved had they not been injured should be applied to determine the current wages they would be earning in the full performance of their duties in the occupation in which they were engaged at the time of the accident. See *Old Ben Coal Co. v. Indus. Comm'n*, 198 Ill.App.3d 485 (1990) (Union contract providing for quarterly wage increases used to determine claimant's current wages had he not been injured). See also *Greaney v. Indus. Comm'n*, 358 Ill. App. 3d 1002 (2005) (Wages for wage differential calculation should be based on wages claimant would have earned at time of hearing and not what he was earning at time of accident); *Morton's of Chicago*, 366 Ill.App.3d 1056 (2006) (Wage differential benefits awarded based on salary increases of similarly situated employees at time of arbitration with similar seniority); *Carter v. Illinois Workers' Comp. Comm'n*, 2023 IL App (1st) 221290WC (Bus driver's wage loss calculated using increased wages set forth in new collective bargaining agreement).

In *Old Ben Coal Company*, the claimant was a union mine worker and testified he was a "roof bolter…classified as a grade 5 employee" at the time of his accident. He introduced pages from the union contract as evidence at arbitration that detailed the daily wage rates and quarterly wage increases for his prior position over the last several years after his accident. *Id.*

The court held that a claimant's wage differential should be calculated on the presumption that but for the injury, the employee would be in the full performance of his duties. Simply stated, the question is how much a claimant would be earning at the time of arbitration had they not sustained their work-related accident.

The Arbitrator does not agree with Respondent's allegation that the Illinois Workers'; Compensation Commission, a judicial body mandated to follow the Illinois Workers 'Compensation Act, must follow a labor arbitration case involving the interpretation of the CBA regarding the wage progression. instructive nor controlling. Respondent cites *ATU, Local 308 and CTA, E. Martin, J. McDowell, and V. Pinkney, Grievants* (Grv. Nos. 0102-13, 0603-04, 1003-01 & 0204-14*),* decided by Arbitrator Aaron Wolff on May 19, 2005.[1] In that case, rail union employees alleged they should be

entitled to wage progression credit for the time they were off work due to workers' compensation injuries. The Arbitrator Wolff found, "…the key word, "works" is an essential ingredient to obtaining wage progression in whatever classification he works in.

The Arbitrator finds that Arbitrator Wolff's labor arbitration case is neither instructive, persuasive or controlling. The issues in the labor arbitration case and the case at bar are not identical. The legal issues, the legislative intent, applicable law and legal principles are totally different. Moreover, the Petitioner was not a party to the labor arbitration case.

The Arbitrator is mindful that the Act is a humane law of a remedial nature, whose fundamental purpose is to protect employees by providing efficient remedies and prompt and equitable compensation for their injuries. The Act is meant to compensate a claimant for economic disabilities that diminish his value in the labor market. Unlike Arbitrator Wolff's labor arbitration decision, in the case at bar, this Arbitrator finds that in a workers' compensation claim, Petitioner's wage differential should be calculated on the presumption that but for the injury, the employee would be in the full performance of his duties.

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The Arbitrator finds that Respondent's reliance on *Deichmiller v. Industrial Com'n of Illinois*, 147 Ill.App.3d 66, 74 (Ill.App. 1 Dist.,1986) is misplaced. The court noted that liability under the Act cannot be premised on speculation or conjecture but must be based solely on the facts. In *Deichmiller* the court noted that there is nothing in the Illinois Act which would have required the Commission to compute claimant's earnings-loss award based on the amount which he might have earned as a union journeyman plumber, a position he never attained.. The claimant was a temporary journeyman plumber at the time of the accident. To be entitled to union journeyman plumber wages and benefits, the temporary journeyman had to pass the union journeyman-plumber examination. The claimant had not taken the examination. Whether he could have passed the examination was not certain and, thus, he was not a union journeyman plumber. In the case at bar, unlike, the claimant in Deichmiller, Petitioner held the same position and job title at the time of the accident and when he returned to work. In the case at bar, in order for the Petitioner the 100% pay rate classification, he did not need to take an examination, he did not to be promoted, he only need to work. But, for his work, injury, Petitioner would have reached the 100% pay rate classification.

In the case at bar, Respondent's witness Ms. Lunde acknowledged that, but for Petitioner's work accident of April 18, 2020, he would have reached the 100% pay scale level approximately nine months after July of 2020, which the Arbitrator again notes would have been April of 2021.

Because Petitioner would have reached the 100% pay level in April of 2021, his base hourly rate would have been $38.663 per hour as of January 1, 2023. His base hourly rate would have been $39.533 per hour as of July 1, 2023. In the full performance

of his duties, Petitioner would have worked forty hours per week as explained by Respondent's witness Ms. Lunde. See *Forest City Erectors v. Indus. Comm'n*, 264 Ill.App.3d 436, 439-440 (1994) (The language of Section 8(d)1 of the Act "clearly evidences the legislature's intent that section 8(d)1 awards are to be based on the number of hours constituting 'full performance' of a particular occupation.").

Petitioner also received $0.50 per hour as a shift premium for working third shift for Respondent. Therefore, his full hourly rate would have been $39.163 per hour as of January 1, 2023. His fully hourly rate would have been $40.033 per hour as of July 1, 2023.

From January 1, 2023, through June 30, 2023, his weekly forty-hour wages had he not been injured would have been $1,566.52 ($39.163 * 40).

From July 1, 2023, through the date of arbitration, his forty-hour wages had he not been injured would have been $1,601.32 ($40.033 * 40).

Petitioner returned to work on January 23, 2023. From that date through July 1, 2023, he earned a total of $16,596.00 while working at Hodgkins Truck Center. This is a period of 22 6/7 weeks. Had he not been injured, he would have earned $36,601.60 while working for Respondent as a train operator ($1,566.52 * 22.857142). As a result of his work accident and resulting injuries, he sustained a wage loss for this period of $20,005.60. Respondent shall pay Petitioner wage differential benefits of $13,337.07 ($20,005.60 * 2/3) for this period pursuant to Section 8(d)(1) of the Act.

For the period of July 2, 2023, through July 29, 2023, he earned a total of $2,747.25 while working at Hodgkins Truck Center. This is a period of 4 weeks. Had he not been injured, he would have earned $6,405.28 while working for Respondent as a train operator ($1,601.32 * 4). As a result of his work accident and resulting injuries, he sustained a wage loss for this period of $3,658.03. Respondent shall pay Petitioner wage differential benefits of $2,438.69 ($3,658.03 * 2/3) for this period pursuant to Section 8(d)(1) of the Act.

Wherefore, Respondent shall pay Petitioner permanent partial disability benefits, commencing January 23, 2023, through July 29, 2023, as outlined above, because the injuries sustained caused a loss of earnings as provided in Section 8(d)(1) of the Act.

The Arbitrator again notes Petitioner earned $19,343.25 while working for Hodgkins Truck Center from January 23, 2023, through July 29, 2023 This equates to an average weekly wage of $720.23 ($19,343.25 / 26.857142 = $720.23).

Wherefore, Respondent shall pay permanent partial disability benefits to Petitioner as of July 30, 2023, in the amount of $587.39/week (($1,601.32 - $720.23 = $881.09) * 2/3 = $587.39)) until Petitioner reaches age 67 or five years from the date of

the final award, whichever is later, because the injuries sustained caused a loss of earnings as provided in Section 8(d)1 of the Act.

Respondent shall be given a credit of $7,938.12 for wage differential benefits previously paid.

WITH RESPECT TO ISSUE (M), WHETHER PETITIONER IS ENTITLED TO PENALTIES, THE ARBITRATOR FINDS AS FOLLOWS:

It is undisputed that Petitioner was unable return to his position as a rail operator. The Respondent was unable to accommodate his restrictions. The Petitioner was off work from April 19, 2020 through February 10, 2022 and February 28, 2022 to present. The Petitioner alleged the Respondent underpaid wage differential benefits. The Petitioner asserts wages at 100% of the Respondent's wage progression scale. Respondent disputes Petitioner's claim based on its interpretation of the CBA.

The Petitioner alleges he should have wage differential benefits at the 100% level of the wage progression scale. Petitioner agrees he was at the 75% level when the accident occurred. Petitioner alleges he should be given credit towards the progression for the time he was off work. Respondent relied upon the CBA in determining the appropriate wage scale. The CBA provides that a union employee must *work* to obtain progression on the scale. [*Emphasis added.*] This was confirmed by the testified by Ms. Lunde. Additionally, Ms. Lunde testified that Respondent has a binding past practice that requires union employees to *work* to progress on the scale.

For the reasons noted in Section L above, the Arbitrator is not persuaded by Respondent's claim but does find that it was made in good faith. Additionally, Respondent did believe that it was meeting its obligations under the Act. Accordingly, the Arbitrator finds that Petitioner has failed to prove by a preponderance of the evidence his entitlement to penalties and attorney fees under the Act.

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ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	22WC012853
Case Name	Daniel Pittman v. Waterloo Police Department
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b) Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	24IWCC0406
Number of Pages of Decision	21
Decision Issued By	Raychel Wesley, Commissioner

Petitioner Attorney	Jon Rosenstengel
Respondent Attorney	Matthew Kelly

DATE FILED: 8/23/2024

/s/ Raychel Wesley, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF)
WILLIAMSON

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

DANIEL PITTMAN,

Petitioner,

vs. NO: 22 WC 12853

WATERLOO POLICE DEPARTMENT,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of whether Petitioner sustained an accidental injury arising out of and occurring in the course of his employment, whether Petitioner's current condition is causally related to the work injury, entitlement to Temporary Total Disability benefits, and entitlement to incurred medical expenses as well as prospective medical care, and being advised of the facts and law, amends the Decision of the Arbitrator as set forth below, but otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof. The Commission remands this case to the Arbitrator for further proceedings for a determination of a further amount of temporary total compensation or of compensation for permanent disability, if any, pursuant to *Thomas v. Industrial Commission*, 78 Ill. 2d 327 (1980).

The Commission observes Petitioner's personal identity information was unredacted from Petitioner's Exhibit 6. The Commission cautions Counsel to adhere to Supreme Court Rule 138. *Ill. S. Ct. R. 138* (eff. Jan. 1, 2018).

All else is affirmed.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed August 2, 2023, as amended above, is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $1,042.67 per week for a period of 11 2/7 weeks, representing May 10, 2022 through June 30, 2022 and September 27, 2022 through October 23, 2022, that being the period of temporary total incapacity for work under §8(b), and that as provided in §19(b), this award in no instance shall be a bar to a further hearing and determination of a further amount of temporary total compensation or of compensation for permanent disability, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay the medical expenses detailed in Petitioner's Exhibit 7, as provided in §8(a), subject to §8.2 of the Act. Respondent shall be given a credit for medical benefits that have been paid, and Respondent shall hold Petitioner harmless from any claims by any providers of the services for which Respondent is receiving this credit, as provided in §8(j) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall provide and pay for lumbar spine and cauda equina syndrome treatment as recommended by Dr. Brett Taylor, as provided in §8(a) of the Act.

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

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

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

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

August 23, 2024

/s/ *Raychel A. Wesley*

RAW/mck

O: 7/24/24

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/s/ *Stephen J. Mathis*

/s/ *Deborah L. Simpson*

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	22WC012853
Case Name	Daniel Pittman v. Waterloo Police Department
Consolidated Cases	
Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	18
Decision Issued By	Linda Cantrell, Arbitrator

Petitioner Attorney	Jon Rosenstengel
Respondent Attorney	Matthew Kelly

DATE FILED: 8/2/2023

THE INTEREST RATE FOR THE WEEK OF AUGUST 1, 2023 5.27%

/s/Linda Cantrell, Arbitrator

Signature

STATE OF ILLINOIS)
)SS.
COUNTY OF WILLIAMSON)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

Daniel Pittman
Employee/Petitioner

v.

Waterloo Police Department
Employer/Respondent

Case # **22** WC **012853**

Consolidated cases: _____

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Linda J. Cantrell**, Arbitrator of the Commission, in the city of **Herrin**, on **6/12/23**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On the date of accident, **5/3/22**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $**81,328.52**; the average weekly wage was $**1,564.01**.

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

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

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

Respondent is entitled to a credit of $**TBD and any and all paid,** under Section 8(j) of the Act, pursuant to the stipulation of the parties.

ORDER

Respondent shall pay the medical expenses outlined in Petitioner's Group Exhibit 7, pursuant to the Illinois medical fee schedule, as provided in Sections 8(a) and 8.2 of the Act. Pursuant to the stipulation of the parties, Respondent shall receive a credit for any and all medical bills paid through its group medical plan, under Section 8(j) of the Act. Respondent shall hold Petitioner harmless for any claims by any providers of the services for which Respondent is receiving this credit.

Respondent shall provide and pay for prospective medical treatment recommended by Dr. Taylor related to his lumbar spine and caudal equina syndrome until Petitioner reaches maximum medical improvement.

Respondent shall pay Petitioner temporary total disability benefits of $**1,042.67**/week for **11-2/7th** weeks, commencing **5/10/22** through **6/30/22** and **9/27/22** through **10/23/22**, representing **11-2/7th** weeks, pursuant to Section 8(b) of the Act.

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

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

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

AUGUST 2, 2023

Arbitrator Linda J. Cantrell

ICArbDec19(b)

STATE OF ILLINOIS)
) SS
COUNTY OF WILLIAMSON)

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

DANIEL PITTMAN,	)	
	)	
Employee/Petitioner,	)	
	)	
v.	)	Case. No. 22-WC-012853
	)	
WATERLOO POLICE DEPARTMENT,	)	
	)	
Employer/Respondent.	)	

FINDINGS OF FACT

This claim came before Arbitrator Linda J. Cantrell for trial in Herrin on June 12, 2023 pursuant to Section 19(b) of the Act. The issues in dispute are accident, causal connection, medical expenses, temporary total disability benefits, and prospective medical care. The parties stipulated that Respondent shall receive a credit for any and all medical expenses paid through its group medical plan, under Section 8(j) of the Act.

TESTIMONY

Petitioner was 32 years old, single, with no dependent children at the time of accident. Petitioner was employed by Respondent as a police officer for approximately six years. Petitioner was active duty in the Army for four years and the Reserves for eight years. He was still active in the Reserves at the time of his alleged work accident on 5/3/22. In 2014, Petitioner sustained an avulsion fracture of his left femur while in the military. He had treatment for his left hip injury over the years and underwent surgery in 2021 by Dr. Pitts. Petitioner testified that he completely recovered from that injury and had no issues with athletic performance or performing his job duties since being released. Petitioner was able to return to his job with the National Guard and perform marches and physical activities.

Petitioner testified that while working as a patrol officer he wore a gun belt that held all of his equipment, including a firearm, handcuffs, taser, radio, OC spray, and gloves at a minimum. He wore his gun and holster on his right side. In May 2022, Petitioner drove an SUV Ford Explorer. He testified that his duty belt absolutely affected the way he entered his vehicle. He sat in the driver's seat, grabbed the steering wheel, twisted his upper body, and pulled his legs inside the vehicle all in a twisting motion. He testified that it was uncomfortable because his pistol got in the way of the seatbelt and dug into the seat.

Petitioner testified that on 5/3/22 he felt a sharp stabbing pain while twisting awkwardly to get into his squad car. The pain was right above where his duty belt sat on his lower back and occurred as he was twisting his lower body. He was initially able to alleviate the sharp pain, but it became progressively worse. His pain initially radiated into his left hip, and then progressed. Petitioner felt that his sudden onset of pain was caused by the way he was getting into his vehicle. Petitioner notified his supervisor Sergeant Zaber of his symptoms around noon the same day. Petitioner completed an accident report on 5/12/23 wherein he reported "no acute injury". Petitioner testified he used that language because he was not shot or involved in a car wreck.

Petitioner testified he was scheduled off work the next two days. He had pain, tingling, and numbness that progressed to an inability to command his leg and footdrop. He could not walk without crutches and had numbness in his groin that caused bladder issues. His symptoms were from his lower back down his left leg. Petitioner saw his prior surgeon Dr. Pitts as he was the first physician that would see him. Petitioner stated that at the time he did not know if he had a back or hip issue. Dr. Pitts was concerned with eliminating Petitioner's hip as the source of his pain. Petitioner told him he was able to perform ruck marches, or movements over land under weight, after his hip surgery. Petitioner testified he had not done a ruck march the week before 5/3/22. Dr. Pitts performed a physical examination and felt Petitioner's back was the issue. A lumbar spine MRI was ordered. Petitioner testified that he did not inform Dr. Pitts he performed a ruck mark in the weekend prior to 5/3/22. When he saw Dr. Pitts he was beginning to have groin area symptoms and incontinence.

Petitioner treated with Dr. Brett Taylor and had emergency surgery the same day for a disc herniation and cauda equina syndrome. Petitioner continues to treat with Dr. Taylor and has numbness in his left leg and groin symptoms. His symptoms have improved but he is still treating with a urologist. Respondent has not paid TTD or medical benefits. Petitioner testified that prior to 5/3/22 he was not involved in any incidents that caused back pain and he was not having any sharp stabbing back pain or left hip radiculopathy before his work accident. Dr. Taylor has him on permanent light duty restrictions which Respondent has not accommodated. Petitioner last worked on 11/22/22.

On cross-examination, Petitioner testified he joined the National Guard in February 2015 after leaving active duty. He trained with the National Guard after he was released for his left hip condition. He engaged in his regular training activities as of January 2022. He testified that inactive training duty is drill assembly which can involve home station, staying at the armory, weapons maintenance, and field exercises. He agreed that those activities involve lifting, carrying, and the use of his back. Petitioner testified that EIB (Expert Infantryman's Badge) weapon training is a series of tests including a PT test, ruck march, qualifications with weapons systems, demonstrating competence on communications equipment, medical procedures, etc. Petitioner testified that he engaged in EIB patrolling tasks in March 2022 as a trainer, not a trainee, which was more observation and critiquing team leaders. He believes he engaged in an 8-mile ruck march with a 35-pound pack in February 2022. He agreed he performed a 9-mile ruck march with a 35-pound sack in March 2022. He performed training assembly on 4/5/22 and 4/6/22 that included light duty administrative tasks around the armory.

Petitioner testified that the first medical visit he had following his work accident was with Dr. Pitts on 5/10/22. He told Dr. Pitts about his work accident, but they did not talk about specifics, and he did not know if his symptoms were due to his hip or back at the time. Petitioner agreed with the history contained in Dr. Pitts' records. He testified that he spoke to Dr. Pitts about his ruck marches in general and how he had been performing them since his hip surgery. Petitioner testified that the accident report he completed mentioned he injured himself in the parking lot, which he intended to communicate the incident of getting in or out of his patrol car. He reported that the incident occurred in his squad car. Petitioner testified that he discussed his accident in detail when he first saw Dr. Taylor. Petitioner believed he told Sergeant Zaber on 5/3/22 that he had a sudden onset of pain getting into his patrol car. Petitioner testified he is currently employed as a contractor at Scott Air Force Base. He performs IT work approximately 40 hours per week and is paid a salary of $55,000.00.

Eric Zaber testified on behalf of Petitioner. Sergeant Zaber is employed by Respondent and was a patrol sergeant in May 2022. Sergeant Zaber was Petitioner's direct supervisor and was friends with Petitioner. He testified that on 5/3/22 he met Petitioner for lunch and Petitioner told him he had lower back and hip pain since that morning that was progressively getting worse. Sergeant Zaber testified that Petitioner told him he was getting in and out of his squad car, that it was very uncomfortable in the car throughout the morning, and his pain progressed. Sergeant Zaber and Petitioner were scheduled off work the next couple of days and when they returned to work on 5/6/22 Petitioner came to his office and told him he needed to take a sick day for the remainder of his shift due to increasing symptoms. Sergeant Zaber suggested that Petitioner return to Dr. Pitts as he was aware Petitioner had hip surgery and he described the area of his pain. Sergeant Zaber testified that he was familiar with Dr. Pitts because he underwent shoulder surgery by Dr. Pitts several years ago.

Sergeant Zaber testified that he has gotten in and out of squad cars for 29 years. In May 2022, most of the officers drove SUVs. He testified there is nothing comfortable about wearing a duty belt and it places a significant amount of weight on your hips and back. He stated that is the reason police departments, including Respondent, are going to load bearing vests to shift the weight to the torso and shoulders. He testified that the duty belt absolutely made it awkward to get in and out of vehicles. Sergeant Zaber testified that he would step into the patrol car with his right leg, twist his hips, and swing his left leg in. He stated there is a period of adjustment getting in with the gun belt. He testified that he had to switch from a low ride holster to a high ride holster because it interfered with the safety belt connecter.

On cross-examination, Sergeant Zaber testified that Petitioner did not inform him of a specific accident when they spoke on 5/3/22. He agreed he has a pending workers' compensation claim against Respondent that is being denied.

MEDICAL HISTORY

Medical records that pre-date Petitioner's work accident were admitted into evidence. (PX6) Petitioner treated with Dr. Ryan Pitts of Orthopedic Associates from 3/16/21 through 10/1/21 for a left hip condition that began seven years prior while he was in the military. On 6/16/21, Petitioner complained of moderate-to-severe left hip pain and groin pain that did not

radiate. On 7/12/21, Dr. Pitts performed a left hip arthroscopic labral repair, acetabuloplasty, and femoral osteochondroplasty. On 10/1/21, Dr. Pitts noted Petitioner was doing well and allowed him to progress to activities as tolerated. He released Petitioner to follow up as needed. None of Dr. Pitts' medical records from March through June 2021 note Petitioner had any low back issues, complaints, or treatment, or lower extremity radiculopathy.

On 5/10/22, Petitioner presented to Dr. Pitts. (PX6, RX1) Dr. Pitts noted Petitioner was nine months status post left hip arthroscopic labral repair and was able to return to all desired activities. Petitioner presented with an acute onset of left buttock and leg pain with radiculopathy down his left leg. Petitioner reported the symptoms were acute, non-traumatic and began on 5/1/22. Dr. Pitts noted that Petitioner's symptoms began as the result of "unknown, although he had a ruck sack march for his National Guard commitments". Petitioner described his symptoms as incapacitating, aching, and sharp. Dr. Pitts noted that in addition to lumbar spine, Petitioner experienced numbness/tingling in his lower left leg. Petitioner had tried rest, ice/heat, over-the-counter medications, activity cessation, and crutches. Physical examination of Petitioner's left hip revealed no pain with range of motion or rotational movement, negative impingement test, and markedly positive straight leg raise on the left in supine and sitting positions. Dr. Pitts diagnosed unspecified low back pain, radiculopathy, and left hip pain, and ordered a lumbar spine MRI. Dr. Pitts prescribed Medrol dose pak and placed Petitioner on sedentary work restrictions.

On 5/11/22, a lumbar spine MRI was performed that revealed a central annular disc bulge, protrusion, and tear at L5-S1, with a possible caudally herniated/extruded disc fragment. (PX6)

On 5/12/22, Petitioner completed an Employee's Accident Report and reported that on the morning of 5/3/22 he had symptoms that came on progressively and became worse sitting in his squad car. (RX1) He reported "no acute incident", and the "patrol belt was the primary aggravating factor". Petitioner stated he mentioned his symptoms to Sergeant Zaber at lunch on 5/3/22 and in his office on 5/6/22. By 5/7/22, his symptoms became too painful to work. Petitioner reported back and left hip pain, numbness through his left leg with occasional burning and tingling, muscle spasms in his left leg and foot, loss of range of motion, inability to sit/stand for long periods of time, and non-weight bearing without extreme pain. He reported no history of back injuries.

On 5/24/22, Petitioner presented to Dr. Brett Taylor and reported that on 5/3/22 he was getting into his vehicle and had an onset of back and leg pain with a twisting motion. (PX1) When he returned to work on 5/6/22 his off-duty belt caused increased pain and he was unable to sit with the belt. His symptoms progressed to numbness and burning down his left leg and spasms in his foot. Petitioner stated that by 5/10/22 he had groin and private area numbness. He denied incontinence but had difficulty with urination. Petitioner reported that prior to his injury he was in good health and walked and hiked without difficulty. Petitioner reported 25% back pain, 75% left leg pain, and no symptoms in his right leg. Petitioner was using a crutch to ambulate. Dr. Taylor performed a physical examination and assessed signs and symptoms consistent with two weeks of cauda equina syndrome, back and leg pain with neurologic findings, perineal numbness with altered urinary flow, and radiographic evidence of a massive

compression intracanal process identified by MRI. Dr. Taylor opined that cauda equina syndrome is relatively uncommon and is most commonly caused by a herniated disc. Symptoms include low back pain, sciatica, lower extremity sensorimotor loss, and bowel or bladder dysfunction. Dr. Taylor opined that immediate diagnoses and surgery was important to prevent long-term damage. He ordered Petitioner to go to the emergency room for an urgent MRI and lumbar decompression if warranted. Dr. Taylor performed an L5 laminectomy and discectomy that day.

On 6/6/22, Dr. Taylor's office called Petitioner and Petitioner reported improved range of motion and improved lower extremity radicular symptoms. He continued to have difficulty starting urination and persistent genital numbness. Petitioner was referred to a urologist and neurologist to evaluate for permanent post cauda equina sequelae. He was continued off work until follow up.

On 6/14/22, Petitioner presented to Dr. Taylor's office and reported minimal back pain and improved radicular symptoms, with numbness in his left buttock, groin, and saddle area with muscle tightness in his leg. Petitioner had persistent loss of motor function in his left leg and difficulty walking up to one half mile. He had persistent urinary urgency with no incontinence, perineal numbness, and improved but difficult bowel movements. Dr. Taylor noted the requested urology consult and bilateral lower extremity nerve conduction studies had not been approved by workers' comp. Petitioner had an antalgic gait. Dr. Taylor assessed caudal equina syndrome (CES) status post L5 laminectomy and sexual dysfunction and urinary urgency secondary to CES. Dr. Taylor opined that based on a reasonable degree of medical certainty, Petitioner's lumbar pathology (CES) is causally connected to his May 2022 work accident. He opined that given the length of Petitioner's symptoms prior to surgery, it is unlikely he will have a complete resolution of symptoms. He continued to recommend urology and neurology consults to determine long-term prognosis. He referred Petitioner to physical therapy and prescribed a lumbar corset. Dr. Taylor opined that Petitioner currently remained temporarily totally disabled.

On 7/12/22, Petitioner had a virtual follow up with Dr. Taylor's office. The urology and neurology consultations had not been approved. Dr. Taylor continued his physical therapy and allowed Petitioner to return to work with a 20-pound lifting limit to allow Petitioner to work a desk job as a police officer per his request. On 8/4/22, Dr. Taylor noted Petitioner previously contacted him regarding nausea and sweating that resolved in a few days. He associated his symptoms with an anxiety attack. Dr. Taylor ordered Petitioner to resume physical therapy and perform activities as tolerated. His work restrictions were continued.

On 9/1/22, Dr. Taylor noted Petitioner was seeking urology and neurology consults through his private health insurance. He was examined by urologist Dr. Mastromichaelis who recommended pelvic floor physical therapy and Cialis and stool softeners daily. He was scheduled to follow up with Dr. Mastromichaelis in three months. Dr. Taylor ordered Petitioner to continue physical therapy and ordered an FCE to determine permanent restrictions. His light duty restrictions were continued.

On 9/27/22, Dr. Taylor noted Petitioner had ongoing numbness in the medial aspect of his left thigh, general numbness, and urge urinary incontinence. Petitioner reported marginal

benefit from pelvic floor therapy. Petitioner was performing physical therapy and was able to do squats without difficulty. He had minimal back pain. Dr. Taylor continued to recommend a neurologic evaluation and FCE prior to releasing Petitioner at MMI. He ordered continued physical therapy and light duty restrictions.

On 10/25/22, Dr. Taylor noted Petitioner returned to light duty work yesterday without issues. The neurology consult and FCE had not been performed or approved by workers' comp. On 11/22/22, Dr. Taylor noted Petitioner's symptoms of urinary urgency persisted but were well controlled as he continued pelvic floor exercises. He continued to work light duty for Respondent. Dr. Taylor recommended that Petitioner not return to full duty work in the police force or in combat duty due to his permanent CES. He continued to recommend neurologic evaluation prior to placing Petitioner at MMI.

On 1/3/23, Dr. Taylor noted Petitioner started a new job in IT at Scott Air Force Base, working half remote and half onsite. His job duties were within his light restrictions. Petitioner had low-level back achiness. Petitioner last saw Dr. Taylor on 4/19/23 via telehealth. Petitioner had mild low back pain that increased with prolonged sitting/standing. He continued to perform home exercises that provided relief. He had persistent numbness in his left thigh. A neurologic consult had not been approved. Petitioner continued to work in IT in a hybrid remote setting. His work restrictions were continued.

Petitioner's records from the Department of the Army were admitted into evidence. (PX8, RX3) The records show that in February 2022 Petitioner performed an 8-mile ruck march with a 35-pound pack. In March 2022 Petitioner performed a 9-mile ruck march with a 35-pound pack. From 4/29/22 through 5/1/22 Petitioner performed range operations, coached his soldiers, and administrative tasks. Petitioner was not assigned to the firing order and participated as a coach and mentor to his soldiers. Captain Mitchell Langan confirmed that Petitioner did not perform a ruck march during April training.

Dr. Brett Taylor testified by way of deposition on 10/6/22. (PX2) Dr. Taylor is an orthopedic spine surgeon. He testified there is an overlap in symptoms with hip and spine conditions. His physical examination was consistent with left-sided radiculopathy and Petitioner presented with a marked altered gait and used a crutch. He opined the MRI was of poor quality but revealed a massive intracanal process at L5-S1. Dr. Taylor testified that caudal equina syndrome (CES) is one of the very few emergent spinal maladies he deals with as a spine surgeon, which occurs in about 1% of lumbar disc injuries. He stated they are incredibly time sensitive as they have significant morbidity if not treated immediately. Dr. Taylor explained that CES is acute in nature in that when there is pressure it restricts blood flow and causes swelling. He testified that the affected nerves can permanently cease to work and minutes and hours of compression can result in permanent neural dysfunction.

Dr. Taylor testified that he scheduled Petitioner for emergency surgery within 4 to 5 hours of his initial consult. Intraoperatively, Dr. Taylor noted a massive, herniated disc fragment that was removed. He performed a laminectomy due to his damaged nerves. He opined that CES can progress over several days which occurred in Petitioner's case. He opined that Petitioner remained temporarily totally disabled from his duties as a police officer and would never return

to full duty as an officer. He testified that Petitioner had a dramatic improvement in low back symptoms following surgery but continues to have numbness, urge, incontinence, decreased sensation in the S-1 distribution, weakness in his left EHL, and S-1 innervated musculature. He is engaged in physical therapy.

Dr. Taylor testified that Petitioner's insidious onset of CES caused urologic symptoms initiating flow, motor weakness, and saddle anesthesia and some of the sequelae will be permanent. He opined it could take years for Petitioner's symptoms to plateau. Dr. Taylor opined that Petitioner will require ongoing care from a urologist and neurologist for CES. He testified it would be November 2022 at the earliest before Petitioner reached MMI for his low back condition.

On cross-examination, Dr. Taylor testified that he based his causation opinion on the history provided by Petitioner, physical examination, imaging studies, and intraoperative findings, which were all consistent with an acute process. He agreed that if a history of injury is drastically different it may affect his opinion as to causation. He testified that some elements of Petitioner's accident report were consistent with what Petitioner reported to him. He agreed it is possible that a march carrying a heavy rucksack could cause a herniated disc and CES. Dr. Taylor testified that the CES diagnosis is the only diagnosis that continues to affect Petitioner. He testified he is not waiting on a further diagnosis from neurology or urology to release Petitioner at MMI with regard to his back. He testified that Petitioner should be assessed for recurrent herniation and instability prior to being released at MMI.

Dr. Taylor testified that in his professional opinion, there is absolutely no way Petitioner could return to heavy physical labor because of his diagnosis of CES and he does not have normal strength. He testified that in his 20-plus years as a surgeon he does not know of any person who had CES to the degree Petitioner did that returned to normal function.

Dr. Peter Mirkin testified by way of deposition on 2/6/23. (RX4) Dr. Mirkin is an orthopedic spine surgeon who performed a records review on 7/19/22. He testified that he did not meet or physically examine Petitioner. Dr. Mirkin reviewed Petitioner's accident report, records from Dr. Pitts and Dr. Taylor, and the MRI dated 5/24/22. He agreed that Petitioner had a very large, herniated disc at L5-S1 with compression of the cauda equina. Dr. Mirkin testified that Dr. Pitts recorded a history of injury on 5/1/22 when Petitioner had a rucksack march with the National Guard. Dr. Mirkin testified that Petitioner later changed his story to his symptoms coming on over a period of time while he was sitting in his car. Another history Petitioner provided was he was getting out his car, twisting, or something of that nature. Dr. Mirkin opined that Petitioner's condition was not causally related to a work injury based on Dr. Pitts' record dated 5/10/22 that his symptoms began on 5/1/22.

Dr. Mirkin testified he is familiar with CES and sees approximately one case per year. He testified that a patient has to have a massive, herniated disc to cause CES and it is extremely unlikely that sitting in a squad car without any kind of intraabdominal pressure would cause a massive, herniated disc. He agreed that Petitioner had a very large disc fragment at L5-S1 that could cause CES. Dr. Mirkin testified he was not providing opinions as to the reasonableness or necessity of the treatment provided to Petitioner, his ability to work, or his future prognosis.

Dr. Mirkin agreed that hip pain can mimic back pain. He stated it was possible, but unlikely, that someone who had hip surgery might mistake back pain for recurrent hip pain. He testified it is slightly possible that twisting awkwardly getting into or out of a car because of a duty belt could cause a back injury. He testified that in order to herniate a disc you have to tear the disc which generally takes an increase in abdominal pressure. He stated that if a person had a previous tear, he supposes that positioning oneself could make it worse. He agreed that a herniated disc could result in a gradual onset of symptoms. Dr. Mirkin did not review any documents that showed Petitioner did not perform a rucksack march on 5/1/22. Dr. Mirkin testified it would be virtually impossible not to have symptoms with a disc fragment of the size shown on Petitioner's MRI.

CONCLUSIONS OF LAW

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

"To obtain compensation under the Act, a claimant bears the burden of showing, by a preponderance of the evidence, that he has suffered a disabling injury which arose out of and in the course of his employment." *Sisbro, Inc. v. Industrial Comm'n,* 797 N.E.2d 665, 671 (2003). "In the course of employment" refers to the time, place, and circumstances surrounding the injury. *Id.* That is to say, for an injury to be compensable, it generally must occur within the time and space boundaries of the employment.

An injury "arises out of" one's employment if its origin is in a risk connected with or incidental to the employment. *Id.* A risk is incidental to the employment "…when it belongs to or is connected with what the employee has to do in fulfilling his or her job duties. In order to meet this burden, a claimant must prove that the risk of injury is peculiar to the work *or* that he or she is exposed to the risk of injury to a greater degree than the general public. *McAllister v. Ill. Workers' Comp. Comm'n*, 2020 IL 124848. Illinois courts recognize the following three categories of risks: "1) risks distinctly associated with the employment; 2) risks personal to the employee; and 3) neutral risks which have no particular employment or personal characteristics." *Id.* A risk is distinctly associated with the employment if the employee was "performing (1) acts he or she was instructed to perform by the employer, (2) acts that he or she had a common law or statutory duty to perform, or (3) acts that the employee might reasonably be expected to perform incident to his or her assigned duties." *Id.*

Where "the injury results from a hazard to which the employee would have been equally exposed apart from the employment, or a risk personal to the employee, it is not compensable." *Caterpillar Tractor Co. v. Industrial Comm'n*, 129 Ill. 2d 52, 59, 541 N.E.2d 665, 667 (1989). However, an injury does arise out of the claimant's employment if he or she "is exposed to a risk common to the general public to a greater degree than other persons." (Emphasis added.) *Id.* "Such an increased risk may be either qualitative, such as some aspect of the employment which contributes to the risk, or quantitative, such as when the employee is exposed to a common risk more frequently than the general public." *Metropolitan*, 407 Ill. App. 3d at 1014, 944 N.E.2d at 804.

Petitioner testified that while working as a patrol officer for approximately six years he wore a gun belt that held all of his equipment, including a firearm, handcuffs, taser, radio, OC spray, and gloves at a minimum. He testified that his duty belt absolutely affected the way he entered his squad car in that he sat in the driver's seat, grabbed the steering wheel, twisted his upper body, and pulled his legs inside the vehicle. He testified it was uncomfortable because his pistol which was held in a holster on his right side got in the way of the seatbelt and dug into the seat. Petitioner's supervisor, Sergeant Zaber, agreed there was nothing comfortable about wearing a duty belt and the belt placed a significant amount of weight on your hips and back. He testified that is the reason police departments, including Respondent, are going to load bearing vests to shift the weight to the torso and shoulders. He testified that the duty belt absolutely made it awkward to get in and out of vehicles. Sergeant Zaber also demonstrated that he got in and out of his squad car by stepping in with his right leg, twisting his hips, and swinging his left leg into the car. He stated there is a period of adjustment getting in with the gun belt as it interfered with the safety belt connecter.

The evidence is overwhelming that Petitioner's work activity of getting in and out of his squad car while in full uniform is substantially different than the activity of getting in and out of a family car while in regular street clothes. The Arbitrator finds that it is reasonable to conclude that getting in and out of a squad car numerous times a day wearing a heavy duty belt substantially increases the risk of injury.

Illinois courts have repeatedly found such increased exposure to be compensable under the Act. In *Carter v. City of Aurora*, petitioner, a police officer, testified that she wore a 30-pound gun belt with her gun, holster, ammunition, night stick, handcuffs, several leather pockets for small items, and a large communication radio attached. As she exited her squad car she put her left leg on the ground and pushed up to lift herself. She felt a pop in her left leg with an immediate onset of pain. The Arbitrator noted a recent Commission decision in *Preston v. Palatine Police Dept.*, 08-IWCC-1067 where, "the Commission concluded that the job requirement of getting into and out of a car multiple times a day with a belt 9 to 10 pounds with large bulky objects attached, forcing Petitioner to twist on every ingress and egress, did indeed place Petitioner in greater risk of injury than the public in general." In *Carter*, the Appellate Court affirmed the Commission's Decision that petitioner's accident arose out of and in the course of her employment. *Carter v. City of Aurora,* Ill. App. 2d, 2-10-1232WC, Rule 23 affirmed.

In the present case, Petitioner testified that on 5/3/22 he felt a sharp stabbing pain while twisting awkwardly to get into his squad car. The pain was right above where his duty belt sat on his lower back. He stated his symptoms progressed and he informed Sergeant Zaber around noon that day that he was in pain. Sergeant Zaber agreed that while they were eating lunch Petitioner told him he had lower back and hip pain since that morning, that it was very uncomfortable in his squad car throughout the morning, and his symptoms were progressively getting worse. Sergeant Zaber testified that Petitioner did not inform him of a specific accident when they spoke on 5/3/22. Following two scheduled days off work, Petitioner returned to work and told Sergeant Zaber he needed to take the rest of the day off due to his symptoms. Sergeant Zaber suggested that Petitioner return to Dr. Pitts as he was aware Petitioner had hip surgery and he described the area of his pain.

Petitioner testified that initially he did not know if his symptoms were related to his left hip or his back. When he presented to his prior surgeon Dr. Pitts on 5/10/22, Petitioner described an acute onset of pain, non-traumatic, on 5/1/22. Petitioner testified that Dr. Pitts was concerned with eliminating the left hip as the source of his pain as he underwent an arthroscopic labral repair, acetabuloplasty, and femoral osteochondroplasty on 7/12/21. Petitioner testified he did not discuss specific details of his work incident with Dr. Pitts but discussed his activities since being released from hip surgery, including his ability to return to rucksack training with the National Guard. Petitioner denied having performed a ruck march the week prior to his work injury. Dr. Pitts suspected Petitioner's symptoms were due to a lumbar spine condition and ordered an MRI.

On 5/12/22, Petitioner completed an Employee's Accident Report and reported that on the morning of 5/3/22 he had symptoms that came on progressively and became worse sitting in his squad car. (RX1) He reported "no acute incident", and the "patrol belt was the primary aggravating factor". Petitioner stated he mentioned his symptoms to Sergeant Zaber at lunch on 5/3/22 and in his office on 5/6/22. By 5/7/22, his symptoms became too painful to work. Petitioner testified that he wrote "no acute incident" because he was not shot or involved in a car wreck.

The Arbitrator does not find that Petitioner's history of a date of accident of 5/1/22 as he reported to Dr. Pitts dispositive, particularly since he presented for treatment one week after the accident. Petitioner denied any incident involving his lower back other than the twisting motion he made to enter his squad car on 5/3/22 as reported. The records provided by Department of the Army reflect that in February and March 2022 Petitioner performed an 8 and 9-mile ruck march with a 35-pound pack. From 4/29/22 through 5/1/22 Petitioner performed range operations, coached his soldiers, and performed administrative tasks. Petitioner was not assigned to the firing order and participated as a coach and mentor to his soldiers. Captain Mitchell Langan confirmed that Petitioner did not perform a ruck march during April training, as Petitioner credibly testified.

Based on the evidence as a whole, the Arbitrator finds that Petitioner sustained accidental injuries that arose out of and in the course of his employment with Respondent.

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

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

There was no evidence Petitioner had any symptoms or received treatment related to his lumbar spine prior to 5/3/22. Petitioner treated with Dr. Pitts from 3/16/21 through 10/1/21 for a

left hip condition that began seven years prior while he was in the military. There was no mention in any of Dr. Pitts records that Petitioner had any low back issues or lower extremity radiculopathy. Petitioner was employed by Respondent as a police officer for approximately six years and worked full duty without restrictions at the time of his accident on 5/3/22. Petitioner was active duty in the Army for four years and the Reserves for eight years. He was still active in the Reserves at the time of his accident on 5/3/22 and was able to engage in ruck marches in February and March 2022 that involved 8 to 9-mile hikes wearing 35-pound equipment.

Dr. Taylor opined several times in his treating records that Petitioner's condition is causally related to his work accident of 5/3/22. He based his causation opinion on the history provided by Petitioner, physical examination, imaging studies, and intraoperative findings, which were all consistent with an acute process. He agreed that if the history of injury was drastically different it may affect his opinion as to causation; however, no evidence was admitted that supported a different history of accident. Dr. Taylor found some elements of Petitioner's accident report consistent with what Petitioner reported to him. Petitioner's accident report dated 5/12/22 indicated he had an onset of symptoms the morning of 5/3/22 that became worse sitting in his squad car. He reported the "patrol belt was the primary aggravating factor". Petitioner testified that he used the language "no acute incident" because he was not shot or involved in a car accident. Petitioner reported his symptoms to his supervisor, Sergeant Zaber, that afternoon and reported that his symptoms started that morning. Sergeant Zaber testified that while he was eating lunch with Petitioner on 5/3/22, Petitioner told him he had lower back and hip pain since that morning, that it was very uncomfortable in his squad car throughout the morning, and his symptoms were progressively getting worse.

Dr. Taylor agreed it is possible that a march carrying a heavy rucksack could cause a herniated disc and CES. However, the Arbitrator finds no evidence that Petitioner sustained injuries performing a ruck march for the National Guard prior to 5/3/22. The last ruck march Petitioner performed prior to his work accident was on 3/12/22.

Dr. Mirkin opined that Petitioner's condition was not causally related to the work accident because Petitioner reported to Dr. Pitts he injured himself on 5/1/22 when he had a rucksack march with the National Guard. The Arbitrator finds that Dr. Mirkin's review of Dr. Pitts' medical record is inaccurate. Petitioner reported to Dr. Pitts on 5/10/22 that he an acute onset of left buttock and leg pain with radiculopathy down his left leg. He reported an injury date of 5/1/22 and stated the cause was "unknown". Dr. Pitts mentioned Petitioner had a ruck sack march for his National Guard commitments; however, Petitioner credibly testified he did not relate his symptoms to a ruck march, and he generally discussed his ability to perform training with the National Guard since being released from his left hip surgery. Further, the last date Petitioner engaged in a ruck march was on 3/12/22. When Petitioner presented to Dr. Pitts' office on 5/10/22 his symptoms were incapacitating, with numbness/tingling in his left leg that required him to ambulate with crutches. His onset of symptoms were sudden and occurred one week prior, which was supported by the testimony of Sergeant Zaber.

The Arbitrator is not persuaded by the opinions of Dr. Mirkin who performed a records review and never met or spoke to Petitioner regarding his work accident. He agreed that Petitioner had a very large, herniated disc at L5-S1 with compression of the cauda equina. He

agreed that symptoms related to hip and low back conditions can overlap. Dr. Mirkin opined that it is extremely unlikely that sitting in a squad car without any kind of intraabdominal pressure would cause a massive, herniated disc. However, he testified it is slightly possible that twisting awkwardly getting into or out of a car because of a duty belt could cause a back injury. He testified that if a person had a previous tear, he supposes that positioning oneself could make it worse. He agreed that a herniated disc could result in a gradual onset of symptoms. Dr. Mirkin testified it would be virtually impossible not to have symptoms with a disc fragment of the size shown on Petitioner's MRI. He agreed that the size of Petitioner's disc fragment at L5-S1 could cause caudal equina syndrome. Dr. Mirkin testified he was not providing opinions as to the reasonableness or necessity of the treatment provided to Petitioner, his ability to work, or his future prognosis.

Based on the evidence as a whole, the Arbitrator finds that Petitioner's current conditions of ill-being in his lumbar spine and caudal equina syndrome are causally connected to his injury that occurred on 5/3/22.

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

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

Upon establishing causal connection and the reasonableness and the necessity of recommended medical treatment, employers are responsible for necessary prospective medical care required by their employees. *Plantation Mfg. Co. v. Indus. Comm'n*, 294 Ill.App.3d 705, 691 N.E.2d. 13 (1997). This includes treatment required to diagnose, relieve, or cure the effects of claimant's injury. *F & B Mfg. Co. v. Indus. Comm'n*, 325 Ill. App. 3d 527, 758 N.E.2d 18 (2001).

Respondent's Section 12 examiner Dr. Mirkin testified he was not providing opinions as to the reasonableness or necessity of Petitioner's medical treatment, his ability to work, or his future prognosis. Dr. Taylor testified that while Petitioner had a dramatic improvement in low back symptoms following surgery, he continues to have numbness, urge, incontinence, decreased sensation in the S-1 distribution, weakness in his left EHL, and S-1 innervated musculature. He is engaged in physical therapy. Dr. Taylor testified that Petitioner's insidious onset of CES caused urologic symptoms initiating flow, motor weakness, and saddle anesthesia and some of the sequelae will be permanent. He opined it could take years for Petitioner's symptoms to plateau. Dr. Taylor opined Petitioner will require ongoing care from a urologist and neurologist for CES. He testified it would be November 2022 at the earliest before Petitioner reached MMI for his low back condition and he should be assessed for recurrent herniation and instability prior to being released. On 10/25/22, Dr. Taylor noted the neurology consult and FCE had not been performed or approved by workers' comp. On 11/22/22, Dr. Taylor noted Petitioner's symptoms of urinary urgency persisted. He continued to work light duty for Respondent and Dr. Taylor opined Petitioner would not return to full duty work in the police force or in combat duty due to his permanent cauda equina syndrome. He continued to recommend neurologic evaluation prior to placing him at MMI. On 1/3/23, Dr. Taylor noted Petitioner started a new job in IT at Scott Air Force Base that was within his light duty restrictions. Petitioner last saw Dr. Taylor on

4/19/23 via telehealth at which time he continued to recommend a neurologic consult and work restrictions.

Based on the finding as to causal connection and Dr. Taylor's testimony, the Arbitrator finds that Petitioner is entitled to medical expenses. Respondent shall therefore pay the medical expenses outlined in Petitioner's Group Exhibit 7, pursuant to the Illinois medical fee schedule, as provided in Sections 8(a) and 8.2 of the Act. Pursuant to the stipulation of the parties, Respondent shall receive a credit for any and all medical bills paid through its group medical plan, under Section 8(j) of the Act. Respondent shall hold Petitioner harmless for any claims by any providers of the services for which Respondent is receiving this credit.

The Arbitrator further finds that Petitioner is entitled to receive the additional care recommended by Dr. Taylor related to his lumbar spine and caudal equina syndrome until Petitioner reaches maximum medical improvement.

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

Petitioner claims entitlement to temporary total disability benefits from 5/7/22 through 6/30/22, 8/20/22 through 10/23/22, and 11/23/22 through 6/12/23. It is undisputed that on 5/6/22 Petitioner told Sergeant Zaber he needed to leave work early due to increasing symptoms. There was no evidence that Petitioner did or did not work in the days prior to 5/10/22 when Dr. Pitts placing him on sedentary restrictions. On 6/14/22, Dr. Taylor opined that Petitioner remained temporarily totally disabled. On 7/12/22, Petitioner requested to return to light duty work and Dr. Taylor allowed him to return to desk work with a 20-pound lifting limit. However, Petitioner only claims entitlement to TTD benefits through 6/30/22. The Arbitrator finds that Petitioner is entitled to temporary total disability benefits from 5/10/22 through 6/30/22.

Petitioner claims entitlement to additional TTD benefits from 8/20/22 through 10/23/22. There was no evidence or testimony as to when Petitioner returned to light duty work after 6/30/22. On 8/4/22 and 9/1/22, Dr. Taylor continued Petitioner's work restrictions of light duty desk work.; however, there was no testimony or evidence that Petitioner was placed off work or did not continue to work in his light duty capacity on or after 8/20/22. On 9/27/22, Dr. Taylor noted Petitioner was optimistic he would be able to return to a light duty work position in accordance with his current work restrictions in the upcoming weeks. This obviously suggests that Petitioner was not working as of 9/27/22. On 10/25/22, Dr. Taylor noted Petitioner returned to light duty work yesterday without issues. Therefore, the Arbitrator finds that Petitioner is entitled to TTD benefits from 9/27/22 through 10/23/22.

Petitioner testified that he last worked for Respondent on 11/23/22 and claimed entitlement to additional TTD benefits from 11/23/22 through the date of arbitration on 6/12/23. On 11/22/22, Dr. Taylor noted Petitioner continued to work light duty for the Waterloo Police Department. Dr. Taylor recommended that Petitioner not return to full duty work in the police force or in combat duty due to his permanent cauda equina syndrome. He continued to recommend neurologic evaluation prior to placing Petitioner at MMI and continued his light duty work restrictions. There was no evidence that explained why Petitioner ceased performing light

duty work for Respondent the day after he was examined by Dr. Taylor as his restrictions remained unchanged as of 11/22/22.

Dr. Taylor noted on 1/3/23 that Petitioner started a new job in IT at Scott Air Force Base (SAFB), working half remote and half onsite. His job duties were within his light duty restrictions. On 4/19/23, Dr. Taylor noted Petitioner continued to work for SAFB in a hybrid remote setting within his restrictions. Petitioner testified he worked 40 hours per week for SAFB and earned a salary of $55,000. There was no evidence as to when Petitioner began working for SAFB. Therefore, the Arbitrator does not find sufficient evidence that Petitioner is entitled to TTD benefits from 11/23/22 through 6/12/23.

Based on the evidence, the Arbitrator finds that Petitioner is entitled to temporary total disability benefits for the period 5/10/22 through 6/30/22 and 9/27/22 through 10/23/22, representing 11-2/7th weeks, pursuant to Section 8(b) of the Act.

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

Arbitrator Linda J. Cantrell _____ DATE _____

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	20WC020092
Case Name	Douglas Price v. Fox & Austin Masonry & Concrete Construction Inc
Consolidated Cases	
Proceeding Type	Petition for Penalties
Decision Type	Commission Decision
Commission Decision Number	24IWCC0407
Number of Pages of Decision	17
Decision Issued By	Kathryn Doerries, Commissioner

Petitioner Attorney	Benjamin Sgro
Respondent Attorney	Andrew Fernandez

DATE FILED: 8/23/2024

/s/Kathryn Doerries, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF CHAMPAIGN)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

DOUGLAS PRICE,

Petitioner,

vs. NO: 20 WC 020092

FOX & AUSTIN MASONRY & CONCRETE CONSTRUCTION, INC.,

Respondent.

ORDER ON PETITIONER'S PETITION FOR PENALTIES

This matter comes before the Commission on Petitioner's Petition for Penalties. (PX2) Petitioner filed a Notice of Motion and served it on Respondent via email and certified mail to Respondent's attorney on December 7, 2023. (PX1-PX2) The Petition for Penalties, asserted under Section 19(k) and Section 19(l) and Attorney's Fees under Section 16, had Exhibits A-I attached in support of Petitioner's motion. (PX2) Petitioner and Respondent were represented by counsel and the merits of the Petitioner's Petition were argued before Commissioner Amylee Simonovich on May 16, 2024. After opening statements, Exhibits were introduced by the parties at the May 16, 2024, Commission hearing, and a transcript of those proceedings was recorded attaching the parties' exhibits in support of their respective positions. After considering the parties' arguments and review of the evidence introduced by the parties, the Commission denies Petitioner's Petition for Penalties under Section 19(k) and Section 19(l) and for Attorney's Fees pursuant to Section 16 based upon the following analysis.

Background

This case proceeded to an Arbitration Hearing before Arbitrator Dennis O'Brien on March 17, 2022. Arbitrator O'Brien issued his Decision on May 9, 2022, finding Petitioner sustained his burden of proving accident, causal connection, entitlement to medical, TTD and PPD benefits. (PX2,XC) The Arbitrator's award of medical in the Order states:

> The following bills introduced into evidence are related to Petitioner's June 30, 2020 injury, are reasonable and were necessitated to treat or cure Petitioner's injuries suffered in this accident and are to be paid by Respondent pursuant to the medical fee schedule: The bills contained in Petitioner's Exhibit 4 on pages 4, 6, 7, 8, 9, 10, 11, 14, 16, 20, 24, 29, 31, 33, 34, 35, 37, 39, 41, 43, and 47.
>
> The following bills introduced into evidence are not awarded on account of Petitioner's June 30, 2020 injury for the following reasons: The following medical records introduced into evidence revealed some duplicative bills (Petitioner Exhibit 4 pages 26, 27, 40, 42, 44, 51, and 53), some bills which were duplicative but in different amounts (Petitioner's Exhibit 4 pages 45, 46, 50, and 52) and some bills for which no medical records were introduced and may be for unrelated medical treatment. (Petitioner's Exhibit 4 pages 12, 13, and 18) Those bills are therefore not awarded. *Id.*

Each party reviewed the Arbitration Decision. This dispute arose after the Commission issued a Decision and Opinion on September 28, 2023, affirming and adopting the Arbitrator's Decision except the Commission reversed the Arbitrator's ruling on two evidentiary issues, but found those not to be outcome determinative. (PX2,XD)

In addition to the afore-referenced excerpt from the Arbitrator's Order, the Commission's Order included the following:

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

Pursuant to Section 19(f)(1), without an appeal, the Commission Decision would be final on October 19, 2023. 820 ILCS 305/19. The Supreme Court has held that in cases such as this, "when assessing the delay, the calculation does not start until after the award is final. The time for payment must, of course, be computed from the date of finality." *Bd. of Educ. v. Indus. Comm'n*, 39 Ill. 2d 167, 171, 233 N.E.2d 362, 365, 1968.

In support of his Petition, Petitioner's attorney submitted pertinent pages from the Arbitration transcript of record from the March 17, 2022, hearing relevant to the issues before the Commission. (PX7) The pertinent passages from the transcript confirm that the Arbitrator stated, "Petitioner claims that there are unpaid medical bills which are included in Petitioner's Exhibit 4." Petitioner's attorney responded "Yes, Your Honor," however, there was no clarification requesting that Petitioner be held harmless for bills that were already paid and no discussion regarding which bills were paid by a third-party, if any. Respondent disputed and denied responsibility for the medical based upon causal connection and accident; the parties agreed that if awarded, the bills "should be under the fee schedule" and Respondent's attorney represented that there were no bills paid under group medical. (PX7, 6-7) There was no stipulation by the parties to pay the medical providers directly. *Id.*

In analyzing the disputed issues before the Commission on the Penalties Petition, the Commission takes judicial notice of the transcript from the Arbitration Hearing including

Petitioner's Exhibit 4 ("PX4-Medical Bills) and the Petitioner's testimony, noting specifically on pages 71-72 Petitioner confirmed Medicaid paid some of the disputed medical bills and Catholic Charities might have paid some of the disputed medical bills. See *Centeno v. Ill. Workers' Comp. Comm'n,* 2020 IL App (2d) 180815WC, P39, 149 N.E.3d 1160, 1174. (Public documents that are included in the records of courts and administrative tribunals are subject to judicial notice. *People v. Davis*, 65 Ill. 2d 157, 164, 357 N.E.2d 792; *Curtis v. Lofy*, 394 Ill. App. 3d 170, 172, 914 N.E.2d 248; *NBD Highland Park Bank, N.A. v. Wien*, 251 Ill. App. 3d 512, 520, 622 N.E.2d 123; see also *People v. Ernest*, 141 Ill. 2d 412, 428, 566 N.E.2d 231 (observing that trial court was authorized to take judicial notice of transcripts in underlying action); *In re McDonald*, 144 Ill. App. 3d 1082, 1085, 495 N.E.2d 78 (recognizing that trial court has authority to take judicial notice of hearing transcripts).

Specifically pertinent to the issues before the Commission on Petitioner's Penalties Petition, is page 47 of Petitioner's Exhibit 4 from the Arbitration Hearing. Page 47 is a copy of a bill which was awarded by the Arbitrator, and affirmed by the Commission, in the amount of $5,679.00. It was noted that the services were rendered at Good Shepherd Outpatient. Page 47 specifically showed that the medical bill was from HSHS Medical Group, for date of service on September 15, 2020, and the total charge was $5,679.00. Page 48 of Exhibit 4, (not awarded) also has HSHS in the top left corner, confirmed that the bill on page 47 reflected three charges for services provided by Dr. Carl F. Painter, specifically for procedure codes 29826, Shoulder Arthroscopy, partial Acromioplasty, 29827, shoulder scope with rotator cuff repair and 29828, biceps tenodesis. These are the same procedure codes listed on page 47. Further, page 48 confirmed that the $5,679.00 bill for date of service September 15, 2020, had a zero balance after one insurance payment for $1,719.38 and four contractual write-offs were credited. Page 49 (not awarded) notes four post-op follow-up visits with zero balances and that the bills or Petitioner qualified as part of the HSHS Financial Assistance Program. The Commission notes that the $5,679.00 bill awarded (page 47) and already paid (page 48) appears to be the same bill listed in Petitioner's Exhibit 10 of the subject hearing transcript as one of the "Bills Refused by Respondent." (PX10) Further, the $5,679.00 bill was paid to the provider on January 4, 2024, reduced by the fee schedule to $5,196.53. Per Section 8(a), Respondent's liability is only $1,719.38, which has been satisfied.

There are four other bills itemized in the list, "Bills Refused by Respondent" none of which this Commission believes remain outstanding. Petitioner claims Respondent has refused to pay $2,272.24 for services at Shelby Memorial Hospital from 7/2/2020-7/21/2020. However, the bill review reference number cited, 23723767, reviewed those services to be $2,045.02 pursuant to the fee schedule. T. 195. Respondent issued $2,045.02 directly to the Hospital on October 19, 2023. (RX1). Petitioner claims that Respondent has refused to pay $116.65 for services by HSHS Medical Group on 7/2/2020. However the bill review reference number cited, 23898937, found those services to be $110.82 pursuant to the fee schedule. Respondent paid this amount directly to the provider on January 4, 2024. Finally, Respondent claims that Respondent has refused to pay $84.85 each for services on 7/21/2020 and 8/11/2020. While it is true that there is no documentation of these two payments being made, a closer look at the bills reveals that these dates of service are for treatment with Dr. Painter that was already billed out and paid under bills awarded on pages 11 and 14.

The trial record further shows Respondent paid certain bills per the fee schedule despite the bills having been satisfied by Medicaid at a lesser negotiated rate.

May 16, 2024 Commission Penalties Hearing

Opening Remarks

Petitioner's attorney and Respondent's attorney made opening remarks to clarify their arguments before Exhibits were introduced. To paraphrase would not do justice to the parties. The following are the opening remarks made before Commissioner Simonovich:

> Your Honor, the sole reason we are here for this hearing today is on Petitioner's penalty petition and whether respondent's actions warrant issuing penalties. Petitioner was awarded TTD, PPD and medical bills from the original arbitration award which was then confirmed by the Commission on September 28th of '23. Respondent e-mailed petitioner following the Commission decision on October 4th of '23 saying it wouldn't be appealing and agreeing to issue payment to the petitioner directly for the entirety of the award. So, we received TTD and PPD shortly thereafter but no medical. The payment for medical was requested and then ultimately denied after that; and we asked respondent for that medical payment in a letter on November 22nd citing some case law and statutory provisions that supported paying petitioner directly. They did agree on December 20th to tender payment, but only partial payment was sent. So, we ended up receiving a check on June, excuse me, January 29th of this year with approximately $8,200 in medical bills that were excluded per the fee schedule. When asked about the remaining bills on March 5th they were refused by respondent, and it was suggested that petitioner has a duty to go get those medical bills himself and reimbursement for them. We disputed that. The $8,200 is still yet to be paid. But, to be clear, the request for penalties is based on the entirety of the award itself for medical bills which is approximately $4,600 (sic) after application of the fee schedule. It's well documented in Illinois law that penalties are calculated on the amount as awarded by the Arbitrator without reduction for untimely payments later. It's really a question of whether respondent's withholding of payment was with good and just cause or whether it was vexatious and unreasonable to do so. I think once you look at everything that you will see that the answer is yes, that's true. So, we are asking for penalties under this petition for Section 19(k) penalties, 19(l) penalties, and attorney's fees under Section 16.
>
> COMMISSIONER SIMONOVICH: I think at one point there you said something about - about $4,600.
>
> Do you mean $46,000? MR. SGRO: Yes. Thank you for clarifying that, $46,000. I appreciate that.
>
> COMMISSIONER SIMONOVICH: And is petitioner taking any issue with the payment of the TTD or PPD portions of this award?
>
> MR. SGRO: We are not. They were paid in accordance with the award.
>
> COMMISSIONER SIMONOVICH: Counsel.
>
> MR. FERNANDEZ: From respondent's perspective it is not as clear cut as

the petitioner would have you believe. There was about a month to a month and-a-half where there was confusion from my client as to whether medicals should continue to be paid directly to the providers or to opposing counsel in a lump sum. Opposing counsel subsequently sent me some case law and I sent it to my client who was thereafter convinced. An agreement was made to pay the petitioner the medical bills per the fee schedule. But, as you will see from the evidence that respondent is submitting, medical bills were missing, medical bills were incomplete, medical bills were not tendered to respondent in a timely manner making calculation of the fee schedule literally impossible.

My client finally was able to pull together a fee schedule analysis I believe in February of this year or late January of this year. Thereafter, a check was promptly sent to opposing counsel for the fee schedule amount. Opposing counsel takes issue with about $8,000 in quote unquote "outstanding medical bills" which if you look at correspondence from respondent aren't, in fact, outstanding. In fact, these medical bills were paid either by my client or by Medicaid. So, it's respondent's position that these $8,000 should be excluded from amounts paid to the petitioner because they were already paid to the medical providers.

COMMISSIONER SIMONOVICH: Okay. Anything else from Petitioner's counsel before we do exhibits?

MR. SGRO: Just very briefly, Your Honor.

We are here on our penalty petition alone. We are not here to argue about the arbitration decision and the value of the medical bills. The bills themselves that were submitted respondent had copies of all of those. They had their opportunity to dispute the awarded medical by Arbitrator O'Brien on appeal. That issue was not raised. It wasn't in their petition for review or their statement of exceptions.

They were able to get a fee schedule audit based on the bills that were submitted at trial. They just were submitted in January of this year. To my understanding no further HCFA forms were provided or obtained in advance. They didn't have a HIPAA authorization or anything to that effect. So it was the bills that were at trial. But, again, that's extraneous to the current issue. It's a bit of a red herring because we are here strictly on the penalty petition. The value of the medical bills as shown in the arbitration are what they are. There is nothing in the arbitration award that says pay either per the fee schedule or per what was reimbursed or what was already paid by Medicaid. The only thing that is in the arbitration award and the subsequent Commission decision is pay the medical bills per the fee schedule; and it identifies, as you noted earlier, very specific bills that were admitted as exhibits. So, those are part of the award. It is not proper either for respondent to have paid the providers directly they admit because those payments made to the providers directly were done well after the arbitration award. As we noted earlier it's pretty well known petitioner should be paid directly for those, not the provider. It is not Petitioner's fault or Petitioner's duty to get reimbursed because the carrier improperly paid the provider. So, again, we feel those issues are extraneous to the penalty petition. We are just here on the penalty petition. If this issue was to be raised it should have been done on review, but we are not here to review. And by allowing the time to lapse and not pursuing our

review further they waived any issue as to the value of the medical bills and the value of the award from Arbitrator O'Brien. So, to that effect, we still request the same as before on the penalties on the entirety of the medical bills that were awarded –

COMMISSIONER SIMONOVICH: Okay.

MR. SGRO: -- per the fee schedule.

MR. FERNANDEZ: Can respondent respond to that?

COMMISSIONER SIMONOVICH: And that's going to be my last one.

MR. FERNANDEZ: Yes. Respondent's response to that is that petitioner asks us to stare at this in a tunnel, so to speak, with blinders on. He is asking for a double windfall; that is payment of the medicals to him and payment of medicals to the carrier which the Commission should not stand for. He makes it sound like the carrier acted in bad faith, but the carrier did not; and opposing counsel is ignoring the fact that he included in the list of bills that should be paid to him bills that he knew were paid by Medicaid well before the arbitration decision ever came out. It's respondent's contention that these bills and the bills paid by the carrier should not be paid out directly to the respondent, or to the petitioner, excuse me. (5/16/24 Commission Hearing, 4-12)

Exhibits

Petitioner introduced his Notice of Motion (PX1) and Petition for Penalties, (PX2 with Exhibits A-I respectively: (A) the Application for Adjustment of Claim; (B) the Request for Hearing submitted at the Arbitration Hearing; (C) the May 3, 2022, Arbitration Decision; (D) Respondent's Petition for Review; (E) the September 28, 2023, Commission Decision, (F) Correspondence between attorneys October 4, 2023 through October 28, 2023; (G) an itemization of the total value of the awarded bills pre-fee schedule and copies of only the bills awarded by the Arbitrator; (H) Email correspondence to and from Petitioner's attorney to Respondent's new attorney, Mr. Fernandez; and (I) Letter to Respondent's attorney citing Section 8(a) language and an IWCC case). Petitioner's Exhibits PX4 through PX6 are additional correspondences between attorneys. Petitioner's Exhibit 7 was what Petitioner alleged was relevant portions of the Arbitration Hearing transcript, Petitioner's Exhibit 8 is Respondent's Petition for Review and Petitioner's Exhibit 9 is a copy of the Respondent's Statement of Exceptions submitted before the Commission Orals after the Petitions for Cross Review were filed by the parties. Petitioner's Exhibit 10 is the itemization of Awarded Medical Bills and Fee Schedule Review with a list of five bills noted under a title, "Bills Refused by Respondent."

Respondent introduced Exhibits 1 through 7, including a Payment Log detailing payments made to date of the subject hearing (PX1); Correspondence to and from attorneys dated between January 25, 2024 when Petitioner's attorney acknowledged receipt of the second check for medical and February 20, 2024, and return correspondence with the fee schedule review itemization from a third party company (RX2); the fee schedule review/audit (RX3); Correspondence to Petitioner's attorney regarding the claim of unpaid bills confirming only two bills (totaling $183.70) remain unpaid and the company needs forms to process them per the fee schedule with a request for Petitioner's attorney to contact those providers to request the information (RX4); Correspondence to Commissioner Simonovich requesting a continuance and advising that Petitioner's attorney

refused to turn over evidence of medical bills paid by Medicaid and waiting for a subpoena response and Respondent's attorney argument for objecting to a continuance (RX5); Medicaid Subpoena and Lien dated March 14, 2024 and response indicating that the Illinois Department of Healthcare and Family Services had confirmed to Petitioner's attorney on October 4, 2023, that they were willing to accept $435.52 in settlement of their lien for the medical bills paid on behalf of Petitioner related to the accident of June 30, 2020-the corresponding bills are listed for dates of service between July 2, 2020 through March 1, 2021 which confirm $5,841.82 in medical bills were satisfied on behalf of Petitioner at a negotiated rate of $544.40---which was the lien amount reduced to $435.52 -the amount Petitioner's attorney paid to IHFS on October 20, 2023 (RX6); Correspondence to Petitioner's attorney dated December 21, 2023, regarding additional documents needed by the third party fee schedule review audit including medical records with corresponding HCFA forms (RX7).

Per Petitioner's Exhibit 2, Exhibit F (PX2, XF) Respondent notified Petitioner's attorney on October 4, 2023, that Respondent was not going to appeal the Commission Decision to the circuit court. Respondent requested Petitioner's W-9 information to issue the award to Petitioner's attorney's office and advised that his client was putting the medical bills through a fee schedule review "but will issue those to your office as well." (PX2, XF) In response, Petitioner's attorney inquired, "I resume (sic) that will include the accrued interest as well?" *Id.* Petitioner's attorney attached a copy of his office's W-9. Id. Respondent's attorney sent his calculation of the interest, however, in reply Petitioner's attorney made a correction to the math calculation and demanded accrued interest similarly calculated on the medical bills but with the date adjusted for an increase in the number of days up to the day before the check would be issued. *Id.*

On October 5, 2023, Petitioner's attorney again sent correspondence via email to Respondent's attorney and sent a list of medical bills (pre-fee schedule review) and provided his interest calculation. *Id.*

Petitioner's attorney wrote Respondent's attorney on October 19, 2023, (the date the Commission Decision became final) and acknowledged receipt of the TTD and PPD checks issued per the award and inquired when Respondent's attorney expected "to have the fee schedule calculations on the medical bills." *Id.* In her response, Respondent's attorney stated she would follow-up with her client regarding an update.

Petitioner's attorney introduced Exhibit PX2, XG which appears to be a pre-fee schedule itemization of medical bills.

In his Petition for Penalties and consistent with his opening remarks, Petitioner's attorney argues that the Respondent waived their right to pay less than the fee schedule amount of awarded bills and that penalties are due on the whole amount of the face value of medical bills awarded at trial. In fact, in his Petition for Penalties, Petitioner further prays for the following relief:

A. That Respondent be ordered to immediately tender payment to Petitioner for the entirety of the awarded medical bills pursuant to the fee schedule plus any and all accrued interest on such medical bills calculated from the date of the Arbitration award through the day prior to the date of payment; and

B. That Respondent to be ordered to tender the aforementioned payment to the Petitioner rather than to Petitioner's medical providers; and
C. That penalties be assessed against Respondent and awarded to Petitioner pursuant to Section 19(l) of the Act for Respondent's refusal to pay the awarded medical bills to Petitioner without good and just cause, and that such penalties be assessed at a rate of $30.00 per day beginning on October 5, 2023, and tolling through the day prior to the date of payment; and
D. That penalties be assessed against Respondent and awarded to Petitioner pursuant to section 19(k) of the Act as a result of Respondent's unreasonable and vexatious refusal to pay the awarded medical bills to Petitioner, and that such penalties be assessed as equal to 50% of the amount payable by Respondent for the awarded medical bills pursuant to the fee schedule at the time of the Arbitration Decision and;
E. That attorney's fees be awarded against the Respondent pursuant to Section 16 of the Act; and
F. For such other and further relief as the Illinois Worker's Compensation Commission deems just and equitable.

Analysis

Under the Act, the Commission has no power to enforce payment of its own award. *Smith v. Gen Co. Corp.*, 11 Ill. App. 3d 106, 110, 296 N.E.2d 25 (1973). Rather, the only method to enforce a final award of the Commission is in the circuit court pursuant to section 19(g) of the Act (820 ILCS 305/19(g) (West 2012)). *Aper v. National Union Electric Corp.*, 165 Ill. App. 3d 482, 483, 519 N.E.2d 117, 116 Ill. Dec. 527 (1988) (noting that section 19(g) serves to "provide a recipient of compensation a method of enforcing its award, because the *** Commission *** has no power to do so"); see also *Smith*, 11 Ill. App. 3d at 110. *Millennium Knickerbocker Hotel v. Guzman*, 2017 IL App (1st) 161027WC, P22, 76 N.E.3d 825, 833.

The Commission notes Respondent relies upon the following holding in *Tower Auto:*

> As it relates to the obligation of an employer to provide or pay for the reasonable and necessary medical care for an injured employee, the purpose of the Act is to relieve the employee and his family of the costs and burdens of such care. *Colclasure v. Industrial Comm'n*, 14 Ill. 2d 455, 458, 153 N.E.2d 33 (1958). By limiting an employer's obligation under section 8(a) of the Act to the amount actually paid to the providers of the first aid, medical, surgical, and hospital services necessary to cure or relieve an injured employee from the effects of an accidental injury, the purpose of the Act has been satisfied; that is to say, both he and his family have been relieved of the cost and burdens of that care. It is for this reason that we now hold that the collateral source rule is not applicable to the right to recover under the Act.
>
> Although our resolution of this issue is one of first impression, it is of limited future significance, as the legislature has seen fit to amend section 8(a) of the Act to provide that employers are obligated to provide and pay "the negotiated rate, if applicable, or the lesser of the health care provider's actual charges or

> according to a fee schedule, subject to Section 8.2, in effect at the time the service was rendered for all the necessary first aid, medical and surgical services, and all necessary medical, surgical and hospital services thereafter incurred, limited, however, to that which is necessary to cure or relieve from the effects of the accidental injury." 820 ILCS 305/8(a) (West 2006). This amendatory change to section 8(a) of the Act is applicable to claims for accidental injuries that occur on or after February 1, 2006. P.A. 94-0277 (eff. July 20, 2005) (amending 820 ILCS 305/8(a) (West 2004)). *Tower Auto. v. Ill. Workers' Comp. Comm'n*, 407 Ill. App. 3d 427, 438-439, 943 N.E.2d 153, 163-164.

Subsequently, the *Perez* Court furthered addressed Respondent's obligations when a medical bill has been negotiated and satisfied to a zero balance by a third-party:

> Contrary to claimant's argument, the plain language of section 8(a) of the Act indicates that the legislative intent was to provide relief to injured employees only to the extent reasonably required to cure or relieve claimant from the effects of a workplace injury. 820 ILCS 305/8(a) (West 2006). Specifically, the Act provides that the employer shall pay medical expenses "*limited*, however, to that which is reasonably required to cure or relieve from the effects of the accidental injury." (Emphasis added.) *Id.* Here, consistent with the legislative intent of the statute, and specifically in regards to her medical expenses, claimant was cured or relieved from the effects of her injury once the employer paid the negotiated rate of $17,857.96 with a $0 balance remaining. See *Tower Automotive*, 407 Ill. App. 3d at 437 ("By paying, or reimbursing an injured employee, for the amount actually paid to the medical service providers, the plain language of the statute is satisfied."). To award claimant any amount for medical expenses beyond the amount actually paid to the medical service providers would result in a windfall to claimant. *Perez v. Ill. Workers' Comp. Comm'n*, 2018 IL App (2d) 170086WC, P22, 96 N.E.3d 524, 527-528.

Medical Bills

Petitioner's attorney represented that by January 29, 2024, his office received payment for the disputed medical bills after the fee scheduled analysis was completed except for approximately $8,200.00 in medical bills that were excluded per the fee schedule. (5/16/24 Commission Hrng. 5) On December 21, 2023, Respondent's attorney sent correspondence to Petitioner's attorney that he had advised his client to cease payments to the providers. Although there was no stipulation by the parties to pay the bills directly to the providers, neither the Arbitrator's award nor the Commission award included language designating payment be made to the Petitioner. The absence of that language was obviously the source of confusion. Several medical bills were paid directly to providers by Respondent. Based upon the correspondence between the attorneys and the exhibits entered into evidence, it is clear that Respondent did not possess all the documentation needed to complete the medical fee schedule review process for two of the bills awarded, pages 6 and 7. Yet, these bills are not listed on the "Bills Refused by Respondent" in PX10. It appears that the remainder of the medical bills, including a payment for accrued interest, were paid by the Respondent within three months after the award was final.

Respondent relies upon *Tower Auto* for the principle that Respondent owes only what has been paid under a negotiated rate. As the *Tower* Court pointed out, Section 8(a) has since been amended. Thus, in the subject case, in regard to penalties, we agree with Respondent. The Respondent should only owe the amount that the paid providers accepted pursuant to the fee schedule rate or the negotiated rate, whichever is less. 820 ILCS 305/8. The Commission agrees with Petitioner's attorney that Petitioner need not contact the providers for reimbursement, however, the Respondent is not required to pay "the fee schedule amount" when the law is clear, the amount Respondent must pay is the negotiated rate or the fee schedule, whichever is less, and in this case to Petitioner. However, Respondent has made overpayments to Petitioner, and to the providers, in excess of the negotiated rate. In the end, Petitioner has been made whole, and thus "cured or relieved from the effects of [his] injury" once the Respondent paid the bills pursuant to the fee schedule. *Perez v. Ill. Workers' Comp. Comm'n*, 2018 IL App (2d) 170086WC, P22. The Commission finds the award has not only been paid in full, but, in some instances, was overpaid. For instance, the bill awarded for page 47 should have been reimbursed for $1,719.38, but instead was paid per the fee schedule amount of $5,196.53. Further, the bill awarded on page 16 in the amount of $269.94 for services on September 4, 2020, reflected a write-off of the entire charge and a zero balance when entered at trial, yet, Respondent issued payment for the fee schedule amount of $143.61 to the Petitioner.

Penalties and Fees

Petitioner's attorney relies on *Roodhouse Envelope Co. v. Industrial Comm'n*, 276 Ill. App. 3d 576, 580. The Commission finds the subject case is readily distinguished from *Roodhouse*. *Roodhouse* was tried under the strictures of Section 19(b-1) and only $7,419.29 for necessary medical expenses was awarded, a relatively small amount of bills compared to the subject case's award of $73,046.93 in medical bills, making the analysis in the subject case more complicated. Further, at the time *Roodhouse* was appealed those bills were not subject to fee schedule reduction and there was no evidence that the bills might have been or were previously paid by a third party, as in the subject case, further complicating reconciliation of the bills.

The pertinent sections of the Act state as follows:

Penalties under Section 19(k)

> In case where there has been any unreasonable or vexatious delay of payment or intentional underpayment of compensation, or proceedings have been instituted or carried on by the one liable to pay the compensation, which do not present a real controversy, but are merely frivolous or for delay, then the Commission may award compensation additional to that otherwise payable under this Act equal to 50% of the amount payable at the time of such award. Failure to pay compensation in accordance with the provisions of Section 8, paragraph (b) of this Act, shall be considered unreasonable delay. *820 ILCS 305/19(k).*

Penalties under Section 19(l)

> If the employee has made written demand for payment of benefits under Section

> 8(a) or Section 8(b), the employer shall have 14 days after receipt of the demand to set forth in writing the reason for the delay. In the case of demand for payment of medical benefits under Section 8(a), the time for the employer to respond shall not commence until the expiration of the allotted 30 days specified under Section 8.2(d). In case the employer or his or her insurance carrier shall without good and just cause fail, neglect, refuse, or unreasonably delay the payment of benefits under Section 8(a) or Section 8(b), the Arbitrator or the Commission shall allow to the employee additional compensation in the sum of $30 per day for each day that the benefits under Section 8(a) or Section 8(b) have been so withheld or refused, not to exceed $10,000. A delay in payment of 14 days or more shall create a rebuttable presumption of unreasonable delay. *820 ILCS 305/19(l).*

Attorneys' Fees under Section 16

> Whenever the Commission shall find that the employer, his or her agent, service company or insurance carrier has been guilty of delay or unfairness towards an employee in the adjustment, settlement or payment of benefits due such employee within the purview of the provisions of paragraph (c) of Section 4 of this Act; or has been guilty of unreasonable or vexatious delay, intentional underpayment of compensation benefits, or has engaged in frivolous defenses which do not present a real controversy, within the purview of the provisions of paragraph (k) of Section 19 of this Act, the Commission may assess all or any part of the attorney's fees and costs against such employer and his insurance carrier. *820 ILCS 305/16.*

In Illinois, the courts have examined the imposition of Sections 19(k) and 19(l) Penalties and Section 16 Attorneys' Fees in numerous cases. In *Jacobo v. Ill. Workers' Comp. Comm'n*, the court examined various histories of the application of Sections 19(k) and 19(l) Penalties and Section 16 Attorneys' Fees as follows:

> Penalties under section 19(l) are in the nature of a late fee. *Mechanical Devices v. Industrial Comm'n*, 344 Ill. App. 3d 752, 763, 800 N.E.2d 819, 828, 279 Ill. Dec. 531 (2003). In addition, the assessment of a penalty under section 19(l) is mandatory "[i]f the payment is late, for whatever reason, and the employer or its carrier cannot show an adequate justification for the delay." *McMahan v. Industrial Comm'n*, 183 Ill. 2d 499, 515, 702 N.E.2d 545, 552, 234 Ill. Dec. 205 (1998). The standard for determining whether an employer has good and just cause for a delay in payment is defined in terms of reasonableness. *Mechanical Devices*, 344 Ill. App. 3d at 763, 800 N.E.2d at 829. The employer has the burden of justifying the delay, and the employer's justification for the delay is sufficient only if a reasonable person in the employer's position would have believed that the delay was justified. *Board of Education of the City of Chicago v. Industrial Comm'n*, 93 Ill. 2d 1, 9-10, 442 N.E.2d 861, 865, 66 Ill. Dec. 300 (1982). The Commission's evaluation of the reasonableness of the employer's delay is a question of fact that will not be disturbed unless it is contrary to the manifest weight of the evidence. *Crockett v. Industrial Comm'n*, 218 Ill. App. 3d 116, 121, 578 N.E.2d 140, 143, 161 Ill. Dec. 13 (1991).

> The standard for awarding penalties under section 19(k) is higher than the standard under 19(*l*). Section 19(k) of the Act provides, in pertinent part, as follows:
>
> "In case where there has been any *unreasonable or vexatious delay* of payment or intentional underpayment of compensation *** then the Commission *may* award compensation additional to that otherwise payable under the Act equal to 50% of the amount payable at the time of such award." (Emphasis added.) *820 ILCS 305/19(k) (West 2006).*
>
> Section 16 of the Act provides for an award of attorney fees when an award of additional compensation under section 19(k) is appropriate. *820 ILCS 305/16 (West 2006)*. "The amount of [attorney] fees to be assessed is a matter committed to the discretion of the Commission." *Williams v. Industrial Comm'n*, 336 Ill. App. 3d 513, 516, 784 N.E.2d 396, 399, 271 Ill. Dec. 178 (2003). *Jacobo v. Ill. Workers' Comp. Comm'n*, 355 Ill.Dec. 358, 363-364, 959 N.E.2d 772, 777-778.

Section 19(l) penalties are not appropriate except for late TTD and medical payments. (See *Theis v. Ill. Workers' Comp. Comm'n* 2017 IL App (1st) 161237WC, P20, 74 N.E.3d 468, 471) In this case, the Commission notes that the period between the Arbitrator's Decision and the subject hearing for non-payment of the medical award could put Section 19(l) penalties at issue, however, both attorneys represented that Respondent had timely paid the TTD and PPD portions of the award and paid the majority of the medical by three months after the Commission Decision was final after conducting (or hiring an outside auditor to conduct) a medical fee schedule analysis. Petitioner's attorney relies upon the Supreme Court's holding in the 1998 pre-fee schedule, case, *McMahan v. Indus. Comm'n* (Farmer's Elevator), 183 Ill. 2d 499, however, the circumstances of *McMahan's* pre-arbitration Penalties analysis is very different from the subject post-award dispute. The medical bills in the subject case were paid by the end of January, after being run through a medical bill review for fee schedule plus there were contract provider discounts given to one or more third party payor(s) on bills paid on behalf of Petitioner, that needed to be reconciled. The timely TTD and PPD payments and majority of medical bills paid by January 2024 mitigate a penalty award under Section 19(l).

The Appellate Court has addressed late payments made after an award became final and notes an award of Section 19(k) penalties and Section 16 attorney's fees is discretionary and not mandated by statute or triggered after a certain statutory amount of time for late payment. Although the late payment of an award runs in contravention of the spirit of the Act, there are some circumstances that do not arise to the level of unreasonable and vexatious delay. In *Armour Swift-Eckrich v. Indus. Comm'n (Williams*) the Court held as follows:

> The delay in this case was 78 days after the award became final. The briefs refer to *Roodhouse Envelope*, 276 Ill. App. 3d at 580, 658 N.E.2d at 840 (payment was made 87 days "after [employer] received notification of the award"), *Board of Education of the City of Chicago v. Industrial Comm'n*, 351 Ill. 128, 131, 184 N.E. 202, 203 (1932) (payment was 90 days late), *Zitzka v. Industrial Comm'n*, 328 Ill.

> App. 3d 844, 848, 767 N.E.2d 405, 408. (delay of one year unreasonably based on erroneous interpretation of the law), and *Sanchez v. Industrial Comm'n*, 53 Ill. 2d 514, 518, 292 N.E.2d 724, 726 (1973), where the Commission declined to issue a penalty though payment was not made until 52 days after the award became final, and the appellate court affirmed the denial on the basis that payment was delayed because there were negotiations to arrive at a lump-sum settlement.
>
> Sections 19(k) and 16 do not mandate that penalties be imposed after a certain period of delay. In contrast to other penalties under the Act which are mandatory, the awarding of substantial penalties under section 19(k) and attorney fees under section 16 is discretionary. *McMahan v. Industrial Comm'n*, 183 Ill. 2d 499, 515, 702 N.E.2d 545, 553, 234 Ill. Dec. 205 (1998) *Armour Swift-Eckrich v. Indus. Comm'n (Williams)*, 355 Ill. App. 3d 708, 711, 823 N.E.2d 1103, 1105.

In a case where the Supreme Court reversed the lower court's award of penalties for a 90-day delay in payment of the award, the Supreme Court noted that both sides relied upon the same prior *Board of Education* case and held that in determining whether or not Section 19(k) penalties were warranted, the delay should be assessed as follows:

> In determining whether such delay has been unreasonable or vexatious, regard must be had to the circumstances attending the delay, the nature of the case and the relief demanded, and also to the question whether the rights of the claimant have been prejudiced by that delay. (351 Ill. 128, 132.) The court further said that in view of the failure to pay for about 90 days plus the lapse of nearly six years from the date of injury, it could not say that the Commission's finding was not justified.
>
> ***
>
> The time consumed from filing to final judgment was from our experience about the same as, or even shorter, than the usual contested compensation case. The time for payment must, of course, be computed from the date of finality. While we do not condone unnecessary delay in payment, we cannot say that the delay in these cases was such as to justify a finding of unreasonable or vexatious delay. It is impractical to set a definite time limitation for payment. As was said in the earlier *Board of Education* case: "* * * where all legal proceedings have been exhausted and a considerable time has been permitted to elapse thereafter during which the award is not paid, it is incumbent upon the one liable to pay the same to excuse the delay." (351 Ill. 128, 132.) *Bd. of Educ. v. Indus. Comm'n*, 39 Ill. 2d 167, 170, 233 N.E.2d 362, 364-365.

In another case where penalties were denied, the Illinois Supreme Court also held "several months" delay in payment of an award is not unreasonable, while cautioning employers not to withhold payment unless there are unusual circumstances. *Chicago v. Industrial Comm'n*., 63 Ill. 2d 99, 345 N.E.2d 477. The facts of the *Chicago* case are similar in that the Arbitrator erred by not allowing a prior credit and the parties did not file a timely review and the Petitioner filed a penalties petition when Respondent did not pay the award. The *Chicago* Court held penalties were

not warranted where there was ongoing communication between the parties regarding the prior credit, which the Petitioner would not allow:

> It is also clear that there were discussions between counsel for the parties regarding credit in some amount, in order to avoid a double payment by the City, although those discussions may well have commenced after expiration of the period in which a review of the arbitrator's decision was possible. Given the circumstances of this case, it is our opinion that the several months delay in payment was neither unreasonable nor vexatious and that the finding of the Industrial Commission to the contrary is against the manifest weight of the evidence. In so holding, however, we do not intend that this opinion be thought to indicate any disposition on our part to countenance delay in payment of final awards in less unusual circumstances. *Id.*

In the case at bar, the Commission Decision became final after October 19, 2023. Similar to the circumstance in *Chicago*, communication between the parties began thereafter. Petitioner was aware that Respondent had immediately communicated to Petitioner that Respondent did not intend to appeal the case to the circuit court and that the TTD and PPD award would be issued and the medical bills submitted for a medical fee schedule audit. The TTD and PPD awards were issued immediately thereafter coinciding with the date the Commission Decision became final.

Petitioner maintains the medical was underpaid by $8,237.59, however, the Commission finds that the amount Petitioner's attorney is claiming pertains to bills already paid directly to the providers or what appear to be duplicate charges.

The Commission notes that there is no evidence that Petitioner cooperated in obtaining the requisite medical bills documentation after missing elements were identified by Respondent after the award issued. It would have been in the interest of all parties to cooperate in resolving any outstanding issues regarding the medical award.

The Commission finds that the attorneys communicated regarding the implementation of the payments but their communications could have, but did not, immediately resolve the issues, in part, because Respondent had to run a medical bill review pursuant to the award under Section 8.2 of the Act. Section 8.2 recognizes that that Respondent must have certain required data elements necessary to adjudicate the bill from the providers. 820 ILCS 305/8.2.

The Commission also notes that the original attorney handling the case for Respondent left the firm and there was some time lost verifying that the medical payments were to be made to Petitioner's attorney and not to the providers. Although the law is clear, absent specificity in the Order, Respondent's second attorney was under the impression that the bills could be paid to the providers. This issue was quickly negotiated, and Respondent thereafter issued the remainder of the bills awarded to Petitioner's attorney.

The Commission further notes that Petitioner's attorney filed a cross-review before the Commission and at that time had the opportunity to request language in the Commission Order specifying that payment for medical bills should be made directly to the Petitioner. Clarifying the Arbitrator's Order regarding payment of the medical in the absence of any statement on the trial

record would have avoided the initial confusion.

The Commission further finds that when Respondent's attorney advised Petitioner's attorney on December 21, 2023, and later on March 4, 2024, that he did not have the necessary documentation containing substantially all the required data elements necessary to adjudicate the bills, and for the Medicaid lien and payment information, Petitioner's attorney could have cooperated to expedite the process which is in both parties' interest.

The Commission finds that based upon the record, Respondent timely submitted the disputed medical bills for a medical fee schedule review, per the Arbitrator's award. The Commission further finds Respondent's medical fee schedule explanation of review was timely requested and made in good faith. The Commission further finds that there is no indication that the Respondent deliberately, unreasonably or vexatiously withheld funds as Petitioner alleges. Instead, the TTD and PPD portions of the award were timely paid and the Respondent's attorney communicated with Petitioner's attorney regarding commencement of the medical fee schedule review. The Commission award did not specify that the bills shall be made payable to the Petitioner and thus the carrier started the process of paying the reviewed bills to providers as evidenced by RX1 until Petitioner's attorney demanded payment of all the bills to his office. In fact, on November 22, 2023, one month after the Commission award became final on October 19, 2023, Petitioner's attorney demanded payment of all the medical under the fee schedule amount within 14 days or he would file for penalties. Petitioner's attorney filed the Penalties Petition on December 7, 2023. However, the Commission finds that Petitioner's attorney's demand was unreasonable under this circumstance and does not warrant Section 19(l) or Section 19(k) penalties. Without Section 19(k) penalties, no Section 16 fees are warranted. (See *Jacobo v. Ill. Workers' Comp. Comm'n,* 2011 Ill. App. LEXIS 1186, *10-11, 355 Ill. Dec. 358, 364.)

Conclusions of Law

The *Millennium Knickerbocker* Court reviewed all statutory authority under which the Commission retains jurisdiction after a final award, and specifically held that the Commission is authorized to assess penalties and attorney fees when a party fails to comply with the terms of a final settlement or final award, and in order to do so, the Commission must first interpret the terms of an ambiguous final settlement/award. *Millennium Knickerbocker Hotel v. Guzman*, 2017 IL App (1st) 161027WC, P29, 76 N.E.3d 825, 836-837.

In the subject case, the Commission's Order, affirming the Arbitrator's Decision, is not explicit regarding the obligation of Respondent to pay the disputed medical, per the fee schedule reductions, directly to the Petitioner. However, in the absence of a stipulation by the parties, Respondent is required by Section 8(a) to pay the awarded disputed medical to Petitioner. Clearly, Petitioner's attorney did not specify his preference to have the bills paid directly to him at the Arbitration Hearing or before the Commission on cross-review, but because accident, causal connection, medical bills, TTD and nature and extent issues were disputed at Arbitration, the Act requires that such disputed compensation should be paid to Petitioner unless there is an agreement or stipulation by the parties to pay the providers.

Petitioner's Exhibit I includes Petitioner's Attorney's November 22, 2023, letter to

Respondent wherein he not only acknowledges Section 8(a) governs a Commission award of medical, but he relies upon the language in Section 8(a) to convince Respondent that the bills are owed to Petitioner. The Commission finds that Petitioner cannot rely upon only a part of the language in Section 8(a) for the proposition that the payments should be made to the Petitioner, but ignore that part of Section 8(a) that provides "[t]he employer shall provide and pay the negotiated rate, if applicable, or the lesser of the health care provider's actual charges or according to a fee schedule, subject to Section 8.2, in effect at the time the service was rendered." In other words, Section 8(a) interplays with Section 8.2, and to maintain that all the medical should be paid solely according to the fee schedule is contrary to the language in Section 8(a).

A finding of vexatious or unreasonable delay must be based on objective reasonableness. *Bd. of Educ. v. Indus. Comm'n,* 93 Ill. 2d 1, 442 N.E.2d 861. Regarding the medical award, Respondent was responsible for issuing the payments, however, not solely responsible for ensuring the Respondent had proper medical documentation. The evidence breaking down the final "Bills Refused by Respondent" in this record is lacking, however, Petitioner's attorney could have cooperated in providing the requisite documentation of paid medical bills to Respondent's attorney when asked and to provide evidence of the Medicaid lien or negotiated rates paid by Medicaid and/or charity, if any, paid before trial. Since certain medical bills were missing at the time of the fee schedule analysis, both parties needed to communicate to expedite resolution of the unpaid medical bills including getting "substantially all the required data elements necessary to adjudicate the bill" as required by Section 8.2(6)(d). Therefore, in this circumstance, the Commission is not persuaded that Respondent is wholly, or even partially, to blame for the delay in payment of the medical bills. Petitioner demanded payment but did not cooperate in providing the missing medical bill documentation when requested by Respondent. Further, Petitioner did not provide itemized bills reflecting amounts paid by Medicaid and the bills awarded at trial; thus, in some instances the providers were paid per the fee schedule, an amount in excess of the negotiated rate.

Having considered the Petitioner's Petition for Penalties under Section 19(k) and Section 19(l) and Attorney's Fees under Section 16, the Arbitrator's and Commission awards, and review of the totality of evidence before the Commission including the arguments made by the parties, the briefs, all the exhibits and pervading case law, the Commission declines to award penalties under Section 19(k), Section19(l) or attorney's fees under Section 16 in this instance for the reasons stated above.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Petitioner's Petition for Penalties is denied for all the afore-referenced reasons.

August 23, 2024

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KAD/bsd
42

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

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC003933
Case Name	Victor Trinidad v. Werner Enterprises
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	24IWCC0408
Number of Pages of Decision	5
Decision Issued By	Deborah Simpson, Commissioner

Petitioner Attorney	Patrick Serowka
Respondent Attorney	Sean Ryan

DATE FILED: 8/26/2024

/s/ Deborah Simpson, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

VICTOR TRINIDAD,

Petitioner,

vs. NO: 21 WC 3933

WERNER ENTERPRISES,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issue of "whether the Arbitrator had jurisdiction to reinstate Petitioner's claim," reverses the Order of the Arbitrator and finds that the Arbitrator did not have jurisdiction to reinstate the instant claim. A hearing was had before Arbitrator Hegarty in Chicago on November 29, 2022. The parties were represented by counsel and a record was taken.

Findings of Fact

Prior to the instant hearing, the Arbitrator noted that she had dismissed the claim based on Petitioner's motion to voluntarily dismiss it. Soon thereafter, she received an e-mail indicating that Petitioner wished the claim to be reinstated, which she did. She then learned that Respondent objected to the reinstatement of the claim and the instant hearing was held.

At the hearing, Respondent's lawyer argued that its objection to the reinstatement was based on the timeline. He noted that the Motion to Voluntarily Dismiss was filed "at the beginning of June of 2022," and the Arbitrator granted the motion on July 13, 2022. He then asserted that because the claim was dismissed on Petitioner's motion, and not a dismissal for want of prosecution, and the 60 day reinstatement did not apply. Therefore, the appropriate timeline to review the original dismissal was 30 days pursuant to §19(b) and "no motion to reinstate was filed until 46 days after the dismissal was granted." Therefore, Respondent asserts, the Arbitrator no longer had jurisdiction to reinstate the claim.

Petitioner's lawyer responded that Petitioner filed his motion to voluntarily dismiss the claim on June 1, 2022. "However, it was motioned up for September 1, 2022, it was never heard or appeared on. It was granted *sua sponte* thereafter." The lawyer claimed that they were "not even aware that it had been dismissed" and they "filed a motion to voluntarily reinstate the case and dismiss any possible dismissal. It was motioned up September 1 as well."

After the lawyers' presentations, the Arbitrator noted that she believed "Petitioner changed his mind or made a mistake regarding the voluntary dismissal," and she granted the motion "in all fairness" and she believed "that in the pursuit of fairness and justice the case should remain reinstated." In her order, the Arbitrator wrote:

> "The Arbitrator finds that the case shall remain re-instated. The Arbitrator acknowledges that the granting of the Petition for Voluntary Dismissal, some 6 weeks prior to the status date, was not performed in accordance with the notice and presentment provisions of Rule 7020.20 or Rule 7020.70(c)."

The timeline indicates that on May 31, 2022, Petitioner's lawyer sent Petitioner a letter memorializing their prior discussions. He noted that they had discussed his claim and agreed that because Petitioner had qualified for SSI disability/Medicaid (perhaps should be Medicare) the necessity of procuring a large, funded, Medicare set-aside made settlement of the claim unlikely. Therefore, if Medicare's interests were not adequately protected Petitioner's rights for treatment under Medicare may be endangered. Therefore, Petitioner was asked to co-sign the letter, which he did. The Motion to Voluntarily Dismiss Petitioner claim was filed on June 1, 2022.

On July 13, 2022, the parties are notified, through Compfile that Petitioner's Motion to Voluntarily Dismiss the Case was granted. On August 28, 2022, Petitioner's lawyer affirmed that he sent the instant "Withdrawal of Motion for Voluntary Dismissal/Reinstate Case" to be heard on September 1, 2022. Also attached was Petitioner's Motion to Withdraw Voluntary Dismissal, in which it was asserted that Petitioner suffered injuries to the person-as-a-whole, shoulders, legs, and lumbar/thoracic/cervical spine on February 4, 2021, he filed a Motion to Voluntarily Dismiss the claim on or about June 1, 2022, and upon further investigation, Petitioner wanted to pursue his claim. On August 31, 2022, the parties were notified, through Compfile that Petitioner's Motion to Reinstate the Case had been granted.

Conclusions of Law

The Arbitrator reinstated Petitioner's claim over Respondent's objection, "in pursuit of fairness and justice." Clearly, the Arbitrator believed that allowing Petitioner to proceed with his claim was the fairest and most just outcome.

In response, Respondent presented cases which it cites for the proposition that a voluntary dismissal does not have the same 60-day reinstatement provision as a dismissal for want of prosecution and that the Arbitrator's reinstatement of Petitioner's claim was improper.

In *Cranfield v IIC,* 78 Ill. 2d 251 (1980), the Supreme Court dealt with an Arbitrator's dismissal of a Petitioner's claim and refusal to reinstate. The Supreme Court held that even though the Petitioner did not file his Petition for Review of the denial to reinstate within the time period of filing for review, the Commission could have considered the late Petition for Review to be effectively a Petition for Reinstatement, which can be filed within 60 days of a dismissal for want of prosecution. Nevertheless, the Supreme Court held that Petitioner has the burden of proving justifying the relief requested. It found that after granting various continuances, the dismissal for want of prosecution after the claimant did not show up for the arbitration hearing was proper and the Commission did not abuse its discretion in denying Petitioner's Motion to Reinstate.

Respondent argues that the *Cranfield* Court specified that it would agree with the argument that the Commission "lacked jurisdiction had the claimant sought review of Arbitrator's award or other disposition of the case on the merits." However, in this instance the matter was dismissed for want of prosecution, which allows the claimant to file a Petition to Reinstate the Claim within 60 days.

In *Kowal v Just Manufacturing Co.*, 95 WC 38433, 00 IWCC 306 (2000), the Commission affirmed and adopted the Decision of the Arbitrator denying Petitioner's Petition to Reinstate. The Commission wrote:

> "The Commission finds the rationale for denying the Petition for Reinstatement is based on a lack of due diligence in proceeding with this claim rather than on a jurisdictional basis. The Commission notes this case was voluntarily dismissed, thus the 60 days reinstatement period on a DWP does not apply. However, Petitioner's attorney acknowledges that nothing was done from March of 1997 (when the case, albeit erroneously, last appeared on the Commission's docket call) through June of 1999. On these facts, the Commission finds the Arbitrator properly denied the Petition to Reinstate." In the Decision of the Arbitrator, he wrote:
>
> "In error, the Petitioner motioned Arbitrator Black on December 6, 1996, for a voluntary dismissal of her claim, which was granted. The Petitioner did not file a review of the dismissal order in accordance with Section 19 of the Act. The Petitioner compounded the error in voluntarily dismissing her claim by a neglect to monitor the claim for another 15 months and the failure to re-file her claim before March 1, 1998, the statutory deadline. The Commission does not have jurisdiction to correct the Petitioner's unilateral mistake and lack of diligence."

Clearly, the Arbitrator based her reinstatement of Petitioner's claim on her conception of fairness. We are sympathetic with the sentiment of the Arbitrator in this regard. In a perfect world, we would like to see all claims to be fully adjudicated. However, the Commission is an administrative agency the jurisdiction of which is strictly limited by our Act.

Respondent appears to be correct that because Petitioner's claim was dismissed on his motion to voluntarily dismiss, he did not have 60 days upon which to seek to reinstate his claim, as if it were dismissed for want of prosecution, rather than within 30 days required to reinstate a voluntarily dismissed claim. Therefore, the Commission finds that it has no jurisdiction to reinstate the claim because the Motion to Reinstate was not filed within the 30 days of voluntary dismissal. Upon expiration of that 30 days, the Decision of the Arbitrator dismissing the claim became a final and unreviewable Decision of the Commission. Therefore, the Commission reverses the Order of the Arbitrator, finds that the Arbitrator/Commission does not have jurisdiction to reinstate the instant claim, and holds that Petitioner's claim is again dismissed.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Order of the Arbitrator dated July 11, 2023, is hereby reversed.

IT IS FURTHER ORDERED BY THE COMMISSION that Petitioner's Petition to Reinstate his claim that he voluntarily dismissed is hereby denied and his claim is again dismissed.

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.

August 26, 2024

DLS/dw
O-7/10/24
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/s/*Deborah L. Simpson*
Deborah L. Simpson

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	20WC026776
Case Name	Adam Slowikowski v. Snow Systems, Inc.
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	24IWCC0409
Number of Pages of Decision	19
Decision Issued By	Deborah Simpson, Commissioner

Petitioner Attorney	David Menchetti
Respondent Attorney	Brad Antonacci

DATE FILED: 8/26/2024

/s/ Deborah Simpson, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

ADAM SLOWIKOWSKI,

Petitioner,

vs. NO: 20 WC 26776

SNOW SYSTEMS, INC.,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of causation of the hand condition, the imposition of penalties/fees, permanent partial disability ("PPD"), and "PPD credit for the statutory 50% loss of use of the left index finger ($14,549.69)" the Commission modifies the Decision of the Arbitrator, as specified below, and otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made hereof.

Findings of Fact

Petitioner testified on October 14, 2020, he was working on a snow plow when a piece of metal came down and detached his left index finger completely off his hand. He picked up his detached finger, put it in plastic bag, and took with him when taken to a hospital in an ambulance. The finger was put in a cooler and he was advised to take the cooler wherever he went.

The medical records show that later that day, Petitioner presented to an ER after amputation of his left second digit earlier that day at work. Mild to moderate bleeding was quickly controlled. He covered his finger and put it on ice. Petitioner was admitted. After an orthopedic consultation, he was taken for surgical reimplantation with Dr. Rybalko. The operative report indicates Dr. Rybalko performed left index finger replantation, repairs of flexor *digitorum profundus* tendon, extensor tendon, ulnar digital artery, dorsal vein, radial digital nerve, and ulnar digital nerve with allograft for traumatic amputation of left index finger. Petitioner reported he was doing well, was fully able to move his left hand/finger, and was looking forward to going home soon. Petitioner was discharged on October 26, 2020.

After his discharge from hospital, Petitioner was referred to Dr. Patel. On April 19, 2021 Petitioner reported he believed he largely plateaued in physical therapy. He continued to have some sensation. Dr. Patel noted that he saw some signs of healing, but not as much as he anticipated. He ordered a CT to confirm healing. He would schedule Petitioner for "tenolysis, possible open reduction internal fixation of the left finger proximal phalanx fracture with distal radius bone grafting, and PIP contracture release." Five weeks later, Dr. Patel noted that Petitioner had plateaued in active ROM. He had returned to work at full duty, but the lack of sensation and ROM made it difficult for many work tasks. Petitioner expressed disappointment with the function of the replanted digit and some regrets about having it replanted.

Dr. Patel noted that the CT showed a small narrow bridge fracture healing. However, the vascular Jorde of the fracture line was still visible, and there was a malunion with an extension deformity. Dr. Patel again recommended tenolysis. He noted that Petitioner "understood that he could lose the digit however because in many ways it gets in the way is willing to take the risk as the downsides he was willing to accept." Petitioner would be scheduled for surgery. On July 2, 2021, Dr. Patel had nothing new to add, except that Petitioner elected not to proceed with the surgery. He ordered an FCE and would make recommendations about restrictions based on the results. The FCE placed Petitioner at the Heavy PDL. Petitioner's job of area manager of a labor crew had a Heavy PDL. He had less function in the left hand and avoided its use. He also dropped nuts and washers while holding with the left hand. Therefore, although Petitioner met the PDL necessary for his job, he may or may not be able to perform all essential job tasks.

Petitioner testified that currently, he had to learn how to use eating utensils/cutting steak, he had pain in his hand clutching on his motorcycle, and it was more difficult to perform truck repairs. He had trouble with fine manipulation and "definitely cannot lift what" he lifted before the accident. His finger gets numb in cold weather. His left index finger is shaped like a fish hook. The Arbitrator described it as appearing to be "permanently curved as he's described a fish hook type of position." Petitioner then testified that he had a lot of scarring on the finger as well in the palm of his hand "where they had to reconnect the tendon." The Arbitrator described it as an inch to inch and a half scar under the index finger area and there were scars around the index finger when it was attached.

Conclusions of Law

The Arbitrator awarded Petitioner 94.25 weeks of PPD representing loss of 100% of the left index finger, 25% of the left hand, $7,274.84 in penalties under §19(k), and attorney fees of $1,454.96 under §16. Respondent argues that the Arbitrator erred in awarding loss of 100% of the amputated-reattached finger. It argues that the reattachment surgery was a complete success and that the 50% advance PPD it made was sufficient compensation for the injured finger. The Commission agrees with the Arbitrator that there has not been a Commission decision in which a reattached amputated finger wasn't considered an amputated finger under the Act. In addition, even though the finger was reattached, it was basically dysfunctional. Accordingly, the Commission affirms the award of the Arbitrator's award of loss of 100% of the use of the left index finger.

The Arbitrator found that Petitioner proved a condition of ill-being of his left hand which was caused by the amputation of the left index finger. She noted that Petitioner had sought medical attention for his finger/hand since the accident, his finger "appeared to be permanently curved," and Petitioner "testified that any functional limitations or issues with his left hand are related to the left index finger injury and limitations of the left index finger. The medical records bear this out." She also pointed out "Petitioner's treating physicians as it related to his left index finger and left hand including the loss of grip strength." Respondent argues that the Arbitrator erred in finding that Petitioner's current condition of ill-being of his left hand was causally related to the amputation of the finger. It stresses that besides the replantation surgery being a complete success, there was no injury to the hand itself, other than the amputation, and Petitioner was not restricted from performing two-handed work.

The Commission agrees that Petitioner is entitled to an award for loss of use of the left hand because of the incision into the palm, reduced grip strength, the fact that his finger injury makes it difficult for him to perform any of his work tasks, and the FCE noted reduced functionality in the left hand. Nevertheless, because the FCE placed Petitioner in the heavy PDL, his permanent disability stems primarily from the amputation/impairment of his finger, and he did not testify to substantial difficulty in performing work tasks, the Commission reduces the award to 41 weeks representing loss of the use of 20% of the left hand.

On the issue of penalties/fees, the Arbitrator awarded $7,274.84 in penalties under §19(k), and attorney fees of $1,454.96 under §16 based on her conclusion that Respondent's delay in paying full amputation benefits was unreasonable and vexatious. The Arbitrator awarded penalties of 50% of the difference of the tendered PPD, representing loss of 50% of the finger and the amputation award of loss of 100% of the finger from the amputation and 20% of that amount as attorney fees. Respondent argues the award of penalties and fees was erroneous. It stresses that it "immediately raised a dispute as to whether Petitioner suffered 50% or 100% loss of the left index finger." It based its payment of 50% of the finger on the fact that the finger was reattached.

The Commission notes that upon a quick review of previous Court and the Commission decisions, these tribunals have been very strict about imposing penalties for employers' failure to pay amputation benefits timely. We agree with the Arbitrator that Respondent's failure to pay full amputation benefits in a timely fashion was unreasonable. Accordingly, the Commission affirms the Arbitrator's award of penalties and fees.

Order IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator dated September 8, 2023, is hereby modified as specified above, and is otherwise affirmed and adopted, which is attached hereto and made a part hereof.

IT IS FURTHER ORDERED BY THE COMMISSION Respondent shall pay to Petitioner the sum of $676.73 per week for 84 weeks because the injuries sustained caused 100% loss of the use of the left index finger (43 weeks) and 20% loss of the use of the left hand (41 weeks).

IT IS FURTHER ORDERED BY THE COMMISSION, that Respondent pay to Petitioner additional compensation in the amount of $7,274.84 as provided in §19(k) of the act and attorney fees in the amount of $1,454.96 as provided in §16 of the Act.

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

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $65,000.00. 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.

August 26, 2024

DLS/dw
O-7/10/24
46

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

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	20WC026776
Case Name	Adam Slowikowski v. Snow Systems, Inc.
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	14
Decision Issued By	Efi James, Arbitrator

Petitioner Attorney	David Menchetti
Respondent Attorney	Brad Antonacci

DATE FILED: 9/8/2023

THE INTEREST RATE FOR THE WEEK OF SEPTEMBER 6, 2023 5.30%

/s/Efi James, Arbitrator

Signature

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Adam Slowikowski
Employee/Petitioner

Case # **20WC026776**

v.

Consolidated cases: **NA**

Snow Systems, Inc.
Employer/Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Efi James,** Arbitrator of the Commission, in the city of **Chicago**, on **July 11, 2023**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
B. ☐ Was there an employee-employer relationship?
C. ☐ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
D. ☐ What was the date of the accident?
E. ☐ Was timely notice of the accident given to Respondent?
F. ☒ Is Petitioner's current condition of ill-being causally related to the injury?
G. ☐ What were Petitioner's earnings?
H. ☐ What was Petitioner's age at the time of the accident?
I. ☐ What was Petitioner's marital status at the time of the accident?
J. ☐ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
K. ☐ What temporary benefits are in dispute?
☐ TPD ☐ Maintenance ☐ TTD
L. ☒ What is the nature and extent of the injury?
M. ☒ Should penalties or fees be imposed upon Respondent?
N. ☐ Is Respondent due any credit?
O. ☒ Other **PPD credit for the statutory 50% loss of use of the left index finger**

FINDINGS

On **10/14/2020,** Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $**58,649.76**; the average weekly wage was $**1,127.88**.

On the date of accident, Petitioner was **21** years of age, ***single*** with **0** dependent children.

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

Respondent ***has*** paid all appropriate charges for all reasonable and necessary medical services, in the amount of $**92,602.39**.

Respondent shall be given a credit of $**3,007.68** for TTD, $**NA** for TPD, $**NA** for maintenance, and $**NA** for other benefits, for a total credit of $**3,007.68**. Neither party claims any overpayment or underpayment of TTD.

ORDER

Respondent Snow System, Inc.shall pay to Petitioner Adam Slowikowski permanent partial disability benefits pursuant to Section 8(e) of the Act in the amount of $676.73 per week for 94.25 weeks because the injuries sustained caused 100% loss of the left first or index finger (43 weeks) and the 25% loss of use of the left hand (51.25 weeks).

Respondent shall pay to Petitioner additional compensation in the amount of $7,274.84 as provided for in Section 19(k) of the Act and attorneys' fees in the amount of $1,454.96 as provided for in Section 16 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 8, 2023

Signature of Arbitrator

STATE OF ILLINOIS)
)SS
COUNTY OF COOK)

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

ADAM SLOWIKOWSKI,	)	
	)	
Petitioner,	)	
	)	
v.	)	IWCC No.: 20 WC 026776
	)	
SNOW SYSTEMS, INC.	)	
	)	
Respondent.		

PROCEDURAL HISTORY

This matter proceeded to hearing on July 11, 2023, in Chicago, Illinois before Arbitrator Efi James on Respondent's Request for Hearing. Issues in dispute include Causal Connection, Nature and Extent, Penalties and Credit for Statutory 50% loss of use of the left index finger ($14,549.69). (Arbitrator's Exhibit "AX" 1)

FINDINGS OF FACT

Job Duties

On October 14, 2020, Petitioner Adam Slowikowski (hereinafter "Petitioner") was 21 years old and had been working for Respondent Snow Systems, Inc. since 2013 (hereinafter "Respondent"). For the last 3-4 years, Petitioner worked as an area manager/supervisor mechanic. (Tr. 10) The job required Petitioner to use fine motor skills with both hands and to lift and pull heavy items. (Tr. 11) He was also required to lift tires, salt bags, salt spreaders, and shovels weighing up to fifty pounds as well as pull sets of forks onto a trailer and plow skis out of a bed. (Tr. 10-11) He also testified he was required to operate machinery, drive and pick up trucks, move and deliver materials and equipment, and perform maintenance repairs on snow removal equipment, which all required the use of both of his hands. (Tr. 30-32) Petitioner

testified that is right hand dominant. (Tr. 12) ATI reported that the occupational physical demand level of the job was heavy. (PX 6, pg. 2)

Prior Medical Condition

Petitioner testified that prior to the October 14, 2020 accident, he had no difficulties or complaints with his left hand. (Tr. 12) He also testified that he had no fractured fingers and no other injuries to his left hand. (Tr. 12) Petitioner was not taking any medication at the time of the accident. (Tr. 12)

Accident

On October 14, 2020, it was stipulated by the parties that Petitioner sustained an accident that arose out of and in the course of his employment by Respondent. (AX 1; Tr. 12-13) Petitioner testified that he was working at a job site located in Bedford and was repairing a front loader when a piece of metal came down onto his left index finger, causing the amputation of his left index finger from his left hand. (T. 13-14; 32-33) Immediately following the accident, Petitioner picked up his left index finger from the ground. (Tr. 14) Photographs depict Petitioner's left index finger completely detached from his left hand. (PX 1) An ambulance was called and Petitioner was transported to the emergency department of Advocate Christ Medical Center with his severed finger placed on ice. (Tr. 14-15; 34-35)

Summary of Medical Records

Petitioner was seen in the emergency department of Advocate Christ Medical Center. (PX 2, pg. 4) He reported being right-handed and denied sustaining any other injuries. (PX 2, pgs. 785-786) Physical exam found an amputation to the left second digit just proximal to the PIP, bleeding controlled, wound dirty, amputated finger on ice, no deformity or wound to rest of the hand, and full range of motion in the other fingers. (PX 2, pgs. 786-788) X-rays of the left hand showed a completely amputated left index finger with transection site at the distal aspect of the proximal phalanx. (PX 2, pg. 51) Separate X-rays of the detached distal finger showed comminution of the bone at the fracture site. (PX 2, pg. 41)

At trial, Petitioner presented photographs of his severed left index finger. (PX 1) Petitioner testified that those photographs were taken in the waiting room at the hospital and truly and accurately depicted the appearance of his finger immediately following the accident. (Tr. 14; 16-17) Petitioner testified that, as of the date of the hearing, his finger had been reattached. (Tr. 35-36)

According to the operative report, Dr. Rybalko had a discussion with Petitioner regarding two treatment options: a revision amputation of the left index finger versus a replantation of the left index finger. (PX 2, pgs. 800-803) Given that this was a single digit index finger zone 2 injury, there was a relative contraindication to a replantation. (PX 2, pgs. 800-803) Dr. Rybalko explained that attempting a replantation would require a lengthy hospital stay of up to two weeks or longer. (PX 2, pgs. 800-803) There would also be a very high risk of failure of the procedure of up to 50% and the recovery would be quite lengthy. (PX 2, pgs. 800-803) Dr. Rybalko also discussed the risks of fitness of the finger

making it non-usable, risk of failure of fixation and union of bone, and risk of infection that could lead to loss of limb. (PX 2, pgs. 800-803) The doctor also explained that additional surgeries might be needed, including tenolysis in order to get the finger moving again in the future. (PX 2, pgs. 800-803) Petitioner requested that the doctor attempt the replantation procedure. (PX 2, pgs. 800-803; Tr. 39-40)

Dr. Daniel Rybalko, an orthopedic surgeon, immediately performed a surgery that reattached his left index finger to his hand, which included: (1) left index finger replantation; (2) repair of flexor digitorum profundus tendon; (3) repair of extensor tendon at the level of the proximal phalanx; (4) repair of ulnar digital artery; (5) repair of dorsal vein; (6) repair of radial digital nerve primarily; and (7) repair of ulnar digital nerve with an allograft. (PX 2, pgs. 800-803) On October 26, 2020, Petitioner was discharged home in stable condition with instructions to start taking antibiotics and pain medications and to follow up with Dr. Rybalko. (PX 2, pgs. 803-807)

On October 29, 2020, Petitioner followed up with Dr. Rybalko for his first post-surgery follow up visit. (PX 3) Petitioner was found to be compliant with the dorsal blocking splint and had been taking his prescribed antibiotics. (PX 3, pg. 2) Dr. Rybalko noted the replantation was completed successfully and Petitioner required no additional surgeries during his hospital stay. (PX 3, pg. 2) Dr. Rybalko felt the bone fixation and tendon repair were strong enough to begin early active motion and referred Petitioner to Dr. Kushal Patel. (PX 3, pg. 3; Tr. 41)

Petitioner then remained under the care of Dr. Patel of Edward-Elmhurst Medical Group from November 3, 2020, to October 18, 2021. (PX 4, pgs. 3-94) At his initial visit on November 3, 2020, Petitioner was doing well regarding pain and his digit remained well-perfused. (PX 4, pgs. 3-16) Per Dr. Patel's noted assessment/plan, Petitioner was to begin occupational therapy to work on FDP gliding. (PX 4, pg. 6)

The medical records reveal that Petitioner attended forty occupational therapy sessions at Athletico Physical Therapy between November 9, 2020 and March 24, 2021. (PX 5, pgs. 4-170) Athletico reported edema of Petitioner's left index finger and loss of range of motion of the left index finger. (PX 5, pg. 5) There was loss of grip strength of the left hand to 67 lbs. (PX 5, pg. 5) Athletico noted numbness and tingling in the left index finger. (PX 5, pg. 6) At the time of discharge on March 24, 2021, there was no significant change in Petitioner's index finger swelling with plateaued grip strength and active range of motion and good passive range of motion. (PX 5, pgs. 4-9; Tr. 50)

On November 11, 2020, Petitioner returned to work for Respondent on a light duty basis. (AX 1) Upon his return, Petitioner met with Trevor Biebrach, Director of Operations for Respondent. (Tr. 50-51; 68-69) It is unrebutted that Petitioner was told that Respondent would bring him back to work in his pre-injury job position as a site manager on a full-time basis. (Tr. 50-51; 68-69) Petitioner testified that he never refused certain activities due to his restrictions. (Tr. 51-52) He also denied ever reporting any complaints with those tasks that he was asked to perform while working light duty but did indicate that the work was harder. (Tr. 52) The Arbitrator notes that Mr. Biebrach testified that Petitioner was not a complainer. (Tr. 69) Petitioner also testified that there were times where he asked for help to perform his duties. (Tr. 52)

On November 24, 2020, Dr. Patel removed the pins and recommended continuing with occupational therapy and no weightbearing of the left upper extremity. (PX 4, pp. 31-44)

Petitioner returned to Dr Patel on January 4, 2021. (PX 4, pg. 45) Petitioner reported tingling and some hot sensation over the fingertip of his left index finger. (PX 4, p. 48) Dr. Patel noted that Petitioner had suspected adhesions on the FDP tendon, preventing normal gliding and prescribed additional occupational therapy. (PX 4, pg. 47) Dr. Patel thought Petitioner could perform activities at work as tolerated. (PX 4, pg. 47) They also discussed the scheduling of the additional surgery by way of flexor tenolysis, possible open reduction internal fixation of left index finger proximal phalanx fracture with distal radius bone grafting, and PIP contracture release. (PX 4, pg. 55) On March 24, 2021 Dr. Patel continued to recommend the additional surgery including bone grafting, plate fixation, tenolysis and PIP contracture release. (PX 4, pg. 55) On March 24, 2021, Petitioner returned to work for Respondent. (Tr. 21)

Petitioner returned to Dr. Patel on May 19, 2021. Dr. Patel opined that Petitioner had plateaued from an active range of motion standpoint. (PX 4, pgs. 85-87) Petitioner expressed disappointment in the replanted digit's function and had some regrets on having had his index finger replanted. (PX 4, pg. 84) Petitioner also reported that he substituted the vast majority of his work tasks with his left middle finger but felt he had enough sensation in his left index finger to perform fine motor tasks. (PX 4, p. 86) Having discussed the risks and benefits of additional surgery with Dr. Patel, Petitioner elected not to proceed with surgery. (PX 4, pg. 90) On July 1, 2021, Dr. Patel then recommended a functional capacity evaluation (FCE). (PX 4, pg. 90)

Petitioner testified that he underwent a valid FCE at ATI Physical Therapy on September 9, 2021. (Tr. 46; PX 6) The FCE shows that Petitioner's demonstrated physical demand level (PDL) was Heavy and his capabilities met the DOT and his self-stated level as Area Manager. (PX 6; Tr. 46-48) During the FCE, Petitioner tended to avoid use of the left index finger as it was less functional and more of a hindrance. (PX 6, p. 2) He was occasionally observed dropping washers and nuts when using the left index finger. (PX 6, pg. 2) Petitioner was otherwise able to complete all tasks without issue and with good safety awareness, met the Heavy PDL requirement in regards to the DOT, and was able to return to work within the FCE guidelines from a functional standpoint. (PX 6, pg. 2; PX 4, pgs. 92-94; Tr. 46-48)

In September 2021, Petitioner went to work for a new employer M & J Asphalt as a local 150 operating engineer. (Tr. 24) Petitioner testified that he is rarely required to lift anything in his new job. (Tr. 25)

Petitioner testified that he returned to Dr. Patel to review his FCE results on October 18, 2021. (PX 4, pp. 92-94) Dr. Patel recommended permanent work restrictions based on the FCE, placed Petitioner at maximum medical improvement, and instructed him to follow up as needed. (PX 4, p. 93; Tr. 48-50) Petitioner further testified and agreed that Dr. Patel did not limit or restrict his ability to perform two-handed work duties. (Tr. 49-50)

Petitioner's Testimony

Petitioner testified that in September of 2021, he decided to voluntarily resign his employment with Respondent to start a new job with another employer. (Tr. 55-56) Petitioner testified that he received a job opportunity to join the Local 150 Operators Union and has been working as an operating engineer for one contractor, M & J Asphalt, since that time. (Tr. 24) As an operating engineer, Petitioner is required to hold joysticks, steer wheels, operate machinery, and lift. (Tr. 24-25) Petitioner testified that he left his employment with Respondent for better opportunities and increased compensation and his decision had nothing to do with this work accident. (Tr. 55-56) He also testified that he left on good terms and continues working for Respondent, on occasion, assisting his dad (who also works for Respondent) with certain activities that require the use of both of his hands. (Tr. 56-57)

Petitioner testified that his injury has not caused any lack of work and admitted working more hours. (Tr. 57-58) He testified he has no follow up appointments scheduled with Dr. Patel or any other doctors related to said injury. (Tr. 59) He also testified he was not taking any prescription medication for said injury. (Tr. 59) He further testified he has not returned for additional therapy since being discharged on March 24, 2021, nor does he have any therapy appointments currently scheduled. (Tr. 59)

Petitioner testified that he notices difficulties with his left hand when cutting steak, riding motorcycles, working on trucks, and lifting things. (Tr. 25-27) Petitioner has pain in his left hand when holding objects or squeezing objects like a motorcycle clutch. (Tr. 26) Petitioner cannot lift things, like a garbage can, with his left hand like he used to do. (Tr. 27) Petitioner described his left index finger as looking like a hook. (Tr. 27) The Arbitrator viewed the Petitioner's left hand and noticed that the left index finger appeared to be permanently curved. (Tr. 28) The Arbitrator noticed scarring on Petitioner's left index finger and in his left palm. (Tr. 28)

Testimony of Trevor Biebrach

Respondent also presented the testimony of Trevor Biebrach, Respondent's Director of Operations. (Tr. 65-75) Mr. Biebrach testified that he is responsible for the supervision of site managers, including Petitioner, who are required to report directly to him with any complaints, issues or other concerns pertaining to their job position. (Tr. 66-67) Mr. Biebrach also noted that he had the opportunity to meet with Petitioner upon his return to work and that Petitioner's job position was still a full-time site manager for Respondent. (Tr. 68-69) He testified that Petitioner never reported any complaints or difficulties with those tasks that he was required to perform. (Tr. 69-70) He also testified that he never observed Petitioner in any pain or distress. (Tr. 70) He also testified that Petitioner's job duties and requirements as a site manager remained the same and that Petitioner was still operating machinery, driving trucks, using hand tools and other small pieces, and using both of his hands to perform those job duties. (Tr. 70-71)

Mr. Biebrach believed that Petitioner's decision to voluntarily resign his employment with Respondent in 2021 was due to better opportunities and not because he was unable to perform his job duties and activities as a site manager. (Tr. 71-72) He also testified that Petitioner has worked for Respondent, on occasion, assisting his dad at his availability and request. (Tr. 72) He also testified that Petitioner has never reported any complaints or difficulties with those work activities nor has he ever refused to perform any work activities. (Tr. 72-73)

CONCLUSIONS OF LAW

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

Decisions of an arbitrator shall be based exclusively on the evidence in the record of the proceeding and material that has been officially noticed. 820 ILCS 305/1.1(e) Credibility is the quality of a witness which renders his evidence worthy of belief. The Arbitrator, whose province it is to evaluate witness credibility, evaluates the demeanor of the witness and any external inconsistencies with his testimony. Where a claimant's testimony is inconsistent with his actual behavior and conduct, the Commission has held that an award cannot stand. *McDonald v. Industrial Commission,* 39 Ill. 2d 396 (1968); *Swift v. Industrial Commission,* 52 Ill. 2d 490 (1972).

A decision by the Commission cannot be based upon speculation or conjecture. *Deer and Company v. Industrial Commission,* 47 Ill.2d 144, (1970). A Petitioner seeking an award before the Commission must prove by a preponderance of credible evidence each element of the claim. *Illinois Institute of Technology v. Industrial Commission,* 68 Ill.2d 236, (1977).

It is the function of the Commission to judge the credibility of the witnesses and to resolve conflicts in the medical evidence and assign weight to witness testimony. *O'Dette v. Industrial Commission,* 79 Ill.2d 249, 253, 403 N.E.2d 221, 223 (1980); *Hosteny v. Workers' Compensation Commission,* 397 Ill. App. 3d 665, 674 (2009). Internal inconsistencies in a claimant's testimony, as well as conflicts between the claimant's testimony and medical records, may be taken to indicate unreliability. *Gilbert v. Martin & Bayley/Hucks,* 08 ILWC 004187 (2010).

In the case at hand, the Arbitrator observed Petitioner during the hearing and finds him be a credible witness. Petitioner came across as a hard-working individual who worked for Respondent since 2013 and continues to work for Respondent on occasion. The Arbitrator finds Petitioner's testimony as to his accident to be straight forward, truthful, and consistent. Petitioner's description of the accident and subsequent physical complaints remained consistent throughout. The Arbitrator compared Petitioner's testimony with the totality of the evidence submitted and did not find any material contradictions or internal inconsistencies that would deem the witness unreliable specifically as it relates to his description of the accident or his current condition of ill-being. Also of note, Respondent's witness, Trevor Biebrach, the Director of Operations for Respondent, testified that Petitioner was a truthful individual. (Tr. 73)

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

To obtain compensation under the Act, a claimant must prove that some act or phase of his employment was a causative factor in his ensuing injuries. It is not necessary to prove that the

employment was the sole causative factor or even that it was the principal causative factor, but only that it was a causative factor. *Tolbert v. Ill. Workers' Comp. Comm'n*, 2014 IL App (4th) 130523WC, 11 N.E.3d 453. "A chain of events which demonstrates a previous condition of good health, an accident, and a subsequent injury resulting in disability may be sufficient circumstantial evidence to prove a causal nexus between the accident and the employee's injury." *International Harvester v. Industrial Com.*, 93 Ill. 2d 59, 63 442 N.E.2d 908 (1982).

"Whether a causal connection exists is a question of fact for the Commission, and a reviewing court will overturn the Commission's decision only if it is against the manifest weight of the evidence... The test is whether the evidence is sufficient to support the Commission's finding, not whether this court or any other tribunal might reach an opposite conclusion. For the Commission's decision to be against the manifest weight of the evidence, the record must disclose that an opposite conclusion clearly was the proper result." *Vogel v. Industrial Commission*, at 786 (2nd Dist. 2005).

The Arbitrator concludes that the current condition of Petitioner's left index finger and left hand is causally related to the stipulated accidental injuries of October 14, 2020. After the traumatic amputation of his left index finger, Petitioner has consistently and continuously sought medical treatment and has had complaints regarding his left index finger and left hand. Importantly, the Arbitrator viewed the Petitioner's left hand and noticed that the left index finger appeared to be permanently curved. (Tr. 28) Petitioner also testified that any functional limitations or issues with his left hand are related to the left index finger injury and limitations of the left index finger. The medical records bear this out. On October 18, 2021, Dr. Patel recommended permanent work restrictions based on the FCE and placed Petitioner at maximum medical improvement. Prior to this date of accident, Petitioner was in a condition of good health relating to his left index finger and left hand. Respondent offers no medical testimony or opinion disputing the findings of Petitioner's treating physicians as it relates to his left index finger and left hand including the loss of grip strength.

Based on the foregoing reasons and the record taken as a whole, the Arbitrator finds that Petitioner's current condition of ill-being is causally connected to the October 14, 2020 work accident.

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

In determining PPD benefits, Section 8.1b(b) of the Act directs the Commission to consider: "(i) the reported level of impairment pursuant to subsection (a); (ii) the occupation of the injured employee; (iii) the age of the employee at the time of the injury; (iv) the employee's future earning capacity; and (v) evidence of disability corroborated by the treating medical records." *Con-Way Freight, Inc. v. Illinois Workers' Compensation Comm'n,* 2016 IL App (1st) 152576WC, 67 N.E.3d 959. "No single enumerated factor shall be the sole determinant of disability." 820 ILCS 305/8.1b(b). "None of the factors set forth in section 8.1b is to be the sole determinant of the claimant's disability." *Corn Belt Energy Corp. v. Illinois Workers' Compensation Comm'n*, 2016 IL App (3d) 150311WC.

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

Under Section 8.1b(b)(ii), the occupation of the injured employee, the Arbitrator notes that Petitioner was employed as a site manager at the time of the accident and was able to return to full duty work for Respondent in his prior capacity as a result of said injury. The FCE report shows that Petitioner can work at the Heavy PDL. The record also shows that Petitioner is currently employed as an operating engineer for M & J Asphalt which requires him to use both of his hands to operate machines, drive, and lift. Because the work injury has had no impact on Petitioner's functional ability to return to work as a site manager and he still had the ability to be placed in certain positions with better opportunities and increased compensation, the Arbitrator gives little weight to this factor.

Under Section 8.1b(b)(iii), the age of the employee at the time of the injury, the Arbitrator notes that Petitioner was 21 years old at the time of the accidental injuries. The Arbitrator concludes that Petitioner is a young individual and infers that Petitioner will have to live with his condition, including having what amounts to a permanently "hooked" finger, for a very long time. The Arbitrator therefore gives some weight to this factor.

Under Section 8.1b(b)(iv), the employee's future earning capacity, Petitioner provided no testimony regarding his future earning capacity. As such, the Arbitrator accords this factor no weight in determining his future earning capacity.

Under Section 8.1b(b)(v), evidence of disability corroborated by the treating medical records, the Arbitrator notes that Petitioner's credible complaints about his left index finger and left hand are corroborated by the treating medical records, especially considering the complex nature of the surgery performed. The Arbitrator attributes complaints about lifting, gripping and grasping to the injury to the left index finger and the left hand. The Arbitrator bases this finding on the records from Athletico and the FCE from ATI. The Arbitrator therefore gives great weight to this factor.

Additionally, Section 8(e)(8) of the Act states: "(t)he loss of the first or distal phalanx of the thumb or of any finger or toe shall be considered equal to the loss of one-half of the amount above specified. The loss of more than one phalanx shall be considered the loss of the entire thumb, finger or toe." The record fully documents that Petitioner sustained a complete amputation of his left index finger below the first phalanx and just above the second knuckle (PIP joint) that was replanted.

The Commission has stated that the term "loss" means "amputation, **severance**, or complete loss of use of a member…." *Outboard Marine Corp. v Industrial Comm'n*, 309 Ill App. 3d 1026 (2000). The Commission has stated that even when a finger is "hanging by a piece of skin," if the

finger was severed below one phalanx, it will be considered an amputation requiring payment of 100% loss of use of a finger. *Nobile v Midwest Wrecking Co.*, 09 IWCC 0751 (2009).

In this case, Petitioner sustained a complete severance of his left index finger just below the second knuckle in the proximal phalanx, below the distal and intermediate phalanges. Two photos of Petitioner's hand taken at the Christ Hospital emergency room shortly after the amputation show the left index finger separated from Petitioner's hand. In addition, the location of the severance on the left index finger was explained by treating Dr. Rybalko; the amputated finger was brought into the surgical field and K-wires were advanced to flex the finger to the proximal phalanx (the phalanx below the distal and intermediate phalanges) and the proximal phalanx was shortened for primary repair of the blood vessels. The undisputed and indisputable evidence clearly shows that the severed portion of the left index finger contained "more than one phalanx." Accordingly, the medical records and the photographs of the finger establish an amputation and Section 8(e)(8) and case law require the payment of 100% loss of the left index finger.

The Arbitrator does not find any support for Respondent's argument that Petitioner's injury amounts to only 50% loss of use of the left index finger. The Commission has never interpreted that a 100% statutory loss of a finger can be negated if the finger is replanted.

As to the loss of use of Petitioner's left hand, the surgery performed included left index finger reallocation, repair of flexor and extendor tendons, nerve repair with allograft and artery and vein repair. Specifically, the surgical report notes because the FDP tendon had retracted into the palm, incisions had to be made in the palm to repair the tendon. Evidence of surgical scars on the palm of Petitioner's hand was noted by the Arbitrator during the trial. (Tr. 28) It is in this same area, that Petitioner had suspected adhesions on the FDP tendon, preventing normal gliding. (PX 4, pg. 47) In January and March of 2021, Dr. Patel recommended an additional surgery including bone grafting, plate fixation, tenolysis and PIP contracture release. (PX 4, pg. 55)

A valid FCE was performed on September 9, 2021. (PX 6) The FCE demonstrated Petitioner's limitations as it relates to the use of his left hand as compared to the right. His above shoulder carry through the workday on the left was 39.4 pounds occasionally as compared to 46.6 pounds on the right. Desk to chair lifting while sitting was 81.6 pounds on the left as compared to 103.8 pounds on the right. Carrying while walking was 62 pounds on the left as compared to 103.8 pounds on the right. According to the FCE, Petitioner's grip strength was also diminished in his left hand as compared to the right. (PX 6, pg. 7) On October 18, 2021, Dr. Patel recommended permanent work restrictions per the FCE. (PX 4, pg. 93)

Petitioner testified that he has difficulties with his left hand when cutting steak, riding motorcycles, working on trucks, and lifting things such as garbage cans. (Tr. 25-27) Petitioner has pain in his left hand when holding objects or squeezing objects like a motorcycle clutch. (Tr. 26) Petitioner cannot lift things, like a garbage can, with his left hand like he used to do. (Tr. 27) Per the record, it is clear that Petitioner's amputation and subsequent replantation of his left index finger effected his ability to use his left hand. (PX 6, pg. 2)

Based on the above factors, and the evidence taken as a whole, the Arbitrator finds that Petitioner sustained accidental injuries causing 100% loss of his left index finger and 25% loss of use of his left hand.

Issue M, should penalties or fees be imposed upon Respondent Arbitrator finds as follows:

Respondent paid a "statutory 50% loss of use of the left index finger." It should be noted that Respondent did not offer any case law in support of its 50% payment in late November 2020, payment that happened only after a demand for a 100% statutory loss was made. It is well-established that the legislature intended for employees who suffer an amputation to be compensated immediately. See *Nobile and Lester v Industrial Comm'n*, 253 Ill. App. 3d 520 (1993). When there is no dispute that the claimant's amputation arose out of and in the course of his employment, statutory benefits for an amputation are to be paid no later than the time when the employer knows the extent of the amputation. See Greene Welding and Hardware v Illinois Workers' Comp. Comm'n, 396 Ill. App. 3d 754 (2009).

In this case, Respondent was made aware of the complete amputation of Petitioner's left index on the day it occurred pursuant to the testimony of Respondent's sole witness, Trevor Biebrach. (Tr. 68) Respondent was also provided the Christ Hospital operative report on November 17, 2020 which documented the amputation below the first finger joint. Additionally, Respondent was provided the two photos of the severed finger on November 23, 2020. The Respondent disregarded all of this by paying only 50% statutory loss of the left index finger. Respondent's argument that it had a reasonable basis to believe this injury amounted to only a 50% statutory loss due to the replantation is not supported by any prior decision of the Commission. The arbitrary 50% payment by Respondent represented an unreasonable and vexatious delay in payment or an intentional underpayment of compensation. Therefore, the Arbitrator awards additional compensation under Section 19(k) of the Act and attorneys' fees under section 16 of the Act as follows: $7,274.84 under Section 19(k) (50% of 50% of the left index finger); and $1,454.96 in attorneys' fees under Section 16 (20% of 19(k) penalty).

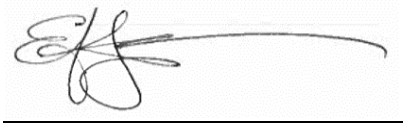
Issue O, whether Respondent is due any credit for payment of statutory 50% loss of use of the left index finger, the Arbitrator finds as follows:

Respondent paid "50% statutory loss" of the left index finger in November 2020. Respondent is entitled to receive credit for $14,549.69 against the award of 100% loss of the left index finger and 30% loss of use of the left hand.

CONCLUSION

In light of the above facts and considerations, the Arbitrator finds that Petitioner's current condition of ill-being is causally connected to the October 14, 2020 work accident. The Arbitrator finds that Petitioner sustained permanent partial disability to the extent of 100%

loss of his left index finger and 25% loss of use of his left hand. Respondent is entitled to receive credit for $14,549.69 against the award of 100% loss of the left index finger and 25% loss of use of the left hand. Finally, having found an unreasonable and vexatious delay in payment or an intentional underpayment of compensation as it relates to the statutory loss, the Arbitrator awards penalties under Section 19(k) of the Act and attorneys' fees under section 16 of the Act as follows: $7,274.84 under Section 19(k) (50% of 50% of the left index finger); and $1,454.96 in attorneys' fees under Section 16 (20% of 19(k) penalty).



Arbitrator Efi Poziopoulos James

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	20WC031232
Case Name	Wayne Ashford v. LST Transport & IWBF
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	24IWCC0410
Number of Pages of Decision	19
Decision Issued By	Deborah Simpson, Commissioner

Petitioner Attorney	Patrick Shifley, Haris Huskic
Respondent Attorney	Rufus Barner

DATE FILED: 8/27/2024

/s/Deborah Simpson, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF LAKE)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Wayne Ashford,
Petitioner,

vs. NO: 20 WC 31232

LST Transport and IWBF,
Respondent.

DECISION AND OPINION ON REVIEW

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

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed September 22, 2023, is hereby affirmed and adopted.

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

IT IS FURTHER ORDERED BY THE COMMISSION The Illinois State Treasurer as *ex-officio* custodian of the Injured Workers' Benefit Fund was named as a co-Respondent in this matter. The Treasurer was represented by the Illinois Attorney General. This award is hereby entered against the Fund to the extent permitted and allowed under §4(d) of the Act, in the event of the failure of Respondent-Employer to pay the benefits due and owing the Petitioner. Respondent-Employer shall reimburse the Injured Workers' Benefit Fund for any compensation obligations of Respondent-Employer that are paid to the Petitioner from the Injured Workers' Benefit Fund.

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 $33,900.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

August 27, 2024

o8/7/24
DLS/rm
046

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

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	20WC031232
Case Name	Wayne Ashford v. LST Transport/IWBF
Consolidated Cases	
Proceeding Type	
Decision Type	Corrected Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	16
Decision Issued By	Paul Seal, Arbitrator

Petitioner Attorney	Haris Huskic, Patrick Shifley
Respondent Attorney	Rufus Barner

DATE FILED: 9/22/2023

THE INTEREST RATE FOR THE WEEK OF SEPTEMBER 22, 2023 5.30%

/s/ Paul Seal, Arbitrator

Signature

STATE OF ILLINOIS)
)SS.
COUNTY OF LAKE)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
CORRECTED ARBITRATION DECISION

Wayne Ashford
Employee/Petitioner
v.
LST Transport/IWBF
Employer/Respondent

Case #**20** WC **31232**

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Paul Seal** Arbitrator of the Commission, in the city of **Waukegan**, on **August 15, 2023.** After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On **December 14, 2020**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $**37,180.00** the average weekly wage was $**715.00.**

On the date of accident, Petitioner was **51** years of age, ***married*** with **0** dependent children.

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

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

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

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

ORDER

The Arbitrator finds based upon the weight of credible evidence in this record that Petitioner is entitled to permanent partial disability to **the extent of 7.5% loss of use of the person as a whole under secton 8(d) (2) of the act.**

Respondent shall pay Petitioner TTD benefits of **$476.67 per week for 4 5/7ths weeks**, commencing December 22, 2020 through January 24, 2021, as provided in Section 8(b) of the Act.

Respondent shall pay to the Petitioner reasonable, related, and necessary medical services in the amount of **$15,462.56** as provided in Sections 8(a) and 8.2 of the Act, and as is set forth below.

In support of the Arbitrator's decision with respect to (L), The Liability of The Injured Workers' Benefit Fund, the Arbitrator finds as follows:

The Illinois State Treasurer, ex-officio custodian of the Injured Workers' Benefit Fund, was named as a co-respondent in this matter. The Treasurer was represented by the Illinois Attorney General. Petitioner submitted the NCCI certification that Respondent was uninsured on the date of accident. (PX7) This award is hereby entered against the Fund to the extent permitted and allowed under Section 4(d) of the Act. In the event the Respondent/Employer/Owner/Officer fails to pay the benefits, the Injured Workers' Benefit Fund has the right to recover the benefits paid due and owing the Petitioner to Section 5(b) and 4(d) of the Act. Respondent/Employer/Owner/Officer shall reimburse the Injured Workers' Benefit Fund for any compensation obligations of Respondent/Employer/Owner/Officer that are paid to the Petitioner from the Injured Workers' Benefit Fund. To find otherwise would thwart the purpose of the Injured Workers' Benefit Fund to provide benefits to employees whose employers failed to obtain workers' compensation insurance.

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 22, 2023

Signature of Arbitrator

FINDINGS OF FACTS

This matter was heard pursuant to Petitioner's Request for Hearing on August 15, 2023, in the City of Waukegan, Illinois before Arbitrator Paul Seal. This matter was tried, and proofs were closed by Arbitrator Seal on August 15, 2023. All issues were in dispute at trial.

Wayne Ashford (hereinafter referred to as "Petitioner") testified that he was employed by LST Transport, Inc (hereinafter referred to as "Respondent") on December 14, 2020. (T.11) On December 14, 2020, Petitioner was 51 years of age, married with zero dependents. (Arb X1) Petitioner testified that he had been employed by Respondent for about four months prior to the December 14, 2020 accident. (T.11)

Petitioner testified that he was approached by the owner of Respondent, Mr. Lanell Townsend, to come and work for him. (T.11-12) Petitioner testified that Mr. Townsend and he are first cousins. Petitioner testified that he had to fill out an application with Respondent and was hired immediately thereafter as a truck driver. (T.14)

Respondent was a company engaged in transporting and delivering items on behalf of Amazon. (T.12) Petitioner testified that Respondent had 15-20 semi- trucks that they used to make deliveries. (T.13) Respondent's logo was on all of the semi-trucks. *Id* Respondent employees, including Petitioner, drove throughout the Midwest region to different Amazon facilities to make deliveries. (T.15)

Petitioner testified that Respondent's owner, Mr. Townsend, would set his work schedule. (T.15) Petitioner worked anywhere from 40-50 hours per week. (T.16) Petitioner testified that Respondent instructed him what facility to drive using a dispatching application the day before. *Id* Petitioner testified that he was paid weekly by Respondent via check, taxes were taken out and he received a W2 from Respondent. (T. 16-17) Petitioner did not receive any percentage of revenue that Respondent generated. *Id* Petitioner also testified that he did not know whether he had the option of refusing to decline a certain job or delivery location. *Id*

Petitioner testified that on December 14, 2020, he sustained work-related injuries to his right elbow, lower back, neck and right buttock. On December 14, 2020 Petitioner was assigned to make a delivery in Madison, Wisconsin. When he arrived at the Amazon warehouse in Wisconsin, he was instructed to go up the warehouse (metal) stairs, which were covered with snow, and presented the front desk employee of Amazon his (phone) application to get clearance to make the delivery. On the way back out, although holding onto the banister and walking back down the stairs, Petitioner slipped and slid down the stairs landing on his back and right side. (T.17-18) Petitioner testified that the metal stairs were located outside the warehouse, and he was instructed to use them as it was his only way to get inside the warehouse. (T.20)

Immediately upon the fall, someone with Amazon called the ambulance and Petitioner was transported to UW Health-University of Wisconsin Hospitals. Petitioner testified that on his way to the hospital, he called and notified Mr. Townsend about his accident. (T.21)

Prior to December 14, 2020, Petitioner did not have any complaints nor sought any medical treatment for his neck or right elbow. (T.22) Petitioner however did have prior treatment for his back, but he had completed treatment and was working full duty as of November 18, 2020, without any issues for Respondent. (PX2, p.54)

On December 14, 2020, Petitioner was transported by an ambulance to UW Health complaining of right elbow, lower back, and right buttock pain. (PX1, p. 10) At that visit, Petitioner reported slipping and falling down six metal stairs onto his back and right side. Petitioner underwent x-rays of his right elbow and right hip. (*Id*, p. 23-26) Following an examination and a review of the x-ray results, Petitioner was diagnosed with right elbow pain and right elbow sprain. *(Id,* p.13) Due to the diagnosis, Petitioner was provided a sling for comfort, prescribed Ibuprofen and Tylenol and was instructed to follow up with his primary care physician within the next 3 days. After being discharged, Petitioner went back to the warehouse, picked up the semitruck and drove it back to the drop off location in Waukegan, Illinois. (T. 24)

On December 22, 2020, Petitioner presented to Associated Medical Centers of Illinois (hereinafter referred to as "AMCI") complaining of neck pain, lower back pain, and right elbow pain following his December 14, 2020 work accident. (PX2, p. 51) At that visit, Petitioner rated his neck pain as a 7 out of 10, lower back pain as a 7 out of 10 and right elbow pain as a 6 out of 10 on a 10-point pain scale. Petitioner informed Dr. Ashley Daliege that he had been unable to work since the accident as his regular job duties required him to drive, push, pull and climb into and out of the semitruck. Following an examination, Petitioner was diagnosed with a cervical sprain, lumbar sprain and right elbow sprain. (*Id*, p.52) Dr. Daliege opined that Petitioner's diagnoses were causally related to his December 14, 2020 work accident. *Id* In response to the diagnoses, Petitioner was prescribed physical therapy, ordered to remain off work and instructed to follow up with Dr. Larry Najera.

On December 23, 2020, Petitioner was seen by Dr. Najera out of AMCI and complained of neck, lower back and right elbow pain. (PX2, p. 54) Following an examination, Dr. Najera diagnosed Petitioner with a cervical sprain, lumbar sprain, right elbow sprain and possible exacerbation of previously asymptomatic degenerative disease. (*Id*, p.54-55) Similarly, Dr. Najera opined that the diagnoses were causally related to and/or exacerbated by the December 14, 2020 work accident. In response to the diagnoses, Dr. Najera prescribed 4 weeks of physical therapy (3 times per week); Tylenol; Cyclobenzaprine; and Lidopro topical medication for pain relief, and instructed Petitioner to remain off work until the next re-evaluation. (*Id,* p. 55)

On December 30, 2020, x-rays of Petitioner's cervical spine, lumbar spine and right elbow were ordered by AMCI. (PX2, p. 59)

On January 5, 2021, Petitioner returned to AMCI and underwent x-rays of his cervical spine, lumbar spine and right elbow. The MRI's of the spine revealed mild spondylosis of the upper cervical and lumbar spine. (PX2, p. 49)

On January 20, 2021, Petitioner followed up with Dr. Najera and reported doing better due to the physical therapy and pain medications. (PX2, p. 56) Following an examination, Dr. Najera discharged Petitioner from care and ordered him to return back to full duty work effective January 25, 2021. (*Id,* p. 57)

On March 29, 2022, Petitioner was seen by Dr. Luke Lotriet out of Pain and Wellness Group. (PX3, p. 74) Petitioner testified that the reason he sought treatment with Dr. Lotriet was because he was still experiencing pain on and off as a result of the December 14, 2020 work accident. (T. 29) Petitioner testified that he was not involved in any accidents between the last time he saw Dr. Najera on January 20, 2021 up until he saw Dr. Lotriet on March 29, 2022. (T.29-30) Petitioner saw Dr. Lotriet rather than go back to AMCI because Dr. Lotriet's location was more convenient for him. (T.41) At the March 29, 2022 visit, Petitioner complained of neck and upper back pain that started after his fall backwards down the stairs in December. Petitioner described the pain as deep achiness and tenderness, which caused headaches. Petitioner reported that the pain was worse at night and when waking up in the morning. To help alleviate the pain, Petitioner reported taking Tylenol. Dr. Lotriet had Petitioner undergo x-ray's of the cervical and thoracic spine at the visit. Following an examination, Dr. Lotriet diagnosed Petitioner with the following: cervicalgia, pain in the thoracic spine, headache, low back pain, postural kyphosis in the cervicothoracic region and myalgia. (*Id*, p. 78) In response to the diagnoses, Dr. Lotriet prescribed physical therapy (3 times per week). (*Id*, p. 77) Petitioner underwent therapy with Dr. Lotriet from March 29, 2023 through January 28, 2023.

At the hearing, Petitioner testified that he still deals with pain stemming from the December 14, 2020 accident. Petitioner noted dealing with lower back pain, specifically close to his buttock region. (T.31) Petitioner testified that he sought treatment with Dr. Lotriet to help alleviate the pain he was having, which helped, but has not completely gone away. *Id* Petitioner testified that driving for a long period of time irritates his spine. (T.32) As a result of the work accident, Petitioner is unable to enjoy the things he once used to do such as fishing, unless he brings someone with him as it's hard for him to bend down and grab his bait. (T.33) Petitioner testified that he is unable to stretch and/or reach as he once used to because of the pain.

CONCLUSIONS OF LAW

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

Section1(b)3(d) of the Act provides that, in order to obtain compensation under the Act, the employee bears the burden of showing, by a preponderance of the evidence, that he or she has sustained accidental injuries arising out of and in the course of the employment. 820 ILCS 305/1(b)3(d). To obtain compensation under the Act, Petitioner has the burden of proving, by a preponderance of the evidence, all of the elements of his claim (*O'Dette v. Industrial Commission*, 79 Ill. 2d 249, 253 (1980), including that there is some causal relationship between his employment and his injury. *Caterpillar Tractor Co. v. Industrial Commission*, 129 Ill. 2d 52, 63 (1989). Decisions of an arbitrator shall be based exclusively on evidence in the record of proceeding and material that has been officially noticed. 820 ILCS 305/1.1

The Arbitrator, as the trier of fact in this case, has the responsibility to observe the witnesses testify, judge their credibility, and determine how much weight to afford their testimony and the other evidence presented. *Walker v. Chicago Housing Authority*, 2015 IL App (1st) 133788. Credibility is the quality of a witness which renders his evidence worthy of belief. Where a claimant's testimony is inconsistent with his actual behavior and conduct, the Commission has held that an award cannot stand. *McDonald v. Industrial Comm'n*, 39 Ill. 2d 396 (1968). Internal inconsistencies in a claimant's testimony, as well as conflict's between the claimant's testimony and medical records, may be taken to indicate unreliability. *Gilbert v. Martin & Bayley/Hucks*, 08 ILWC 004187 (2010).

In the case at hand, the Arbitrator observed Petitioner during the hearing and finds him to be a credible witness. Petitioner was calm, well-mannered, composed and spoke clearly. 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.

In support of the Arbitrator's decision with respect to (A), Whether Petitioner and Respondent were operating under the Illinois Workers' Compensation or Occupational Diseases Act, and their relationship was one of employee and employer, the Arbitrator finds as follows:

At the outset, the Commission considers whether Respondents are subject to the Illinois Workers' Compensation Act ("Act") The Act defines those businesses that are considered "employers" and, thus, come under its jurisdiction. Under Section 3 of the Act, certain types of businesses/employers automatically come under the Act's jurisdiction due to their business activities. 820 ILCS 305/3. Pursuant to Section 3 of the Act, the Act automatically applies to a Respondent who meets any of the seventeen listed "extra-hazardous" activities. Such activities that apply here are, "*carriage by land, water or aerial service and loading or unloading in connection therewith, including the distribution of any commodity by horse drawn or motor vehicle where the employer employs more than 2 employees in the enterprise or business", "the operation of any warehouse or general or terminal storehouses", "any enterprise in which sharp edged cutting tools, grinders or implements are used, including all enterprises which buy, sell or handle junk and salvage, demolish or reconstruct machinery, "any business or enterprise in which electric, gasoline or other power driven equipment is used in the operation thereof", "any business or enterprise in which goods, wares or merchandise are produced, manufactured or fabricated", and "any business or enterprise in which goods, wares or merchandise are sold or in which services are rendered to the public at large, provided that this paragraph shall not apply to such business or enterprise unless the annual payroll during the year next preceding the date of injury shall be in excess of $1,000.00."* 820 ILCS 305/3 (3), (4), (8), (15), (16), (17a) (West 2004)

The Arbitrator finds that on December 14, 2020, Respondent was operating under and subject to the Act within the Sections mentioned above. Petitioner was hired by Respondent to deliver and transport items. The activities that Petitioner performed (transporting packages across the Midwest region using a semi-truck) are to be considered dangerous and hazardous. Petitioner's unrebutted testimony, established that Petitioner worked as a delivery driver, wore gloves provided by

Respondent and transported the packages in a semi-truck provided and owned by Respondent. Thus, the Arbitrator finds that the work Respondent engaged in automatically subjected them to the provisions of the Illinois Workers' Compensation Act. As per Section 4(a) of the Act, all employers who come within the auspices of the Act are required to provide workers' compensation insurance. 820 ILCS 305/4(a) (West 2004).

In the instant case, Petitioner submitted a certified finding from the NCCI that Respondent did not file policy information showing proof of workers' compensation insurance at any time around December 14, 2020. (PX7). Thus, the Arbitrator finds that Petitioner proved that Respondent failed to comply with the legal obligations imposed by Section4(a) of the Act on December 14, 2020.

The Arbitrator finds that there was an employer-employee relationship between Respondent and Petitioner. Section 1(b)(2) of the Act defines an employee as "every person in the service of another under any contract of hire, express or implied, oral or written." 820 ILCS 305/1 (b)(2) (West 2020). Here, Petitioner testified that he was hired by Respondent to deliver and transport packages. In order to complete his duties, Respondent provided Petitioner with the semi-truck, gloves and the phone application that was used for deliveries. Moreover, Respondent set Petitioner's wage and work schedule. Petitioner testified that the day before a delivery, he would receive his schedule and route by Respondent's dispatcher using the phone application. Petitioner testified that he was paid weekly. Petitioner was paid via W-2 by Respondent rather than a 1099. (PX8) There was no mention, nor any evidence admitted to suggest that Petitioner was an independent contract. Petitioner testified that he did not work for anyone else during the time he worked for Respondent as he was already working 40-50 hours per week. Petitioner also testified that he did not decline or reject any jobs/routes that Respondent ordered him to do. In any event, there is no rigid rule of law that exists to determine whether a worker is an employee or an independent contractor. *Ware v. Industrial Comm'n*, 318 Ill. App. 3d 1117, 1122 (2000). Rather, whether a person is an employee is a "vexatious" question. *Roberson v. Industrial Comm'n,* 225 Ill. 2d 159, 174 (2007).

It is the Petitioner's burden to prove that an employer/employee relationship existed rather than Petitioner being an independent contractor. "When the evidence is conflicting and the facts are subject to diverse interpretations, it is within the province of the Commission to draw inferences from the evidence, ascertain the credibility of witnesses, evaluate conflicting testimony, and resolve whether the claimant has met his burden of proof." *Ragler Motor Sales v. Industrial Comm'n*, 93 Ill. 2d 71, 71-72 (1982). "No single facet of the relationship between the parties is determinative, but many factors, such as the right to control the manner in which the work is done, the method of payment, the right to discharge, the skill required in the work to be done, and the furnishing of tools, materials or equipment have evidentiary value and must be considered." *Henn v. Industrial Commission*, 3 Ill. 2d 325, 121 N.E.2d 492. Of these factors, "the right to control the work" is perhaps the most important single factor in determining the relationship *Crepps v. Industrial Commission*, 402 Ill. 606, 85 N.E.2d 5, inasmuch as an employee is at all times subject to the control and the supervision of his employer, whereas an independent contractor presents the will of the owner only as to the result, and not as to the means by which it was accomplished. *Immaculate Conceptions Church v. Industrial Commission*, 395 Ill. 615, 71 N.E. 2d 70.

Regarding the most important factor, the right to control, testimony at trial clearly shows that Respondent had the right to control Petitioner. Respondent would dictate Petitioner's schedule as to where Petitioner would go for work/what deliveries to make each day using the phone application. No testimony was offered that Petitioner had the right to decline a job/delivery offered by Respondent. Additionally, the vehicle/semi-truck that Petitioner used to make deliveries, was furnished by Respondent. While Petitioner testified, he had to purchase his own bolt cutter, that is insufficient to make him an independent contractor. Petitioner testified that during the time he worked for Respondent he did not work for anyone else as he was already working 40-50 hours per week for Respondent. (T.35-36) Thus, the evidence in the record clearly demonstrates that Respondent provided the instrumentalities needed to conduct business and furthermore demonstrates an employer-employee relationship.

Another relevant factor in determining whether there was an employer-employee relationship is "the nature of the worked performed by the alleged employee in relation to the general business of the employer." See *Ware*, 318 Ill. App 3d at 1122. In the case at hand, the Respondent was in the business of making deliveries on behalf of Amazon- as a subcontractor. At the time of the accident, Petitioner was doing exactly that, making a delivery on behalf and for Respondent's business.

Based on the above, the Arbitrator finds that Petitioner and Respondent were operating under and subject to the Illinois Workers' Compensation Act on December 14, 2020. Petitioner has established that on December 14, 2020, he was an employee of Respondent. Petitioner was hired to do the job he got injured doing. At the time of the injury, Petitioner did not work anywhere else. Petitioner made deliveries on behalf of and for Respondent, his hours and delivery routes were set and directed by Respondent and the vehicle used to transport packages, was provided by and owned by Respondent.

In support of the Arbitrator's decision with respect to (B), Whether Petitioner sustained accidental injuries or was last exposed to an occupational disease that arouse out of and in the course of employment, the Arbitrator finds as follows:

Petitioner bears the burden of proving by a preponderance of the evidence that an injury arose out of and in the course of his employment. *Sisbro, Inc. v. Industrial Comm'n*, 207 Ill. 2d 193, 203 (2003). For an injury to arise out of one's employment, "it must be shown that the injury had its origin in some risk connected with, or incidental to, the employment so as to create a causal connection between the employment and the accidental injury." *Id*

To determine whether a claimant's injury arose out of his employment, we must categorize the risk to which the claimant was exposed. *Dukich v. Illinois Workers' Compensation Comm'n*, 2017 Ill. App (2d) 160351WC. There are three categories of risk: (1) risks distinctly associated with the employment; (2) personal risks to the employee; and (3) neutral risks which have no particular employment or personal characteristics. *Caterpillar Tractor Co., v. Industrial Comm'n*, 129 Ill. App.3d 149, 162 (2000). An injury arises out of a claimant's employment if at the time of injury, the claimant was performing an act reasonably expected to be performed for his employment, or casually related to what the claimant must do to complete his job duties, even if

the activity involves everyday activities. *Id* Moreover, the Court noted that a risk is distinctly associated with a claimant's employment if at the time of occurrence the employee was performing (1) acts he or she was instructed to perform by the employer, (2) acts that he or she had a common law or statutory duty to perform or, (3) acts that the employee might reasonably be expected to perform incident to his or her assigned duties. *Id,* at 58.

It is undisputed that Petitioner was hired by Respondent as a delivery driver. It is also undisputed that Petitioner was making a delivery on behalf, for, and directed by Respondent. Respondent provided Petitioner with the truck used to make deliveries and was dispatched to the location that Respondent wanted him to make a delivery to. Petitioner's act of checking in at Amazon's warehouse in order to make a delivery, which required him to have paperwork complicated by Amazon upon arrive, is an act that Respondent reasonably expected him to perform in fulfilling his job duties as a delivery driver. Petitioner's credible testimony is corroborated by the medical records.

Based on Petitioner's testimony, the Arbitrator finds that Petitioner's lumbar spine, cervical spine, right buttock and right elbow injuries arose out of an employment related risk. The record established that at the time of the incident, Petitioner's injuries were caused by a risk distinctly associated with his employment with Respondent. As the injury occurred as a result of an employment related risk, there is no need to analyze the injury under the personal or neutral risk analysis.

In support of the Arbitrator's decision with respect to C), Whether Respondent was given notice of the accident within the time limits stated in the Act, the Arbitrator finds as follows:

Under the Act, the injured employee must notify his or her employer of the accidental injury or illness within 45 days, either orally or in writing. The Arbitrator further finds that Respondent received proper and timely notice of Petitioner's accident of December 14, 2020.

Petitioner testified that while enroute to the emergency room shortly after his accident, he called the owner of Respondent, Mr. Townsend, and notified him about the accident. In addition, upon the emergency room discharge, Petitioner went back to the scene of the accident, picked up the semitruck and dropped it off at one of Respondent's locations in Waukegan, Illinois. Once dropping off the semi-truck, Petitioner testified that he called Mr. Townsend again and told him that the truck was dropped off. As such, Respondent was provided with timely notice of the accident on the same day the accident took place. No conflicting evidence was presented by Respondent.

The Arbitrator finds that the evidence is clear that the Petitioner provided timely notice of the December 14, 2020 accident to Respondent. However, if that notice was insufficient, the burden of notice was met by the application for adjustment of claim being filed within 30 days of the accident, specifically within 10 days of the accident in the instant case. Petitioner filed an application for adjustment of his December 14, 2020 claim with the Commission on December 24, 2020. (PX6)

In support of the Arbitrator's decision with respect to (D), Is Petitioner's current condition of ill-being is causally connected to this injury, the Arbitrator finds as follows:

A casual connection between work duties and a condition of ill-being may be established by a chain of events including claimant's ability to perform job duties before the date of the accident and inability to perform the same duties following that date. *Peabody Coal Co v. Industrial Comm'n*, 213 Ill. App.3d 64. 65 (1991). It is the function of the Commission to resolve disputed questions of fact, including those of causal connection, to draw permissible inferences and to decide which of conflicting medical views is to be accepted. *Material Service Corp. v. Industrial Comm'n*, 97 Ill. 2d 382, 387 (1983)

Based upon the evidence presented at trial, including medical opinions, and witness testimony, the Arbitrator finds that Petitioner established a causal connection between the work-related accident of December 14, 2020 and his current condition of ill- being regarding his lumbar spine, cervical spine, right buttock and right elbow.

A claimant with a pre-existing condition may recover where employment aggravates or accelerates that condition. *Caterpillar Tractor Co. v. Industrial Comm'n*, 92 Ill 2nd 30, 36 (1982). The law is clear that Respondent takes Petitioner as it finds him. *Baggett v. Industrial Comm'n*, 201 Ill. 2nd 187, 199 (2002). It is necessary that the claimant show that a work-related accident was a causative factor in the claimant's condition of ill-being. *Sysbro, Inc. v. Industrial Comm'n*, 207 Ill. 2nd 103, 205 (2003). It is not, however, necessary that the employee demonstrate that the injury was "the sole or principal causative factor, as long as it was a causative factor in the resulting condition of ill-being. *Land Lakes Co. v. Industrial Comm'n* 359 Ill. App 3rd 582, 592 (2005). Petitioner was able to perform his regular duties for Respondent before the event of December 14, 2020. Petitioner testified that prior to December 14, 2020, he had no prior, cervical spine, right buttock, or right elbow injuries, nor did he seek treatment for those body parts. While Petitioner had prior lumbar spine treatment, he was done with treatment prior to the December accident, was released back to full duty as of November 18, 2020 and worked for Respondent without any issues up until the December 14, 2020 accident.

The evidence presented at trial, including Petitioner's testimony, establishes that Petitioner was diagnosed with a cervical sprain, lumbar sprain, right elbow sprain and possible exacerbation of previously asymptomatic degenerative disease as a direct result of his December 14, 2020 accident. Petitioner's physicians opined to the same in the medical records.

Based on the above, the Arbitrator accordingly finds that Petitioner has proven by a preponderance of the credible evidence that his lumbar spine, cervical spine, right buttock and right elbow conditions are causally related to the work accident that took place on December 14, 2020 while employed by Respondent.

In support of the Arbitrator's decision with respect to (E), What were Petitioner's earnings during the year preceding the injury and Petitioner's average weekly wage pursuant to Section 10 of the Act, the Arbitrator finds as follows:

Petitioner testified that he was paid a weekly by Respondent. The W2 that Respondent provided Petitioner with was introduced into evidence at trial. (PX8) **Petitioner testified that he did not know the exact date he started for Respondent but worked there anywhere between 2-4 months**. Petitioner bears the burden of proving each and every element of his claim by the preponderance or greater weight of the evidence. Petitioner has a failure of proof with regard to earnings under section 10 of the act. Given the W2 and the testimony, Petitioner utilizes the lower estimate of time worked for Respondent – two months. This yields average weekly earnings of $1,430.00, which Petitioner claims on AX1 the Request for Hearing stipulation sheet. On the other hand, if the higher range of Petitioner's estimate is utilized, four months, then average weekly earnings are half that or $715.00. There is no accurate way to calculate Petitioner's average weekly earnings without speculation or conjecture. What evidence of record there is regarding earnings cannot be construed in the light most favorable to that party bearing the burden of proof. Therefore, the Arbitrator finds that the Petitioner's average weekly wage at the time of the accident was $715.00.

In support of the Arbitrator's decision with respect to (F), What was the Petitioner's age at the time of injury, the Arbitrator finds as follows:

Petitioner testified that he was 51 years of age at the time of the accident (born on December 31, 1969) and was 53 years of age at the time of the hearing. This is consistent with his Application for Adjustment, filed on December 24, 2020. Petitioner testified that at the time of the accident he was married with no dependents. Petitioner admitted into evidence a copy of his marriage certificate. (PX9) No evidence was presented to dispute Petitioner's testimony. The Arbitrator finds that the Petitioner was 51 years old, married with no dependents at the time of the accident.

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

Under Section 8(a) of the Act, a claimant is entitled to recover reasonable medical expenses that are causally related to the accident and that are determined to be required to diagnose, relieve, or cure the effects of a claimant's injury. The claimant has the burden of proving that the medical services were necessary, and the expenses incurred were reasonable. *City of Chicago v. Illinois Workers' Compensation Comm'n* 409 Ill. App. 3d 258, 267 (1st Dist., 2011). Based upon the Arbitrator's finding with respect to casual connection, reasonable and necessary treatment for the lumbar spine, cervical spine, right elbow and right buttock through January 28, 2023 would be casually related.

Petitioner's exhibit 11 shows multiple balances. Having reviewed the bill exhibits and the medical records submitted, the Arbitrator finds the following bills to be reasonable, necessary and casually connected:

UW Health University Hospital: $2,640.80
AMCI: $5,342.00
Pain and Wellness Group: $1,331.47
Preferred Prescription Pharmacy: $6,148.29

The total bills awarded equal **$15,462.56.** Based on the record as a whole and the Arbitrator's finding with respect to Casual Connection, the Arbitrator finds Respondent shall pay reasonable and necessary services of $**15,462.56** as detailed herein, as provided in Sections 8(a) and 8.2 of the Act. Pursuant to the Appellate Court decisions in *Mentzer v. Van Scyoc*, 233 Ill. App 3rd 438, 422 (4th District 1992) and *McMahon v. Industrial Comm'n*, 183 Ill. 2nd 499, 512 and the Commission Decision in *Spencer v. State of Illinois*, 20 IWCC 0609, which hold that an award of medical expenses is an award of compensation and must be paid to Petitioner. Respondent is ordered to make payment of the bills that have been awarded herein directly to Petitioner. Petitioner only treated as directed by his doctor(s) for the injuries sustained, and Respondent has no medical opinion to refute the treatment nor the bills.

In support of the Arbitrator's decision with respect to (H), what temporary benefits are in dispute, the Arbitrator finds as follows:

An employee is temporarily totally disabled from the time an injury incapacitates him until such time as he is as far recovered as the permanent character of the injury will permit. *Archer Daniels Midland Company v. Industrial Comm'n,* 138 Ill 2nd 107, 118 (1990); *Westin Hotel*, 372 Ill. App. 3rd, at 542. To be entitled to TTD benefits, the employee must establish not only that he did not work, but also that he is unable to work and the duration of that inability to work. *Pietrzak v. Industrial Comm'n*, 329 Ill. App 3rd 828, 832 (2002); *Interstate Scaffolding, Inc. v. Illinois Workers' Compensation Commission*, 236 Ill 2nd 132, 146 (2010). Once an injured employee has reached maximum medical improvement, the disabling condition has become permanent, and he or she is no longer eligible for temporary total disability benefits. *Nascote Industries v. Industrial Comm'n*, 352 Ill. App 3rd 1067, 1072 (2004). The factors to be considered in determining whether an employee has reached maximum medical improvement include a release to work, medical testimony or evidence concerning he employee's injury, and the extent of the injury. *Land & Lake Co. v. Industrial Comm'n*, 359 Ill. App. 3rd 582, 594 (2005). The Act is a remedial statute which should be liberally construed to provide financial protection for injured workers. *McAllister v. IWCC*, 2020 IL 124848.

Petitioner's testimony that he was disabled from December 22, 2020 through January 24, 2021 is supported by the medical records. On January 20, 2021, Dr. Najera released Petitioner back to full duty work effective January 25, 2021.

Based upon the record as a whole, the Arbitrator finds that Petitioner has proven by a preponderance of the evidence that he is entitled to temporary total disability from December 22, 2020 through January 24, 2021, a period of 4 5/7 weeks.

In support of the Arbitrator's decision with respect to (I), what is the nature and extent of the injury, the Arbitrator finds as follows:

In determining a PPD award. The Arbitrator is required to consider the factors and criteria set forth in Section 8.1(b) of the Act. Pursuant to Section 8.1(b) of the Act, the Arbitrator must consider the level of impairment under the AMA Guides, the occupation of the injured worker, the age of the injured worker, the future earning capacity of the injured worker and evidence of disability corroborated by the treating medical records. The Act provides that no single enumerated factor shall be the sole determinant of disability. With respect to the five factors, the Arbitrator finds:

1. *Level of Impairment under the AMA Guides*

   In this case, neither party entered an impairment rating into evidence; however, this factor alone does not preclude an award for permanent partial disability. Accordingly, the Arbitrator accords this factor no weight in determining PPD.

2. *Occupation of Petition*

   At the time of the work-related accident, Petitioner was employed as a delivery driver. Petitioner testified that he stopped working for Respondent due to an issue with payment- Respondent was not paying Petitioner. (T.39) At trial, Petitioner testified that he works part time with the Dixmoor Police Department making much less than what he made working for Respondent. (T.33) Petitioner testified that he currently makes about $500.00 per week with his current employer. The Arbitrator accords great weight to this factor in determining PPD.

3. *Age of Petitioner*

   At the time of the accident, Petitioner was 51 years of age. At the time of the hearing, Petitioner was 53 years of age. Due to Petitioner's age, he would be considered a younger worker expected to remain in the workforce for many years, however he will experience residuals of his injury. The Arbitrator accords great weight to this factor in determining PPD.

4. *Future Earning Capacity*

   Petitioner testified that he returned to work for Respondent for a brief period. However, Petitioner and Respondent had a falling out to due Respondent not paying Petitioner. Petitioner testified that he currently works for the Dixmoor Police Department making $500.00 per week, which is much less than what he was making with Respondent. Due to ongoing pain Petitioner is experiencing, it will be difficult for him to find a steady job that pays him as much as he made with Respondent. The Arbitrator accords this factor great weight in determining PPD.

5. *Evidence of Disability Corroborated by the Treating Medical records*

   Petitioner completed a significant amount of medical care and treatment. Petitioner was diagnosed with a cervical sprain, lumbar sprain, right elbow sprain and possible exacerbation of previously asymptomatic degenerative disease. As a result of the injuries, Petitioner underwent months of physical therapy, however the pain has not fully resolved. The Arbitrator accords this factor great weight in determining PPD.

After considering the above five factors and the entirety of the evidence, the Arbitrator finds based upon the weight of credible evidence in this record, that Petitioner sustained permanent partial disability to the extent of 7.5% loss of use of the person.

In support of the Arbitrator's decision with respect to (J), should penalties be imposed upon the Respondent, the Arbitrator finds as follows:

The Arbitrator finds that no claim has been made for penalties and fees and therefore, none are awarded.

In support of the Arbitrator's decision with respect to (K), Is the Respondent due any credit, the Arbitrator finds as follows:

As no benefits were paid, the Arbitrator finds that Respondent is not entitled to a credit.

In support of the Arbitrator's decision with respect to (L), The Liability of The Injured Workers' Benefit Fund, the Arbitrator finds as follows:

The Illinois State Treasurer, ex-officio custodian of the Injured Workers' Benefit Fund, was named as a co-respondent in this matter. The Treasurer was represented by the Illinois Attorney General. Petitioner submitted the NCCI certification that Respondent was uninsured on the date of accident. (PX7) This award is hereby entered against the Fund to the extent permitted and allowed under Section 4(d) of the Act. In the event the Respondent/Employer/Owner/Officer fails to pay the benefits, the Injured Workers' Benefit Fund has the right to recover the benefits paid due and owing the Petitioner to Section 5(b) and 4(d) of the Act. Respondent/Employer/Owner/Officer shall reimburse the Injured Workers' Benefit Fund for any compensation obligations of Respondent/Employer/Owner/Officer that are paid to the Petitioner from the Injured Workers' Benefit Fund. To find otherwise would thwart the purpose of the Injured Workers' Benefit Fund to provide benefits to employees whose employers failed to obtain workers' compensation insurance.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	22WC029294
Case Name	Trinidad Jimenez v. Surge Staffing
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	24IWCC0411
Number of Pages of Decision	8
Decision Issued By	Deborah Simpson, Commissioner

Petitioner Attorney	Brenton Schmitz
Respondent Attorney	Christopher Jarchow

DATE FILED: 8/27/2024

/s/ Deborah Simpson, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF WILL)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Trinidad Jimenez,
Petitioner,

vs. NO: 22 WC 29294

Surge Staffing,
Respondent.

DECISION AND OPINION ON REVIEW

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

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed January 29, 2024, is hereby affirmed and adopted.

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

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

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $5,000.00. 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.

August 27, 2024
d: 08/07/24
DLS/rm
046

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

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	22WC029294
Case Name	Trinidad Jimenez v. Surge Staffing
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	6
Decision Issued By	Jessica Hegarty, Arbitrator

Petitioner Attorney	James McHargue
Respondent Attorney	Christopher Jarchow

DATE FILED: 1/29/2024

THE INTEREST RATE FOR THE WEEK OF JANUARY 23, 2024 5.02%

/s/ Jessica Hegarty, Arbitrator

Signature

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Trinidad Jimenez
Employee/Petitioner
v.
SURGE STAFFING
Employer/Respondent

Case # **22** WC **029294**

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 **Hegarty**, Arbitrator of the Commission, in the city of **Kankakee**, on **12/18/2023**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On **10/27/2022**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $**N/A**; the average weekly wage was $**$588.79**.

On the date of accident, Petitioner was **52** years of age, ***married*** with **1** dependent children.

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

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

Respondent shall be given a credit of $**9,984.00** for TTD, $**0.00** for TPD, $**0.00** for maintenance, and $**0.00** for other benefits, for a total credit of $**9,984.00**.

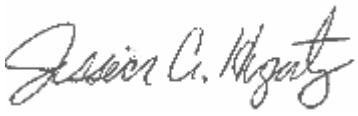
Respondent is entitled to a credit of $**0.00** under Section 8(j) of the Act.

ORDER

The Arbitrator finds that Petitioner is permanently partially disabled to the extent of 8% loss of use of the left foot, under Section 8(d)(2) of the Act. (*See the attached Addendum for the Arbitrator's analysis of the 5 factors pursuant to Section 8.1b(b) of the Act).*

RULES REGARDING APPEALS Unless a party files a *Petition for Review* within 30 days after receipt of this decision, and perfects a review in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

STATEMENT OF INTEREST RATE If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.



Signature of Arbitrator

JANUARY 29, 2024

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

TRINIDAD JIMENEZ	)	
	)	
Petitioner,	)	
	)	
vs.	)	**No. 22 WC 29294**
	)	
SURGE STAFFING	)	
	)	
Respondent.	)	

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The only issue in dispute is the nature and extent of Petitioner's injury.

Petitioner testified she was employed by Respondent on a packaging line on October 27, 2022, when she sustained a slip and fall accident after tripping over some cables that were on the ground. Petitioner sought initial medical treatment at Silver Cross Hospital Emergency Department on October 27, 2022, at which time she reported a consistent history of accident that caused pain to the back of her head, left elbow, and left ankle. Petitioner underwent x-rays of the ankle and was diagnosed with a left ankle trimalleolar fracture (PX1).

On November 1, 2022, Petitioner presented to Dr. Krishna Chunduri at Illinois Orthopedic Network with complaints of numbness in her left foot following a slip and fall accident at work. (PX1 p. 9)

Dr. Chunduri ordered an MRI, and advised Petitioner to remain non-weight-bearing and follow up with Dr. Ratkovich. Petitioner underwent the MRI of her left ankle on November 15, 2022, at which time the radiologist interpreted the study as showing a left ankle fracture (PX1 p. 12).

On December 5, 2022, Petitioner presented to Dr. Edward Ratkovich at Parkview Orthopedic Group at which time the doctor reviewed the MRI noting the presence of a nondisplaced left ankle fracture of the lateral malleolus (PX1 p. 14). Dr. Ratkovich noted that if Petitioner transitioned into a boot, then she could weight bear as tolerated. Petitioner was authorized off work for two months (Id.).

Petitioner followed up with Dr. Ratkovich on December 19, 2022, and January 18, 2023, at which time she reportedly was doing well with minimal pain although she reported difficulty wearing a gym shoe due to swelling. Petitioner was kept off work until February 1, 2023 (PX1 p. 20).

Petitioner underwent an Independent Medical Evaluation with Dr. Anand Vora on February 22, 2023, at which time Dr. Vora diagnosed Petitioner with a left ankle fracture. Dr. Vora noted Petitioner was capable of working in a light-duty fashion (RX2).

The Arbitrator notes that Petitioner was offered accommodated light duty on April 21, 2023. Petitioner did return to work for the employer for two days but ended her employment on April 25, 2023 (RX3, RX4).

Petitioner was seen by Dr. Ratkovich on June 5, 2023. Petitioner was notably doing well and denied any problems or pain although she did report occasional swelling. Petitioner was wearing an ankle brace. Dr. Ratkovich updated his assessment to a healed left ankle lateral malleolus fracture. Petitioner was to return to normal activity as tolerated and released to work at maximum medical improvement ("MMI") without restrictions (PX1 p. 39).
Petitioner testified that she continues to have problems with left ankle swelling. Petitioner testified she was wearing regular snow boots with an orthotic in the boots for support.

Petitioner testified that she has not returned to any physician for any follow-up care for her left ankle since being released from treatment at MMI by Dr. Ratkovich in June. Petitioner testified she has no appointments scheduled to see any physician in the foreseeable future. Petitioner denied working for another employer.

CONCLUSIONS OF LAW

In support of the Arbitrator's decision with respect to L (Nature and Extent), the Arbitrator finds as follows:

Section 8.1b(b) sets forth various factors the Commission must consider when determining the claimant's level of PPD, including "(i) the reported level of impairment pursuant to subsection (a); (ii) the occupation of the injured employee; (iii) the age of the employee at the time of the injury; (iv) the employee's future earning capacity; and (v) evidence of disability corroborated by the treating medical records." 820 ILCS 305/8.1b(b). The Arbitrator notes that he must also determine, the relevance and weight of any factors used in addition to the level of impairment as reported by the physician must be explained in a written order." Corn Belt Energy Corp. v. Illinois Workers' Comp. Comm'n, 2016 IL App (3d) 150311WC, ¶ 51, 56 N.E.3d 1101, 1112–13, 65 N.E.3d 840 (Ill. 2016).

The first factor to be considered is the AMA impairment rating pursuant to the guides for the evaluation of permanent partial disability. Neither party submitted an impairment rating. The Arbitrator awards this factor no weight.

The second factor in determining PPD is the occupation of the injured employee. Petitioner testified she was employed as a line worker in a packing plant on the accident date. Petitioner provided little details regarding her job duties and physical requirements. There is no evidence that she is unable to return to her prior job due to an accident-related condition. The Arbitrator awards little to no weight to this factor.

The third factor in determining permanency is the age of the employee at the time of the injury. Petitioner was 52 years old on the accident date. The Arbitrator notes that Petitioner is relatively young and capable of working for many years. Although the Arbitrator notes the general tendency for injuries to heal slower with age, there is some evidence in the record that Petitioner continues to experience symptoms related to her left ankle fracture. The Arbitrator awards some weight to this factor.

The fourth factor in determining PPD is the employee's future earning capacity. The Parties stipulate to an average weekly wage of $588.79. Petitioner testified she is not currently working due to ankle pain. Despite this testimony, the Arbitrator finds little evidence in the record in support as Petitioner was released at MMI to full-duty work by Dr. Ratkovich on June 5, 2023. Accordingly, little to no weight is given to this factor in support of increased PPD.

The fifth and final factor in determining PPD is evidence of disability corroborated by the treating medical records. The records in this case show that Petitioner was diagnosed with an ankle fracture, confirmed on MRI,

and underwent a course of conservative treatment before being released to full-duty work, at MMI by Dr. Ratkovich on June 5, 2023, at which time the doctor noted that the fracture had since healed. The Arbitrator found some support for Petitioner's testimony regarding her current complaints in this last record which documented her complaints of occasional swelling and the fact that she continued to wear an ankle brace.

Based on the medical documentation and the testimony, the Arbitrator finds that Petitioner is permanently partially disabled to the extent of **8% loss of use of the left foot under Section 8(d)(2) of the Act.**

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC019106
Case Name	Kayla Nelson v. State of Illinois - Murray Developmental Center
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b) Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	24IWCC0412
Number of Pages of Decision	18
Decision Issued By	Kathryn Doerries, Commissioner

Petitioner Attorney	Thomas Rich
Respondent Attorney	Nicole Werner

DATE FILED: 8/28/2024

/s/Kathryn Doerries, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF MADISON)

☐ Affirm and adopt (no changes)	☐ Injured Workers' Benefit Fund (§4(d))
☒ Affirm with changes	☐ Rate Adjustment Fund (§8(g))
☐ Reverse Choose reason	☐ Second Injury Fund (§8(e)18)
	☐ PTD/Fatal denied
☐ Modify Choose direction	☐ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

KAYLA NELSON,

Petitioner,

vs. NO: 21 WC 019106

STATE OF ILLINOIS-MURRAY DEVELOPMENTAL CENTER,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of causal connection, medical necessity, prospective medical, and whether Petitioner reached maximum medical improvement, and being advised of the facts and law, modifies the Decision of the Arbitrator as stated below and otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof. The Commission further remands this case to the Arbitrator for further proceedings for a determination of a further amount of temporary total compensation or of compensation for permanent disability, if any, pursuant to *Thomas v. Industrial Comm'n*, 78 Ill.2d 327 (1980).

The Commission modifies the Arbitrator's Decision with respect to the awarded prospective medical treatment. Dr. Gornet's physician's assistant (PA) saw Petitioner on June 23, 2022. (PX6. 11; T. 205) Petitioner reported that she had lost weight and she still had had a low level of symptoms and wished to continue to work full duty. *Id.* The plan was for her to return in three to four months to monitor her progress. *Id.* The PA documented that this plan was discussed with Dr. Gornet. *Id.* Petitioner testified at the Arbitration Hearing on August 31, 2022, that she improved significantly as a result of the two injections she had. (T. 15) Petitioner further testified that she had a follow-up visit scheduled with Dr. Gornet's office on October 6, 2022. (T. 17-18)

Petitioner testified that the follow-up visit with Dr. Gornet in October is the only treatment currently scheduled for her low back. (T. 19)

Therefore, the Commission strikes the last sentence of the last paragraph under "Issue K: Is Petitioner entitled to any prospective medical care?" The Commission substitutes the following as the last sentence under Issue K: The Commission finds that Petitioner's follow-up visit with Dr. Gornet, scheduled for October 6, 2022, is reasonable and necessary treatment and Respondent is liable for that office visit, the only treatment scheduled for Petitioner's low back at the time of the Arbitration Hearing.

All else is affirmed and adopted.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Arbitrator's Decision filed on January 20, 2023, is hereby modified for the reasons stated herein, and otherwise affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay the reasonable and necessary medical services outlined in Petitioner's Exhibit 1, as provided in §8(a) and §8.2 of the Act. Respondent shall be given a credit for medical benefits that have been paid, and Respondent shall hold Petitioner harmless from any claims by any providers of the services for which Respondent is receiving this credit, as provided in §8(j) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall provide and pay for the only prospective treatment pending at the time of the Arbitration Hearing, the follow-up office visit to Dr. Gornet scheduled to take place on October 6, 2022, as provided in §8(a) and §8.2 of Act.

IT IS FURTHER ORDERED BY THE COMMISSION that as provided in §19(b) of the Act, this award in no instance shall be a bar to a further hearing and determination of a further amount of temporary total compensation or of compensation for permanent disability, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that this case be remanded to the Arbitrator for further proceedings consistent with this Decision.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner interest under §19(n) of the Act, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall have credit for all amounts paid, if any, to or on behalf of Petitioner on account of said accidental injury.

Pursuant to Section 19(f)(1) of the Act, this decision is not subject to judicial review. *820 ILCS 305/19(f)(1).*

August 28, 2024
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KAD/bsd
42

/s/*Kathryn A. Doerries*
Kathryn A. Doerries

/s/*Maria E. Portela*
Maria E. Portela

/s/*Amylee H. Simonovich*
Amylee H. Simonovich

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC019106
Case Name	Kayla Nelson v. Murray Developmental Center
Consolidated Cases	
Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	14
Decision Issued By	Jeanne AuBuchon, Arbitrator

Petitioner Attorney	Thomas Rich
Respondent Attorney	Nicole Werner

DATE FILED: 1/20/2023

THE INTEREST RATE FOR THE WEEK OF JANUARY 18, 2023 4.68%

/s/ Jeanne AuBuchon, Arbitrator
Signature

CERTIFIED as a true and correct copy
pursuant to 820 ILCS 305/14

January 20, 2023

/s/ Michele Kowalski

Michele Kowalski, Secretary
Illinois Workers' Compensation Commission

STATE OF ILLINOIS)
)SS.
COUNTY OF **MADISON**)

☐ Injured Workers' Benefit Fund (§4(d))
☐ Rate Adjustment Fund (§8(g))
☐ Second Injury Fund (§8(e)18)
☒ None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

Kayla Nelson
Employee/Petitioner

v.

Murray Developmental Center
Employer/Respondent

Case # **21** WC **19106**

Consolidated cases: _____

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Jeanne L. AuBuchon**, Arbitrator of the Commission, in the city of **Collinsville**, on **August 31, 2022**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
B. ☐ Was there an employee-employer relationship?
C. ☐ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
D. ☐ What was the date of the accident?
E. ☐ Was timely notice of the accident given to Respondent?
F. ☒ Is Petitioner's current condition of ill-being causally related to the injury?
G. ☐ What were Petitioner's earnings?
H. ☐ What was Petitioner's age at the time of the accident?
I. ☐ What was Petitioner's marital status at the time of the accident?
J. ☒ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
K. ☒ Is Petitioner entitled to any prospective medical care?
L. ☐ What temporary benefits are in dispute?
☐ TPD ☐ Maintenance ☐ TTD
M. ☐ Should penalties or fees be imposed upon Respondent?
N. ☐ Is Respondent due any credit?
O. ☒ Other **Has Petitioner reached MMI?**

FINDINGS

On the date of accident, **5/9/21**, Respondent ***was*** operating under and subject to the provisions of the Act.

On this date, an employee-employer relationship ***did*** exist between Petitioner and Respondent.

On this date, Petitioner ***did*** sustain an accident that arose out of and in the course of employment.

Timely notice of this accident ***was*** given to Respondent.

Petitioner's current condition of ill-being ***is*** causally related to the accident.

In the year preceding the injury, Petitioner earned $**38,477.38**; the average weekly wage was $**739.95**.

On the date of accident, Petitioner was **25** years of age, ***single*** with **2** dependent children.

Respondent ***has not*** paid all reasonable and necessary charges for all reasonable and necessary medical services.

Respondent shall be given a credit of $**all paid** for TTD, $**n/a** for TPD, $**n/a** for maintenance, and $**n/a** for other benefits, for a total credit of $**all paid**.

Respondent is entitled to a credit of $**any paid** under Section 8(j) of the Act.

ORDER

Respondent shall pay the reasonable and necessary medical services outlined in Petitioner's Exhibit 1, as provided in Sections 8(a) and 8.2 of the Act. Respondent shall be given a credit for medical benefits that have been paid, and Respondent shall hold petitioner harmless from any claims by any providers of the services for which Respondent is receiving this credit, as provided in Section 8(j) of the Act.

Respondent shall authorize and pay for the prospective follow-up treatment recommended by Dr. Gornet as of June 23, 2022.

In no instance shall this award be a bar to subsequent hearing and determination of an additional amount of medical benefits or compensation for a temporary or permanent disability, if any.

RULES REGARDING APPEALS Unless a party files a *Petition for Review* within 30 days after receipt of this decision, and perfects a review in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

STATEMENT OF INTEREST RATE If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

Jeanne L. AuBuchon

Signature of Arbitrator

JANUARY 20, 2023

PROCEDURAL HISTORY

This matter proceeded to trial on August 31, 2022, pursuant to Sections 19(b) and 8(a) if the Illinois Workers' Compensation Act (hereinafter "the Act"). The issues in dispute are: 1) the causal connection between the accident and the Petitioner's current low back condition; 2) liability for medical bills after July 31, 2021; 3) prospective medical treatment; and 4) the nature and extent of the Petitioner's injuries if she is found to be at maximum medical improvement. The Respondent accepted liability for a low back injury existing until July 31, 2021.

INDINGS OF FACT

At the time of the accident on May 9, 2021, the Petitioner, who was 25 years old, was employed by the Respondent as a mental health technician II and injured her back while restraining a physically aggressive individual and holding down the person's legs. (AX1, T.10) She said she had no prior issues with her low back. (T. 10-11) She acknowledged she was pregnant at the time of the accident. (T. 13)

The next day, the Petitioner saw her primary care physician Dr. Mahvish Zahoor at SSM Health Medical Group and reported that she injured her lower back while restraining a patient at work and that her pain was traveling to the front of her body. (Id.) Dr. Zahoor believed the Petitioner suffered a sprain of her low back and recommended she rest and apply heat for her symptoms. (Id.)

On May 12, 2021, the Petitioner saw her OB/GYN, Dr. Debra Carson at Heartland Women's Healthcare, who believed the Petitioner's low back pain was not pregnancy related and was most likely secondary to her work accident. (PX4) The Petitioner continued to follow up with Dr. Zahoor through May 31, 2021, when he referred her to an orthopedic specialist after the Petitioner reported her low back pain was radiating into her right thigh. (PX3)

On June 3, 2021, the Petitioner saw Dr. Mathew Phillips, an orthopedic spine surgeon at the Orthopaedic Center of Southern Illinois, who examined the Petitioner and found tenderness to the right sacroiliac (SI) joint (joint between the lower portion of the spine and the pelvis) and positive thigh thrust, distraction and Faber tests on the right. (PX5) Dr. Phillips diagnosed the Petitioner with right sacroiliac joint dysfunction and recommended physical therapy and use of Tylenol. (Id.) The Petitioner began physical therapy on June 14, 2021, at the Orthopedic Center of Southern Illinois. (Id.)

Upon recommendations of coworkers, the Petitioner sought treatment from Dr. Matthew Gornet, an orthopedic spine surgeon at The Orthopedic Center of St. Louis. (T. 12) The Petitioner saw Dr. Gornet on June 25, 2021, and complained of low back pain to the right side, right buttock, right hip and right leg to her lateral thigh and knee. (PX6) Although no imaging was taken due to the Petitioner's pregnancy, Dr. Gornet believed her symptoms were consistent with a disc injury and causally connected to the work injury. (Id.) He recommended the Petitioner complete her course of physical therapy. (Id.)

The Petitioner underwent physical therapy at the Orthopedic Center of Southern Illinois from June 14, 2021, through July 14, 2021, for a total of 11 visits. (PX5) At her last visit, the Petitioner rated her pain as a constant 4/10. (Id.) The therapist made recommendations for continuing therapy treatments. (Id.) The Petitioner also underwent physical therapy at ApexNetwork Physical Therapy from July 15, 2021, through September 8, 2021, for an additional 25 visits. (PX7) At her last visit, the Petitioner stated that her lower back and lower extremity were sore. (Id.) The therapists recommended continued therapy. (Id.) The Petitioner testified that the physical therapy provided only temporary relief. (T. 12)

On August 3, 2021, the Petitioner spoke with Dr. Gornet's physician assistant, Nathan Collins, and said she continued to have significant low back pain which radiated into her right hip, buttock, and leg. (PX6) Her symptoms were progressing, and she wanted to know what treatments were available. (Id.) PA Collins advised her there was no active treatment they could perform while she was pregnant and recommended that she contact her OB/GYN to discuss what medications would be safe for her to take during her pregnancy. (Id.) The next day, she went to Heartland Women's Healthcare with back pain and headaches and was recommended to continue physical therapy, use of Tylenol and narcotics if her primary care physician deemed them appropriate. (PX4)

On September 9, 2021 – one day after her last physical therapy visit – the Petitioner went to SSM Health Good Samaritan Hospital complaining of lower right back pain rated at 7-8/10. (PX8) She underwent tests for the health of her baby and was given a muscle relaxant and a recommendation of using over-the-counter lidocaine patches. (Id)

The Petitioner testified that her treatment was put on hold because she was pregnant. (T. 13) After delivering a healthy baby on November 2, 2021, the Petitioner was still experiencing symptoms and returned to Dr. Gornet. (T. 13-14) The Petitioner saw Dr. Gornet on January 20, 2022, after having undergone an MRI of her lumbar spine. (PX6) Dr. Gornet read the scan as showing a large tear at L5-S1 on the right as well as a smaller protrusion at L4-5 and some subtle changes centrally at L3-4. (Id.) Dr. Gornet recommended additional physical therapy and a steroid injection at L5-S1 on the right. (Id.) His working diagnosis was a disc injury predominantly at L4-5 and L5-S1 with the possibility of the L3-4 level. (Id.)

On February 1, 2022, the Petitioner began physical therapy at the Work Safety Institute at St. Mary's-Centralia. (PX10) She was assessed to have deficits of mobility, sitting, standing or

walking for more than 30 minutes and had tenderness to palpation at the right quadratus and sacral glutes. (Id.) The Petitioner underwent a right L5-S1 interlaminar epidural steroid injection on February 10, 2022, performed by Dr. Helen Blake, a pain management specialist at St. Louis Spine & Orthopedic Surgery Center. (PX11, PX12)

The Petitioner underwent a Section 12 examination on March 16, 2022, with Dr. Timothy VanFleet, an orthopedic spine surgeon at the Orthopedic Center of Illinois. (RX3) Dr. VanFleet took a history from the Petitioner, reviewed medical records and examined her. (Id.) The Petitioner reported that the injection brought her pain to 2/10, and at the time of the examination it was 5/10. (Id.) Dr. VanFleet took X-rays of the lumbar spine that demonstrated evidence of loss of disc space height at the L5-S1 level – approximately 50 percent compared to adjacent levels. (Id.) The L4-5 level demonstrated evidence of degeneration, and L3-4 demonstrated mild degeneration. (Id.)

Dr. VanFleet diagnosed pre-existing lumbar degenerative disc disease. (Id.) His findings were: superficial tenderness to palpation, some evidence of nonorganic pain manifestations, no neurologic abnormalities and obesity with a body mass index (BMI) of 38.1. (Id.) He found no causal relationship between the Petitioner's current objective findings and the reported accident – stating that the Petitioner had multilevel degenerative disc disease, obesity, was recently postpartum and was not physically conditioned. (Id.) He said she needed to work on a conditioning program to help with her lumbar spine. (Id.)

As to medical treatment, Dr. VanFleet stated that the physical therapy was reasonable and necessary right at the injury. (Id.) He said the Petitioner did not require any injections in the lumbar spine as there was no evidence of radiculopathy. (Id) He stated that the Petitioner would benefit from physical therapy, but it was more likely true than not that the reason for physical

therapy was because of her multilevel degenerative disc disease and postpartum condition. (Id.) He noted that it was a well-known and understood phenomena that in postpartum mothers, the core becomes weakened. (Id.) He found the Petitioner to be at maximum medical improvement as of July 2021, when she completed her physical therapy program. (Id.)

In her testimony, the Petitioner denied exaggerating her symptoms and stated that none of her other physicians told her she was exaggerating her symptoms. (T. 17)

The Petitioner underwent physical therapy at the Work Safety Institute from February 1, 2022, through April 1, 2022, for a total of 25 visits. (PX10) At her last visit, the therapist assessed the Petitioner as having reached a plateau in therapy. (Id.) She still had tenderness to palpation and pain with range of motion. (Id.)

The Petitioner returned to Dr. Gornet on April 4, 2022, and reported the February 10, 2022, injection helped her pain substantially but the pain gradually returned. (PX6) Given her improvement, Dr. Gornet recommended another injection and stated that if the Petitioner failed to have sustained relief, he would recommend a CT discogram at L3-4, L4-5, and L5-S1. (Id.) Dr. Gornet reviewed Dr. VanFleet's report and disagreed with the diagnoses and conclusions of causation. (Id.) Dr. Gornet noted that he never detected non-organic manifestations on her physical examination and found her pain diagram was very consistent with someone who had a disc injury with mild radicular complaints. (Id.)

On April 26, 2022, Dr. Gornet testified consistently with his records. (PX13) He felt that the Petitioner's symptoms were causally related to the work accident. (Id.) He said the fact that the injection gave the Petitioner substantial improvement for a period of time told him that he was on the right track – that the pathology and diagnosis was consistent with her problem. (Id.) He said he would try one more injection which he said: "may be enough to push her over the edge."

(Id.) He said that if the Petitioner did not improve, he would use a CT discogram to determine from what spinal levels her symptoms were coming. (Id.) He said the Petitioner would have to lose weight before he would operate. (Id.)

As to his disagreement with Dr. VanFleet's opinion as to the cause of the Petitioner's current condition, Dr. Gornet said Dr. VanFleet's diagnosis of disc degeneration did not fit the Petitioner's clinical symptoms, and the Petitioner did not have significant back pain or problems before the accident. (Id.) He said the more likely diagnosis was the disc injury in the face of pre-existing degeneration, which he said made clinical sense, chronological or historic sense and biomechanical sense because a mechanical load in the face of a disc degeneration is more likely to injury a degenerative disc than a normal disc. (Id.) Dr. Gornet said the Petitioner's pregnancy was no longer a cause of her symptoms because pregnancy hormones associated with back pain were no long in play after her delivery. (Id.)

On cross-examination, Dr. Gornet stated that if the Petitioner was doing well after the second injection he recommended, he would give the Petitioner a full-duty release and follow up with her in several months to see if she sustained that relief. (Id.) He said that at that time, he was not recommending any further treatment until he sees what the Petitioner's response is to the injection. (Id.)

Dr. Blake performed a second epidural steroid injection at the right L5-S1 on May 3, 2022. (PX11, PX12)

Dr. VanFleet testified consistently with his report at a deposition on June 1, 2022. (RX4) He said he did not review the films of the MRI performed on the Petitioner's lumbar spine but relied on the reports provided to him. (Id.) He explained his finding of non-organic pain manifestations, stating that superficial tenderness to palpation and pain with simulated truncal

rotation are exaggerated responses because those examination techniques should not evoke pain, and the individual is confabulating or exaggerating their responses. (Id.)

As to the Petitioner's obesity, Dr. VanFleet stated that she was not quite in the morbidly obese category, which is having a 40 BMI. (Id.) He said obesity and morbid obesity are associated with chronic low back pain. (Id.) He said many, if not most, pregnant women have low back discomfort due to additional weight on the skeleton in conjunction with a weakening of the core. (Id.) He stated that even after delivery, many patients will continue to have some low back discomfort that can take time to improve. (Id.) On cross-examination, he said that, in general, it takes about three months for postpartum low back symptoms to go away and, at the time he saw the Petitioner, those symptoms should have resolved. (Id.)

Regarding future treatment or diagnostics, he said MRI spectroscopy of the Petitioner's lumbar spine would not be warranted because the test has not been clinically proven to be valid and because the Petitioner was not a surgical candidate due to her weight, the multilevel degenerative nature of her back, the fact that she has compensation affecting the potential outcome of any kind of potential treatment and the fact that there are not studies that support doing an operation on somebody such as the Petitioner. (Id.)

Dr. VanFleet did not believe the accident permanently aggravated the condition of the Petitioner's lumbar spine but would have been a temporary exacerbation of an underlying condition – more likely the manifestation of her pregnancy in conjunction with obesity would have been the major contributing factor to the continuation of her back pain. (Id.)

The Petitioner returned to Dr. Gornet's office on June 23, 2022, and reported to PA Allyson Joggerst that the second injection improved her symptoms and they were more tolerable. (PX6) She also had lost 16 pounds. (Id.) Although she still had a low level of symptoms, the Petitioner

wanted to continue working full duty. (Id.) PA Joggerst wanted to see the Petitioner in about three to four months to monitor her progress. (Id.)

The Petitioner testified that she said she improved significantly from the injections, was working full-duty and overtime and was able to do her job duties. (T. 15-16, 19) She said she was doing significantly better and was hoping to avoid additional treatment. (T. 16) She said she didn't want to have surgery unless she had to. (T. 16-17) The Petitioner still had a follow-up appointment with Dr. Gornet and was hoping to be done with treatment at that time. (T. 15, 18)

CONCLUSIONS OF LAW

The Arbitrator adopts the above Findings of Fact in support of the Conclusions of Law as set forth below.

Issue F: Is Petitioner's current condition of ill-being causally related to the accident?

An accident need not be the sole or primary cause as long as employment is a cause of a claimant's condition. *Sisbro, Inc. v. Indus. Comm'n,* 207 Ill. 2d 193, 205, 797 N.E.2d 665, 278 Ill.Dec. 70 (2003). An employer takes its employees as it finds them. *St. Elizabeth's Hosp. v. Workers' Comp. Comm'n,* 371 Ill.App.3d 882, 888, 864 N.E.2d 266, 309 Ill.Dec. 400 (5th Dist. 2007). A claimant with a preexisting condition may recover where employment aggravates or accelerates that condition. *Caterpillar Tractor Co. v. Industrial Comm.,* 92 Ill. 2d 30, 36, 440 N.E.2d 861, 65 Ill.Dec. 6 (1982). Employers are to take their employees as they find them. *A.C.& S. v. Industrial Comm'n*, 304 Ill.App.3d 875, 883, 710 N.E.2d 837, 238 Ill.Dec. 40 (1st Dist. 1999)

When a preexisting condition is present, a claimant must show that "a work-related accidental injury aggravated or accelerated the preexisting [condition] such that the employee's current condition of ill-being can be said to have been causally connected to the work-related injury

and not simply the result of a normal degenerative process of the preexisting condition." *St. Elizabeth's Hospital*, 371 Ill.App.3d at 888.

Circumstantial evidence, especially when entirely in favor of the Petitioner, is sufficient to prove a causal nexus between an accident and the resulting injury, such as a chain of events showing a claimant's ability to perform manual duties before accident but decreased ability to still perform immediately after accident. *Pulliam Masonry v. Industrial. Comm'n*, 77 Ill. 2d 469, 471-472, 397 N.E.2d 834, 34 Ill.Dec. 162 (1979); *Gano Elec. Contracting v. Industrial Comm'n*, 260 Ill.App.3d 92, 96–97, 631 N.E.2d 724, 197 Ill.Dec. 502 (4th Dist. 1994); *International Harvester v. Industrial Com.*, 93 Ill.2d 59, 63-64, 442 N.E.2d 908, 66 Ill.Dec. 347 (1982).

The Petitioner had degeneration in her lumbar spine and was pregnant and gaining weight at the time of the accident. However, she was having no low back problems before the accident. The doctors agreed that the Petitioner suffered an injury from the work accident but disagreed as to the extent of that injury. Dr. Gornet believed the Petitioner suffered a disc injury on top of her pre-existing degenerative condition, which he explained in his testimony. Dr. VanFleet believed the Petitioner suffered a temporary exacerbation of degenerative spine, pregnancy and obesity conditions. Dr. VanFleet found that the effects of the accident stopped after the first round of physical therapy in July 2021, while her obesity, degenerative spine and her pregnant condition were the causes of her pain after that time. Dr. VanFleet did not explain this finding. It appears that Dr. VanFleet was unaware the Petitioner continued physical therapy from July 15, 2021, through September 8, 2021, with another provider. This omission makes his cutoff date for the temporary exacerbation less reliable and more arbitrary. From the evidence submitted, it appeared that the Petitioner's symptoms continued after the first round of physical therapy, after she delivered her baby and after the period in which Dr. VanFleet said the effects of the Petitioner's

pregnancy on her low back would have resolved. The Arbitrator also notes that Dr. VanFleet did not review the actual MRI images but only the reports.

As to Dr. VanFleet's finding that the Petitioner was exaggerating her pain, the Arbitrator notes that he was the only doctor who found that. The Petitioner's primary care physician, her OB/GYN, Dr. Phillips and Dr. Gornet did not make any such findings. Additionally, her OB/GYN stated that the Petitioner's back pain was due to the accident and not her pregnancy. The Arbitrator also gives more weight to the opinions of the Petitioner's treating physicians, as they had more opportunities to become familiar with the Petitioner and her conditions. Further, the Arbitrator finds the Petitioner to be credible.

For the above reasons and based on the opinions of the Petitioner's treating physicians, the Arbitrator finds that the Petitioner has met her burden of proving by a preponderance of the evidence that the accident of May 9, 2021, was a contributing factor to her low back condition that continued after July 31, 2021.

Issue J: Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?

The right to be compensated for medical costs associated with work-related injuries is at the very heart of the Workers' Compensation Act. *Hagene v. Derek Polling Const*., 388 Ill. App. 3d 380, 383, 902 N.E.2d 1269, 327 Ill.Dec. 883 (2009). A claimant is entitled to recover reasonable medical expenses that are causally related to the accident and that are determined to be required to diagnose, relieve, or cure the effects of claimant's injury. *F & B Mfg. Co. v. Indus. Comm'n*, 325 Ill. App. 3d 527, 534, 758 N.E.2d 18, 259 Ill.Dec. 173 (1st Dist. 2001).

Dr. VanFleet found that treatment for the Petitioner's low back was not reasonable or necessary after the first round of physical therapy as it related to the work accident. Based on the

analysis above regarding causation, the Arbitrator finds this to be an arbitrary cutoff for treatment in light of the fact that the Petitioner was still experiencing symptoms and needed diagnostics and treatment to relieve the effects of the work injury.

Therefore, the Arbitrator finds the medical expenses listed in Petitioner's Exhibit 1 to be reasonable, necessary and causally related to the work accident and orders the Respondent to pay these expenses.

Issue K: Is Petitioner entitled to any prospective medical care?

Upon establishing causal connection and the reasonableness and the necessity of recommended medical treatment, employers are responsible for necessary prospective medical care required by their employees. *Plantation Mfg. Co. v. Indus. Comm'n*, 294 Ill.App.3d 705, 691 N.E.2d. 13 (1997). This includes treatment required to diagnose, relieve, or cure the effects of claimant's injury. *F & B Mfg. Co. v. Indus. Comm'n*, 325 Ill. App. 3d 527, 758 N.E.2d 18 (2001).

At the time of arbitration, the Petitioner had not finished treating with Dr. Gornet and was not yet at maximum medical improvement. Also at that time, Dr. Gornet had not yet recommended further diagnostic tests or surgical procedures, so the Arbitrator will not weigh in on those. Based on the findings above, the Arbitrator finds that follow-up care as recommended by Dr. Gornet is reasonable and necessary and orders the Respondent to authorize and pay for such services.

Issue O: Has the Petitioner reached maximum medical improvement?

Because evidence was not presented that Dr. Gornet placed the Petitioner at maximum medical improvement, the Arbitrator will not find that she has reached maximum medical improvement.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	22WC011829
Case Name	April Rieker v. City of East Peoria
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	24IWCC0413
Number of Pages of Decision	13
Decision Issued By	Raychel Wesley, Commissioner

Petitioner Attorney	Stephen Kelly
Respondent Attorney	Michael Bantz

DATE FILED: 8/28/2024

/s/ Raychel Wesley, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF PEORIA)

☐ Affirm and adopt (no changes)	☐ Injured Workers' Benefit Fund (§4(d))
☐ Affirm with changes	☐ Rate Adjustment Fund (§8(g))
☐ Reverse	☐ Second Injury Fund (§8(e)18)
	☐ PTD/Fatal denied
☒ Modify Temporary Disability, Permanent Disability	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

APRIL RIEKER,

Petitioner,

vs. NO: 22 WC 11829

CITY OF EAST PEORIA,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petitions for Review having been filed by Petitioner and Respondent herein and notice given to all parties, the Commission, after considering the issues of whether Petitioner sustained an accidental injury arising out of her employment on November 24, 2021, entitlement to Temporary Total Disability benefits, and the nature and extent of Petitioner's permanent disability, and being advised of the facts and law, modifies the Decision of the Arbitrator as stated below, but otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

PROLOGUE

The Commission observes Petitioner's personal identity information was unredacted from Petitioner's Exhibits 3 and 5. The Commission cautions Counsel to adhere to Supreme Court Rule 138. *Ill. S. Ct. R. 138* (eff. Jan. 1, 2018).

CONCLUSIONS OF LAW

I. Temporary Disability

On the Request for Hearing form, Petitioner alleged entitlement to Temporary Total Disability ("TTD") benefits from November 26, 2021 through December 11, 2021. ArbX1. The

Arbitrator awarded TTD of $1,073.77 per week for 2 4/7 weeks, representing November 25, 2021 through December 13, 2021. As the TTD award exceeds the period claimed by Petitioner, the Commission vacates the award of TTD benefits for November 25, 2021; December 12, 2021; and December 13, 2021. *See Walker v. Industrial Commission*, 345 Ill. App. 3d 1084, 1088 (4th Dist. 2004). The Commission further observes the TTD rate identified in the Decision is incorrect: Petitioner's stipulated AWW of $1,788.46 yields a TTD rate of $1,192.31 ($1,788.46 / 3 x 2 = $1,192.31). Therefore, the Commission finds Petitioner is entitled to TTD benefits of $1,192.31 per week for 2 2/7 weeks, representing November 26, 2021 through December 11, 2021.

II. Permanent Disability

The Arbitrator concluded Petitioner sustained 3.5% loss of use of the person as a whole. The Commission views the evidence differently.

§8.1b(b)(i) – impairment rating

Neither party submitted an impairment rating. As such, the Commission assigns no weight to this factor and will assess Petitioner's permanent disability based upon the remaining enumerated factors.

§8.1b(b)(ii) – occupation of the injured employee

Petitioner was a firefighter and had achieved the rank of lieutenant. Petitioner returned to her pre-injury job on December 14, 2021. T. 35-36. Petitioner credibly testified she was able to perform her command duties as a lieutenant, but she retired upon reaching her eligibility age of 50 because of the anxiety stemming from her accident. The Commission finds this factor weighs in favor of increased permanent disability.

§8.1b(b)(iii) – age at the time of the injury

Petitioner was 48 years old on the date of her accidental injury. The Commission notes that due to her age, Petitioner will experience her residual complaints for an extended period. This factor weighs in favor of increased permanent disability.

§8.1b(b)(iv) – future earning capacity

There is no evidence Petitioner's work accident had an adverse impact on her future earning capacity. The Commission finds this factor weighs in favor of reduced permanent disability.

§8.1b(b)(v) – evidence of disability corroborated by treating medical records

Following the November 24, 2021 accident, Petitioner experienced flashbacks, anxiety, despair, and insomnia. Petitioner was diagnosed with acute post-traumatic stress disorder. She underwent psychological care, including counseling and cognitive behavioral therapy, and was prescribed anti-depressants for approximately six months. PX2, PX3. Petitioner testified she continues to "carry angst" and experience extremes of emotion; she utilizes coping mechanisms

learned in counseling to make the emotional roller coaster "manageable." T. 42. The Commission finds this factor weighs in favor of increased permanent disability.

Based on the above, the Commission finds Petitioner sustained 7% loss of use of the person as a whole.

All else is affirmed.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed July 19, 2023, as modified above, is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $1,192.31 per week for a period of 2 2/7 weeks, representing November 26, 2021 through December 11, 2021, that being the period of temporary total incapacity for work under §8(b) of the Act. The award of TTD for November 25, 2021; December 12, 2021; and December 13, 2021 is hereby vacated.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the medical expenses incurred from the date of accident through the date of trial, as provided in §8(a), subject to §8.2.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $937.11 per week for a period of 35 weeks, as provided in §8(d)2 of the Act, for the reason that the injuries sustained caused the 7% loss of use of the person as a whole.

IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent pay to Petitioner interest under §19(n) of the Act, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall have credit for all amounts paid, if any, to or on behalf of the Petitioner on account of said accidental injury.

Under §19(f)(2), no "county, city, town, township, incorporated village, school district, body politic, or municipal corporation" shall be required to file a bond. As such, Respondent is exempt from the bonding requirement. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

August 28, 2024

/s/ *Raychel A. Wesley*

RAW/mck

O: 7/24/24

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/s/ *Stephen J. Mathis*

/s/ *Deborah L. Simpson*

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	22WC011829
Case Name	April Rieker v. City of East Peoria
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	9
Decision Issued By	Kurt Carlson, Arbitrator

Petitioner Attorney	Stephen Kelly
Respondent Attorney	Michael Bantz

DATE FILED: 7/19/2023

/s/Kurt Carlson, Arbitrator

Signature

THE INTEREST RATE FOR THE WEEK OF JULY 18, 2023 5.25%

STATE OF ILLINOIS)
) SS.
COUNTY OF **Peoria**)

☐ Injured Workers' Benefit Fund (§4(d))
☐ Rate Adjustment Fund (§8(g))
☐ Second Injury Fund (§8(e)18)
☒ None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

April Rieker Case # **22** WC **011829**
Employee/Petitioner/ skelly@stephenkellylaw.com
v.
City of East Peoria
Employer/Respondent/ mbantz@ifmklaw.com

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Kurt Carlson**, Arbitrator of the Commission, in the city of **Peoria**, on **June 21, 2023**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
B. ☐ Was there an employee-employer relationship?
C. ☒ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
D. ☐ What was the date of the accident?
E. ☐ Was timely notice of the accident given to Respondent?
F. ☒ Is Petitioner's current condition of ill-being causally related to the injury?
G. ☐ What were Petitioner's earnings?
H. ☐ What was Petitioner's age at the time of the accident?
I. ☐ What was Petitioner's marital status at the time of the accident?
J. ☒ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
K. ☐ Is Petitioner entitled to any prospective medical care?
L. ☒ What temporary benefits are in dispute?
☐ TPD ☐ Maintenance ☒ TTD
M. ☐ Should penalties or fees be imposed upon Respondent?
N. ☒ What is the nature and extent of the injury?
O. ☐ Other _____

FINDINGS

On **11-24-21**, Respondent ***was*** operating under and subject to the provisions of the Act.

On this date, an employee-employer relationship ***did*** exist between Petitioner and Respondent.

On this date, Petitioner ***did*** sustain an accident that arose out of and in the course of employment.

Timely notice of this accident ***was*** given to Respondent.

Petitioner's current condition of ill-being ***is*** causally related to the accident.

In the year preceding the injury, the Petitioner earned $**93,000**; the average weekly wage was $**1,788.46**.

On the date of accident, Petitioner was **48** years of age, ***married*** with **1** dependent children.

The Petitioner ***has*** received all reasonable and necessary medical services.

Respondent ***has not*** paid all appropriate charges for all reasonable and necessary medical services.

Respondent shall be given a credit of $**0** for TTD, $**0** for TPD, $**0** for maintenance, and $**0** for other benefits, for a total credit of $**0**.

ORDER

- The Petitioner sustained an accident that arose out of and in the course of the employment of the Respondent on November 24, 2021
- The Petitioner's condition of ill-being was causally related to the work injury of November 24, 2021.
- The Respondent shall pay all reasonable, necessary and causally related medical and hospital bills, from the date of the injury through the time of trial.
- The Respondent shall pay Petitioner temporary total disability benefits of $1,073.77/week for 2 4/7 weeks, commencing 11/25/21 – 12/13/21 as provided in Section 8(b) of the Act.
- The Respondent shall pay Petitioner the sum of $**937.11**/week for a further period of **17.5** weeks, as provided in Section **8(e)** of the Act, because the injuries sustained caused **3.5% loss of use of the Person As A Whole.**

RULES REGARDING APPEALS Unless a party files a *Petition for Review* within 30 days after receipt of this decision, and perfects a review in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

STATEMENT OF INTEREST RATE If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

Kurt Carlson

Signature of Arbitrator

July 19, 2023

FINDINGS OF FACT

Testimony of April Rieker

The Petitioner testified that she began her employment with the Respondent almost 25 years ago. The Petitioner testified that she began her career as a firefighter, mandated to paramedic and then promoted to lieutenant from 2019 to 2023 (AT 11). The Petitioner testified that she retired in May 2023 (AT 11). The Petitioner testified that her job duties included saving lives, protecting property, respond to calls, and be in charge of the scene of the crew (AT 12).

Prior to November 24, 2021, the Petitioner testified that she had never been diagnosed with post-traumatic stress disorder or anxiety nor sought any type of medical treatment for post-traumatic stress disorder or anxiety (AT 13). The Petitioner testified that she had not responded to a call that involved a fatality while as lieutenant (AT 14).

The Petitioner testified that on November 24, 2021, she responded to a house fire. Dispatch alerted that there was a 12-year-old girl entrapped inside the house. The Petitioner testified that she noticed the glow of the fire and could tell it would be a very large fire (AT 15-18). The Petitioner testified that she was the first engine to arrive, and it was just herself and one other firefighter (AT 19). The Petitioner testified that the home was an inferno and knowing somebody was inside, her instinct was to go inside and rescue, however she knew that likely wasn't possible (AT 20).

The Petitioner testified that after conversing with two police officers, she began firefighter operations, hosing the side of the house. The front door and all windows had flames coming out so there was no way to make entry. The Petitioner testified that for safety reasons, she deemed this a defensive fire which means you're not able to go in and attack the fire because of the stability of the structure (AT 21).

The Petitioner testified that the mother of the child arrived on the scene and Petitioner could hear the mother's screaming and crying (AT 23). The Petitioner testified that the child's age only being 12 years old was significant to her because she has a son that was 12 years old that that time (AT 23-24). The Petitioner testified that she had never been exposed to a child who died in a fire (AT 24).

The Petitioner testified that she completed her tasks and returned to the fire station (AT 24). The Petitioner testified that while on scene, she had to remove herself and try to recoup. She was in tears and emotional with feelings of hopelessness (AT 26).

The Petitioner testified that she involved in fire prevention services at local schools for the past 18 years. The Petitioner testified that it was her hope that this would never happen to anybody and that children would remember the importance of fire safety (AT 27).

The Petitioner testified that over the next couple days she noticed she had anxiety, short tempers, and irritability. The Petitioner didn't want to leave her house. The Petitioner testified that she felt like she had a roller coaster of emotions (AT 27).

The Petitioner testified that she sent an email to the chief stating she was not doing well (AT 29). The Petitioner had a phone conversation with the chief discussing how emotionally unstable she was and needing to seek medical treatment (AT 29). The chief advised that she should stay home and take as much time as she needs (AT 31).

The Petitioner returned to work on December 14, 2021 (AT 36). The Petitioner testified that prior to returning to work she was in communication with Chief Zimmerman and Chief Knapp about how she was doing (AT 36).

The Petitioner testified that she was apprehensive to go back to work because she still experienced anxiety and fear but she was a dedicated firefighter and she wanted to overcome this (AT 39).

The Petitioner testified that at the time of trial she still experiences angst and feelings of an emotional rollercoaster at times. The Petitioner testified that she is no longer on medications and utilizes her coping mechanisms (AT 42).

Medical Treatment

The Petitioner presented to Glen Manor Counseling on November 30, 2021. The Petitioner had complaints of confusion and sleeping. The Petitioner would wake up around the time of the fire call for weeks and the scenario would replay in her head (Pet. Exh. 2).

The Petitioner returned to Glen Manor Counseling on December 8, 2021. The Petitioner was still having crying spells. The Petitioner felt guilty and ashamed that she couldn't do anything else to help the child (Pet. Exh. 2).

The Petitioner returned to her therapist at Glen Manor Counseling on December 22, 2021. The Petitioner advised that she was starting to feel better. The Petitioner and the therapist were working on coping mechanisms (Pet. Exh. 2).

The Petitioner returned to her therapist on January 12, 2022. The therapist prescribed the Petitioner Prozac at that time. The Petitioner had stomach issues with the Prozac, so she was soon switched to Zoloft (Pet. Exh. 2).

The Petitioner followed up with her therapist on February 10, 2022. The Petitioner was performing her full duty work and feeling better. The Petitioner was released from care (Pet. Exh. 2).

The Petitioner presented to an independent medical exam scheduled by the Respondent. The Petitioner presented to Dr. Reff on November 30, 2022. The Petitioner provided Dr. Reff a full history of the accident and events that occurred on November 24, 2021. The Petitioner provided her symptoms to Dr. Reff.

Dr. Reff diagnosed the Petitioner as suffering from Post Traumatic Stress Disorder (P.T.S.D.). Dr. Reff noted that the Petitioner continued to have residual symptoms of P.T.S.D. Dr. Reff opined that the Petitioner's P.T.S.D. was causally related to the November 24, 2021 incident (Pet. Exh. 7).

Dr. Reff opined that the medical care received by the Petitioner for the work injury was reasonable and necessary. Dr. Reff stated that it could be possible that the Petitioner would need further medical care for her work injuries. (Pet. Exh. 7).

ARBITRATOR'S FINDINGS

Accident

It is undisputed that the Petitioner was performing her duties as a Firefighter on November 24,2021. The Petitioner testified that on November 24, 2021, she responded to a house fire. Dispatch alerted that there was a 12-year-old girl entrapped inside the house. The Petitioner testified that she noticed the glow of the fire and could tell it would be a very large fire (AT 15-18). The Petitioner testified that she was the first engine to arrive, and it was just herself and one other firefighter (AT 19). The Petitioner testified that the home was an inferno and knowing somebody was inside, her instinct was to go inside and rescue, however she knew that likely wasn't possible (AT 20).

The Petitioner testified that after conversing with two police officers, she began firefighter operations, hosing the side of the house. The front door and all windows had flames coming out so there was no way to make entry. The Petitioner testified that for safety reasons, she deemed this a defensive fire which means you're not able to go in and attack the fire because of the stability of the structure (AT 21).

The Petitioner testified that the mother of the child arrived on the scene and Petitioner could hear the mother's screaming and crying (AT 23). The Petitioner testified that the child's age only being 12 years old was significant to her because she has a son that was 12 years old that that time (AT 23-24). The Petitioner testified that she had never been exposed to a child who died in a fire (AT 24).

The Illinois Supreme Court has recognized "mental-mental" accidents as being work related events. ***Pathfinder Co. v. Industrial Commission,*** 62 Ill. 2d 556, 343 N.E. 2nd 913 (1976). The Court in Pathfinder required a petitioner alleging a "mental-mental" claim to prove she suffered a "sudden, severe emotional shock traceable to a definite time, place and cause which causes psychological injury or harm. (Id.)

Additionally, the Appellate Court analyzed the ***Pathfinder*** case in ***Chicago Transit Authority v. Illinois Workers Compensation Commission.*** The ***CTA*** Court found that is all the ***Pathfinder*** ruling requires, sating that ***Pathfinder*** does not compel the petitioner to prove, in addition, that the psychological injury resulting from the emotional shock was "immediately apparent". The ***CTA*** Court concluded the emotional shock which caused a psychological injury, her claim may be compensable even if the resulting psychological injury did not manifest itself until sometime after the shock. (Id.)

The facts in this case are similar to the facts in fact in ***Moran v Illinois Workers Compensation Commission***, 406 Ill. Dec. 156, 59 N.E. 3d 934, (2016). In Moran, the petitioner was a firefighter who suffered from P.T.S.D. Moran argued to the court that he suffered a sudden severe emotional shock because he was at the scene of a fire and in a position of command. The Employer argued that the that Moran did not suffer a severe emotional shock because he was not inside a burning building when a fire severely injured a fellow

firefighter. The Appellate Court found that because Moran was responding to a fire where he was in charge, he determined what gauge of hose to be used, and instructed other firefighters where to go to fight the fire, and after a fellow firefighter was severely injured at the scene of that fire, that he suffered a compensable psychological injury. (Id)

Wherefore the Petitioner did sustain an accident that arose out of and in the course of the employment of the Respondent on November 24, 2021

Causal Connection

The Petitioner presented to an independent medical exam scheduled by the Respondent. The Petitioner presented to Dr. Reff on November 30, 2022. The Petitioner provided Dr. Reff a full history of the accident and events that occurred on November 24, 2021. The Petitioner provided her symptoms to Dr. Reff.

Dr. Reff diagnosed the Petitioner as suffering from Post Traumatic Stress Disorder (P.T.S.D.). Dr. Reff noted that the Petitioner continued to have residual symptoms of P.T.S.D. Dr. Reff opined that the Petitioner's P.T.S.D. was causally related to the November 24, 2021 incident (Pet. Exh. 7).

Dr. Reff opined that the medica care received by the Petitioner for the work injury was reasonable and necessary. Dr. Reff stated that it could be possible that the Petitioner would need further medical care for her work injuries. (Pet. Exh. 7).

There is no medical evidence to the contrary of the opinions of the IME Dr. Reff.

Wherefore, the Arbitrator finds that the Petitioner's conditions of ill-being is causally related to the Petitioner's work accident.

Temporary Total Disability

The Petitioner testified that she sent an email to the chief stating she was not doing well following the work accident. (AT 29). The Petitioner had a phone conversation with the chief discussing how emotionally unstable she was and needing to seek medical treatment (AT 29). The chief advised that she should stay home and take as much time as she needs (AT 31).

The Petitioner returned to work on December 14, 2021 (AT 36). The Petitioner testified that prior to returning to work she was in communication with Chief Zimmerman and Chief Knapp about how she was doing (AT 36).

The Petitioner testified that she was apprehensive to go back to work because she still experienced anxiety and fear, but she was a dedicated firefighter and she wanted to overcome this (AT 39). The Petitioner was off work from November 25, 2021 until December 13, 2021.

Wherefore, the Respondent is ordered to pay the Petitioner Temporary Total Disability from November 25, 2021 through December 13, 2021.

Medical Services

In light of the opinion that the Petitioner's condition of ill-being is causally related to the work accident, the Arbitrator finds that the Respondent should pay for any and all medical bills from the date of the accident through the time of trial.

NATURE AND EXTENT OF THE INJURY

With regard to the issue of nature and extent, the Arbitrator notes that pursuant to Section 8.1b of the Act, for accidental injuries occurring after September 1, 2011, permanent partial disability shall be established using five enumerated criteria, with no single factor being the sole determinant of disability. Per 820 ILCS 305/8.1b(b), the criteria to be considered are as follows: (i) the reported level of impairment pursuant to subsection (a) [AMA "Guides to the Evaluation of Permanent Impairment"]; (ii) the occupation of the injured employee; (iii) the age of the employee at the time of the injury; (iv) the employee's future earning capacity; and (v) evidence of disability corroborated by the treating medical records. Applying this standard to this claim, the Arbitrator makes the following findings listed below.

With regard to Sec. 8.1(b) (i); the Arbitrator notes that there was no impairment rating performed on the Petitioner in this case. This factor will not be considered.

With regard to Sec. 8.1(b) (ii); the occupation of the Petitioner, the Arbitrator notes that the Petitioner was employed by the Respondent as a lieutenant. This factor should be weighed in favor of the Petitioner.

With regard to Sec. 8.1(b) (iii); the Arbitrator notes that the Petitioner was 48 years old at the time of the injury. This factor should be weighed in favor of the Petitioner.

With regard to Sec. 8.1(b) (iv); the Petitioner did not lose earnings as a result of the work injury.

With regard to Sec 8.1(b) (v); the Arbitrator notes that the Petitioner was diagnosed with post-traumatic stress disorder. The Petitioner testified that at the time of trial she still experiences angst and feelings of an emotional rollercoaster at times. The Petitioner testified that she is no longer on medications and utilizes her coping mechanisms (AT 42).

Based on the foregoing, the Arbitrator awards the Petitioner 3.5% loss use of the Person As A Whole.

RULES REGARDING APPEALS Unless a Petition for Review is filed within 30 days after receipt of this decision, and a review is perfected in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

STATEMENT OF INTEREST RATE If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

Kurt A. Carlson
Signature of Arbitrator

July 19, 2023
Date

ICArbDecN&E p.2

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	22WC007797
Case Name	Tim Jasutis v. Conveyor Specialties, Inc.
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b) Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	24IWCC0414
Number of Pages of Decision	13
Decision Issued By	Raychel Wesley, Commissioner

Petitioner Attorney	Sean Stec
Respondent Attorney	Courtney Schoch

DATE FILED: 8/29/2024

/s/ Raychel Wesley, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

☒ Affirm and adopt (no changes)	☐ Injured Workers' Benefit Fund (§4(d))
☐ Affirm with changes	☐ Rate Adjustment Fund (§8(g))
☐ Reverse	☐ Second Injury Fund (§8(e)18)
	☐ PTD/Fatal denied
☐ Modify	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

TIM JASUTIS,

Petitioner,

vs. NO: 22 WC 07797

CONVEYOR SPECIALTIES, INC.,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) and §8(a) having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of accident, causal connection, medical expenses, prospective medical care, and temporary total disability, and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof. The Commission remands this case to the Arbitrator for further proceedings for a determination of a further amount of temporary total compensation or of compensation for permanent disability, if any, pursuant to *Thomas v. Industrial Commission*, 78 Ill. 2d 327 (1980).

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed July 20, 2023, is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent pay to Petitioner interest under §19(n) of the Act, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent shall have credit for all amounts paid, if any, to or on behalf of the Petitioner on account of said accidental injury.

IT IS FURTHER ORDERED BY THE COMMISSION that this case be remanded to the Arbitrator for further proceedings consistent with this Decision, but only after the latter of the time for filing a written request for Summons to the Circuit Court has expired without the filing of such a written request, or after the time of completion of any judicial proceedings, if such a written request has been filed.

Bond for 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.

August 29, 2024

/s/ *Raychel A. Wesley*

RAW/wde

O: 7/10/24

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/s/ *Stephen J. Mathis*

/s/ *Deborah L. Simpson*

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	22WC007797
Case Name	Tim Jasutis v. Conveyor Specialties, Inc.
Consolidated Cases	
Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	10
Decision Issued By	Elaine Llerena, Arbitrator

Petitioner Attorney	Sean Stec
Respondent Attorney	Courtney Schoch

DATE FILED: 7/20/2023

/s/Elaine Llerena, Arbitrator
Signature

THE INTEREST RATE FOR THE WEEEK OF JULY 18, 2023 5.25%

STATE OF ILLINOIS)
)SS.
COUNTY OF **COOK**)

- ☐ Injured Workers' Benefit Fund (§4(d))
- ☐ Rate Adjustment Fund (§8(g))
- ☐ Second Injury Fund (§8(e)18)
- ☒ None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)/8(a)

Tim Jasutis
Employee/Petitioner
v.
Conveyor Specialties, Inc.
Employer/Respondent

Case # **22** WC **007797**

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Elaine Llerena**, Arbitrator of the Commission, in the city of **Chicago**, on **January 27, 2023**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
B. ☐ Was there an employee-employer relationship?
C. ☒ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
D. ☐ What was the date of the accident?
E. ☐ Was timely notice of the accident given to Respondent?
F. ☒ Is Petitioner's current condition of ill-being causally related to the injury?
G. ☐ What were Petitioner's earnings?
H. ☐ What was Petitioner's age at the time of the accident?
I. ☐ What was Petitioner's marital status at the time of the accident?
J. ☒ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
K. ☒ Is Petitioner entitled to any prospective medical care?
L. ☒ What temporary benefits are in dispute?
☐ TPD ☐ Maintenance ☒ TTD
M. ☐ Should penalties or fees be imposed upon Respondent?
N. ☐ Is Respondent due any credit?
O. ☐ Other _____

FINDINGS

On the date of accident, **September 20, 2021**, Respondent ***was*** operating under and subject to the provisions of the Act.

On this date, an employee-employer relationship ***did*** exist between Petitioner and Respondent.

On this date, Petitioner ***did*** sustain an accident that arose out of and in the course of employment.

Timely notice of this accident ***was*** given to Respondent.

Petitioner's current condition of ill-being ***is*** causally related to the accident.

In the year preceding the injury, Petitioner earned $**111,550.40**; the average weekly wage was $**2,145.20**.

On the date of accident, Petitioner was **41** years of age, ***single*** with **0** dependent children.

Respondent shall be given a credit of $**31,564.35** for TTD, $**0** for TPD, $**0** for maintenance, and $**1,920.31** in medical payments, for a total credit of $**33,484.66**.

Respondent is entitled to a credit of $**0** under Section 8(j) of the Act.

ORDER

Respondent shall pay Petitioner temporary total disability benefits of $1,430.13 per week for 67 & 1/7 weeks, commencing October 15, 2021, through January 27, 2023, as provided in Section 8(b) of the Act.

Respondent shall pay reasonable and necessary medical services of $647.00 to Parent Advocate Sherman Hospital, $4,789.00 to OrthoIllinois, and $2,852.57 to Fox Valley Health Chiropractic, Ltd., as provided in Sections 8(a) and 8.2 of the Act.

Respondent shall authorize and pay for prospective medical care in the form of physical therapy, as recommended by Dr. Lawton.

In no instance shall this award be a bar to subsequent hearing and determination of an additional amount of medical benefits or compensation for a temporary or permanent disability, if any.

RULES REGARDING APPEALS Unless a party files a *Petition for Review* within 30 days after receipt of this decision, and perfects a review in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

STATEMENT OF INTEREST RATE If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

Elaine Llerena
Signature of Arbitrator

July 20, 2023

ICArbDec19(b)

FINDINGS OF FACT

This matter proceeded to hearing on January 27, 2023, in Chicago, Illinois before Arbitrator Elaine Llerena on Petitioner's Petition for Immediate Hearing under Section 19(b)/8(a). The issues in dispute were accident, causal connection, medical expenses, temporary total disability benefits, and prospective medical care. Arbitrator's Exhibit 1 (AX1).

Job Duties

Petitioner has been a journeyman ironworker for 20 years. (T. 7-8) Petitioner began work for Respondent as a journeyman ironworker approximately 6 months prior to his work injury. (T. 8)

Petitioner's work for Respondent involved constructing catwalks and "cross-overs" over the conveyor system in the warehouse of a Target Overflow Distribution Center. (T. 11-13) The catwalks and "cross-overs" were made of steel and had to be anchored to the floor of the warehouse. (T. 11-13) Because of the nature of the work, approximately 80% of Petitioner's work was done from a kneeling or squatting position. (T. 13-14)

While Petitioner performed his work for Respondent, he wore a "Bolt Bag" that held spud wrenches, lever bars and any hardware he needed to perform his work. (T. 15-16) Petitioner's "Bolt Bag" weighed approximately 15 pounds and was worn around his waist like a tool belt. (T. 15-16) Petitioner frequently had to transition from a squatting or kneeling position to a standing position in order to perform his job duties. (T. 15) Petitioner was unable to grab onto the conveyor system or the catwalks or "cross-overs" when transitioning from a kneeling or squatting position to a standing position. (T. 13-14) Occasionally, Petitioner had a drill motor that weighed approximately 5 pounds in his hand when he transitioned from a squatting or kneeling position to a standing position. (T. 17)

Prior Medical Condition

Prior to September 20, 2021, Petitioner had never injured his right knee, received medical care for his right knee or missed time from work due to right knee problems. (T. 9-10)

On a few occasions between March 2021 and September 20, 2021, Petitioner experienced swelling in his right knee. (T. 10) He purchased a compression brace for his knee at Walgreens and took ibuprofen for the swelling. (T. 10-11) On these occasions, the swelling lasted for less than a week and did not involve any pain in his knee. (T. 10)

Accident

On September 20, 2021, after approximately two hours of drilling on his knees at work, Petitioner felt pain in his right knee. (T. 11-12, 18-19, 21) As Petitioner attempted to transition to a standing position, he felt extreme pain in the front area of his right knee. (T. 19) Petitioner had never felt symptoms similar to what he experienced in his right knee on September 20, 2021, prior to that time. (T. 22) Petitioner required assistance from his co-worker, Paris, to walk from his work area to report his work injury to his supervisor, Brianne. (T. 19-20) Petitioner completed his workday at approximately 3:00 p.m., but the pain and symptoms in his right knee continued. (T. 21-22)

Summary of Medical Records

On September 21, 2021, Petitioner was examined at Advocate Sherman Hospital. Dr. Bonnie McManus examined Petitioner and took a history that indicated Petitioner was lifting, kneeling and squatting frequently at work and developed sharp pain in the right knee which was worse with kneeling and squatting. (PX4, pg. 8) X-rays were taken of Petitioner's right knee which showed suspected osteochondritis dissecans involving the lateral femoral condyle. (PX4, pg. 4) Dr. McManus noted that Petitioner exhibited tenderness over the lateral joint line of his right knee and diagnosed him with a right knee strain. (PX4, pg. 11) Dr. McManus placed light duty restrictions on Petitioner and referred him for follow-up with an orthopedic specialist. (PX4, pg. 11)

Petitioner returned to work for Respondent in a light duty capacity, as provided by Dr. McManus. (T. 30)

On September 27, 2021, Petitioner saw Dr. Cort Lawton, an orthopedic specialist. (PX5, pgs. 3-6)) Dr. Lawton took a history that states that on September 20, 2021, Petitioner was crawling under conveyor belt at work when he had onset of pain and swelling. Dr. Lawton noted that Petitioner exhibited a positive patellar grind test and reviewed the x-ray of Petitioner's right knee. Dr. Lawton found that Petitioner had evidence of osteochondritis dissecans lesion of the lateral femoral condyle. Dr. Lawton ordered Petitioner to use a knee sleeve or compression wrap and to return as needed.

On October 15, 2021, Petitioner was laid off by Respondent. (T. 31) Respondent has not provided Petitioner with light duty work since that time. (T. 31)

On October 20, 2021, Petitioner returned to see Dr. Lawton. (PX5, pgs. 7-10) Petitioner still exhibited a positive patellar grind test with a catching sensation and complained of lingering right knee pain. Dr. Lawton ordered a right knee MRI and released Petitioner to return to work with no kneeling.

On November 16, 2021, Petitioner underwent the MRI of his right knee at OrthoIllinois, the results of which revealed large regions of chronic avascular necrosis in Petitioner's distal femur. (PX5, pg. 12)

Dr. Lawton reviewed the MRI on December 1, 2022, and diagnosed Petitioner as having right knee pain and returned to see Dr. Lawton on December 1, 2022. (PX5, pgs. 13-16) The doctor reviewed the MRI of Petitioner's right knee and diagnosed him with right knee pain and avascular necrosis of the right femur. Dr. Lawton ordered physical therapy and took Petitioner off work.

On December 13, 2021, Petitioner started physical therapy at Serene Chiropractic & Physical Therapy. (PX7) Petitioner continued his physical therapy program until February 8, 2022.

On January 17, 2022, Petitioner underwent a Section 12 evaluation with Dr. Brian J. Cole at Respondent's request. (RX3, DX2) The medical history recorded by Dr. Cole states that on September 20, 2021, Petitioner was rising to a standing position when he noticed pain and swelling in his right knee. Dr. Cole opined that Petitioner suffered from a pre-existing condition that manifested itself spontaneously on September 20, 2021. Dr. Cole indicated that Petitioner required a cortisone injection and a home exercise program and indicated that Petitioner could work with no squatting, kneeling or climbing.

On February 9, 2022, Petitioner returned to see Dr. Lawton. (PX5, ,pgs. 22-25) Dr. Lawton noted that Petitioner continued to have pain and mechanical symptoms, including catching, in his right knee. Dr. Lawton recommended that Petitioner proceed with arthroscopic right knee abrasion chondroplasty surgery. Dr. Lawton also advised Petitioner that if he did not get significant relief from the first procedure that was recommended, he may require a cartilage restoration procedure or an arthroplasty procedure. Dr. Lawton kept Petitioner off work.

On February 15, 2022, Dr. Cole authored an addendum report. (RX3, DX3) Dr. Cole opined that Petitioner suffered from pre-existing avascular necrosis and that Petitioner's work injury aggravated this condition. Dr. Cole also opined that Petitioner's need for treatment was related to his work injury.

On March 15, 2022, Dr. Cole authored a second addendum report. (RX3,DX4) Dr. Cole opined that Petitioner was suffering from symptoms of a pre-existing condition that was not a direct result of any workplace injury, but that the recommended right knee surgery was appropriate.

On May 24, 2022, Dr. Lawton performed a right knee arthroscopy and chondroplasty of the trochlea at Northwestern Medicine – Huntley Hospital. (PX8, pgs. 9-10)

Petitioner started post-operative physical therapy at Serene Chiropractic & Physical Therapy on May 31, 2022. (PX7) On June 6, 2022, Petitioner returned to see Dr. Lawton who continued physical therapy and kept Petitioner off work. (PX5, pgs. 29-31)

On June 24, 2022, Dr. Cole's evidence deposition was taken. (RX3) Dr. Cole testified that avascular necrosis is a condition that could occur idiopathically, with either no known cause, or it could have risk factors biologic in nature, such as history of steroid use, liver disease. (RX3, pgs. 7-8) Avascular necrosis can be longstanding, can remain indolent, or can spontaneously manifest symptoms of pain and swelling. (RX3, pg. 8) Avascular Necrosis is not related to trauma and can be difficult to predict when avascular necrosis will become symptomatic *Id.* Dr. Cole testified that a classic presentation of avascular necrosis will occur when a knee begins swelling, hurting, catching mechanical symptoms. *Id.* Common symptoms of avascular necrosis include night pain, pain at rest, pain with load, as well as swelling, locking, and catching. (RX3, pg. 9) Dr. Cole testified that avascular necrosis is treated by either skillful neglect (doing nothing), or surgical intervention ranging from arthroscopic debridement to cord decompression to knee replacement. *Id.* Kneeling does not accelerate symptoms of avascular necrosis. *Id.* Symptoms may manifest during kneeling, but kneeling itself does not accelerate avascular necrosis. *Id.* Dr. Cole opined Petitioner had preexisting condition of avascular necrosis with manifestation of symptoms on September 20, 2021. (RX3, pgs. 14-15) Petitioner had a history of swelling with same symptoms prior to the date of accident. *Id.* Dr. Cole did not believe the fact pattern and objective diagnosis supported causality to the alleged accident. *Id.* According to Dr. Cole, the manifestation of symptoms occurred at the workplace, but not due to anything inherent to the work Petitioner performed. (RX3, pg. 16) Dr. Cole noted that Petitioner had two prior events of swelling, classic for avascular necrosis. *Id.* Dr. Cole opined that Petitioner had avascular necrosis for years and that it did not require trauma to bring symptoms to light. (RX3, pg. 31)

On July 21, 2022, Petitioner's physical therapy was discontinued, and he was referred back to his orthopedic surgeon for further evaluation. (PX7) Petitioner returned to see Dr. Lawton on July 27, 2022, who noted that Petitioner continued to have anterior pain in the right knee which was worse with flexion activities and kneeling. (PX5, pgs. 32-34) Dr. Lawton recommended that Petitioner proceed with a series of Synvisc injections and to resume physical therapy once the injection series began.

Dr. Lawton's evidence deposition was taken on October 10, 2022. (PX6) Dr. Lawton opined that it was more likely than not that Petitioner's work-related injury aggravated or precipitated symptoms from his avascular necrosis. (PX6, pg. 24) Dr. Lawton testified this was his opinion as Petitioner reported an acute onset of pain on the date of accident. (PX6, pg. 25) Dr. Lawton testified that Petitioner was carrying a weighted work belt and spending a large portion of his day in a deep knee flexed position kneeling down, doing a lot of repetitive squatting activities, when he reported rising from a kneeling position and feeling a sharp pain in his knee, and that precipitated his symptoms. (PX6, pg. 26) Dr. Lawton testified that the fact that Petitioner had two

or three occasions of swelling in his right knee over the 9 months preceding the date of accident, September 20, 2021, did not change his opinion regarding causal connection in any way. (PX6, pg. 31)

Petitioner hoped that his right knee condition would improve, so he gave it some time to heal following surgery. (T. 28) When it became clear to Petitioner that his right knee condition would not improve without further medical intervention, he contacted Dr. Lawton to schedule the Synvisc injections. (T. 28)

On January 9, 2023, Dr. Lawton performed the first right knee Synvisc injection for Petitioner. (PX5, pgs. 35-37) On January 18, 2023, Dr. Lawton performed the second right knee Synvisc injection for Petitioner. (PX5, pgs. 38-39) On January 25, 2023, Dr. Lawton performed the third right knee Synvisc injection for Petitioner. (PX1, pgs. 5-6)

Petitioner's Current Condition

At the time of hearing, Petitioner was participating in a physical therapy program at Serene Chiropractic & Physical Therapy. (T. 29-30) Petitioner has not returned to full duty work as an ironworker since September 20, 2021, and he has not worked in any capacity since October 14, 2021. (T. 31)

Petitioner has not suffered any new injuries to his right knee since September 20, 2021. (T. 34)

CONCLUSIONS OF LAW

The Arbitrator adopts the above Findings of Fact in support of the Conclusions of Law set forth below.

Decisions of an arbitrator shall be based exclusively on the evidence in the record of the proceeding and material that has been officially noticed. 820 ILCS 305/1.1(e). Credibility is the quality of a witness which renders his evidence worthy of belief. The Arbitrator, whose province it is to evaluate witness credibility, evaluates the demeanor of the witness and any external inconsistencies with his testimony. Where a claimant's testimony is inconsistent with his actual behavior and conduct, the Commission has held that an award cannot stand. *McDonald v. Industrial Commission,* 39 Ill. 2d 396 (1968); *Swift v. Industrial Commission,* 52 Ill. 2d 490 (1972).

It is the function of the Commission to judge the credibility of the witnesses and to resolve conflicts in the medical evidence and assign weight to witness testimony. *O'Dette v. Industrial Commission*, 79 Ill.2d 249, 253, 403 N.E.2d 221, 223 (1980); *Hosteny v. Workers' Compensation Commission*, 397 Ill. App. 3d 665, 674 (2009). Internal inconsistencies in a claimant's testimony, as well as conflicts between the claimant's testimony and medical records, may be taken to indicate unreliability. *Gilbert v. Martin & Bayley/Hucks,* 08 ILWC 004187 (2010).

In the instant case, the Arbitrator finds the testimony of Petitioner to be credible. Petitioner's testimony was repeatedly corroborated by his treating medical records. Specifically, when asked about swelling in his right knee that occurred prior to September 20, 2021, Petitioner testified that he believed to have had 2 instances of swelling without pain in the right knee in the 6 months that preceded his work injury. Petitioner further testified that those occasions of swelling resolved after about 3 to 5 days. (R. pp. 10-11).

The Arbitrator notes that the history taken at Advocate Sherman Hospital on September 21, 2021, corroborates Petitioner's testimony. Additionally, Petitioner's history, as recorded by Dr. Lawton, also corroborates Petitioner's testimony.

WITH RESPECT TO ISSUE (C), DID AN ACCIDENT OCCUR THAT AROSE OUT OF AND IN THE COURSE OF THE PETITIONER'S EMPLOYMENT BY THE RESPONDENT, THE ARBITRATOR FINDS AS FOLLOWS:

To obtain compensation under the Act, a claimant must establish that she was injured in an accident which arose out of and in the course of his employment, and that a causal relationship exists between his employment and his injury. See *Stapleton v. Industrial Commission*, 282 Ill. App. 3d 12, 15, 217 Ill. Dec. 830, 668 N.E.2d 15, 18 (1996), and *Caterpillar Tractor Company v. Industrial Commission*, 129 Ill. 2d 52, 63, 133 Ill. Dec. 454, 541 N.E.2d 665 (1989). "Arising out of" refers to the requisite causal connection between the employment and the injury. In other words, the injury must have had its origins in some risk incidental to the employment. "In the course of" refers to the time, place and circumstances under which the accident occurred. *Illinois Consolidated Telephone Company v. Industrial Commission*, 314 Ill. App. 3d 347, 349, 247 Ill. Dec. 333, 732 N.E. 2d 49 (2000).

The Arbitrator notes that Petitioner testified that in order to construct the catwalks and "cross-overs" in the warehouse, he has to perform the majority of his work from a squatting or kneeling position and frequently had to transition from a squatting or kneeling position to a standing position. Additionally, Petitioner was wearing his bolt bag which contained tools and hardware necessary for him to do his job for Respondent and it weighted approximately 15 pounds. Further, Petitioner could not grab onto anything to assist his transition from a kneeling or squatting position to a standing position and, at times, had a drill motor that weighed approximately 5 pounds in his hand.

The Arbitrator finds that the prolonged work from a kneeling or squatting position, in conjunction with the added weight of the bolt bag and the inability to grab hold of anything to transition from a squatting or kneeling position to a standing position create a risk of injury to Petitioner that is incidental to his employment.

Further, the Arbitrator notes that there is no dispute that the work that Petitioner was performing for Respondent on September 21, 2021, occurred at a time, place and under circumstances required as an element of his employment by Respondent. Accordingly, the Arbitrator finds that Petitioner's work injury occurred "in the course" of his employment with Respondent.

The Arbitrator notes that both Dr. Lawton and Dr. Cole found that Petitioner had preexisting avascular necrosis and that both doctors found that Petitioner's work injury aggravated this condition. The Arbitrator acknowledges that Dr. Cole vacillates between whether Petitioner's condition was aggravated by the work accident in his reports, and, as such, finds the findings and opinions of Dr. Lawton more persuasive. The Arbitrator further notes that while Petitioner suffered from avascular necrosis prior to September 20, 2021, his condition waxed and waned prior to the accident and Petitioner was able to work full duty prior to the accident. After September 20, 2021, Petitioner's condition was aggravated to the point that he could no longer work without restrictions and had to undergo surgery. As such, the Arbitrator finds that Petitioner sustained an aggravation of his preexisting avascular necrosis on September 20, 2021.

Based on the above, the Arbitrator finds that Petitioner sustained an accident that arose out of and in the course of employment with Respondent on September 20, 2021.

WITH RESPECT TO ISSUE (F), IS THE PETITIONER'S PRESENT CONDITION OF ILL-BEING CAUSALLY RELATED TO THE INJURY, THE ARBITRATOR FINDS AS FOLLOWS:

A Workers' Compensation claimant bears the burden of showing by a preponderance of the evidence that his current condition of ill-being is causally related to the workplace injury. *Horath v. Industrial Commission*,

96 Ill. 2d 349, 356, 70 Ill. Dec. 741, 449 N.E.2d 1345 (1983). Expert medical evidence is not essential to support the Commission's conclusion that a causal relationship exists between a claimant's work duties and his condition of ill-being. *International Harvester v. Industrial Commission*, 93 Ill. 2d 59, 63, 66 Ill. Dec. 347, 442 N.E.2d 908 (1982). A chain of events suggesting a causal connection may suffice to prove causation. *Consolidation Coal Co. v. Industrial Commission*, 265 Ill. App. 3d 830, 839, 203 Ill. Dec. 327, 639 N.E.2d 886 (1994). Prior good health followed by a change immediately following an accident allows an inference that a subsequent condition of ill-being is the result of the accident. *Navistar International Transportation Co. v. Industrial Commission*, 315 Ill. App. 3d 1197, 1205, 248 Ill. Dec. 609, 734 N.E.2d 900 (2000).

In the instant case, prior to September 20, 2021, Petitioner had never injured his right knee, nor had he received any treatment for his right knee. As noted above, Petitioner suffered from preexisting avascular necrosis, but had never missed any time from work due to the condition or any right knee problems. Petitioner's right knee condition changed drastically on September 20, 2021, following the work accident. Petitioner sought medical treatment and, ultimately, underwent surgery to treat his right knee. The Arbitrator recognizes that proof of the state of good health of the Petitioner prior to and down to the time of injury, and then change immediately following the injury and continuing thereafter, is competent as tending to establish that the impaired condition was due to the injury. *Spector Freight System, Inc. v. Industrial Commission*, 93 Ill. 2d 507, 513, 445 N.E.2d 280, 67 Ill. Dec. 800 (1983).

The Arbitrator further notes Dr. Lawton's findings and opinion that Petitioner's condition of ill-being, as it relates to the right knee, was a result of a work injury that aggravated or precipitated symptoms from pre-existing avascular necrosis. Dr. Lawton explained that his opinion was based on the onset of acute pain in Petitioner's right knee on September 20, 2021, while working with a weighted tool belt and transitioning from a kneeling or squatting position to a standing position, which would load the patellofemoral joint. The Arbitrator recognizes that Dr. Cole ultimately did not find that Petitioner's avascular necrosis was aggravated by the September 20, 2021, work injury, but as noted previously, he started with the opinion that Petitioner suffered from a pre-existing condition that manifested itself spontaneously on September 20, 2021, then opined that Petitioner suffered from pre-existing avascular necrosis and that Petitioner's work injury aggravated this condition, and concluded with that Petitioner was suffering from symptoms of a pre-existing condition that was not a direct result of any workplace injury. While the facts of the matter did not change, Dr. Cole's opinions for some reason did quite often. As such, the Arbitrator finds the findings and opinions of Dr. Lawton more credible and persuasive.

Based on the above, the Arbitrator finds that Petitioner's condition of ill-being, as related to the right knee, is causally related to the September 20, 2021, work accident.

WITH RESPECT TO ISSUE (J), WERE THE MEDICAL SERVICES THAT WERE PROVIDED TO PETITIONER REASONABLE AND NECESSARY AND HAS RESPONDENT PAID ALL APPROPRIATE CHARGES FOR ALL REASONABLE AND NECESSARY MEDICAL SERVICES, THE ARBITRATOR FINDS AS FOLLOWS:

Under Section 8(a) of the Act, a claimant is entitled to recover reasonable medical expenses that are causally related to the accident and that are determined to be required to diagnose, relieve, or cure the effects of a claimant's injury. The claimant has the burden of proving that the medical services were necessary, and the expenses incurred were reasonable. *City of Chicago v. Illinois Workers' Compensation Commission*, 409 Ill. App. 3d 258, 267, 349 Ill. Dec. 849, 947 N.E.2d 863 (2011).

The Arbitrator notes that Petitioner has submitted unpaid medical bills from Parent Advocate Sherman Hospital, for services rendered on September 21, 2023, totaling $647.00, from OrthoIllinois, for services

rendered from September 27, 2021, through January 18, 2023, totaling $4,789.00, and from Fox Valley Health Chiropractic, Ltd., for services rendered from December 13, 2021, through July 21, 2022, totaling $2,852.57. The Arbitrator further notes that Dr. Lawton opined that the treatment provided was reasonable and necessary to treat Petitioner's right knee. The Arbitrator also notes that Dr. Cole agreed with the injections and surgery Petitioner underwent to treat his right knee condition.

Based on the above, the Arbitrator finds that Petitioner's treatment has been reasonable and necessary, and that Respondent shall pay reasonable and necessary medical services, totaling $8,288.57, as provided in Sections 8(a) and 8.2 of the Act.

WITH RESPECT TO ISSUE (K), IS PETITIONER ENTITLED TO ANY PROSPECTIVE MEDICAL CARE, THE ARBITRATOR FINDS AS FOLLOWS:

The Arbitrator notes that Dr. Lawton recommended that Petitioner begin a physical therapy program on January 8, 2023. The Arbitrator further notes that Respondent has not offered any evidence to dispute the reasonableness or necessity of the medical treatment that has been recommended by Dr. Lawton.

Based on the above, the Arbitrator finds that Respondent shall authorize and pay for physical therapy care as recommended by Dr. Lawton, as provided in Section 8(a) and 8.2 of the Act.

WITH RESPECT TO ISSUE (L), WHAT AMOUNT OF COMPENSATION IS DUE FOR TEMPORARY TOTAL DISABILITY, TEMPORARY PARTIAL DISABILITY AND/OR MAINTENANCE, THE ARBITRATOR FINDS AS FOLLOWS:

The Arbitrator notes that Dr. McManus provided Petitioner with light duty work restrictions on September 21, 2021. Petitioner returned to work for Respondent in a light duty capacity. On October 15, 2021, Petitioner was laid off by Respondent. Dr. Lawton again provided Petitioner with a light duty work restriction on October 20, 2021. Further, Dr. Lawton took Petitioner off work starting December 1, 2021.

The Arbitrator notes that Respondent has not offered any evidence to dispute Petitioner's period of temporary total disability. Further, Dr. Cole recommended that Petitioner work a job with no squatting, kneeling or climbing on January 17, 2022.

Based on the above, the Arbitrator finds that Petitioner was temporarily totally disabled from October 15, 2021, through January 27, 2023, the date of hearing, a period of 67 & 1/7 weeks. Respondent has paid temporary total disability benefits in the amount of $31,564.35, and is entitled to a credit for the temporary total disability benefits paid.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC004729
Case Name	William Randle v. Apache Industrial United
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b) Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	24IWCC0415
Number of Pages of Decision	30
Decision Issued By	Stephen Mathis, Commissioner

Petitioner Attorney	Thomas C Rich
Respondent Attorney	Matthew Rokusek

DATE FILED: 8/29/2024

/s/Stephen Mathis, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF MADISON)

☒ Affirm and adopt (no changes)	☐ Injured Workers' Benefit Fund (§4(d))
☐ Affirm with changes	☐ Rate Adjustment Fund (§8(g))
☐ Reverse	☐ Second Injury Fund (§8(e)18)
	☐ PTD/Fatal denied
☐ Modify	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

William Randle,

Petitioner,

vs. NO. 21WC 04729

Apache Industrial United,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petitions for Review under §19b having been filed by both parties herein and proper notice given, the Commission, after considering the issues of medical expenses, causal connection, prospective medical care, and temporary disability, and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof. 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 June 20, 2023 is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that this case be remanded to the Arbitrator for further proceedings consistent with this Decision, but only after the latter of expiration of the time for filing a written request for Summons to the Circuit Court has expired without the filing of such a written request, or after the time of completion of any judicial proceedings, if such a written request has been filed.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner interest under §19(n) of the Act, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall have credit for all amounts paid, if any, to or on behalf of Petitioner on account of said accidental injury.

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $75,000.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

August 29, 2024

SJM/sj
o-7.24.2024
44

/s/ *Stephen J. Mathis*
Stephen J. Mathis

/s/ *Deborah L. Simpson*
Deborah L. Simpson

/s/ *Raychel A. Wesley*
Raychel A. Wesley

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC004729
Case Name	William Randle v. Apache Industrial United,
Consolidated Cases	
Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	27
Decision Issued By	Maureen Pulia, Arbitrator

Petitioner Attorney	Thomas C. Rich
Respondent Attorney	Khristopher Dunard

DATE FILED: 6/20/2023

THE INTEREST RATE FOR THE WEEK OF JUNE 13, 2023 5.15%

/s/Maureen Pulia, Arbitrator

Signature

STATE OF ILLINOIS)
)SS.
COUNTY OF **MADISON**)

☐ Injured Workers' Benefit Fund (§4(d))
☐ Rate Adjustment Fund (§8(g))
☐ Second Injury Fund (§8(e)18)
☒ None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

WILLIAM RANDLE,
Employee/Petitioner

v.

APACHE INDUSTRIAL UNITED,
Employer/Respondent

Case # **21** WC **4729**

Consolidated cases: _____

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Maureen Pulia**, Arbitrator of the Commission, in the city of **Collinsville**, on **5/25/23**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
B. ☐ Was there an employee-employer relationship?
C. ☐ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
D. ☐ What was the date of the accident?
E. ☐ Was timely notice of the accident given to Respondent?
F. ☒ Is Petitioner's current condition of ill-being causally related to the injury?
G. ☐ What were Petitioner's earnings?
H. ☐ What was Petitioner's age at the time of the accident?
I. ☐ What was Petitioner's marital status at the time of the accident?
J. ☒ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
K. ☒ Is Petitioner entitled to any prospective medical care?
L. ☒ What temporary benefits are in dispute?
☐ TPD ☐ Maintenance ☒ TTD
M. ☐ Should penalties or fees be imposed upon Respondent?
N. ☐ Is Respondent due any credit?
O. ☐ Other _____

FINDINGS

On the date of accident, **1/22/21**, Respondent ***was*** operating under and subject to the provisions of the Act.

On this date, an employee-employer relationship ***did*** exist between Petitioner and Respondent.

On this date, Petitioner ***did*** sustain an accident that arose out of and in the course of employment.

Timely notice of this accident ***was*** given to Respondent.

Petitioner's current condition of ill-being as it relates to his left knee, left ankle, left hip, and groin ***is*** causally related to the accident per the parties' stipulation.

Petitioner's current condition of ill-being as it relates to his lumbar spine ***is*** causally related to the accident.

Petitioner's current condition of ill-being as it relates to his right knee ***is*** causally related to the accident through 7/11/22, with one additional follow-up visit on 3/6/23.

Petitioner's current condition of ill-being as it relates to his bilateral index and ring fingers, and his left hand trigger finger ***is*** causally related to the accident through 5/5/21.

Petitioner's current condition of ill-being as it relates to his cervical spine ***is*** causally related to the accident through 4/12/21.

In the year preceding the injury, Petitioner earned $**97,270,68**; the average weekly wage was $**1,870,59**.

On the date of accident, Petitioner was **46** years of age, ***married*** with **1** dependent children.

Respondent ***has not*** paid all reasonable and necessary charges for all reasonable and necessary medical services.

Respondent shall be given a credit of $**19,178.05** for TTD, $**00.00** for TPD, $**00.00** for maintenance, and $**00.00** for other benefits, for a total credit of $**19,178.05**.

Respondent is entitled to a credit of $**00.00** under Section 8(j) of the Act.

ORDER

Respondent shall pay Petitioner temporary total disability benefits of $1,247.06/week for 117-2/7 weeks, commencing 2/24/21 through 5/25/23, as provided in Section 8(b) of the Act.

Per the parties stipulation the Respondent shall pay reasonable and necessary medical services for petitioner's left knee, left hip, left ankle, and groin, as provided in Sections 8(a) and 8.2 of the Act.

Respondent shall pay reasonable and necessary medical services for petitioner's lumbar spine through 5/25/23, as provided in Sections 8(a) and 8.2 of the Act.

Respondent shall pay reasonable and necessary medical services for petitioner's right knee through 7/11/22, and the additional visit to Dr. Bradley for his right knee on 3/6/23, as provided in Sections 8(a) and 8.2 of the Act.

Respondent shall pay reasonable and necessary medical services for petitioner's bilateral index and ring fingers, and left hand trigger finger through 5/5/21, as provided in Sections 8(a) and 8.2 of the Act.

Respondent shall pay reasonable and necessary medical services for petitioner's cervical spine through 4/12/21, as provided in Sections 8(a) and 8.2 of the Act.

Respondent shall pay no reasonable and necessary medical services for any prospective medical care as provided in Sections 8(a) and 8.2 of the Act, given that the only prospective medical care currently recommended is for the cervical spine, which has been found to be not causally related to the injury on 1/22/21, after 4/12/21.

Respondent shall be given a credit for medical benefits that have been paid, and Respondent shall hold petitioner harmless from any claims by any providers of the services for which Respondent is receiving this credit, as provided in Section 8(j) of the Act.

In no instance shall this award be a bar to subsequent hearing and determination of an additional amount of medical benefits or compensation for a temporary or permanent disability, if any.

RULES REGARDING APPEALS Unless a party files a *Petition for Review* within 30 days after receipt of this decision, and perfects a review in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

STATEMENT OF INTEREST RATE If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

Signature of Arbitrator

JUNE 20, 2023

ICArbDec19(b)

THE ARBITRATOR HEREBY MAKES THE FOLLOWING FINDINGS OF FACT:

Petitioner, a 46 year old mechanical insulator, sustained accidental injuries that arose out of and in the course of his employment by respondent on 1/22/21. The parties stipulate that the petitioner sustained injuries to his left hip, left knee, left ankle, and groin. Respondent disputes petitioner sustained injuries to his cervical spine, lumbar spine, fingers, and right knee.

Prior to 1/22/21 petitioner denied any neck or low back problems. He testified that he did have his knees drained years before the accident on 1/22/21. He denied any active treatment before this injury. Petitioner testified that prior to the injury he would park a mile from the project and had to walk to the job site with his equipment on his back.

On 1/22/21 petitioner was working at the Phillips 66 refinery in Roxana, IL. On that date petitioner was climbing a scaffold and exited the scaffold onto the platform. When the gate closed and he set his right leg into the pan it fell out and he fell 4-6 feet through it. Petitioner testified that the scaffold was about 20 feet up. Petitioner was wearing a safety harness.

Petitioner sought immediate treatment at Midwest Occupational Medicine's Wood River Office. He completed a pain diagram that noted burning, numbness and, sharp pain, as well as weakness in his left knee, and pain in his left ankle. He reported that his left knee hurt mainly at the top, and he had left ankle swelling. He also reported that his right hip went all the way down to the testicles and he hit them as well, although he did not have any pain at that time. He denied any prior injuries to either knee. On examination, petitioner had some swelling in the suprapatellar area of the left knee with some mild fluid collection; left ankle puffiness; tenderness on the medial side of the ankle inferior to the medial malleolus; minimal tenderness over the lateral malleolus; trace edema of the left calf; and, tenderness over the medial aspect of the left knee at the medial joint line and over the entire medial aspect of the knee; mild pain laterally. Petitioner was able to flex the hip and elevate the leg and hold out his knee, although it caused him some mild pain. The right knee and hip showed no tenderness. Dr. Dirkens assessed a left ankle strain, left ankle sprain, and history of a groin contusion. He did not think there was any ACL injury overtly, or gross quadriceps tear. X-rays were ordered. Dr. Dirkers released petitioner to work as tolerated.

On 1/22/21 Tom Durham completed a Witness Statement. He wrote:

> "Willy checked scaffold tag, hooked Yo-Yo to his harness, climbed up ladder to the landing where he was going to remove insulation. When he stepped onto the scaffold, the small pan closest to the ladder, along with the pin or brace, came loose and fell to the ground. This caused Willy to fall. His right leg fell

> into the opening and his left (knee/leg) was twisted up under him. I was on the ground on the opposite side of the ladder and witnessed the entire event. The scaffold was signed off and had today's date on it."

On 1/22/21 petitioner completed an Injured Employee Statement:

> "climb scaffolding, tied off. Watch footing steped (sic) one foot at time when I stepped in scaffold board fell and I fell with it."

Sheryl Reynaud competed the Employer's First Report of Injury. The history of injury was consistent. She noted that petitioner sustained a left knee strain.

On 1/25/21 petitioner followed up with Dr. Dirkers for his left knee and ankle. He completed a pain diagram that identified moderate pain to his bilateral knees and left ankle. Petitioner reported that he was able to start bearing weight on his left knee, although he still had a lot of pain. He reported that his left ankle also bothered him, but not as much as the knee. Petitioner also reported a little bit of achiness in the right knee, that he felt was from walking and favoring it. He denied any pain in the testicular area. On examination his left knee was less swollen; there was still significant suprapatellar fluid; and, tenderness medially and laterally over the left ankle. X-rays taken 1/22/21 showed degenerative left knee changes without evidence of an acute fracture or dislocation with the small suprapatellar joint effusion. His ankle showed mild soft tissue swelling and a small osseous fragment in the lateral malleolus. Dr. Dirken's assessment was left ankle and left knee sprain. He was of the opinion that petitioner was somewhat improved. He continued petitioner's work status.

On 1/28/21 petitioner returned to Dr. Dirkers. On his diagram he noted moderate pain in his bilateral hips, bilateral knees, left buttock, and left ankle. He reported that he was doing a lot better. He still had some swelling in the left ankle. He noted some achiness in the right knee and right hip, that he reported as minor. Petitioner had less swelling in the left knee and was moving it much better. His left ankle showed some generalized puffiness. Petitioner's right knee showed no fluid and only some minor crepitations consistent with arthritic changes. He was also able to flex his right hip well. Dr. Dirkers reviewed the MRI of the left knee and discussed the findings with the radiologist. He was of the opinion that the MRI of the left knee showed findings consistent with degenerative changes only with no acute injury including the mild undersurface mid body tearing of the meniscus, which was consistent with wear and tear. Dr. Dirkers assessed an overall improved left knee sprain, and left ankle sprain. He told petitioner that there was no evidence of an acute injury to his left knee or ankle. He continued petitioner's work restrictions and gave him an Ace support for his left ankle swelling.

On 2/2/21 petitioner signed his Application for Adjustment of Claim. He alleged injuries to his left ankle, left knee, right knee, back, neck, and man as a while.

On 2/4/21 petitioner followed-up with Dr. Dickers. On his diagram he noted pain in his bilateral knees, and left ankle. He reported that his left ankle was still swelling laterally. He stated that if he moves it too much either by inversion or eversion, he gets pain in the back of his leg that goes from his ankle up through his buttock up to his neck. He pointed to the paraspinal muscle on the left side of his back. He reported that his left knee was a lot better, but both knees give him a little knocking. On examination Dr. Dirkers noted swelling around the lateral malleolus; minor crepitations in both knees consistent with his underlying arthritis; mild tenderness on palpation to the left hip; mild pain with roll testing and mild pain with FABER's testing of left hip; and, no specific pain with palpation of the paraspinals in the left back. Dr. Dirkers assessed left knee, left ankle, and left leg pain. Dr. Dickers gave petitioner an ankle support.

On 2/10/21 petitioner presented to Dr. Droege, DC, at Esquire Sports Medicine. Petitioner gave a history of falling through scaffolding floor on 1/22/21 while working for respondent. He complained of lower back pain, left leg pain, left hip pain, left knee pain, and left ankle pain. He examined petitioner and diagnosed him with sprain of the lumbar spine and pelvis, sprain of the left hip, sprain of the left knee, and sprain of the left ankle. He provided petitioner with a course of chiropractic care to increase range of motion, decrease pain pattern, and increase activities of daily living. He also ordered an MRI of the lumbar spine.

On 2/11/21 petitioner returned to Dr. Dickers. His diagram noted pain in his left hip and left ankle. He reported that his left ankle was better, but still had some mild pain with extreme movement to the side. He reported that the left knee was no longer bothering him, but his left hip was bothering him. He noted that if he sits too long his neck will start to pop and he will get tightness in his left flank across the middle of his back depending on how long he sits. He also noted some ringing in his ears. On examination he had some mild pain at the terminal gradients with full eversion and inversion; pain over the left greater trochanter, and reduced pain with roll test; straight leg raising in a seated position caused only some tightness in the left flank, but no pain down the left leg; some mild tenderness to palpation in the left upper mid lateral musculature of the left low back; and the neck showed good freedom of motion with rotation to 80 degrees bilaterally. Dr. Dickers assessed a healing left ankle sprain; improving left hip pain; resolved left knee pain; and muscular left lateral back pain and neck pain. Dr. Dickers was of the opinion that the original injury to petitioner's left ankle and left knee were resolving nicely and no further care was needed.

Petitioner last followed up with Dr. Dickers on 2/18/21. On his diagram petitioner noted pain in his left hip, left ankle, and right knee. Petitioner reported that he was getting better, but his left hip was still hurting him, especially at night. He stated that his ankle support helped a lot, but noted some achiness when walking extended periods without the ankle support. He also reported some achiness in his right knee, and pain in his left lateral low back, posterior to the left hip, without any radicular/sciatic symptoms. He noted that his left knee was doing very well. Following an examination, Dr. Dickers assessed resolved left knee pain; resolving left ankle sprain; left hip pain; right knee pain; and, left lateral low back pain. Dr. Dickers instructed petitioner to taper his ankle support. He was of the opinion that petitioner's right knee pain was due to arthritis. He was of the opinion petitioner did not need any further treatment. He noted that petitioner would continue to follow up per his choice with Dr. Droege. He instructed petitioner to work as tolerated.

On 2/20/21 petitioner underwent an MRI of his lumbar spine. The impression was congenital/developmental central canal stenosis at all lumbar levels L2-L5; large central broad based protrusions measuring up to 6 mm in thickness at both L3-L4 and L4-L5 with extruded disc material in the midline at L4-L5; severe L3-L4 and L4-L5 central canal stenosis, moderate bilateral stenosis; circumferential disc bulge with a left lateral recess foraminal protrusion and endplate spurring at L5-S1 resulting in moderate central canal stenosis and moderate left greater than right foraminal stenosis; and L2-L3 circumferential disc bulge with posterior elements hypertrophy resulting in mid central canal stenosis and moderate bilateral foraminal stenosis.

On 2/21/21 petitioner underwent an MRI of the left hip that revealed anterior superior os acetabuli/lateral ossification with a small edematous cleft at the base of the focal labral ossification, consistent with a focus of labral acetabular separation at the footprint of the ossicle; no proximal femoral fracture or avascular necrosis; and no hip effusion.

On 2/22/21 petitioner reported left trigger finger pain to Dr. Droege. On 2/24/21 Dr. Droege continued to treat petitioner for his low back, left hip, left knee, left ankle, and left trigger finger. He restricted petitioner to light duty work only. Petitioner continued to treat with Dr. Droege for all, or some of these body parts through 5/25/23. Petitioner underwent over 120 chiropractic sessions with Dr. Droege from 2/10/21 through 5/25/23.

On 3/10/21 petitioner presented to Dr. Thomas Lee at United Physicians Group. He reported that when he fell through the pan his right leg went through the pan up to his groin, and his left knee was bent all the way backwards at the groin. His complaints included left ankle pain; improved left hip pain; left groin pain; low back pain; bilateral knee pain; painful popping in the right knee; and, bilateral long finger

and ring finger pain from when he came down hard against the scaffold. Petitioner reported that he could not remember all the mechanisms of the fall because it happened so fast. An examination revealed no tenderness in the cervical or lumbar spine; some decreased motion of the cervical and lumbar spine; tender fingers with loss of range of motion in the left fingers; pain with range of motion of right knee with some crepitus; pain with left hip rotation; and, tenderness of left ankle. Following an examination and review of the x-rays and MRIs of the left hip, lumbar spine, and right knee, Dr. Lee's impression was cervical sprain without HNP; bilateral jammed index finger and ring finger; left lateral ankle sprain; and aggravation of right knee and possible meniscal tear. Dr. Lee ordered an L4-L5 epidural injection interlaminar, and an MRI of the cervical spine.

On 3/10/21 petitioner underwent an MRI of the right knee. The impression was medial tear of the medial meniscal posterior horn at the meniscal root, with near complete extrusion of the medial meniscal body from the medial compartment joint space; Grade 1 tears of the MCL and LCL origins; mixed Grade 3 and 4 chondrosis of the medial femoral condylar weightbearing surface; and mixed Grades 3 and 4 chondral fissuring of the patellar apex.

On 3/17/21 petitioner underwent an MRI of the cervical spine. The impression was large bilateral lateral recess foraminal protrusions at each of the C3-C4, C4-C5, C5-C6 and C6-C7 levels; moderate central canal stenosis at C4-C5 and C6-C7, slightly milder central canal stenosis at C3-C4 and C5-C6; severe foraminal stenosis from C3-C7, most severe at C6-C7 on the left, and at C4-C5 on the right; left paracentral protrusion at C7-T11 resulting in dural displacement, but no central canal stenosis foraminal stenosis.

On 3/22/21 petitioner presented to Dr. Matthew Bradley for his bilateral knee and left ankle pain. Petitioner provided a consistent history of the injury and reported immediate bilateral knee and ankle pain. He could not clearly describe how they were injured, whether it was a twisting or turning type mechanism or a direct impact. He also reported injuring his back and hip for which he was seeing a different doctor. He denied any history of pain in his left ankle or bilateral knees prior to the work injury. Dr. Bradley performed an examination and took some x-rays of the bilateral knees and left ankle, and reviewed the MRI of the right knee. His impression was right knee fairly severe medial knee chondrosis with a very large extruded medial meniscus tear, left knee chondrosis, and left ankle sprain. Dr. Bradley performed a right knee injection. He was of the opinion that the left ankle sprain was resolving. Dr. Bradley restricted petitioner to light duty work with no climbing.

On 3/23/21 petitioner underwent a left L4-L5 ILESI performed by Dr. Helen Blake. On 4/2/21 petitioner followed up with Dr. Lee. He noted that the injection helped, but there were still times that his

pain got severe. Dr. Lee noted that he was still limping and his pain levels could get to 8/10. He rated his right hip pain at a 7/10. He also noted that his right knee pain has become problematic. Petitioner stated that the treatment to his left ankle helped. Dr. Lee examined petitioner and reviewed the cervical MRI, right knee MRI, and left ankle MRI. His impression was right medial meniscal tear, and left ankle tibialis posterior and peroneus longus tendon strain. He ordered an injection to petitioner's left ankle. He noted that petitioner was seeing Dr. Bradley for his right knee. He noted petitioner had not been able to work at his previous occupation due to the accident. On 4/7/21 petitioner called Dr. Lee and told him that Dr. Bradley was also treating his left ankle. As a result, Dr. Lee deferred the ankle injections to Dr. Bradley's impression.

On 4/12/21 petitioner returned to Dr. Bradley and reported 50% improvement in his right knee following the injection. However, he continued to complain of catching and giving out of his knee, particularly with any twisting or turning. His ankle was improved. Petitioner also complained of left knee and hip pain. Following an examination Dr. Bradley's assessment remained the same. Despite the improvement in petitioner's right knee following the injection, Dr. Bradley recommended a right total knee arthroplasty. He restricted petitioner from lifting greater than 20 pounds, and pushing, pulling more than 30 pounds. He also restricted petitioner to light duty with no climbing.

On 4/13/21 petitioner was involved in a motor vehicle accident. He claimed he injured his elbow and right shoulder. He denied injuring his neck, back, knees, groin, or ankle. He testified that he treated with Dr. Droege for a month for treatment related to the motor vehicle accident before being released as it relates to the motor vehicle accident. He denied any lingering problems from the motor vehicle accident.

On 5/5/21 petitioner followed-up with Dr. Lee and reported some significant improvement with his back following the injection. Petitioner reported some trapezial pain in the mid trapezium and out towards the AC joint. Dr. Lee did not know if there was involvement of his shoulder, but petitioner did not perceive that he had a shoulder problem prior to the most recent accident he had on 4/13/21 when he was a restrained passenger in a car that was hit. He reported that he braced himself with his right arm on the dash on impact. He stated that the airbag did not deploy. He reported that he was treating with Dr. Droege for this problem. Dr. Lee noted that petitioner seemed to have had an increase in his low back pain overall following the motor vehicle accident, but at this visit his pain level was the same as prior visits. On exam, Dr. Lee noted not much change in petitioner's cervical range of motion. He assessed cervical and lumbar sprain, and right shoulder rotator cuff contusion. Dr. Lee ordered an MRI and x-rays of the right shoulder.

On 5/5/21 petitioner last followed-up with Dr. Droege for his left trigger finger. No treatment was noted to the third finger that day.

On 5/27/21 petitioner returned to Dr. Bradley and reported that his left ankle was showing significant improvement, and his right knee continued to be very painful and possibly slightly worse. He also reported continued mild right groin pain. Following an examination of the right hip, right knee and left ankle, and review of the imaging, his assessment was right knee chondrosis with medial meniscus tear, left ankle sprain resolving, and mild left hip degenerative joint disease. Dr. Bradley was of the opinion that the right groin pain was likely due to petitioner's significant altered gait. He noted that the left ankle sprain was resolving with just some mild peroneal tendonitis. He was of the opinion that the right knee continued to be the majority of petitioner's pain. He reiterated his surgical recommendation. Dr. Bradley modified petitioner's restrictions to lifting no greater than 10 pounds; no pushing/pulling greater than 20 pounds, and light duty.

On 6/2/21 petitioner returned to Dr. Lee. He reported that he worked in the office for 3-4 weeks following the injury, but was having difficulty remaining standing, and his job was terminated. Dr. Lee noted that the new symptoms petitioner reported at his last visit following the car accident had nearly resolved, and Dr. Droege had released him with respect to those symptoms. Petitioner still complained of lumbar and cervical pain, lumbar worse than cervical. He stated that he was using a cane due to low back pain. He reported that with his increased neck pain, his fingers felt like they were spasming or getting stuck when he lays down. He rated the pain in his neck and back at a 5-6/10. He reported increased pain with increased activity. Following an examination Dr. Lee's impression was cervical and lumbar HNP with neural impingement. Dr. Lee referred petitioner to Dr. Gornet.

On 7/14/21 the petitioner underwent a Section 12 examination performed by Dr. Russell Cantrell, at the request of the respondent. Dr. Cantrell noted that petitioner gave a history of climbing up the scaffold and stepping on a pan and his left leg went behind him and his right leg went forward and fell forward, and he was prevented from falling by his safety vest and the lanyard. Petitioner gave a history of his treatment to date. He reported that he had been off work since the injury. Petitioner reported ongoing complaints of localized neck pain, ongoing localized lumbosacral back pain, left anterior hip pain, bilateral knee pain, and left ankle pain. He noted that some of his pain complaints were made by physical therapy, but many of his symptoms were worsened with walking, twisting, and exercise. Petitioner denied any prior history of pain or injury to his cervical spine, lumbar spine, left ankle, or left hip, but did acknowledge a known history of arthritis in both of his knees unrelated to a specific injury, for which he

had been seen by an orthopedic surgeon at DePaul Hospital, and at one point several years ago had fluid drained off his knees. He rated his pain at a 7/10.

On examination it was noted that petitioner was 6'7" tall and weighed 335 pounds. He had active range of motion of his cervical spine within normal limits in all planes of movement, but with some left posterolateral neck pain complaints extending to his left upper trapezius at the end range of forward flexion. He had full range of motion of his shoulders bilaterally, with some mild discomfort in his bilateral shoulders at the end range of forward flexion. Petitioner had tenderness to palpation in the bilateral, left greater than right cervical paraspinal musculature and into the left upper trapezius in the absence of any muscular spasms and in the absence of any palpable trigger points. Petitioner had full range of motion of his lumbar spine in flexion and extension, with pain at end range. On palpation, he described bilateral lumbar paraspinal tenderness. He had a negative straight leg raise. His Patrick's test and FADIR test were negative bilaterally for groin pain. Petitioner reported right medial knee pain at the end range of external rotation of his right hip. Petitioner had no localized tenderness on either knee to palpation. He did have palpable crepitus in both knees during passive range of motion testing. He had no visible swelling in either knee. He was not tender to palpation over the medial or lateral joint line, or patella, patellar tendon, or quadriceps tendon. His ankle had no visible swelling, and he had a full range of motion with dorsiflexion, plantarflexion, inversion, and eversion, and had no localized tenderness in the left ankle.

Following an examination, imaging review, and records review, Dr. Cantrell noted that petitioner made no mention of any complaints in reference to either hand or his fingers associated with his work injury on 1/22/21. He noted that petitioner had subjective musculoskeletal complaints to his neck, low back, left hip, bilateral knee, and left ankle. With respect to the cervical spine, he was of the opinion the MRI was representative of preexisting muti-level degenerative disc disease. Given petitioner's lack of cervical spine complaints through at least 2/20/21, Dr. Cantrell was of the opinion that there is no causal connection between petitioner's cervical spine condition and the work injury on 1/22/21, and petitioner needs no work restrictions related to his cervical spine.

With respect to his left knee, Dr. Cantrell was of the opinion that petitioner sustained a left knee sprain as a result of the work injury, superimposed on a preexisting history of osteoarthritis. Dr. Cantrell was of the opinion that the findings on the MRI are not related to the injury given that petitioner's examination showed no localized tenderness and full range of motion. Dr. Cantrell was of the opinion that petitioner's left knee is only causally related to the work injury through 2/18/21 when Dr. Dirkers noted that petitioner was doing very well without any pain or swelling. Dr. Cantrell diagnosed a resolved

left knee sprain superimposed on preexisting known osteoarthritis. He was of the opinion that petitioner did not need any further medical treatment, or restrictions related to his left knee. Using the AMA Guides to Permanent Partial Impairment 6th Edition he rated petitioner's impairment as "none" based on petitioner's diagnosis of a left knee sprain with no significant objective abnormal findings.

With respect to his right knee, Dr. Cantrell was of the opinion that petitioner had preexisting osteoarthritis, with no localized tenderness to his right knee. He noted petitioner had no complaints of right knee pain on the date of injury, and the references to right knee pain on 1/25/21 and 1/28/21 was due to favoring his left leg. Dr. Cantrell was of the opinion that petitioner did not sustain any acute meniscal or ligamentous pathology as a result of the work injury. He was of the opinion that the temporary aggravation in petitioner's right knee osteoarthritis, as a result of gait deviation associated with his left hip and ankle complaints, had resolved and petitioner did not need any further treatment or work restrictions. He was of the opinion that petitioner had reached maximum medical improvement with respect to his right knee.

With respect to his left ankle, Dr. Cantrell was of the opinion that petitioner sustained a left ankle sprain as a result of his work injury. He noted that although petitioner described ongoing pain in his left ankle, his examination revealed no visible swelling, decreased range of motion or localized tenderness. Therefore, Dr. Cantrell was of the opinion that petitioner's left ankle strain was resolved and he was not in the need of any further treatment, or restrictions. Using the AMA Guides to Permanent Partial Impairment 6th Edition he rated petitioner's impairment as none base on petitioner's diagnosis of a left ankle sprain with no residual instability.

With respect to his left hip, Dr. Cantrell was of the opinion that the mechanism of injury would be one in which an injury to his left hip could have occurred. He was of the opinion that petitioner had not reached maximum medical improvement given Dr. Droege's reference on 3/15/21 that the MRI of the left hip showed a labral tear.

With regard to his lumbar spine, Dr. Cantrell noted that petitioner described localized lumbosacral back pain complaints without any radicular signs or symptoms. He noted that neurological testing was negative for radiculopathy or lateralizing neurological deficits. He was of the opinion that petitioner's mechanism of injury could have resulted in injury to his lumbar spine, however, petitioner's presenting complaints were to his left knee and left ankle. He also noted that the 1/22/21, 1/25/21, and 1/28/21 pain diagrams petitioner completed made no reference to his lumbar spine. He noted that on 2/4/21 although petitioner references some complaints in his left lumbar paraspinal area, his pain diagram did not reflect any symptoms localized to his lower back. Dr. Cantrell was of the opinion petitioner's diagnosis could

be best described as mechanical low back for which petitioner has no objective findings to support his objective complaints in his lower back. Dr. Cantrell was of the opinion that the work injury did not cause or aggravate his current and ongoing lumbar back pain complaints. He was of the opinion that treatment to petitioner's lumbar spine may be reasonable, but it is not related to the work injury. He did not believe the petitioner needed any work restrictions and had reached maximum medical improvement.

Lastly, in reference to his hand and finger complaints that Dr. Cantrell believed began months after the work injury, Dr. Cantrell was of the opinion that work injury did not cause or aggravate any complaints in reference to any left hand trigger finger diagnosis to his left hand made by Dr. Droege. Therefore, any treatment, although reasonable, would not be related to the work injury. He was of the opinion that the work injury did not cause or contribute to cause any triggering in his left hand. Dr. Cantrell was of the opinion that petitioner did not require any work restrictions, and had reached maximum medical improvement regarding the alleged injury in reference to his left hand.

On 8/2/21 petitioner presented to Dr. Matthew Gornet for his complaints of neck and low back pain. Petitioner noted that his neck pain was to the back of his neck to both trapezius, stopping before the shoulders. He reported frequent daily headaches, central low back pain to both sides, but particularly the left buttock, left hip and down his left leg into his foot with tingling. He reported that his leg symptoms were worse than his back. Petitioner stated that his current problems began on or about 1/22/21. Petitioner denied any problems of major significance in his low back requiring treatment in the past. He reported a motor vehicle accident 15 years ago, and another on 4/13/21 that caused temporary irritation of his neck and back. He claimed he had symptoms in his neck and back before this. Dr. Gornet noted that he talked to Dr. Droege that day, and he believed the petitioner's symptoms relate to his work injury, and did not believe the motor vehicle accident caused any major changes in his overall medical status.

Petitioner reported that his symptoms were constant and worse with bending, lifting, prolonged sitting or standing. He also reported that his neck was worse with reaching, pulling, lifting, or fixed head positions. He denied any significant arm pain, but reported occasional paresthesias in his arms. He also reported left leg pain, but denied right leg pain. On examination Dr. Gornet noted that petitioner weighed 340 pounds.

Following an examination and imaging review, Dr. Gornet diagnosed lumbar radiculopathy L5 nerve root secondary to disc herniation and aggravation of some preexisting stenosis and disc degeneration. He was of the opinion that petitioner would probably require a simple laminotomy and decompression, and if his structural back pain did not improve, he may require a three level treatment at L3-L4, L4-L5 and L5-S1. With respect to the cervical spine, Dr. Gornet was of the opinion that

petitioner suffers from nonspecific tingling, which may be an early sign of myelopathy, as well as some mild bilateral weakness predominantly in the C6-C7 distribution. Given the severity of his headaches, Dr. Gornet was of the opinion that if he failed the injection at C7-T1, he would require a 4 level cervical disc replacement. Dr. Gornet was of the opinion that petitioner's symptoms and requirement for treatment are causally related to his 1/22/21 accident. He instructed petitioner to lose weight. He also took petitioner off work.

On 11/2/21 petitioner underwent a right C7-T11 ILESI with spread to C6-C7 performed by Dr. Helen Blake.

On 1/20/22 petitioner followed up with Dr. Bradley. He denied any significant changes in his symptoms. Petitioner reported that the severity of his right knee pain was causing him to stumble and nearly fall. He reported mild to moderate right hip pain in certain positions. Following an examination of the right hip, right knee, and left ankle, Dr. Bradley's assessment remained the same. He noted that petitioner's left ankle pain was minimal and significantly improved from the prior visit. He also noted findings consistent with a labral tear of the left hip for which he recommended conservative treatment. He again recommended surgical intervention for the right knee. He restricted petitioner to desk duty only.

On 1/27/22 the petitioner followed-up with Dr. Gornet for his neck and back. Dr. Gornet noted that his examination was unchanged. Petitioner noted that the C7-T1 injection helped, but did not provide enough relief so that he could move on. Dr. Gornet told petitioner that some hip and buttock pain may eminate from the spine and he would like to do a repeat L4-L5 injection. He continued petitioner off work. Dr. Gornet was of the opinion that petitioner would need a 4 level disc replacement in his cervical spine from C3 to C7.

On 2/16/22 petitioner underwent a right knee arthroscopy performed by Dr. Gornet. Petitioner followed up post-operatively with Dr. Gornet.

On 3/3/22 petitioner followed-up with Dr. Bradley. Petitioner reported that he was doing well and did not have any severe pain, only stiffness and achiness. Dr. Bradley recommended formal therapy and a home exercise program. He took petitioner off work.

On 4/18/22 petitioner returned to Dr. Bradley for follow-up of his right total knee replacement. He reported tightness after prolonged sitting. Dr. Bradley noted that overall petitioner was improved. His primary complaint was his left hip. Following an examination, Dr. Bradley's assessment was that petitioner was doing well post right total knee replacement, but had continued left hip pain with

underlying mild degenerative disease. Dr. Bradley was of the opinion that petitioner was doing very well, given that most of petitioner's preoperative symptoms had resolved. He noted that petitioner's range of motion and strength were excellent. He released petitioner to desk work only, with no lifting greater than 5 pounds, or pushing/pulling greater than 10 pounds.

On 5/16/22 petitioner reported to Dr. Bradley that he had pain over the IT band, and some tightness over his knee when sitting for long periods of time. Dr. Bradley examined petitioner and was of the opinion that petitioner was doing well status post right total knee arthroscopy, but had continued left hip pain with underlying mild degenerative disease and ITB syndrome. Dr. Bradley noted that petitioner was doing exceptionally well post-operatively, and had regained motion and strength. He was of the opinion that petitioner's knee was very stable. He continued petitioner in physical therapy. He modified petitioner's restrictions. He only restricted petitioner from lifting over 10 pounds, pushing/pulling greater than 20 pounds, and no repetitive bending, twisting, or squatting activities.

On 7/11/22 petitioner returned to Dr. Bradley. Petitioner reported that he was weight bearing without any assistive devises. He had regained his strength and motion. He only reported stiffness in the morning and at the end of the day. Dr. Bradley recommended an anti-inflammatory as needed. Dr. Bradley placed petitioner at maximum medical improvement for his right knee. He also told petitioner to return in a year for routine x-rays. He released petitioner to full duty work without restrictions for his right knee.

On 8/4/22 petitioner followed-up with Dr. Gornet. Dr. Gornet reiterated petitioner's need for disc replacements at C3-C4, C4-C5, C5-C6, and C6-C7. He was of the opinion that petitioner has a structural disc problem at L3-L4, L4-L5, and L5-S1. Dr. Gornet noted that petitioner weighed 335 pounds. He placed petitioner's low back on hold. He continued petitioner off work.

On 12/21/22 the evidence deposition of Dr. Cantrell was taken on behalf of respondent. Dr. Cantrell is board certified in physical medicine and rehabilitation. Dr. Cantrell noted that Dr. Gornet noted neurologic deficits in petitioner's cervical spine that were not noted by Dr. Lee or himself. He was of the opinion that such neurologic deficits should have been present in temporal relationship to the injury if they were to be related to the injury.

On cross examination, Dr. Cantrell was of the opinion that neurologic deficits or symptoms are not necessary to have back pain. Dr. Cantrell testified that he understood petitioner's right leg went through an opening in the scaffolding, basically up to his groin area in the right leg. Dr. Cantrell noted that petitioner had an intervening motor vehicle accident in April of 2021, but petitioner did not tell him about

it. He testified that he learned about it from the medical records he reviewed. He further testified that petitioner told him he had no prior back or neck pain or injuries. Dr. Cantrell noted that petitioner received chiropractic treatment following the April 2021 accident from Dr. Droege. Dr. Cantrell testified that complaints first made 11 days after the work injury would not be temporal to the injury. Dr. Cantrell was of the opinion that petitioner's history on 2/4/21 of pain on inversion or eversion of the left ankle that went all the way up his leg and all the way up his spine to his neck made no sense from an anatomical standpoint. Dr. Cantrell testified that he is not a surgeon. Dr. Cantrell noted that Dr. Bradley's surgical report noted no evidence of a medial or lateral meniscus tear.

On 1/12/23 the evidence deposition of Dr. Matthew Gornet, an orthopedic surgeon, was taken on behalf of petitioner. Dr. Gornet has a subspecialty in spine surgery, and specializes in neck and low back pain. Dr. Gornet is heavily involved in clinical research. Dr. Gornet was of the opinion that a sudden trauma, sudden fall where you twist has easily been known to cause disc injuries in the low back and neck. He stated that this is a typical mechanism of injury that he sees. Dr. Gornet opined that petitioner's symptoms were caused by the work accident, and secondary to his objective findings. He further opined that the need for surgery to petitioner's neck is related to his work accident on 1/22/21.

Dr. Gornet testified that he did not agree with Dr. Cantrell's opinion that petitioner's cervical spine condition is not related to the work injury on 1/22/21 because he did not immediately report these symptoms. Dr. Gornet was of the opinion that there is no disease process in human beings that essentially all the symptoms are present immediately following an injury. He was also of the opinion that the initial focus after the injury was on petitioner's knee, and petitioner may not have been focused on these other issues. Dr. Gornet testified that he also did not agree with Dr. Cantrell's opinion as it relates to the petitioner's lumbar spine. He was of the opinion that petitioner has obvious objective pathology that at a minimum could be easily aggravated by this twisting injury. Dr. Gornet was of the opinion that because petitioner was working full duty before the work injury with no active problems, and then has this significant accident, there has to be a causal connection. Dr. Gornet did not believe petitioner would improve without surgery.

On cross examination Dr. Gornet testified that he did not review any records from Midwest Occupational Health, any witness statements, the initial accident report, or Dr. Cantrell's deposition. He was under the belief that petitioner's first complaints of cervical and lumbar spine symptoms were in early February 2021, which would be within the realm of any trauma. Dr. Gornet was of the opinion that petitioner had preexisting degeneration in his cervical spine, but not a lot. He noted that petitioner's herniation, particularly at C6-C7 was very acute in nature; he had objective annular tears at several

levels; a large right herniation at C4-C5. Dr. Gornet was of the opinion that petitioner also had preexisting disc degeneration at the first two open motion segments, and preexisting facet arthropathy. Dr. Gornet was of the opinion that petitioner was not symptomatic in the near term prior to his work injury. Dr. Gornet was of the opinion that if the history petitioner provided was incorrect that could change his opinions. Dr. Gornet did not believe petitioner's weight had any impact on his cervical and lumbar conditions. Dr. Gornet agreed that Dr. Cantrell's physical findings were different than his. Dr. Gornet was of the opinion that petitioner's congenital stenosis put him at an increased risk for developing issues with his cervical spine, if he had a disc injury. Dr. Gornet testified that he was not going to address petitioner's lumbar spine until after he treated petitioner's cervical spine. He testified that he had no current recommendation for lumbar spine surgery.

On 2/10/23 the evidence deposition of Dr. Matthew Brady, an orthopedic surgeon, was taken on behalf of the petitioner. He testified that half his practice was related to more chronic conditions, and the other half was related to acute conditions. He testified 1/3 of his practice is related to knees. Dr. Bradley testified that petitioner was 6'7" and 300 + pounds. Dr. Bradley opined that he recommended a right total knee replacement because petitioner's x-rays and MRI his right knee showed bone on bone, and his medial meniscus was completely torn. Dr. Bradley testified that when he placed petitioner at maximum medical improvement that was for the right knee, as well as for his ankle and hip pain.

Dr. Bradley opined that the fall exacerbated petitioner's underlying degenerative disease and very likely caused the full tear to his medial meniscus resulting in extrusion. He noted that petitioner had worked 26 years and never missed a day, and that after the fall he was unable to bear weight on his knee, and it was unstable. With respect to his left knee, Dr. Bradley also opined that the condition and symptoms were caused, or contributed to, or aggravated by his work injury on 1/22/21. He believed petitioner had an exacerbation of underlying disease in the left knee that ultimately was able to be treated successfully nonoperatively. With respect to his left ankle, opined that petitioner's injury on 1/22/21 directly resulted in a left ankle sprain and pain. With respect to his bilateral hips, Dr. Bradley opined that the work accident may have caused an exacerbation of the mild degenerative disease in his hips. He was of the opinion that it was more the injury to his ankle and knee that was causing his gait deformities that led to his hip problems. Dr. Bradley opined that the need for surgery to petitioner's right knee was causally related to the work accident, and the surgery was reasonable and necessary. Dr. Bradley was of the opinion that on the day before the work accident he would have never recommended a surgery on petitioner's right knee. He testified that the surgery was not for his preexisting condition of arthritis, but rather for the acute condition of pain and instability that came from his accident.

Dr. Bradley reviewed the IME reports of Dr. Cantrell and agreed with Dr. Cantrell's opinion that petitioner sustained a strain to his left ankle as a result of the work injury. He also agreed with Dr. Cantrell's finding that petitioner suffered an exacerbation of some underlying disease and a sprain in his left knee as a result of the work accident. Dr. Bradley disagreed with Dr. Cantrell's opinion that petitioner right knee condition is not related to the work accident. He could not see how petitioner injures his left ankle and left knee, but not his right knee. He agreed with Dr. Cantrell that petitioner had preexisting arthritis, but did not agree with Dr. Cantrell's opinion that he could not attribute the meniscus tear to the work injury. Dr. Bradley did not know how Dr. Cantrell came to this conclusion. Dr. Bradley was of the opinion that following the work injury, petitioner's right knee symptoms significantly changed. He did not believe petitioner had reached maximum medical improvement at the time of Dr. Cantrell's examination. Dr. Bradley agreed with Dr. Cantrell that petitioner had exacerbated some underlying arthritis in his left hip as a result of the work accident. He was of the opinion that petitioner had a little bit of a sprain.

On cross examination Dr. Bradley testified that he did not review any accident reports or witness statements; any records from Midwest Occupational Health; or Dr. Cantrell's deposition. He testified that any records immediately after the injury would be relevant to his causation findings, since the more information you have, the better. Dr. Bradley opined that petitioner had bad arthritis before the injury, and the fall made that arthritis a little bit worse, and maybe broke off a little bit of cartilage. He was of the opinion that any findings of effusion could be chronic or an acute finding. Dr. Bradley could not opine whether or not the meniscus tear was degenerative or acute in nature. Dr. Bradley was of the opinion that with big meniscus tears, patients will have good and bad days based on where the tear is. He testified that if it flips overs or moves around it can cause instability or catching and hurt like crazy, but if it does not flip over or move, the patient will have a good day. He agreed that with respect to the meniscus tear, that instability is something that could develop just simply as a result of the natural degenerative aging process, but was of the opinion that if petitioner had the same MRI findings he saw prior to the work injury, he did not think petitioner could have done his regular duty job. He was of the opinion that that large of a meniscal tear would create severe locking, severe instability of his knee and make it very difficult to climb a ladder, balance on scaffolding, or twist and turn. Dr. Bradley opined that when he released petitioner from care on 7/11/22 he placed him at maximum medical improvement with regards to his bilateral knees, left ankle and left hip. Dr. Bradley was of the opinion that the type of typical type of mechanism of injury that causes an acute meniscal tear is a twisting injury, but you can see them with just about any mechanism of injury. He was of the opinion that the most common

mechanism of injury would be the foot planted on the ground and the body of the knee twists one way or the other.

On redirect examination Dr. Bradley was of the opinion that absent an intervening trauma, slowly developing right knee pain following petitioner's work injury over the following weeks would not change his causation opinion as it relates to the petitioner's right knee condition and the injury on 1/22/21.

On 3/6/23 petitioner followed-up with Dr. Bradley. He complained of some pain in the left gluteal area. He noted that on days when he is up and walking a lot he notices himself start to walk a little funny, and that creates some pain in his left gluteal area. Following an examination, Dr. Bradley noted that the pain in the gluteal area is really isolated to the muscles in the myotendinous junction. He gave him some home exercises to help. He was of the opinion that petitioner's right knee was doing excellent, with good range of motion. He again placed petitioner at maximum medical improvement with respect to the right knee.

On 5/4/23 petitioner followed-up with Dr. Gornet for his low back and neck pain. Petitioner reported that his neck pain was getting worse and included the base of his neck, both trapezius to his shoulders with headaches. He also complained of central low back pain predominantly to the left buttock, left hip, and down his left leg. His exam was unchanged, and his weight was 333. Dr. Gornet again requested approval for the cervical spine surgery, and continued petitioner off work.

Petitioner testified at trial that his left ankle, left arm, left pinky, left elbow, and groin problems had all completely healed and he needed no further treatment. Petitioner reported that he still has symptoms in his neck and back. He noted that Dr. Gornet was recommending surgery to his neck. He testified that he wants to get back to full duty work.

Petitioner testified that he has been married 20 years and his spouse helps him with his activities of daily living. He testified that he does not feel good about this because he is the man of the house. Petitioner testified that he takes medication including meloxicam.

F. IS PETITIONER'S CURRENT CONDITION OF ILL-BEING CAUSALLY RELATED TO THE INJURY?

The parties stipulated that petitioner's left hip, left knee, left ankle and groin conditions of ill-being are causally related to the injury petitioner sustained on 1/22/21. However, there is a dispute as to whether petitioner's current condition of ill-being as it relates to his right knee, cervical spine, lumbar spine, and fingers are causally related to the injury petitioner sustained on 1/22/21. Based on these stipulations and dispute the arbitrator will only be addressing the issue of causal connection as it relates to the petitioner's right knee, cervical spine, lumbar spine, and fingers.

First, with respect to petitioner's right knee. It is unrebutted that petitioner had his knees drained years before the accident, had an arthritic right knee prior to the injury; had no treatment for his right knee in the period leading up to the accident; parked and walked a mile from the project job site with his equipment on his back daily prior to the injury; and, that when petitioner stepped onto the pan with his right leg the pan he stepped on fell out, and his right leg fell approximately 4-6 feet through the hole. Given that petitioner's left leg remained on the scaffolding in a bent position, petitioner's initial complaints on the date of injury were to his left knee and left ankle.

However, just three days later, when petitioner followed up for his injuries, he identified moderate pain in his "bilateral knees", and achiness in his right knee from walking and favoring it. On 1/28/21 petitioner again reiterated moderate pain that included his right knee. He again reported some achiness in the right knee. An examination at that time showed some minor crepitations consistent with arthritic changes. Thereafter, petitioner continued to complain of right knee pain at most follow-up visits, and on 3/10/21 when petitioner saw Dr. Lee his complaints not only included right knee pain, but also painful popping in the right knee. As a result of these ongoing complaints, petitioner underwent an MRI of the right knee that showed fairly severe medial knee chondrosis and a very large extruded medial meniscal tear. Petitioner then began treating with Dr. Bradley who injected the knee on 3/22/21. On 4/12/21 petitioner reported that although the injection provided him with 50% improvement, he still had catching and giving out of his right knee. As a result, Dr. Bradley recommended a right total knee arthroplasty, which petitioner underwent on 2/16/22. Petitioner reached Maximum Medical Improvement for his right knee on 7/11/22. A second Maximum Medical determination was made by Dr. Bradley when petitioner followed up on 3/6/23.

Causal connection opinions with respect to petitioner's knee were offered by Dr. Cantrell and Dr. Bradley. On 7/14/21 Dr. Cantrell opined that petitioner did not sustain any acute meniscal or ligamentous pathology as a result of the work injury. He was further of the opinion that the temporary aggravation in petitioner's right knee osteoarthritis, as a result of gait deviation associated with his left hip and ankle complaints, had resolved and petitioner did not need any further treatment or work restrictions. However, the arbitrator notes that by the time petitioner saw Dr. Cantrell he had consistent and worsening right knee pain to the point that petitioner had already undergone an injection, and had a recommendation for a total knee replacement. Therefore, the arbitrator finds Dr. Cantrell's opinion that petitioner's aggravation of his preexisting right knee osteoarthritis was only temporary, is not supported by the credible medical evidence, and not very persuasive, given that petitioner's preexisting right knee osteoarthritis "aggravation" did not resolve until after his right total knee replacement.

Dr. Bradley also offered an opinion on causation as it relates to petitioner's right knee. Dr. Bradley opined that the fall on 1/22/21 exacerbated petitioner's underlying degenerative disease and very likely caused the full tear to his medial meniscus resulting in extrusion. Dr. Bradley was of the opinion that on the day before the work accident he would have never recommended a surgery on petitioner's right knee. Dr. Bradley was of the opinion that following the injury on 1/22/21 petitioner's right knee symptoms significantly changed. He opined that petitioner had bad arthritis in his right knee before the injury, and the fall made that arthritis a little bit worse, and maybe even broke off a little bit of the cartilage. He was of the opinion that with big meniscus tears, patients will have good and bad days based on where the tear is. He testified that if it flips overs or moves around it can cause instability or catching and hurt like crazy, but if it does not flip over or move, the patient will have a good day. He was of the opinion that if petitioner had the same post accident MRI findings, prior to the work injury, he did not think petitioner could have done his regular duty job. He was of the opinion that that large of a meniscal tear would create severe locking, severe instability of the knee, and make it very difficult to climb a ladder, balance on scaffolding, or twist and turn.

Based on the causal connection opinions of Dr. Cantrell and Dr. Bradley as they relate to the right knee, the arbitrator finds the opinions of Dr. Bradley more persuasive, and supported by the credible evidence which shows that petitioner's right leg fell 4-6 feet through a hole in scaffolding; that within 3 days of the injury there is documented evidence of petitioner already having problems with his right knee; that there is documented medical evidence of these problems worsening over time; that these complaints were only relieved by the right total knee arthroplasty; and, that there is no credible evidence of any active treatment to petitioner's right knee leading up to the injury on 1/22/21. Therefore, the arbitrator finds the petitioner has proven by a preponderance of the credible evidence that his current condition of ill-being as it relates to his right knee is causally related to the injury he sustained on 1/22/21.

Next, respondent disputes petitioner's claim that his current condition of ill-being, as it relates to his lumbar spine, is causally related to the injury on 1/22/21. Following the injury on 1/22/21 petitioner's first complaints regarding his lumbar spine were on 1/28/22, just one week after the injury. At that time, petitioner complained of moderate pain in his left buttock. On his next visit on 2/4/22, petitioner reported pain in the paraspinal muscles on the left side of his back. Petitioner received chiropractic treatment for his low back. He also had complaints of tightness in his left flank across the middle of his back depending on how long he sits. The pain in his low back continued and an MRI of the lumbar spine was performed just one month after the injury. Petitioner then started treating with Dr. Lee and underwent an

injection at L4-L5. Petitioner had some improvement following the injection, but his low back pain continued. Then petitioner was involved in a motor vehicle accident on 4/13/21. However, on 5/5/21 Dr. Lee noted that although petitioner had some increased pain in his low back immediately following the motor vehicle accident, on 5/5/21 his pain level was the same as it was before the motor vehicle accident. Petitioner continued to complain of low back pain, and Dr. Lee assessed a lumbar HNP with neural impingement. Dr. Lee then referred petitioner to Dr. Gornet for further treatment.

Casual connection opinions as to petitioner's lumbar spine were offered by Dr. Cantrell and Dr. Gornet. Dr. Cantrell agreed that petitioner's mechanism of injury could have resulted in an injury to his lumbar spine, however, his presenting complaints immediately after the injury were only to his left knee and left ankle, so therefore the work injury did not cause or aggravate petitioner's current and ongoing lumbar back pain complaints. The arbitrator notes that within one week of the injury, petitioner had complaints in the lumbar spine region that worsened over time. The arbitrator finds a one week delay in reporting these symptoms does not negate the possibility that petitioner's lumbar spine condition is causally related to the injury on 1/22/21. The arbitrator finds it significant that petitioner, a 6'7" man who weighed about 340 pounds at the time of the injury fell between 4-6 feet and was only prevented from falling further by his harness, which was around his body. The arbitrator finds such a traumatic fall and stop could have easily resulted in some low back pain that petitioner did not immediately report due to the trauma of his left leg being bent at the top of the scaffold.

Dr. Gornet opined that a sudden trauma and fall where you twist has been known to cause disc injuries in the low back, and that this is a typical mechanism of injury that he sees. Therefore, he opined that petitioner's current condition of ill-being as it relates to his low back is causally related to the injury on 1/22/21. Dr. Gornet was of the opinion that petitioner has obvious objective pathology that at a minimum could be easily aggravated by the twisting injury on 1/22/21. He was also of the opinion that since petitioner was working full duty before the work injury with no active problems, and then has this significant accident, there has to be a causal connection.

Given the fact that petitioner was not actively treating for his low back leading up to the injury on 1/22/21; that petitioner began reporting low back symptoms within one week of the injury; that his low back complaints continued thereafter; and that both Dr. Gornet and Dr. Cantrell were of the opinion that petitioner's mechanism of injury could have resulted in an injury to his lumbar spine, the arbitrator finds the petitioner has proven by a preponderance of the credible evidence that his current condition of ill-being as it relates to his low back is causally related to the injury petitioner sustained on 1/22/21. The arbitrator finds the opinions of Dr. Gornet more persuasive than those of Dr. Cantrell given the

mechanism of injury, the reporting of symptoms within one week of the injury, and the ongoing complaints thereafter.

Respondent also disputes petitioner's claim that his current condition of ill-being as it relates to his cervical spine is causally related to the injury on 1/22/21. Following the injury on 1/22/21 the first documented evidence of any cervical spine complaints to any healthcare provider is a reference on 2/11/21 of his neck popping if he sits too long. However, the arbitrator notes an examination at that point showed good freedom of motion with rotation to 80 degrees bilaterally. On 3/10/21 an examination revealed tenderness in the cervical spine, and Dr. Lee assessed a cervical sprain without HNP. An MRI of the cervical spine was performed on 3/17/21. Petitioner had no further treatment for his cervical spine until after the motor vehicle accident on . Thereafter, petitioner complained of trapezial pain in the mid trapezium and out towards the AC joint. Petitioner reported that he braced himself with his right arm on the dash on impact. The airbag did not deploy. On 6/2/21 although Dr. Lee noted that the new symptoms petitioner had following the motor vehicle accident on 4/13/21 had nearly resolved, petitioner was reporting increased neck pain, and his fingers felt like they were spasming or getting stuck when he laid down. At that point Dr. Lee's assessment of petitioner's neck changed from a neck strain without HNP to a cervical HNP with neural impingement. The arbitrator finds these complaints far more severe than the "simple tenderness", and "popping in his neck when he sat too long", that petitioner had on the two visits between 1/21/21 and 4/13/21, the date of the intervening motor vehicle accident.

Dr. Cantrell was of the opinion that the MRI of the cervical spine was only representative of preexisting multi-level degenerative disc disease. He also noted the lack of cervical spine complaints through at least 2/20/21. However, the arbitrator notes that petitioner did report on 2/11/21 that his neck popped if he sat too long. Dr. Cantrell was of the opinion that Dr. Gornet noted neurological deficits in petitioner's spine that were not noted by Dr. Lee or himself, and that any such neurologic deficits should have been present in temporal relationship to the injury if they were to be related to the injury. Based on this evidence, Dr. Cantrell was of the opinion there is no causal connection between petitioner's cervical spine condition and the injury on 1/22/21.

Dr. Gornet was of the opinion that petitioner's first complaints of cervical spine symptoms were in early February of 2021, and that would be within the realm of any injury. He was of the opinion that there is no disease process in human beings that essentially all the symptoms are present immediately following the injury. Dr. Gornet was of the opinion that petitioner had obvious objective pathology that at a minimum could be easily aggravated by the twisting injury petitioner experienced. Dr. Gornet was

also of the opinion that because petitioner was working full duty before the work injury with no active problems, and then has this significant accident, there has to be a causal connection.

Following the injury on 1/22/21 there are only two references to any cervical spine symptoms prior to the motor vehicle accident on 4/13/21. The first was a report of a "pop in his neck if he sits too long" on 2/11/21. However, an examination that day showed good freedom of motion with rotation to 80 degrees bilaterally. The other was a mention of "simple tenderness" to petitioner's cervical spine in 3/10/21. The arbitrator finds it significant that it is not until after the motor vehicle accident on 4/13/21 that petitioner's cervical spine complaints worsened and petitioner began reporting increased neck pain, and radicular symptoms. It was also only then that Dr. Lee's assessment of petitioner's neck changed from a cervical strain with no HNP, to a cervical HNP with neural impingement. Based on the credible medical evidence, and opinions of Dr. Lee, Dr. Cantrell and Dr. Gornet, the arbitrator finds the petitioner sustained a strain of his cervical spine as a result of the injury on 1/22/21. The arbitrator further finds the motor vehicle accident on 4/13/21 broke the causal connection chain between petitioner's cervical spine and the injury on 1/22/21. The arbitrator finds the fact that petitioner's symptoms worsened, his diagnoses changes significantly, and he was referred to a spine surgeon after the 4/13/21 motor vehicle accident, support a finding that the motor vehicle accident on 4/13/21 was an intervening accident that broke the chain of causal connection between petitioner's cervical spine and the accident on 1/22/21. Therefore, the arbitrator finds the petitioner's condition of ill-being as it relates to his cervical spine is causally connected to the injury on 1/22/21, only through 4/12/21, the day before the intervening motor vehicle accident on 4/13/21.

Lastly, the respondent disputes petitioner's claim that his current condition of ill-being as it relates to his fingers is causally related to the injury on 1/22/21. The credible medical evidence does include references to some finger complaints. On 2/22/21 petitioner reported left trigger finger pain to Dr. Droege. On 3/10/21 petitioner reported to Dr. Lee bilateral long finger and ring finger pain from when he came down hard against the scaffold. An examination revealed tender fingers with loss of range of motion in the left fingers. Dr. Lee's impression was bilateral jammed index finger and ring finger. On 4/2/21 petitioner reported to Dr. Lee that his fingers were still locking up at times, but no specific treatment recommendations were made with respect to his fingers at that time. Petitioner never saw Dr. Lee again for his fingers, but there are ongoing references to petitioner's left hand trigger finger in Dr. Droege's records through 5/5/21.

Dr. Cantrell is the only doctor that provided a causal connection opinion as it relates to petitioner's finger complaints. Dr. Cantrell was of the opinion that the work injury did not cause or aggravate any

complaints in reference to any trigger finger diagnosis to his left hand made by Dr. Droege. Therefore, any treatment, although reasonable, would not be related to the work injury. He was of the opinion that the work injury did not cause or contribute to cause any triggering in petitioner's left hand.

The arbitrator finds the causal connection opinion of Dr. Cantrell not persuasive, given that the mechanism of injury could clearly have resulted in petitioner sustaining bilaterally jammed index and ring finger, and a left hand trigger finger when he fell through the pan, and the fact that his complaints began within a month of the injury, not months as Dr. Cantrell believed. Therefore, the arbitrator finds the petitioner sustained bilateral jammed index and ring fingers, and a left hand trigger finger as a result of the injury on 1/22/21, and that the injury to his bilateral index and ring fingers, and left hand trigger finger are casually related to the injury on 1/22/21 through 5/5/21, the last date there is any documented evidence to petitioner's fingers in the credible medical evidence.

Based on the above, as well as the credible evidence the arbitrator finds the petitioner's current condition of ill-being as it relates to his right knee, bilateral index and ring fingers, and left hand trigger finger, cervical spine, and lumbar spine are causally related to the injury he sustained on 1/22/21. However, the arbitrator finds the right knee is only causally related to the injury on 1/22/21 through 7/11/22, and then again on 3/6/23, the second date he reached Maximum Medical Improvement for his right knee; the bilateral index and ringer fingers, and left hand trigger finger are only causally related to the injury on 1/22/21 through 5/5/21, the last mention of any finger complaints in the credible medical records; the cervical spine is only causally related to the injury on 1/22/21 through 4/12/21, the date before the intervening motor vehicle accident, and the lumbar spine is causally related through 5/25/23, the date of trial.

J. WERE THE MEDICAL SERVICES THAT WERE PROVIDED TO PETITIONER REASONABLE AND NECESSARY? HAS RESPONDENT PAID ALL APPROPRIATE CHARGES FOR ALL REASONABLE AND NECESSARY MEDICAL SERVICES?

Given that the parties have stipulated that petitioner sustained injuries to his left hip, left knee, left ankle, and groin, the arbitrator finds the medical services that were provided to these body parts, were reasonable and necessary to cure or relieve petitioner from the effects of the injury he sustained on 1/22/21.

Having found the petitioner's current condition of ill-being as it relates to his right knee, lumbar spine, cervical spine, bilateral index and ring fingers, and left trigger finger are causally related to the injury he sustained on 1/22/21, the arbitrator finds all medical services that were provided to petitioner for his right knee, through 7/11/22, and 3/6/23; that were provided to petitioner for his bilateral index and ring fingers, and left trigger finger through 5/5/21; that were provided to petitioner for his cervical spine

through 4/12/21; and, that were provided to petitioner for his lumbar spine through 5/25/23, were reasonable and necessary to cure or relieve petitioner from the effects of his injury on 1/22/21.

K. IS PETITIONER ENTITLED TO ANY PROSPECTIVE MEDICAL CARE?

The petitioner is only claiming that he is entitled to the prospective medical care prescribed by Dr. Gornet for his cervical spine in the form of a 4 level disc replacement from C3 to C7. Having found the petitioner's current condition of ill-being as it relates to his cervical spine is only causally related to the injury on 1/22/21 through 4/12/21, the arbitrator finds the petitioner is not entitled to any prospective medical care for his cervical spine

L. WHAT TEMPORARY BENEFITS ARE IN DISPUTE?

Having found the petitioner's current condition of ill-being as it relates to his left hip, left knee, left ankle, groin, right knee, lumbar spine, cervical spine, bilateral index and middle fingers, and left hand trigger finger are causally related to the injury on 1/22/21 through various dates, including the date of trial, and at no point following the injury on 1/22/21 was petitioner ever released to full duty work for all his injuries, the arbitrator finds the petitioner was temporarily totally disabled from 2/24/21 through 5/25/23, a period of 117-2/7 weeks.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	23WC007827
Case Name	Garrick Mueller v. Village of Niles
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b) Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	24IWCC0416
Number of Pages of Decision	20
Decision Issued By	Stephen Mathis, Commissioner

Petitioner Attorney	Kenneth Lubinski
Respondent Attorney	Daniel Egan

DATE FILED: 8/29/2024

/s/Stephen Mathis, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

☐ Affirm and adopt (no changes)	☐ Injured Workers' Benefit Fund (§4(d))
☒ Affirm with changes	☐ Rate Adjustment Fund (§8(g))
☐ Reverse Choose reason	☐ Second Injury Fund (§8(e)18)
	☐ PTD/Fatal denied
☐ Modify Choose direction	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Garrick Mueller,

Petitioner,

vs. No. 23 WC 07827

Village of Niles,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by Respondent herein and notice given to all parties, the Commission, after considering the issues of accident, notice, causal connection, medical expenses, prospective medical care and temporary disability, and being advised of the facts and law, corrects the Decision of the Arbitrator as stated below and otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof. The Commission further remands this case to the Arbitrator for further proceedings for a determination of a further amount of temporary total compensation, medical benefits or of compensation for permanent disability, if any, pursuant to *Thomas v. Industrial Commission*, 78 Ill.2d 327 (1980).

The Commission corrects a clerical error on top of page 3 of the Arbitrator's Decision to reflect, consistently with the Findings of Fact and Conclusions of Law, that Petitioner's current condition of ill-being ***is*** causally related to the work accident. All else is affirmed and adopted.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed September 29, 2023, is hereby corrected, affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that this case be remanded to the Arbitrator for further proceedings consistent with this Decision, but only after the latter of expiration of the time for filing a written request for Summons to the Circuit Court has expired without the filing of such a written request, or after the time of completion of any judicial

proceedings, if such a written request has been filed.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner interest under §19(n) of the Act, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall have credit for all amounts paid, if any, to or on behalf of Petitioner on account of said accidental injury.

No bond is required for removal of this cause to the Circuit Court. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

August 29, 2024

SJM/sk
o-8/7/20
44

/s/ *Stephen J. Mathis*
Stephen J. Mathis

/s/ *Deborah L. Simpson*
Deborah L. Simpson

/s/ *Raychel A. Wesley*
Raychel A. Wesley

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	23WC007827
Case Name	Garrick Mueller v. Village of Niles
Consolidated Cases	
Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	17
Decision Issued By	Crystal Caison, Arbitrator

Petitioner Attorney	Kenneth Lubinski
Respondent Attorney	Daniel Egan

DATE FILED: 9/29/2023

THE INTEREST RATE FOR THE WEEK OF SEPTEMBER 26, 2023 5.31%

/s/Crystal Caison, Arbitrator

Signature

STATE OF ILLINOIS)
)SS.
COUNTY OF **Cook**)

☐ Injured Workers' Benefit Fund (§4(d))
☐ Rate Adjustment Fund (§8(g))
☐ Second Injury Fund (§8(e)18)
☒ None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

Garrick Mueller
Employee/Petitioner

v.

Village of Niles
Employer/Respondent

Case # **23** WC **007827**

Consolidated cases: _____

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Crystal L. Caison**, Arbitrator of the Commission, in the city of **Chicago, Illinois**, on **June 5, 2023**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
B. ☐ Was there an employee-employer relationship?
C. ☒ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
D. ☐ What was the date of the accident?
E. ☒ Was timely notice of the accident given to Respondent?
F. ☒ Is Petitioner's current condition of ill-being causally related to the injury?
G. ☐ What were Petitioner's earnings?
H. ☐ What was Petitioner's age at the time of the accident?
I. ☐ What was Petitioner's marital status at the time of the accident?
J. ☒ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
K. ☒ Is Petitioner entitled to any prospective medical care?
L. ☒ What temporary benefits are in dispute?
☐ TPD ☐ Maintenance ☒ TTD
M. ☐ Should penalties or fees be imposed upon Respondent?
N. ☐ Is Respondent due any credit?
O. ☐ Other

FINDINGS

On the date of accident, **January 13, 2023**, Respondent ***was*** operating under and subject to the provisions of the Act.

On this date, an employee-employer relationship ***did*** exist between Petitioner and Respondent.

On this date, Petitioner ***did*** sustain an accident that arose out of and in the course of employment.

Timely notice of this accident ***was*** given to Respondent.

Petitioner's current condition of ill-being ***is not*** causally related to the accident.

In the year preceding the injury, Petitioner earned $**41,600.00**; the average weekly wage was $**800.00.**

On the date of accident, Petitioner was **48** years of age, ***single*** with **0** dependent children.

Respondent ***has not*** paid all reasonable and necessary charges for all reasonable and necessary medical services.

Respondent shall be given a credit of $**0** for TTD, $**0** for TPD, $**0** for maintenance, and $**0** for other benefits, for a total credit of $**0**.

ORDER

The Arbitrator finds that the Petitioner has proved he sustained accident injuries arising out of and in the course of his employment by Respondent.

The Arbitrator finds that Respondent was given notice of the accident, within the time limits stated in the Act.

The Arbitrator finds that Petitioner's current condition of ill-being, as it relates to the neck, low back, left shoulder and left hip is causally related to the accident of January 13, 2023.

The Arbitrator finds the Petitioner's treatment to be reasonable and necessary and finds that Respondent has not paid for said treatment. As such, the Arbitrator orders the Respondent to pay reasonable and necessary medical services for causally related treatment Petitioner underwent, as provided in Sections 8(a) and 8.2 of the Act. The treatment is detailed in Petitioner's Ex. 4 as follows: Bone and Joint Clinic-$2,244.02, Chicago Pain and Orthopedic Institute-$350, Procare DME-$1,900 and Loyola Gottlieb Hospital-$8,230.06.

The Arbitrator finds that Petitioner is entitled to Chicago Pain and Orthopedic Institute's recommended treatment of x-rays, 6 weeks of physical therapy (3x each week) and MRI. Respondent shall authorize and pay reasonable and necessary medical services associated with said treatment.

The Arbitrator finds Respondent liable for 20 weeks and 3/7 days of TTD benefits (January 14, 2023 through June 5, 2023) at a weekly rate of $533.33, which corresponds to $10,895.17 to be paid directly to Petitioner.

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.

Crystal L. Caison

SEPTEMBER 28, 2023

Signature of Arbitrator

ICArbDec19(b)

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

ILLINOIS WORKERS' COMPENSATION COMMISSION
19(b)

Garrick Mueller	)	
	)	
Petitioner,	)	
	)	
v.	)	
	)	Case No. 23WC007827
Village of Niles,	)	
	)	
	)	
Respondent.	)	

PROCEDURAL HISTORY

This matter proceeded to hearing on June 5, 2023 before Arbitrator Crystal L. Caison. Issues in dispute include accident, notice, causal connection, medical bills, prospective medical care and TTD benefits. (AX 1).

THE ARBITRATOR MAKES THE FOLLOWING FINDINGS OF FACT:

Petitioner's Testimony

Garrick Mueller ("Petitioner") was a 48-year-old single male with no dependent children on January 13, 2023. He alleges that he sustained an accidental injury that arose out of and in the course of his employment by Respondent on January 13, 2023.

Petitioner testified he was a seasonal employee and had worked for a week for the Village of Niles prior to the alleged accident on January 13, 2023. (Tr. 39-41) Petitioner testified he was a driver. Petitioner testified that his duties included tree trimming, power washing the grounds and picking up garbage. *Id*.

Petitioner testified that prior to working for he drove a plow truck and sweeper for the City of Chicago from 1995 to 2010. (Tr. 41-42) Between his jobs for the City of Chicago and Respondent he worked for Dominos and Door Dash. (Tr. 44)

On January 13, 2023, Petitioner testified that he started work at 7:00 AM. (Tr. 47) Petitioner testified that at about 8:15 AM he took his break and went to breakfast. Petitioner

testified that in the morning he picked up trees and did tree trimming until lunch. (Tr. 48) Petitioner further testified that after lunch, his job duties involved moving pianos. *Id*.

Petitioner testified that he drove a Village pickup truck to the Historical Society to move the pianos. (Tr. 50) Petitioner put the pianos into a box truck that had an electric lift gate. Petitioner testified the pianos were then taken to eight places in the Village of Niles. (Tr. 51) Petitioner testified that he followed the box truck in his Village pickup truck and said that he never rode in the box truck. Petitioner testified that no one from Respondent had given him any instruction on how to enter or exit the back of a box truck. (Tr. 52).

Petitioner testified that at the last place of the delivery, the last piano was moved off the truck and was seven or eight feet away. (Tr. 57) Petitioner testified that he closed the door, and he jumped off the back of the truck. *Id*. at 62. Petitioner testified when he did that, his legs gave out and he fell into the piano and then onto the ground, hitting his back, head, and neck. *Id*. Petitioner testified that he began to feel pain a couple of minutes after hitting the ground. *Id*. at 63. Petitioner testified that he felt a sharp pain in his whole body. *Id*. He said that he felt pain from his head all the way down and felt pain mostly on his right side. *Id*. at 64. Petitioner said that it took a little while to get up. *Id*.

Petitioner testified that after that, he had to go on Dempster to pick up debris. He testified that he could barely walk and couldn't drive when he got back into the truck. *Id*. at 65. Petitioner testified that he reported (verbally and via text) the incident to his foreman, Todd, and ended his workday at 3:00 PM. *Id*. at 66. Petitioner testified that he was fired. He said that his last day working for the Village of Niles was January 13, 2023 because he was driving the truck and hit "those yellow things inside a gas station." *Id*. at 67.

Petitioner testified that he sought treatment at Gottlieb Emergency Room on January 13, 2023 and complained of left shoulder, back, hip pain on both sides. *Id*. at 69. Petitioner testified that he was given some pain medication. Petitioner testified that he returned to the Gottlieb ER on February 21, 2023. (Tr. 75) Petitioner stated that the pain that he experienced he felt on February 21, 2023 was the same as he felt on January 13, 2023. *Id*. He said that nothing alleviated the pain including pillows, ice, and aspirin. He said that he was given lidocaine patches, but that didn't help the pain either.

Petitioner testified that between January 13, 2023 and February 21, 2023, he got in touch with Todd with the Village of Niles about opening a workers' compensation claim, but that it was denied, and the Village didn't approve or authorize treatment. (Tr. 76)

Petitioner testified that he does some stretching to alleviate the pain he experiences. He testified that he was involved in an auto accident in December 2022 and experienced neck and low back pain for two or three days, but the pain resolved. Petitioner testified that he did not have pain in his neck, low back, shoulder, or hip prior to January 13, 2023 and that he was able to do his job at the Village of Niles. (Tr. 82-86) Petitioner said that as of the date of the hearing, he was having difficulty walking because of the pain from his head all the way down to his butt on the right side. *Id*. at 87.

On cross examination, Petitioner testified that he belongs to Planet Fitness health club and goes there daily. (Tr. 99-100) Petitioner testified that he had four workers' compensation claims and eventually settled a claim February 19, 2021 with the City of Chicago. Petitioner testified that he sustained head and neck injuries in connection with that settlement. *Id*.

Petitioner testified that he started a "Go Fund Me" page with the headline of "Permanently Disabled from Accident" and raised $3,692." (Tr. 107). Petitioner testified that he started a total of two "Go Fund Me" pages. Petitioner testified that in his post, he represented that he was in a "2010 accident while working with the City of Chicago and almost died."

On redirect, Petitioner testified that he started the "Go Fund Me" pages because needed money because the "City of Chicago took 12 years to pay him money". Petitioner testified that he used Planet Fitness for the massage chair and to use the bathroom to shower and shave.

Respondent Witness Testimony-Katherine Schneider

Katherine ("Ms. Schneider ") Schneider testified that she is a Village of Niles employee who was tasked with the assignment of the piano move project on January 13, 2023. (Tr. 153) Ms. Schneider testified that she rented a truck with an automatic lift to move the pianos and was the designated driver. (Tr. 154-157). She confirmed that the pick-up time of 8:58 AM and drop off time of 11:38 AM on January 13, 2023 was correctly reflected on the rental agreement and as being the timeframe that the piano move project fell into. (Tr. 158-157 & RX 7).

Ms. Schneider testified that there were other Village of Niles employees including the Petitioner who helped with the piano move project. (Tr. 158-159) She testified that the lift on the rental truck was needed so the upright pianos could be wheeled onto the lift and then into inside

the truck. *Id*. at 159. She testified that she thought that five pianos were moved that day. *Id*. She testified that the truck had a ladder/stair on both sides of the rear bumper. *Id*. at 160. She testified that Petitioner wheeled the pianos onto the lift and operated the lift buttons from a standing position on the ground. *Id*. Ms. Schneider testified that Petitioner opened and closed the door to the truck a number of times by using the stair to get up and down. *Id.* at 162. She testified that the piano move project ended just before 11:00AM and the last drop-off was at the senior center. *Id.* at 163. She testified that Petitioner pulled down on the rolltop to close the door on the truck and she saw him jump off the back of the truck and sort of fell back a little bit. *Id*. at 166. Ms. Schneider testified that Petitioner was on the ground a couple of seconds, he stood back up with the help of the other two Village employees (not Ms. Schneider) and said that he was fine when his co-workers asked if he was okay. *Id.* Ms. Schneider testified that she sent to an email dated March 14, 2023 to "Donna" and the contents of the email were about the January 13, 2023 incident. *Id.*

On cross, Ms. Schneider testified that she was in charge of the piano moving project and she requested that a supervisor provide employees to help with the project. (Tr. 170) Ms. Schneider testified that she did not recall being asked to give any other statement about what occurred on January 13, 2023 prior to March 14, 2023. *Id*. at 172. She testified that the first time that she worked with Petitioner was about 9:00 AM on January 13, 2023 and that she did not see Petitioner trim trees, pick up branches or drive around in other city vehicles. (Tr. 177) She testified that she did not see the Petitioner go up and down the stair of the truck every time and did not provide instructions on how to do so. *Id*. at (179-181).

Respondent Witness Testimony- Alan Livingston

Alan ("Al") Livingston was a co-worker of Petitioner who worked for the Village of Niles for 18 years as a Service Worker II. (Tr. 187) Mr. Livingston testified that he worked once with Petitioner but denied remembering the date. *Id*. He testified that he and Petitioner were using a pressure washer to remove goose droppings from the ground. *Id*. Mr. Livingston said that he cautioned the Petitioner to be careful as to not fall while pressure washing. *Id*. Mr. Livingston testified that Petitioner said, "Don't worry about it. I can sue the Village." *Id*. at 188. Mr. Livingston testified that he reported Petitioner's statements to his supervisor, Tony Dati.

On cross examination, Mr. Livingston testified that he did not witness the incident on January 13, 2023. He testified that he did not know whether Petitioner intentionally fell off the truck to hurt himself and sue the Village. (Tr. 193) Mr. Livingston testified that when people say,

"they're going to sue the Village, he kind of watch out for those because he has been with the Village for a long time."

Respondent Witness Testimony-Christopher Scholpp

Christopher Scholpp testified that he was a part-time seasonal worker. Mr. Scholpp testified that he was Petitioner's co-worker and was working with the Petitioner on the January 13, 2023 piano move project. (Tr. 198) Mr. Scholpp testified that he also worked with Pete Majic and Ms. Schneider on the piano move project. Mr. Scholpp testified that he signed a statement on March 14, 2023 about the January 13, 2023 incident. (Tr. 200) Mr. Scholpp said that he witnessed Petitioner fall off the truck, but also said that Petitioner jumped off the truck.

On cross examination, Mr. Scholpp testified that he saw Petitioner jump off the truck, fall backwards and hit his head on the piano. (Tr. 203) He testified that he only worked with Petitioner that one time on January 13, 2023. (Tr. 204) He testified that when he got back, he told his supervisor, Todd, about the incident. He testified that he didn't keep any notes of his observations, but he talked to Human Resources and Human Resources typed up the two-page report dated March 14, 2023. (Tr. 206)

Respondent Witness Testimony-Peter Majic

Peter Majic testified that he was Petitioner's co-worker and was working with the Petitioner on the January 13, 2023 piano move project, but that he currently works for The Drake Hotel. (Tr. 213) Mr. Majic testified that he gave two statements that were dated March 14, 2023 about what he had observed. (Tr. 215) He testified that on the morning of January 13, 2023, he, Mr. Scholpp, Ms. Schneider, and Petitioner worked together on the piano move project. He testified that Ms. Schneider drove the truck and they moved six or eight pianos to different locations in the Village of Niles. (Tr. 216) Mr. Majic testified that Petitioner jumped down from the truck, then he lands, his body moved forward. He then fell on his back, hit his head up against the other vehicle that was there. (Tr. 219)

Medical

On December 26, 2022, Petitioner presented to Gottlieb Memorial Hospital after being involved in motor vehicle accident. Petitioner complained of both low back pain and cervical pain. He was also seeking a refill of Lexapro. (PX 1, 220-222) Petitioner underwent a physical exam which showed tenderness of the cervical spine and low back. *Id.* at 222-223. Diagnoses included post Motor Vehicle Accident and medication refill. Petitioner was prescribed Lexapro and Norflex and referred to a Family Health Clinic. *Id.* at 225

On January 13, 2023, Petitioner was evaluated at the Emergency Department at Gottlieb Memorial Hospital. (PX 1) The records note that Petitioner gave a history of falling at 10 AM "backwards off a truck about 4 feet onto concrete after what "my legs gave out." He reports walking over 17000 steps and that his legs gave out because of this. He states he does not recall if he hit his head if he had loss of consciousness. He states he took muscle relaxer without relief and reported pain to left shoulder, entire back and left hip." *Id.* at 258. Physical exam showed normal cervical back with no significant tenderness. He had mild left shoulder tenderness, mild left lateral hip tenderness and full active range of motion without difficulty. *Id.* at 262. Petitioner's low back was not examined. Petitioner underwent CT of the cervical spine and head, and x-rays of the left shoulder and left hip and pelvis. *Id.* at 263. Petitioner was diagnosed with contusion of skin, discharged from care, and allowed to return to work on January 18, 2023.

On February 21, 2023, Petitioner presented with history of falling and chronic back pain to the Emergency Department at Gottlieb Memorial Hospital. (PX 1, 305, 308) It was noted that Petitioner provided a history of falling on January 13, 2023 while moving a piano and "states that the pain never gotten better." Petitioner requested pain management. *Id.*at 308. Further, the ED notes that Petitioner "points to lower portion of back on right side," but there was no evident sign of fracture and no edema. Also noted was that "patient did not attempt to follow-up with Workmen's Comp clinic and treater requested that he does so. Petitioner was diagnosed with sacroiliac inflammation, given Tylenol, lidocaine and discharged on February 22, 2023. Petitioner left in stable conditions with steady gait and was advised to return to ED if symptoms continue and/or worsen.

On March 3, 2023, Petitioner presented to Chicago Pain and Orthopedic Institute with low back pain and no radiculopathy (PX 2). Petitioner provided a history of a fall while moving pianos to different locations for the Village of Niles. A physical examination noted that Petitioner has pain on palpation to the lower back area, on extension and no pain with forward flexion. He has good strength to his lower extremities bilaterally, 5/5 flexion and extension, 5/5 plantar flexion and dorsiflexion bilaterally.

He was recommended for x-rays, 6 weeks of physical therapy (3x each week) and MRI, if needed. He was put in off work status and given a follow-up date to return on March 17, 2023.

On March 7, 2023, Petitioner presented to Bone and Joint Clinic with complaints of pain over his neck, low back, left shoulder and left hip from work-related injury on January 13, 2023. (PX 3) The notes provide a history from Petitioner that his legs suddenly gave out while moving pianos and he fell from the truck. Petitioner was diagnosed with cervicalgia, low back pain, unspecified, pain in left shoulder and left hip. The notes state "patient reports that he had 3 more follow-ups at the ED, and he contacted lawyer to file the work compensation. His lawyer made a pain specialist appointment for him on March 3, 2023 and NP Hanna referred him to our clinic for physical therapy." Petitioner was prescribed a back brace for management of pain to help support the lower back and to avoid reinjury of the lumbar spine.

CONCLUSIONS OF LAW

The Arbitrator adopts the above Findings of Fact in support of the Conclusions of Law set forth below.

Decisions of an arbitrator shall be based exclusively on the evidence in the record of the proceeding and material that has been officially noticed. 820 ILCS 305/1.1(e). Credibility is the quality of a witness which renders his evidence worthy of belief. The Arbitrator, whose province it is to evaluate witness credibility, evaluates the demeanor of the witness and any external inconsistencies with his/her testimony. Where a claimant's testimony is inconsistent with his/her actual behavior and conduct, the Commission has held that an award cannot stand. McDonald v. Industrial Commission, 39 Ill. 2d 396 (1968); Swift v. Industrial Commission, 52 Ill. 2d 490 (1972).

It is the function of the Commission to judge the credibility of the witnesses and to resolve conflicts in the medical evidence and assign weight to witness testimony. O'Dette v. Industrial Commission, 79 Ill.2d 249, 253, 403 N.E.2d 221, 223 (1980); Hosteny v. Workers' Compensation

Commission, 397 Ill. App. 3d 665, 674 (2009). Internal inconsistencies in a claimant's testimony, as well as conflicts between the claimant's testimony and medical records, may be taken to indicate unreliability. Gilbert v. Martin & Bayley/Hucks, 08 ILWC 004187 (2010).

The Arbitrator observed Petitioner during the hearing and finds him credible. Although there are some inconsistencies with Petitioner's testimony, those inconsistencies listed below are not dispositive. At trial, Petitioner testified that he felt pain all over, but mostly on his right side on January 13, 2023 after falling. The ED notes on February 21, 2023 indicate that Petitioner "points to lower portion of back on right side." However, the medical reports on January 13, 2023 and March 7, 2023 reflect that Petitioner's pain is in his left side. The Arbitrator compared Petitioner's testimony with the totality of the evidence submitted and did not find any material contradictions that would deem the witness unreliable.

The Arbitrator observed Ms. Schneider during the hearing and finds her credible, but not very persuasive. Ms. Schneider said she saw Petitioner jump off the back of the truck and "sort of fell back a little bit." She said that he was on the ground a couple of seconds and stood back up with the help of his other co-workers. Ms. Schneider's rendition of facts does not mention Petitioner hitting his head or falling on his back as compared to the statements from Mr. Scholpp, Mr. Majic and Petitioner. Ms. Schneider's comes off biased towards the Petitioner by the way that she characterized and minimized the January 13, 2023 events. Moreover, the Arbitrator finds it significant that Ms. Schneider made no reports of the incident until March 14, 2023 when she sent an email to "Donna". Overall, the timing of that statement is questionable.

The Arbitrator observed Alan Livingston during the hearing and finds him credible, but not persuasive. Mr. Livingston testified to his interactions with Petitioner on another day but did not witness the incident on January 13, 2023. When Mr. Livingston testified that Petitioner said that he would sue the Village if he got hurt and that Livingston "watches out for those types of people," he appears to have a bias against the Petitioner. Although, Mr. Livingston's testimony attempts to show evidence of Petitioner's intent of secondary gain, his own testimony runs counter to that notion because he said that he did not know whether Petitioner intentionally feel off the truck to hurt himself and sue the Village.

The Arbitrator observed Christopher Scholpp during the hearing and finds him credible. Mr. Scholpp testified that he saw Petitioner jump off the truck, fall backwards and hit his head on the piano. Mr. Scholpp told his supervisor, Todd, about the incident when he got back. The

Arbitrator notes that Mr. Scholpp also prepared a statement that Human Resources typed up for him and that report was dated March 2023. The Arbitrator finds the timing of that report to be questionable.

The Arbitrator observed Pete Majic during the hearing and finds him credible. Mr. Majic's rendition of facts are similar to Scholpp's, but not identical in that Majic states that Petitioner jumped, fell on his back, and hit his head against the other vehicle that was there. The Arbitrator notes that Mr. Majic also gave two written statements that were dated March 14, 2023. The Arbitrator finds the timing of those statements to be questionable.

Issue C, whether the accident arose out of and in the course of Petitioner's employment by Respondent, the Arbitrator finds as follows:

The phrase "in the course of employment" refers to the time, place, and circumstances of the injury. McAllister v. Illinois Workers' Compensation Comm'n, 2020 IL 124848, 34. A compensable injury occurs 'in the course of' employment when it is sustained while he performs reasonable activities in conjunction with his employment. *Id*.

"The 'arising out of' component is primarily concerned with causal connection. To satisfy this requirement it must be shown that the injury had its origin in some risk connected with, or incidental to, the employment so as to create a causal connection between the employment and the accidental injury." *Id*. at 36. To determine whether a claimant's injury arose out of his employment, the risks to which the claimant was exposed must be categorized. *Id*. The three categories of risks are "(1) risks distinctly associated with the employment; (2) risks personal to the employee; and (3) neutral risks which have no particular employment or personal characteristics." *Id*. at 38. "A risk is distinctly associated with an employee's employment if, at the time of the occurrence, the employee was performing (1) acts he or she was instructed to perform by the employer, (2) acts that he or she had a common-law or statutory duty to perform, or (3) acts that the employee might reasonably be expected to perform incident to his or her assigned duties." *Id*. at 46.

In this case, the risk falls squarely under (1), a risk distinctly associated with the employment, as Petitioner was performing a task that he was instructed to perform by his employer. Petitioner was moving the pianos as instructed by Respondent. Petitioner, Ms. Schneider, Mr. Scholpp and Mr. Majic all testified that after moving the last piano, Petitioner

jumped off of the back of the box truck and fell to the ground. Each gave a different account as to what happened when Petitioner landed and which body part was impacted, but all states that he fell after he closed the rolltop door on the truck. Petitioner introduced evidence of a photo of his pants after falling to the ground. The photo depicts some discoloration on the left side of his pants. Although the Petitioner's action of jumping off the train could be characterized as negligent, nonetheless, he was performing assigned work duties for the benefit of Respondent.

Based on the record as a whole, the Arbitrator finds that Petitioner sustained an accident that arose out of and in the course of his employment.

Issue E, whether timely notice of the accident was given to Respondent, the Arbitrator finds as follows:

Pursuant to Section 6(c) of the Act, a claimant is required to give notice to his or her employer within 45 days of a work-related accident. 820 ILCS 305/6(c). The failure to give the statutorily required notice is a bar to recovery under the Act. Silica Sand Transport, Inc. v. Industrial Comm'n, 197 Ill. App. 3d 640, 651, 554 N.E.2d 734, 143 Ill. Dec. 799 (1990). Notice to agents of the employer (i.e., supervisors or foremen) can constitute notice to the employer. See McLean Trucking Co. v. Industrial Comm'n, 72 Ill. 2d 350, 354, 381 N.E.2d 245, 21 Ill. Dec. 167 (1978).

The purpose of the notice requirement is to enable the employer to investigate the employee's alleged industrial accident. White v. Illinois Workers' Compensation Comm'n, 374 Ill. App. 3d 907, 911, 873 N.E.2d 388, 313 Ill. Dec. 764 (2007). Giving notice of an injury is insufficient if the employer is not apprised that the injury is work related. Id. Because the legislature has mandated a liberal construction on the issue of notice, if some notice has been given, although inaccurate or defective, then the employer must show that it has been unduly prejudiced. Eileen Farina v. State Farm Mutual Insurance, 2014 Ill. Wrk. Comp. LEXIS 205, *9-10, 14 IWCC 210; See Gano Electric Contracting v. Industrial Comm'n (Moore), 260 Ill. App. 3d 92, 631 N.E.2d 724 (4th Dist. 1994).

The Petitioner testified that on January 13, 2023, he reported the accident via text message and phone call to his supervisor, Todd. Mr. Scholpp also testified that he told his supervisor, Todd, about the incident when he got back on January 13, 2023. Moreover, Ms. Schneider, Mr.

Scholpp and Mr. Majic all testified that they witnessed the accident and provided their respective accounts of the events.

Thus, the Arbitrator finds that Petitioner gave timely notice to Respondent of the January 13, 2023 accident.

Issue F, whether Petitioner's current condition of ill-being is causally related to the injury, the Arbitrator finds as follows:

To obtain compensation under the Act, a claimant must prove that some act or phase of his employment was a causative factor in his ensuing injuries. A work-related injury need not be the sole or principal causative factor, as long as it was *a* causative factor in the resulting condition of ill-being. Even if the claimant had a preexisting degenerative condition which made him more vulnerable to injury, recovery for an accidental injury will not be denied as long as he can show that his employment was also a causative factor. Thus, a claimant may establish a causal connection in such cases if he can show that a work-related injury played a role in aggravating his preexisting condition. Sisbro, Inc. v. Industrial Comm'n, 207 Ill. 2d 193, 205, 797 N.E.2d 665, 278 Ill. Dec. 70 (2003). "A chain of events which demonstrates a previous condition of good health, an accident, and a subsequent injury resulting in disability may be sufficient circumstantial evidence to prove a causal nexus between the accident and the employee's injury." International Harvester v. Industrial Com., 93 Ill. 2d 59, 63 442 N.E.2d 908 (1982).

The Arbitrator had the opportunity to personally observe the Petitioner's testimony. The Arbitrator finds the Petitioner truthful in his assertion that his back conditions began after the fall that occurred on January 13, 2023 and in a manner consistent with his testimony at trial. Also, Petitioner credibly testified that any issues from his December 2022 motor vehicle accident had resolved, and he was working full duty at the Village of Niles without issue.

Based on the above and the record taken as a whole, the Arbitrator finds that Petitioner has proven by preponderance of credible evidence that his current condition of ill-being, as it relates to the neck, low back, left shoulder and left hip is causally related to the accident of January 13, 2023.

Issue J, whether the medical services that were provided to Petitioner were reasonable and necessary and whether Respondent has paid all appropriate charges for all reasonable and necessary medical services, the Arbitrator finds as follows:

Section 8(a) of the Act states a Respondent is responsible …"for all the necessary first aid, medical and surgical services, and all necessary medical, surgical and hospital services thereafter incurred, limited, however, to that which is reasonably required to cure or relieve from the effects of the accidental injury…" A claimant has the burden of proving that the medical services were necessary, and the expenses were reasonable. See Gallentine v. Industrial Comm'n, 201 Ill.App.3d 880, 888 (2nd Dist. 1990).

Having found the Petitioner's current condition of ill-being, as it relates to the neck, low back, left shoulder and left hip is causally related the injuries sustained on January 13, 2023, the Arbitrator finds the Petitioner's treatment to be reasonable and necessary and finds that Respondent has not paid for said treatment. As such, the Arbitrator orders the Respondent to pay reasonable and necessary medical services for causally related treatment Petitioner underwent, as provided in Sections 8(a) and 8.2 of the Act. The treatment is detailed in Petitioner's Ex. 4 as follows: Bone and Joint Clinic-$2,244.02, Chicago Pain and Orthopedic Institute-$350, Procare DME-$1,900 and Loyola Gottlieb Hospital-$8,230.06.

Issue K, whether Petitioner is entitled to any prospective medical care, the Arbitrator finds as follows:

Having found the Petitioner's current condition of ill-being, as it relates to the neck, low back, left shoulder and left hip is causally related the injuries sustained on January 13, 2023, the Arbitrator finds that Petitioner is entitled to the Chicago Pain and Orthopedic Institute's recommended treatment of x-rays, 6 weeks of physical therapy (3x each week) and MRI. Respondent shall authorize and pay reasonable and necessary medical services associated with said treatment.

Issue L, whether Petitioner is entitled to temporary total disability benefits, the Arbitrator finds as follows:

A claimant is temporarily totally disabled from the time an injury incapacitates him from work until such time as he is as far recovered or restored as the permanent character of his injury will permit. Westin Hotel v. Indus. Comm'n, 372 Ill.App.3d 527, 542 (1st Dist. 2007).

In determining whether a claimant remains entitled to receiving TTD benefits, the primary consideration is whether the claimant's condition has stabilized and whether she is capable of a return to the workforce. Interstate Scaffolding, Inc. v. Illinois Workers' Comp. Comm'n, 236 Ill.2d 132, 148 (2010). Once an injured employee's physical condition stabilizes, she is no longer eligible for TTD benefits. Archer Daniels Midland Co. v. Indus. Comm'n, 138 Ill.2d 107, 118 (1990).

A claimant is temporarily totally disabled from the time an injury incapacitates him from work until such time as he is as far recovered or restored as the permanent character of his injury will permit. Westin Hotel v. Indus. Comm'n, 372 Ill.App.3d 527, 542 (1st Dist. 2007).

In determining whether a claimant remains entitled to receiving TTD benefits, the primary consideration is whether the claimant's condition has stabilized and whether she is capable of a return to the workforce. Interstate Scaffolding, Inc. v. Illinois Workers' Comp. Comm'n, 236 Ill.2d 132, 148 (2010). Once an injured employee's physical condition stabilizes, she is no longer eligible for TTD benefits. Archer Daniels Midland Co. v. Indus. Comm'n, 138 Ill.2d 107, 118 (1990).

Following the accident of January 13, 2023, Petitioner testified that he experienced neck, back, shoulder and hip pain, and had difficulty walking. Petitioner was subsequently taken off work by the Chicago Pain and Orthopedic Institute on March 3, 2023, and he has not been returned to work. The Arbitrator notes that there was no testimony or evidence presented by Respondent that a job offer within those restrictions was made to Petitioner on this denied claim.

Based on the above, the Arbitrator finds Respondent liable for 20 weeks and 3/7 days of TTD benefits (January 14, 2023 through June 5, 2023) at a weekly rate of $533.33, which corresponds to $10,895.17 to be paid directly to Petitioner.

It is so ordered:

Crystal L. Caison

Arbitrator Crystal L. Caison

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC011178
Case Name	Daniel Martis v. Lockport Township Fire Protection Dist.
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b) Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	24IWCC0417
Number of Pages of Decision	18
Decision Issued By	Stephen Mathis, Commissioner

Petitioner Attorney	Peter Bobber
Respondent Attorney	Michael Rusin

DATE FILED: 8/30/2024

/s/Stephen Mathis, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF WILL)

☒ Affirm and adopt (no changes)	☐ Injured Workers' Benefit Fund (§4(d))
☐ Affirm with changes	☐ Rate Adjustment Fund (§8(g))
☐ Reverse	☐ Second Injury Fund (§8(e)18)
	☐ PTD/Fatal denied
☐ Modify	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Daniel Martis,

Petitioner,

vs. No. 21 WC 11178

Lockport Township Fire Protection District,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petitions for Review under §19(b) having been filed by the parties herein and proper notice given, the Commission, after considering the issues of causal connection, medical expenses, temporary disability, penalties, attorney fees and "[m]aintenance and [v]ocational [r]ehabilitation [i]ssues," 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, medical benefits or of compensation for permanent disability, if any, pursuant to *Thomas v. Industrial Commission*, 78 Ill.2d 327 (1980).

During the pendency of this matter on review, Petitioner filed a "Motion to Strike Causal Connection from Respondent's Petition for Review." Petitioner stated that on October 18, 2023, the Pension Fund granted his application for a line-of-duty disability pension in connection with the instant work accident, and the Fund's decision was not appealed and is now final. Petitioner argued that further litigation of causal connection is precluded by the doctrine of collateral estoppel.

The Commission notes the arbitration hearing in this matter was held on June 16, 2023, and the Arbitrator's Decision issued on August 28, 2023. Respondent timely filed its Petition for Review on September 26, 2023, properly raising the issue of causal connection. The Pension Fund's decision followed on October 18, 2023.

The Commission agrees with the Arbitrator on the merits, making Petitioner's motion moot. Accordingly, the Commission dismisses Petitioner's motion and affirms and adopts the Decision of the Arbitrator on the merits.

IT IS THEREFORE ORDERED BY THE COMMISSION that Petitioner's Motion to Strike Causal Connection from Respondent's Petition for Review is hereby dismissed.

IT IS FURTHER ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed August 28, 2023, is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that this case be remanded to the Arbitrator for further proceedings consistent with this Decision, but only after the latter of expiration of the time for filing a written request for Summons to the Circuit Court has expired without the filing of such a written request, or after the time of completion of any judicial proceedings, if such a written request has been filed.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner interest under §19(n) of the Act, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall have credit for all amounts paid, if any, to or on behalf of Petitioner on account of said accidental injury.

No bond is required for removal of this cause to the Circuit Court. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

August 30, 2024

SJM/sk
o-7/10/2024
44

/s/*Stephen J. Mathis*
Stephen J. Mathis

/s/ *Deborah L. Simpson*
Deborah L. Simpson

/s/ *Raychel A. Wesley*
Raychel A. Wesley

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC011178
Case Name	Daniel Martis v. Lockport Township Fire Protection Dist.
Consolidated Cases	
Proceeding Type	19(b)/8(a) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	15
Decision Issued By	Paul Cellini, Arbitrator

Petitioner Attorney	Peter Bobber
Respondent Attorney	Nicole Breslau

DATE FILED: 8/28/2023

THE INTEREST RATE FOR THE WEEK OF AUGUST 22, 2023 5.29%

/s/ Paul Cellini, Arbitrator

Signature

STATE OF ILLINOIS)
)SS.
COUNTY OF **WILL**)

☐ Injured Workers' Benefit Fund (§4(d))
☐ Rate Adjustment Fund (§8(g))
☐ Second Injury Fund (§8(e)18)
☒ None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)/8(a)

DANIEL MARTIS Case # **21** WC **11178**
Employee/Petitioner
v.
LOCKPORT FIRE PROTECTION DIST.
Employer/Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Paul Cellini**, Arbitrator of the Commission, in the city of **Joliet**, on **June 16, 2023**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below and attaches those findings to this document.

DISPUTED ISSUES

A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
B. ☐ Was there an employee-employer relationship?
C. ☐ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
D. ☐ What was the date of the accident?
E. ☐ Was timely notice of the accident given to Respondent?
F. ☒ Is Petitioner's current condition of ill-being causally related to the injury?
G. ☐ What were Petitioner's earnings?
H. ☐ What was Petitioner's age at the time of the accident?
I. ☐ What was Petitioner's marital status at the time of the accident?
J. ☒ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
K. ☐ Is Petitioner entitled to any prospective medical care?
L. ☒ What temporary benefits are in dispute?
☐ TPD ☒ Maintenance ☒ TTD
M. ☒ Should penalties or fees be imposed upon Respondent?
N. ☐ Is Respondent due any credit?
O. ☒ Other **Vocational Rehabilitation**

FINDINGS

On the date of accident, **April 2, 2021**, Respondent ***was*** operating under and subject to the provisions of the Act.

On this date, an employee-employer relationship ***did*** exist between Petitioner and Respondent.

On this date, Petitioner ***did*** sustain an accident that arose out of and in the course of employment.

Timely notice of this accident ***was*** given to Respondent.

Petitioner's current condition of ill-being ***is*** causally related to the accident.

In the year preceding the injury, Petitioner earned $**128,403.08**; the average weekly wage was $**2,469.29**.

On the date of accident, Petitioner was **43** years of age, ***married*** with **3** dependent children.

Entitlement to and payment of all reasonable and necessary charges for all reasonable and necessary medical services has been reserved by the parties by agreement.

Respondent shall be given a credit of $**23,532.73** for TTD, $**0** for TPD, $**16,139.30** for maintenance, and $**0** for other benefits, for a total credit of $**39,672.03**.

Respondent's entitlement to a credit under Section 8(j) of the Act is reserved by agreement of the parties.

ORDER

The Arbitrator finds that the Petitioner's lumbar spine condition of ill-being is causally related to the April 2, 2021 work accident.

Respondent shall pay Petitioner temporary total disability benefits of $1,613.93 per week, the maximum allowable statutory rate, for 26 weeks, commencing April 3, 2021 through April 8, 2021, from April 15, 2021 through May 23, 2021, from June 23, 2021 through October 20, 2021, December 14, 2021, January 6, 2022, and April 28, 2022 through May 12, 2022, as provided in Section 8(b) of the Act.

Respondent shall pay Petitioner maintenance benefits of $1,613.93 per week, the maximum allowable statutory rate, for 38-6/7 weeks, commencing May 13, 2022 through February 8, 2023, as provided in Section 8(a) of the Act.

Respondent shall be given a credit of $39,672.03 for temporary total disability and/or maintenance benefits that have been paid.

The issue of entitlement to vocational rehabilitation services is premature as of the date of hearing.

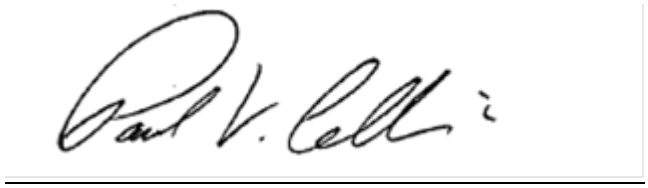
Respondent shall pay Petitioner $200.00 for his out-of-pocket medical expenses.

Respondent shall pay to Petitioner penalties of $**2,000.00**, as provided in Section 16 of the Act; $**0**, as provided in Section 19(k) of the Act; and $**10,000.00**, as provided in Section 19(l) of the Act.

In no instance shall this award be a bar to subsequent hearing and determination of an additional amount of medical benefits or compensation for a temporary or permanent disability, if any.

RULES REGARDING APPEALS: Unless a party files a *Petition for Review* within 30 days after receipt of this decision and perfects a review in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

STATEMENT OF INTEREST RATE: If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.



Signature of Arbitrator

AUGUST 28, 2023

STATEMENT OF FACTS

Petitioner began working for Respondent in April of 1996 at age 18 after graduating from Lockport Township High School. He initially worked as a "paid on-call" firefighter before being hired as a full-time firefighter/paramedic (EMT) in 1998. In 2007, he was promoted to Lieutenant, which still required him to perform all aspects of a firefighter/EMT job. He is currently the most senior of Respondent's approximately 20 Lieutenants. In 2008, Petitioner was appointed as the Fire Investigations Team Leader, a role he maintained until 2021. As Team Leader, he was in charge of drafting and executing a budget for the team, requesting and adding personnel as needed, and making sure all district fires were investigated and documented. This role also led to him serving as an arson investigator for the Will-Grundy Major Crimes Task Force. He obtained an associate degree in Fire Science in 2019 and he holds professional certifications including Firefighter, Paramedic, Firefighter III, Fire Officer 1, Fire Officer 2, Fire Investigator, Arson Investigator, and HAZMAT Operations and Fire Safety Officer. These certifications required him to undergo additional training. Petitioner denied any lost time or workers compensation claims involving his low back prior to 4/2/21. He undergoes annual agility testing and physical examination he must pass as a requirement of his job, which did most recently and passed in January, 2021 (See Px1, 1/25/21).

On 4/2/21, Petitioner testified he injured his low back while using a hook or rake-type of tool to break up a pile of smoldering debris in a rubbish fire. When it caught on some debris, he pulled the tool hard, developing immediate intense back pain in the middle of his waistline shooting down to his right foot. He tried to continue working and returned to the fire station, but his pain persisted so his Battalion Chief sent him to Bolingbrook Hospital by ambulance. He testified that his back pain was worse than his foot pain at this point.

At the Bolingbrook ER, Petitioner provided a history of back pain with radiation while pulling brush during a fire. He reported low back pain with brief pain radiating to his legs. X-rays showed some degenerative joint disease and Petitioner was diagnosed with low back pain, muscle strain, and osteoarthritis of the back. He was restricted to no bending, prolonged standing, or lifting over 10 pounds from 4/6/21 to 4/9/21. It was noted he likely would need an MRI if he did not improve, and he was advised to follow up with his MD the next day for further instructions. (Px1).

Petitioner testified he then utilized "Rebound", which he described as Respondent's facilitator for medical treatment scheduling, who referred him to Dr. Hasan (Oak Orthopedics/Illinois Bone & Joint Institute). Dr.

Hasan first examined Petitioner on 4/7/21, and his complaints were of bilateral low back pain with radiation into the right leg/hip following a 4/2/21 work-related injury. Neurologic exam was essentially normal. Dr. Hasan diagnosed low back pain, lumbar spondylosis, and myofascial pain. He prescribed anti-inflammatories, physical therapy, an x-ray, and light duty (no lifting over 10 pounds with no frequent bending or twisting). On 4/14/2021, Dr. Hasan noted Petitioner had low back pain with radicular symptoms along the right proximal posterior leg. Lumbar MRI was requested to evaluate for discogenic versus facet mediated pain with radicular impingement. Petitioner was held off work pending the MRI results, and possible trigger point injections were planned. (Px2).

The 4/21/21 lumbar MRI revealed a right-sided L4/5 disc protrusion contributing to mild to moderate ipsilateral neural canal stenosis but without convincing evidence for impingement of the exiting right sided nerve roots. Also noted were findings suggestive of Baastrup's syndrome from L2 to S1 with posterior hyperintense edema-like signal within the posterior intraspinous ligaments, and mild discogenic lumbar spondyloarthropathy with grade 1 retrolisthesis at L5/S1. (Px2).

Petitioner underwent seven therapy sessions at ATI from 4/8/2021 through 4/27/2021. His noted complaints were of low back pain radiating into the right leg. (Px3). Petitioner testified that therapy was actually increasing his pain significantly, leading to Dr. Hasan discontinuing it. (Px2; Px3).

It appears that Dr. Hasan administered trigger point injections on 4/26/21. He noted the MRI was reviewed and that Petitioner was experiencing myofascial pain along the lumbar area. The doctor again notes both "Work restrictions" and that Petitioner was held off work at this time. It was also noted that Petitioner did not want to pursue any surgical options at that time. Petitioner testified the injections provided limited pain relief. Petitioner also ended up suffering from an allergic reaction to the injections which Dr. Hasan on 4/29/21 referred to as "red man syndrome." At this point, Dr. Hasan noted only work restrictions as opposed to off work status, and a back brace was prescribed. On 5/19/21, Dr. Hasan noted Petitioner reported the following: "numbness (right foot, morning); tingling (right foot, morning), along with grinding and radiation into the right leg to hip. On 5/21/21, Dr. Hasan indicated Petitioner could work restricted duty, and it appears he did start working again on 5/24/21. On 6/23/21, Dr. Hasan again prescribed trigger point injections, and also continued to prescribe Tylenol 3 and Meloxicam. Petitioner remained under the care of Dr. Hasan throughout the summer of 2021 with similar complaints. A second set of trigger point injections were ultimately performed on 7/21/21. Dr. Hasan noted that the injections did provide some relief, and Petitioner testified that this relief lasted about 2 to 3 weeks.

Respondent directed a Section 12 examination with orthopedic surgeon Dr. Nolden on 8/16/2021. A consistent history of the 4/2/21 work accident was noted, and Petitioner reported initial sharp, axial low back pain with occasional radiation into the left buttock, and he denied any pain radiation into either leg nor any numbness or weakness. However, a pain drawing completed by Petitioner depicted his pain in the low back into the *right* hip. (Px4). Petitioner noted 3 weeks of benefit with each round of trigger point injections. Dr. Nolden's review of 4/7/21 x-rays indicated his opinion that they were normal, and his review of the 4/21/21 MRI indicated mild to moderate right-sided foraminal stenosis due to a foraminal/far lateral disc protrusion at L4/5, which he described as an "insignificant finding given the left-laterality of his pain and the lack of any right-sided L4 radicular pain." The doctor noted: "I was provided the medical records but did not review them. They would not affect my assessment and opinions." He then goes on to indicate he did, in fact, review some records and that the treatment had been "simple and conservative and therefore assessment of physical therapy and office visits would not necessarily add anything relevant to the opinions and assessment." After performing an essentially normal exam, Dr. Nolden diagnosed myofascial low back pain/chronic lumbar strain, related to the work accident, with an incidental MRI finding of a small right-sided L4/5 disc herniation without correlating symptoms. He opined that Petitioner had reached maximum medical improvement (MMI) a week after the last

trigger injections, and recommended Petitioner return to work once he was able to tolerate normal work activities and perhaps could have one additional trigger point injection, but that surgery was not appropriate. (Px4; Rx3).

On 8/25/21, Dr. Hasan referred petitioner for a surgical consultation. (Px2). Dr. Darwish (Illinois Bone & Joint Institute) examined Petitioner on 9/2/21, noting a consistent history of the work accident. Petitioner's current complaints were of neck pain and low back pain which would shoots into the right hip with tingling into the right foot, which had subsided. Petitioner had 30% limited lumbar range of motion, a positive straight leg raise test, and diminished sensation over the right thigh. The diagnosis was an L4/5 disc herniation with cervicalgia, and low back pain with radiculopathy. Dr. Darwish recommended further physical therapy, a right L4/5 epidural steroid injection, medications and to remain off work. (Px5). Dr. Hasan agreed with Dr. Darwish's treatment plan and sought authorization to proceed with the injection. (Px2).

Petitioner underwent a second round of therapy at ATI from 9/30/2021 through 10/19/2021 (Px3), but he again testified the therapy seemed to just aggravate his symptoms with pain increasing after each session. Dr. Darwish discontinued the therapy and recommended continued use of medications and the epidural injection. He indicated that if the injection did not help, Petitioner would be a candidate for a right L4/5 discectomy. (Px5).

Dr. Darwish then referred Petitioner to Dr. Said (Px5) of Ascend Pain & Wellness, who performed right L4/5 and right L5/S1 transforaminal epidurals on 12/14/2021 and 1/6/2022. (Px6). Petitioner advised that Dr. Said held him off work on those two dates. At Dr. Said's initial evaluation on 12/6/2021 he noted a consistent history of the 4/2/2021 work accident. Dr. Said indicated Petitioner experienced about 50% pain relief from the injections for about 3 to 4 weeks, but that the effects wore off over time and his pain persisted. (Px6). Given the temporary relief provided by the injections, on 1/11/2022, Dr. Darwish recommended a right L4/5 laminectomy surgery. (Px5).

Petitioner testified that he considered the surgery because he was getting desperate for pain relief, but that Respondent's workers' compensation carrier (or the group health carrier without a denial from the comp carrier) was not authorizing it, and four or five months went by. In the interim, Dr. Nolden issued a supplemental report on 4/12/22, essentially restating his prior opinions and advising against Petitioner proceeding with surgery, as this would "fail to resolve his diffuse complaints", and instead recommended a functional capacity evaluation (FCE). He did state that given the persistence of his symptoms, his continued treatment with Dr. Darwish had been reasonable, and that the ongoing causal connection was based on his reported history and its timeline. He opined that he could not state with medical certainty that the L4/5 disc protrusion is causally related to the work accident given Petitioner's pain behavior, location, and lack of clinical correlation. (Rx4).

It appears that the Respondent referred Petitioner for another Section 12 examination with Dr. Player on 4/26/22. Dr. Player diagnosed lumbar radicular syndrome at L4/5 with radiculopathy that was causally related to Petitioner's 4/2/2021 work accident, with subjective complaints consistent with the objective findings. Exam findings included decreased right Achilles reflex as well as decreased sensation and weakness in an L4 distribution. Petitioner reported his initial epidural provided temporary relief, while the second one provided no relief. Dr. Player found no evidence of symptom magnification. His recommendation was an additional series of epidurals with laminectomy/discectomy surgery a possibility. He opined that Petitioner was unable to perform full duty work as a firefighter but was capable of working within the restrictions of Dr. Darwish. The Arbitrator notes there was an indication from Petitioner that he developed neck pain about three months after the accident with no specific activity when it occurred, and Dr. Player opined this was not causally related to the work accident. (Px8).

Petitioner testified he discussed the risk versus reward of proceeding with surgery with Dr. Darwish and Dr. Player, after which he decided to try to live with his pain given the fear of getting worse with surgery. Petitioner noted that none of the physicians he has seen thus far have indicated a significant likelihood of improving with surgery to the point where he would be able to return to full duty firefighting duties.

Petitioner testified that Respondent did provide light duty work within his restrictions from 10/21/21 through 4/28/22. He testified that the concept of light duty was new to Respondent, and that the light duties he was performing were still difficult for him to do. The statement of Chief O'Connor indicated he emailed Petitioner on 4/28/22 to indicate that the light duty was terminated because Petitioner's union collective bargaining agreement (CBA) provided for only a 24-week light duty allotment while Petitioner was already working in his 27th week of light duty. (See Px13 and Arbx5). As a result, Petitioner testified he began to use his sick leave time. From 4/28/22 to 5/12/22, when permanent restrictions were issued, he was off work and using sick leave, which he felt was his only option as neither light duty nor TTD were being provided.

Concurrently, Dr. Darwish's office, while noting that they were continuing to await surgical authorization, on 4/8/22 ordered a functional capacity evaluation (FCE) (Px5), which was performed on 5/3/22 at Illinois Bone and Joint Institute. The therapist indicated Petitioner passed 90% of the validity criteria indicating an excellent effort and valid results. He concluded that Petitioner was functioning at the medium physical demand level, which is below the very heavy physical demand level required by his occupation as a first responder. (Px7).

Dr. Darwish reviewed the FCE results on 5/12/22 and again discussed surgical options with Petitioner, noting he was still awaiting authorization from Respondent. He indicated it was medically reasonable for Petitioner to decline surgery "as there are no guarantees that doing so would improve his functional abilities and there is a chance, although remote, that his functionality could decrease post-operatively." Barring surgery, Dr. Darwish opined that Petitioner was at maximum medical improvement (MMI) and imposed permanent restrictions of no lifting more than 30 pounds overhead or 40 pounds overall with no repetitive bending or squatting. (Px5).

After meeting with the Chief to discuss his work options, Petitioner opted to apply for a duty disability pension on 5/16/22 (See also Arbx5), which had not yet been adjudicated as of the hearing date. In connection with that application, at the request of the Pension Board the Petitioner underwent three additional independent medical evaluations with Drs. Shapiro, Stanley, and Williamson-Link.

Dr. Shapiro examined Petitioner on 10/25/22. He interpreted the 4/21/21 lumbar MRI as showing a right L4/5 foraminal disc herniation with encroachment/effacement of the right L4 nerve root. After noting a consistent history of the 4/2/21 work accident, he diagnosed Petitioner with chronic right-sided low back pain with accompanying right lower extremity radiculopathy. It was Dr. Shapiro's opinion that Petitioner had reached MMI from a nonsurgical standpoint and he was unable to perform his very heavy job as a firefighter. He noted that a new MRI would be needed if the Petitioner was going to consider surgery in the future. (Px11).

On 10/27/22, Dr. Stanley examined the Petitioner. He noted a consistent history of the 4/2/21 work accident, diagnosed right lumbar radiculopathy which he attributed to the work accident, and he indicated Petitioner's current disability per the FCE was permanent, assuming he did not undergo surgery. He opined that it was unlikely that Petitioner would return to full duty absent surgical intervention. The Arbitrator does note that Dr. Stanley referenced records of two prior incidences of back pain involving Petitioner: falling off a ladder in 2014 with occasional low back pain and numbness and tingling down the lateral leg to the foot and "pain to the right side" and an August 2019 report of pain on the right side after he "hurt his back moving a heavy patient." Dr. Stanley took this into consideration. (Px9).

Dr. Williamson-Link performed his examination of Petitioner on 11/4/22. This physician also recited a consistent history of the 4/2/21 work accident. He diagnosed Petitioner with chronic lumbar pain and persistent right lower extremity symptoms causally related to the work accident, noting that Petitioner "has had some prior back injuries or complaints", and that while he had some treatment, the majority of the complaints being middle back versus low back pain. Additionally, he opined that Petitioner was restricted from performing firefighting duties due to persistent chronic low back pain with persistent right leg symptoms. He did not offer any treatment recommendations. (Px10).

The Arbitrator notes that no medical records were submitted into evidence relative to the references to prior back pain by Drs. Stanley and Williamson-Link.

After applying for his duty disability pension, on or about 5/30/22 Petitioner began conducting a self-directed job search at his attorney's recommendation as the Respondent was not providing him light duty work or paying any weekly workers' compensation benefits. Noting he has worked for Respondent for his entire adult life, Petitioner testified he has had no experience looking for work, conducting a job search, or preparing a resume. He utilized the online service "Indeed" to locate jobs he believed to be within his experience, skill set, and restrictions. Once he located a job opportunity, he would fill out an Employer Contact Sheet, noting the name, telephone number and address of the potential employer with any listed contact person and checked the box "Follow Up Needed." These job search log forms were provided by his attorney. However, while he located the jobs, he testified he did not actually contact any of the potential employers directly as he was concerned that doing so could violate his CBA (Px13), which he testified indicated that if he was on sick leave, he couldn't have any secondary employment. He was concerned this could lead to disciplinary action and might jeopardize his pension disability application process.

The CBA indicates "An Employee in a paid sick leave status may not engage in any gainful employment without the Chief's approval. If a dispute arises regarding the Employee's condition or ability to perform work outside the fire department, the Employer shall require the Employee to submit to an examination by a physician selected and paid for by the Employer." Reference is also made to the interaction of such sick leave time and TTD and how such benefits may need to be reimbursed. (Px13).

Respondent paid Petitioner weekly compensation benefits from mid-September through mid-November of 2022, at which point Petitioner testified the benefits were again stopped without explanation. Respondent's payment logs confirm maintenance payments were made from 9/9/22 through 11/17/2022. (Rx1).

Petitioner testified the Respondent never offered him any assistance with his job search activities and never provided any written explanation of whether his job search was sufficient or not. He first became aware of a 2/2/23 vocational report obtained by Respondent from Genex (Rx2) within a few weeks prior to the hearing which indicated his job search was not adequate. No one from Genex had ever contacted him or offered him any assistance with a job search.

The 2/22/23 report of Karen Taussig of Genex notes she reviewed the MMI report of Dr. Darwish as to permanent restrictions, that she understands Petitioner tested to the medium level per FCE and that his job with Respondent is classified as very heavy, and that she reviewed Petitioner's job logs. It was her opinion that the jobs he was found and documented were appropriate, but that he did not provide a valid job search effort as there was no evidence he applied for any of the jobs, that he did not utilize a resume/cover letter which is the norm in today's labor market, no indication of employer contacts, and no use of any other job contacts outside of the internet. (Rx2).

Petitioner testified he was contacted by the Deputy Chief, who indicated the Chief advised he was to report back to work on 1/22/23. However, he didn't actually then return to light duty until 2/9/23, testifying the delay was due to a "Variance Agreement" (See Px14) that had to be signed by Petitioner, his union president, and the Fire Chief. This was a separate document unrelated to the CBA agreement. (Px14). The Chief indicated that there was a delay in Petitioner's return to light duty at this point because Respondent required the Variance Agreement, and that the Chief's statement indicates Petitioner did not return to light duty until 3/9/23. (Arbx5). Upon his return, he discontinued his job search activities. He has continued to work light duty since that time, noting his understanding is that this light duty could end at any time if the Chief didn't feel the Petitioner was "…meeting an appropriate level of performance for assigned task." (See Px14). Otherwise, this period of light duty would terminate once his pension disability application process was concluded. Respondent has no permanent light duty work available. (Arbx5, Px13).

Due to continued pain in his low back and right leg, Petitioner has continued to treat with Dr. Said in 2023, including additional epidural injections on 1/16/2023 and 2/13/2023. At the last visit prior to the hearing, 5/16/23, Petitioner indicated his back pain was 9 out of 10 (9/10) as a result of his light work duties, including the detailing of Respondent's vehicles. Dr. Said issued restrictions including no lifting greater than 40 pounds, no prolonged sitting, and minimal bending and twisting. The restrictions also included no operating a riding mower, limiting self-propelled mowing to 15-minute increments or as tolerated, and taking breaks as needed if his pain worsened (Px6).

Petitioner's understanding is that some of his medical expenses were paid by Respondent's workers' compensation insurance company, and some were paid by Blue Cross Blue Shield, his group health insurance carrier. He also has some out-of-pocket expenses totaling $1,819.30 (See Px15). Petitioner was not aware of any other outstanding medical charges.

Petitioner testified that currently the radiating pain in his right leg comes and goes. He has numbness in the top of the foot. His pain can go into the foot intermittently, versus his low back pain which is constant. He has good days and bad days. The pain ranges from 2-3/10 on good days to 7-8/10 on bad days. He generally is on the couch with heat/ice when the pain is bad and takes muscle relaxers and narcotic pain medication. For the past several months, the pain has gone from the center of his low back down to his right calf to now extending to the top of his right foot which is now completely numb. Petitioner denied any radiating pain or symptoms into his left leg. Petitioner stepped down from his team leader role and from the task force due to his back injury.

Petitioner remains on light duty status. He testified that both times he returned to light duty the initial duties included clerical and office work, acting as an assistant chief to some degree and some driving to pick up or deliver items. More recently, the duties have changed to include cutting grass at all six fire stations and washing, waxing, and detailing the chief's vehicles, fire prevention vehicles and utility vehicles. He testified that detailing vehicles is difficult because to the bending required to reach the lower portions of the vehicle or vacuuming the truck's floor of the passenger compartment. He avoids using a riding mower to cut grass as it causes pain, and he uses the self-propelled push mower in 15-minute increments with breaks in between, which was recommended by Dr. Said (See Px6).

Regarding his present non-work activities, Petitioner has difficulty in participating in physical activities with his two young 11- and 8-year-old), and any participation is short due to his symptoms, which is hard for him to accept. He has not played softball or gone running, which he used to do before the accident. Petitioner testified he is an avid hunter and fisherman, and this has been curtailed significantly, as he used to do it all day and now, due to his back pain, goes 2 or 3 days a week and has to limit the duration to a couple of hours. He can no longer walk in areas of marsh or uneven ground. At home, he has to ask others to help with activities he used to do like landscaping, gardening, and gutters, and his wife and sons now mow the lawn.

Petitioner testified that when he saw Dr. Nolden on 8/16/21, he provided a history to his assistant, not the doctor himself. He agreed that he completed a pain drawing and that the one in Px4 is true and accurate and that the markings on the document were all his. His understanding was to he was indicate where the pain was and if there was radiation int the leg to indicate this.

On cross-exam, Petitioner testified he is a 1996 high school graduate, but did not receive is associate degree until 2019 from Columbia Southern University. He testified regarding the 300 plus hours of training he had to become a fire investigator and arson investigator, and that he is required to have 100 hours of continuing education every four years, which he has not kept up with since stepping down in 2021. He left the fire investigation team, which he had a passion for, because he knew he could no longer be an asset and didn't want to be the "weak link." As Team Leader of the Fire Investigation Unit from 2008 to 2021, Petitioner agreed that he planned and maintained the team budget, noting that most of this is done "old school", i.e., with handwritten documentation. He was efficient at this and was under budget most years. He managed about 12 team members, which included coordinating trainings and assigning investigators to different tasks. He would work with other police departments as well as other agencies like the ATF and FBI. He acknowledged that he is comfortable using email and the telephone. As part of the Will-Grundy Major Crimes Task Force, which involved detectives and police chiefs from various departments, he would be involved in arson cases basically to assist as "another set of eyes" for the group. He was invited to the group by the Task Force Commander after Petitioner's involvement in a homicide arson as the lead investigator for the fire district. He would not prepare reports, he was involved verbally.

With regard to his tasks while on light duty for Respondent, the office work he performed included phone follow ups with residences and businesses to verify their garage codes, to address hazards like vacant buildings, to note locations where there were people with special needs, and to deal with forms for hoarder conditions.
His initial task was pre-planning for various residences and businesses that would have special considerations if the fire department had to respond to their buildings. When he initially returned to light duty in February, his job was driving around to make sure businesses still existed or changed hands. He has no current driving restrictions. He can take breaks as needed on light duty, such as when he mows grass. His understanding is he is to stay on light duty until the pension issue is determined. He knows of no complaints about his work on light duty. He has Blue Cross/Blue Shield group health through Respondent. He is receiving his regular salary while on light duty. With regard to the job logs contained in Px12, Petitioner agreed he did not submit any applications to prospective employers. He agreed that surgery has been recommended for him, but he has chosen not to undergo it.

Deputy Fire Chief of Administration Ed Rossetto testified that he handles all paperwork for Respondent, such as that involving time off, sick time, vacation time, and communications with outside agencies. He was hired as a firefighter/EMT in 1996 and worked his way up to Deputy Fire Chief in 2018. He testified he has a good relationship with Petitioner, with whom he has worked with on shift and on specialty teams. He testified that Petitioner has been a good employee with no problems or disciplinary issues. He is aware that Petitioner has missed time from work and is currently working light duty. Since Petitioner's injury, he has not returned to regular duties, he has been on light duty, sick leave or vacation days. He most recently went back on sick time on 11/20/22 and then started light duty on 2/6/23. Deputy Chief Rossetto had no knowledge of any issues or complaints with Petitioner's current light duty performance, and his understanding is Petitioner's light duty work is to continue, per the variance, through the completion of pension proceedings.

Chief O'Connor noted that Petitioner's pension disability hearing began on 12/20/22, with subsequent hearings on 3/22/23 and 3/23/23, and that as of 6/16/23, "further hearings are still necessary to complete the hearing process, but no subsequent hearing is currently scheduled." (Arbx5).

CONCLUSIONS OF LAW

WITH RESPECT TO ISSUE (F), IS THE PETITIONER'S PRESENT CONDITION OF ILL-BEING CAUSALLY RELATED TO THE INJURY, THE ARBITRATOR FINDS AS FOLLOWS:

The evidence in this case indicates the Petitioner did have at least two episodes of prior back pain in 2014 and 2019. In 2014, it appears that this included complaints of symptoms including numbness into the right foot, similarly to his current complaints. However, the evidence also indicates that the Petitioner's job with Respondent is at the very heavy level. Petitioner testified he had no lost time as a result of these incidents, that he made no workers' compensation claims for them, that he had been working full duty at the time of the 4/2/21 accident, and that he had passed his most recent pre-annual firefighting physical prior to the accident on 1/25/21.

Petitioner credibly testified to the 4/2/21 work accident and mechanism of injury, which is consistent with all of the medical records, and the Respondent does not dispute the issue of accident. Petitioner reported immediate low back pain radiating into his right foot at the time of the accident, and his subsequent complaints were consistently low back pain into the right thigh, ultimately with complaints of numbness into the foot. The Bolingbrook ER diagnosed low back pain and Petitioner ultimately was examined by several orthopedic surgeons, including treaters, Section 12 examiners and IMEs which were requested by the Pension Board. All of these physicians other than Respondent's examining physician Dr. Nolden have opined that Petitioner's lumbar condition of ill-being is causally related to the 4/2/21 work accident. This includes Drs. Darwish, Player, Shapiro, Stanley, and Williamson-Link. The complaints noted throughout the medical records are quite consistent as to low back pain into the right hip area, other than the report of Dr. Nolden which indicates complaints into the left buttocks. This includes the pain management records of Dr. Hasan and Dr. Said. Nowhere else in the evidentiary record was the Arbitrator able to locate left buttocks complaints, and the doctor's failure to note right-sided symptoms indicates to the Arbitrator that he didn't review comprehensive medical records of Petitioner. A pain diagram completed for Dr. Nolden reflects symptoms into the right lower extremity, not the left. Dr. Nolden agreed in his addendum report that Petitioner sustained a lumbar strain related to the accident, and that his continuing low back symptoms, by history, remained causally related to the work accident. He acknowledged he didn't review all of Petitioner's medical records. Dr. Nolden acknowledged a right-sided disc protrusion at L4/5 with mild to moderate foraminal stenosis but opined this was not related to the accident in large part because he believed Petitioner's symptoms were left-sided. Based on this discrepancy in particular, Dr. Nolden's opinion in this case with regard to causation are not very persuasive.

The Arbitrator finds, by a significant preponderance of the evidence, that the Petitioner has proven that his lumbar condition, including the abnormality at the L4/5 level, is causally related to the 4/2/21 accident.

WITH RESPECT TO ISSUE (J), WERE THE MEDICAL SERVICES THAT WERE PROVIDED TO PETITIONER REASONABLE AND NECESSARY AND HAS RESPONDENT PAID ALL APPROPRIATE CHARGES FOR ALL REASONABLE AND NECESSARY MEDICAL SERVICES, THE ARBITRATOR FINDS AS FOLLOWS:

The parties stipulated at the time of trial that any issue of unpaid medical expenses would be reserved for a future determination if needed, and the only current issue as to medical expenses at this hearing relates to the claim for Petitioner's out of pocket expenses. This stipulation includes also reserving the Respondent's ability to prove payment, either by the workers' compensation carrier or the group health carrier pursuant to Section 8(j), of any unpaid bills that may later be submitted by Petitioner at any subsequent hearing. Thus, the reference

in Arbx1 to a credit to Respondent regarding the payment of medical expenses is moot as it relates to this hearing.

The parties have also stipulated subsequent to the hearing that all of Petitioner's claimed out-of-pocket expenses (which are contained in Px15) have been resolved by agreement except for $200 in expenses from 2023. In reviewing Px15, this includes five (5) separate charges from Ascend Medical/Dr. Said. These charges are indicated as being from 11/11/23, 1/16/23, 1/30/23, 2/13/23, and 2/27/23. The Arbitrator finds that this treatment, while found to be at MMI by Dr. Darwish if Petitioner did not undergo surgery, is reasonable given the Petitioner's ongoing symptoms.

Given the Arbitrator's findings as to causal connection noted above, the Arbitrator finds Petitioner's medical treatment to date, based on the records submitted into evidence, has been reasonable and necessary, including the treatment of Dr. Said. As such, the Arbitrator orders Respondent to pay Petitioner $200.00 for reimbursement of his out-of-pocket medical expenses related to Ascend Medical/Dr. Said.

WITH RESPECT TO ISSUE (L), WHAT AMOUNT OF COMPENSATION IS DUE FOR TEMPORARY TOTAL DISABILITY, TEMPORARY PARTIAL DISABILITY AND/OR MAINTENANCE, THE ARBITRATOR FINDS AS FOLLOWS:

According to Arbx1, the Petitioner seeks TTD benefits from 4/3/21 through 4/8/21, from 4/15/21 through 5/23/21, 6/23/21 through 10/20/21, 12/14/21 and 1/6/22, and 4/28/22 through 5/12/22. Petitioner also claims entitlement to maintenance from 5/13/22 through 2/8/23, which is disputed by Respondent. Respondent and Petitioner agree that Respondent has paid TTD totaling $23,532.73 and maintenance totaling $16,139.30 and is entitled to credit for same against any award of TTD and/or maintenance.

Respondent, per Arbx1, indicates it has paid TTD from 4/3/21 through 4/8/21, 4/15/21 through 5/23/21, and 6/23/21 through 8/16/21. Additional TTD is disputed pursuant to the report of Dr. Nolden. Thus, the TTD periods in dispute are from 8/17/21 through 10/20/21, 12/14/21, 1/6/22, and 4/28/22 through 5/12/22.

At the hearing, Respondent's counsel acknowledged that Petitioner was not actually working, either regular or light duty, on any of the dates he is claiming TTD benefits, but that Respondent is disputing his entitlement to TTD benefits on all of the claimed dates.

Regarding the period 8/17/2021 through 10/20/2021, Petitioner was being kept off work by Dr. Hasan and then Dr. Darwish. Specifically, on 8/11/21 and 8/25/21, Dr. Hasan continued Petitioner's off work status. Dr. Darwish then continued him off work on 9/20/2021 and 10/8/2021 before releasing him to restricted duty on 10/22/2021. Deputy Chief Rosetto confirmed that Petitioner returned to light duty effective 10/21/2021, even though he utilized a vacation day for that shift. The Arbitrator finds that the Petitioner is entitled to TTD benefits from 8/17/21 through 10/20/21. The Arbitrator is not persuaded by Dr. Nolden's opinion. His opinion that Petitioner could return to work was premised on the factual inaccuracy that Petitioner did not have radicular symptoms into his right leg which corresponded to the MRI findings.

On 12/14/2021 and 1/6/2022, Dr. Said administered epidural steroid injections to Petitioner's lumbar spine and took him off work the days of these procedures. The Arbitrator finds that Petitioner is entitled to TTD on 12/14/21 and 1/6/22.

Petitioner was working light duty from 10/21/21 through 4/28/22 when Chief O'Connor emailed him about the discontinuation of light duty. informing him that he had exceeded the contractual (CBA) allotment of up to 24 weeks of light duty. Petitioner then remained off work from 4/28/2022 through 5/12/2022, the day Dr. Darwish

issued permanent restrictions based on the 5/3/22 FCE and determined Petitioner had reached MMI. Prior to that, Dr. Darwish had been maintaining Petitioner on work restrictions. It should be noted that Dr. Nolden opined in his 4/12/22 supplemental report that he had no opinion as to Petitioner's work status and suggested he undergo an FCE. The Arbitrator finds that the Petitioner is entitled to TTD benefits from 4/28/2022 through 5/12/2022.

Based on the MMI determination of Dr. Darwish, the Petitioner is also seeking maintenance benefits from 5/13/2022 through 2/8/2023, as he remained off work during this period.

Following Dr. Darwish's MMI determination on 5/12/22, Petitioner remained on sick leave status after light duty with Respondent was terminated on 4/28/22. He used this time because he was not receiving workers' compensation benefits. After meeting with his Fire Chief, Petitioner applied for his duty disability pension on 5/16/22.

At the request of his counsel, Petitioner commenced what was described as a self-directed job search on 5/30/22, but as noted above, this essentially was an exercise in Petitioner seeking employment opportunities but not applying for any of them, referencing the union CBA and arguing that holding another job while on sick leave would be prohibited by the agreement and possibly lead to discipline and/or could jeopardize his duty disability pension. While conducting his job search activities, Petitioner testified that Respondent did pay him maintenance benefits from mid-September of 2022 through mid-November of 2022, at which time they were again terminated without explanation. Respondent's payment logs confirm maintenance payments from 9/9/22 through 11/17/22. (See Rx1).

Petitioner testified that Respondent did not offer any assistance with his job search activities. He also testified that neither Respondent nor its workers compensation carrier ever provided any information to him with regard to whether his job search activities were insufficient or inadequate. Then, in the few weeks prior to the hearing date, he testified that he became aware of the 2/22/23 vocational report generated by Genex which alleged that his job search was insufficient. The Genex report indicates that the opinion had been requested by Respondent on 2/17/2023. The Genex counselor, Ms. Taussig, did indicate that the job titles contained in Petitioner's job search logs were appropriate for his work history and that the geographic area encompassed in the search was appropriate as well. Petitioner testified he discontinued his job search when Respondent again returned him to light duty as of 2/9/23.

The Arbitrator finds Petitioner entitled to maintenance from 5/13/22 through 2/8/23. Respondent is entitled to credit for the maintenance payments it did make from 9/9/22 through 11/17/22. While there has been evidence presented and discussion in the proposed decisions regarding the Petitioner's job search, the Arbitrator notes that no evidence has been presented that indicates the Petitioner is no longer an employee of the Respondent. This is supported by the fact that, as of the hearing date, Petitioner was continuing to work light duty for Respondent. There is no evidence indicating he had been terminated at any point and rehired. Thus, during the period between 5/13/22 through 2/8/23, the preponderance of the evidence supports that the Petitioner remained an employee of Respondent. Respondent has provided light duty at different times in this case, so it is clear that such duty is available. However, light duty was not offered to Petitioner during the awarded time period. It was provided subsequently, with a variance agreement that is in opposition, it appears, to the CBA language. The Arbitrator does not have jurisdiction over the pension board hearing. However, to a layperson, the language of the CBA as to working another job while an employee of Respondent would reasonably give one pause in obtaining new employment. It is understandable that the Petitioner performed a job search under the circumstances of this case, but the Arbitrator does not believe it was necessary. The Petitioner did reach MMI, short of surgery, but he remains a Respondent employee whose work restrictions are being accommodated.

The Arbitrator also notes that, with regard to the beginning of the period of maintenance being requested by Petitioner, the Petitioner's benefits were terminated per the CBA according to the Chief. Given he had permanent restrictions at that time, a minimum period of time of maintenance would have been applicable while Petitioner sought new employment. Yet, his benefits weren't then reinstated until 9/9/22. There does not appear to be a good explanation for the termination of benefits between 5/13/22 and 9/9/22 given Petitioner remained an employee of Respondent.

As the Petitioner is on work-related physical restrictions that have not been accommodated by Respondent, his current employer, between 5/13/22 and 2/8/23, the Petitioner is entitled to maintenance during this period.

The Arbitrator notes that while Petitioner indicates "prospective maintenance" as an issue in this case, the Arbitrator has no known authority to make such a prospective award of weekly benefits. All of the relevant evidence in this case indicates that the Petitioner will remain on light duty pending a determination in his duty disability case, with the determination date, as of the date of hearing in this case, remaining unknown.

As noted, the Respondent is entitled to credit of $39,672.03 towards the award of TTD and maintenance.

WITH RESPECT TO ISSUE (M), SHOULD PENALTIES BE IMPOSED UPON THE RESPONDENT, THE ARBITRATOR FINDS AS FOLLOWS:

Petitioner testified that he did not receive the TTD benefits he was entitled to between 6/23/21 and 8/16/21 until 11/1/21, a 77 day delay. At that time, Dr. Hasan was maintaining Petitioner's off work status. No evidence was offered by Respondent as to the reason for this delay in payment and Respondent agreed that the Petitioner was, in fact, off work during this period of time.

Petitioner also alleges that Respondent delayed the payment of TTD benefits that were due from 8/17/21 to 10/21/21. This time period represents the period following Respondent's Section 12 exam with Dr. Nolden through 10/21/2021 when Petitioner returned to light duty work. This period of TTD remained unpaid as of the hearing date, which was 603 days after the end of the noted time period.

Petitioner alleges that between 5/13/22 and his 2/8/23 return to light duty, he only received maintenance benefits from 9/9/22 through 11/17/22. The time periods before and after these dates involved no payment of maintenance.

The Arbitrator finds that the Petitioner has failed to prove entitlement to penalties pursuant to Section 19(k) of the Act. That section of the Act relates to the unreasonable, vexatious, and intentional delay in payment or refusal to pay due benefits. Here, the Arbitrator does not believe the Respondent acted unreasonably or vexatiously or intentionally within the meaning of 19(k). It appears that there is a confluence of issues surrounding light duty and the union CBA that has led to unusual circumstances, such as the Petitioner remaining an employee of Respondent despite having restrictions, barring a decision to have surgery, that appear to prevent him from returning to his job as a firefighter/EMT. The Petitioner certainly absolutely has a choice as to whether he wants to have a recommended surgical procedure or not. At the same time, that voluntary decision has an impact on the employer if such surgery potentially could lead to a full duty release, while the choice not to have surgery results in permanent work restrictions. It also appears to the Arbitrator that the Respondent was trying to get the Petitioner back to work pending the outcome of his pension duty disability hearing, as the Petitioner himself has indicated fear of obtaining new employment while awaiting the decision based on language in the CBA.

The Arbitrator does find that the Petitioner, by the preponderance of the evidence, has shown that he is entitled to penalties pursuant to Section 19(l) of the Act. This section of the Act indicates that where the employer unreasonably delays the payment of medical or TTD benefits, the Arbitrator *shall* allow additional compensation of $30.00 per day for each day the benefits have been withheld or refused, not to exceed $10,000.00. While the Arbitrator doesn't find the delay to be vexatious or intentional, there has not been a sufficient explanation, in the Arbitrator's view, to avoid the 19(l) penalties, especially the maintenance benefits noted. At $30.00 per day, it takes 333 plus days to reach the maximum $10,000.00. The delay in the maintenance benefits to date as of the hearing is longer than 333 days, and therefore the Arbitrator awards Section 19(l) penalties totaling $10,000.00, as well as Section 16 attorney fees in the amount of $2,000.00, or 20% of the 19(l) penalties.

WITH RESPECT TO ISSUE (O), IS PETITIONER ENTITLED TO VOCATIONAL REHABILITATION SERVICES, THE ARBITRATOR FINDS AS FOLLOWS:

The Arbitrator finds this issue to be presented prematurely at this time based on the evidence presented. Ultimately, entitlement to vocational rehabilitation services is governed in Illinois by the factors annunciated by the Supreme Court in *National Tea v. Industrial Comm'n*, 97 Ill. 2d 424, 454 N.E.2d 672 (1983).

In a case like this, the Arbitrator requires some level of expert vocational opinion to determine the appropriateness of vocational rehabilitation. Here, we have a situation where the Petitioner has essentially "gone through the motions" of looking for a job but has not actually contacted any prospective employers. He testified he did research the jobs online for which he created logs but did not actual contact the prospective employers because he was concerned with how a new job might impact his application for a disability pension based on his union CBA. Respondent then obtained a vocational opinion which sought only to determine if Petitioner's job search had been valid, as opposed to whether the Petitioner would be a candidate for vocational rehabilitation. Additionally, per Commission Rules, a vocational rehabilitation plan would need to be prepared.

Additionally, as noted above, the Petitioner has continued to work light duty for Respondent from 2/9/23 through the 6/16/23 hearing date. As such, he remains an employee of Respondent. The outcome of the pension duty disability request is unknown. When and if that employment with Respondent will end is speculative as of the hearing date in this case based on the evidence presented.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	19WC011774
Case Name	Herbert H. Feldt, III v. Gilster-Mary Lee Corporation
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b)
Decision Type	Commission Decision
Commission Decision Number	24IWCC0418
Number of Pages of Decision	10
Decision Issued By	Stephen Mathis, Commissioner

Petitioner Attorney	Nathan Lanter
Respondent Attorney	Pieter Schmidt

DATE FILED: 8/30/2024

/s/Stephen Mathis, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF WILLIAMSON)

☒ Affirm and adopt (no changes)	☐ Injured Workers' Benefit Fund (§4(d))
☐ Affirm with changes	☐ Rate Adjustment Fund (§8(g))
☐ Reverse	☐ Second Injury Fund (§8(e)18)
	☐ PTD/Fatal denied
☐ Modify	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Herbert H. Feldt, III,

Petitioner,

vs. NO. 19WC011774

Gilster-Mary Lee Corporation,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19b having been filed by the Petitioner herein and notice given to all parties, the Commission, after considering the issue of jurisdiction and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed December 27, 2023, is hereby affirmed and adopted.

No bond is required for the removal of this cause to the Circuit Court. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

August 30, 2024

SJM/sj
o-7/24/2024
44

/s/ *Stephen J. Mathis*
Stephen J. Mathis

/s/ *Deborah L. Simpson*
Deborah L. Simpson

/s/ *Raychel A. Wesley*
Raychel A. Wesley

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	19WC011774
Case Name	Herbert H. Feldt, III v. Gilster-Mary Lee Corporation
Consolidated Cases	
Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	8
Decision Issued By	Edward Lee, Arbitrator

Petitioner Attorney	Nathan Lanter
Respondent Attorney	Pieter Schmidt

DATE FILED: 12/27/2023

THE INTEREST RATE FOR THE WEEK OF DECEMBER 27, 2023 5.08%

/s/Edward Lee, Arbitrator

Signature

STATE OF ILLINOIS)
)SS.
COUNTY OF **Williamson**)

- ☐ Injured Workers' Benefit Fund (§4(d))
- ☐ Rate Adjustment Fund (§8(g))
- ☐ Second Injury Fund (§8(e)18)
- ☒ None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

Herbert H. Feldt, III
Employee/Petitioner

v.

Gilster-Mary Lee Corporation
Employer/Respondent

Case # **19** WC **011774**

Consolidated cases: **N/A**

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Edward Lee**, Arbitrator of the Commission, in the city of **Herrin**, on **11/02/23**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below and attaches those findings to this document.

DISPUTED ISSUES

A. ☒ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
B. ☐ Was there an employee-employer relationship?
C. ☐ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
D. ☐ What was the date of the accident?
E. ☐ Was timely notice of the accident given to Respondent?
F. ☐ Is Petitioner's current condition of ill-being causally related to the injury?
G. ☐ What were Petitioner's earnings?
H. ☐ What was Petitioner's age at the time of the accident?
I. ☐ What was Petitioner's marital status at the time of the accident?
J. ☐ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
K. ☐ Is Petitioner entitled to any prospective medical care?
L. ☐ What temporary benefits are in dispute?
☐ TPD ☐ Maintenance ☐ TTD
M. ☐ Should penalties or fees be imposed upon Respondent?
N. ☐ Is Respondent due any credit?
O. ☐ Other _____

FINDINGS

On the date of accident, **06/21/18**, Respondent ***was not*** 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 **N/A** sustain an accident that arose out of and in the course of employment.

Timely notice of this accident **N/A** given to Respondent.

Petitioner's current condition of ill-being **N/A** causally related to the accident.

In the year preceding the injury, Petitioner earned $**00.00**; the average weekly wage was $**00.00**.

On the date of accident, Petitioner was **57** years of age, ***married*** with **0** dependent children.

Petitioner **N/A** received all reasonable and necessary medical services for her cervical condition.

Respondent **N/A** paid all appropriate charges for all reasonable and necessary medical services.
.

Respondent shall be given a credit of $**00.00** for TTD, $**00.00** for TPD, $**00.00** for maintenance, and $**00.00** for other benefits, for a total credit of $**00.00**.

Respondent is entitled to a credit of $under Section 8(j) of the Act.

ORDER

Benefits are denied because Petitioner failed to show that the contract for his employment was made in Illinois. As such, the Illinois Worker's Compensation Commission has no jurisdiction in this matter.

RULES REGARDING APPEALS Unless a party files a *Petition for Review* within 30 days after receipt of this decision, and perfects a review in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

STATEMENT OF INTEREST RATE If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

Edward Lee_____ **DECEMBER 27, 2023**
Signature of Arbitrator

THE ARBITRATOR HEREBY MAKES THE FOLLOWING FINDINGS OF FACT:

Petitioner, a 53-year-old spotter, alleges he sustained an accidental injury that arose out of and in the course of his employment by respondent on June 21, 2018. Respondent disputes that Illinois is the proper jurisdiction for this claim.

On direct examination, Petitioner admitted that his personnel file, which was admitted as Respondent's Exhibit 1, was accurate at placing his employment start date on August 18, 2011. He further testified that the file contained paperwork which he admitted was completed prior to his interview with Respondent. When asked about where he completed this paperwork, Petitioner responded that it was done in Illinois.

Petitioner next testified that he met with Mike Welker, who he understood to be in charge of Respondent's trucking division, for an interview at Respondent's facility in Chester, Illinois. It was Petitioner's testimony that Mr. Welker offered him the job at the end of this interview.

Petitioner admitted that he was required to perform a physical and drug screening prior to his employment. Petitioner testified that both were completed in Chester, Illinois, after the initial interview. Petitioner then testified that he was told to report to McBride, Missouri for his employment.

On cross-examination, Petitioner admitted that the injury which formed the basis of his claim occurred in Missouri.

Petitioner was next asked about his position as a spotter. Petitioner testified that a spotter's duties were distinct from a driver in that spotters stay in one facility, moving trucks around the facility for loading. Petitioner further testified that his set facility was located in McBride, Missouri.

Petitioner next admitted that he went to the McBride facility after the physical and drug screening to meet with the people at that facility. Petitioner admitted to signing a Missouri W4 bearing an address in Perryville, Missouri.

Petitioner was then asked about a prior accident that occurred while working for Respondent in 2014. Petitioner admitted that this prior claim was filed with the Missouri Department of Labor and

Industrial Relations and that it was settled under the applicable Missouri statute.

On re-direct, Petitioner was asked about whether he knew he could have filed in Illinois, Petitioner replied, “I could have, but I didn't know better at the time. I know better now.” Petitioner next testified that it was his understanding that his trip to the McBride facility was after he had been hired and that he did not sign anything at that time.

Petitioner’s next witness was his spouse who testified to the fact that she assisted in the preparation of the pre-employment paperwork in Illinois. Petitioner’s spouse next testified that the initial interview between Petitioner and Mr. Welker occurred in Chester, Illinois, and that, to her knowledge, Petitioner and Mr. Welker only met once.

Respondent called Mike Welker, the traffic manager for Respondent, to testify on the employment process for Petitioner. Mr. Welker testified that while his job duties do involve interviewing, he is not the one to decide on hiring applicants. Mr. Walker testified that his standard practice is to accept the pre-employment paperwork from applicants and conduct an initial interview. If after that initial interview Mr. Welker believes the applicant to be qualified, he asks them to get a physical and drug screening and schedules the applicant for another interview with the person who is responsible for hiring. Mr. Welker testified that the person in charge of Petitioner’s case was Gene Alexander, who worked at Respondent’s McBride, Missouri location.

Mr. Welker next testified on the job duties of a spotter. According to Mr. Welker, spotters are truck drivers that are assigned to one facility and move trailers from dock to dock in order to finish unloading raw materials and loading finished products. Mr. Welker also confirmed that Petitioner’s assigned location was McBride, Missouri.

When asked about telling Petitioner that he was hired at the initial interview, Mr. Welker testified that he would not, and could not, have said that at the time as he required the results of the physical and drug test and “[a]nd he didn’t sign any documents.”

Mr. Welker was then asked about what paperwork Petitioner would need to sign to become an employee at the Missouri facility. Mr. Welker responded that the paperwork consisted of an acknowledgement of probationary period, establishing a DOT file, an acknowledgement of receipt and agreement to follow operational policies, and his tax withholding forms. When asked where and when these were signed, Mr. Welker said on 8/18/11 at McBride, Missouri.

Mr. Welker then testified that Petitioner was not required to have a driving test for his position with Respondent.

On cross examination, Mr. Welker was asked why Gene Alexander was not testifying in this matter. Mr. Welker responded that Mr. Alexander had retired from the company and that it was unclear if Mr. Alexander was still alive.

Mr. Welker was then asked where the Petitioner had his physical and drug screening to which he responded that it was done at Chester Hospital in Chester, Illinois. Next, Mr. Welker was asked about why Petitioner's employment file had a record of a driving test if he was not required to have one. In response, Mr. Welker testified that he placed the record into the file after Petitioner was hired in case an auditor looked at the files.

Mr. Welker then testified that he was not at the 8/18/11 meeting in McBride, Missouri, between Mr. Alexander and Petitioner. He was then asked how he knew that the meeting occurred. In response, Mr. Welker claimed that company policy required Mr. Alexander to provide Petitioner with the documents to sign, witness the signing, and return them to the company.

On re-direct, Petitioner denied meeting with Mr. Alexander in Missouri and further denied ever meeting Mr. Alexander. The Petitioner further denied ever being presented with a copy of the employee handbook. Finally, Petitioner re-asserted that he signed all documents in Chester.

On re-direct, Mr. Welker confirmed that the signed documents were signed by both Mr. Alexander and Petitioner in Missouri. Mr. Welker further testified that in his 33 years of employment with Respondent, he has never hired a person in his Chester office.

On re-cross, Mr. Welker was again asked to verify that he was not present at the meeting between Mr. Alexander and Petitioner, which he confirmed. Mr. Welker further answered that his testimony was based on the standard procedures of the company. Finally, Mr. Welker again testified that he never hired someone in his Chester office.

Arbitrator admitted Respondents Exhibits 1 and 2. Arbitrator then asked Petitioner if he had Exhibits to enter for consideration in this proceeding, but none were presented. Arbitrator notes that Respondent's Exhibits include an acknowledgement of receipt of the employee handbook signed by Petitioner.

A. Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?

Under the Illinois Workers' Compensation Act, Illinois has jurisdiction if (1) the contract for hire was made in Illinois, (2) the accident occurred in Illinois, or (3) the claimant's employment was principally located in Illinois. 820 ILCS 305/1(b)(2) (2023). Arbitrator notes that the parties agree that Petitioner's accident occurred in Missouri and that his employment was principally located in McBride, Missouri. Therefore, jurisdiction is only proper in Illinois if Petitioner's employment contract was made in Illinois.

In Illinois, it is a long-established rule that a contract, including contracts for employment, is made in the place where the last act necessary to give validity to the contract is done. Youngstown Sheet & Tube Co. v. Indus. Comm'n, 79 Ill. 2d 425, 433, 404 N.E.2d 253, 257 (1980). In this case, Mike Welker, Respondent's traffic manager, testified as to the hiring process of Respondent. Potential employees are first interviewed, then they must pass a physical examination and drug screening, finally, they must report to the facility where the position is located for another interview and, if hired, sign the required documentation, including an acknowledgement of receipt of the employee handbook. As such, the last act in the process, if followed in this case, would occur in Missouri, when Petitioner reported to McBride, Missouri, for his second interview.

Considering the evidence and testimony of Petitioner and Mr. Welker, the Arbitrator finds that this procedure was followed in this case. Petitioner admitted to meeting with Mr. Welker for an interview about 8/11/11. He further admitted that, after that interview, he was told to report for a physical examination and drug screening. He also admitted to being told to report to Respondent's facility in McBride, Missouri, which he further admitted to doing "a few days later." Petitioner denied that he met with Gene Alexander in McBride, denied receiving an employee handbook, and denied that he signed anything in Missouri. However, Petitioner's employment paperwork, including his W-4, clearly listed the address for Respondent's location in Perryville, Missouri, and contained a signed acknowledgement that Petitioner received the employee handbook. Additionally, Petitioner's prior 2014 Missouri Claim for Compensation shows that Petitioner recognized that Missouri had proper jurisdiction over his compensation claims from his employment with Respondent.

It is the Arbitrator's conclusion that Mr. Welker's testimony is the more credible evidence, particularly in light of the supporting documentation signed on 8/18/11 in McBride, Missouri. The Illinois Worker's Compensation Commission does not have jurisdiction to award benefits in this case.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	22WC032202
Case Name	Justin Dobyns v. Lakeshore Beverage
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b) Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	24IWCC0419
Number of Pages of Decision	19
Decision Issued By	Kathryn Doerries, Commissioner

Petitioner Attorney	Mark Wilson
Respondent Attorney	Ilir Imeri

DATE FILED: 8/30/2024

/s/Kathryn Doerries, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF)
KANKAKEE

☐ Affirm and adopt (no changes)	☐ Injured Workers' Benefit Fund (§4(d))
☒ Affirm with changes	☐ Rate Adjustment Fund (§8(g))
☐ Reverse Choose reason	☐ Second Injury Fund (§8(e)18)
	☐ PTD/Fatal denied
☐ Modify Choose direction	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

JUSTIN DOBYNS,

Petitioner,

vs. NO: 22 WC 032202

LAKESHORE BEVERAGE,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of accident, Section 11 intoxication, causation, TTD, medical, and prospective medical, and being advised of the facts and law, modifies the Decision of the Arbitrator as stated below and otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof. The Commission further remands this case to the Arbitrator for further proceedings for a determination of a further amount of temporary total compensation or of compensation for permanent disability, if any, pursuant to *Thomas v. Industrial Comm'n*, 78 Ill.2d 327, 399 N.E.2d 1322 (1980).

The Commission affirms and adopts the Arbitrator's Decision in its entirety with the following modifications for the purpose of correcting certain scrivener's errors and providing additional analysis regarding the issue of intoxication under Section 11 of the Act.

The Commission corrects a scrivener's error in the Findings of Fact section, page 2, fourth paragraph, line four, and strikes the year "2023" and replaces it with "2022."

The Commission corrects a scrivener's error in the Conclusions of Law section, page 10, first paragraph, second sentence, and strikes "Petitioner" and replaces it with "Respondent."

The Commission modifies the Arbitrator's Conclusions of Law section regarding Issues F (causation) and K (prospective medical) by striking the last sentence on page 9 finding that "For the reasons stated above, Respondent shall authorize and pay for this and such other reasonable medical treatment pursuant to the statutory fee schedule."

The Commission modifies the Arbitrator's Findings of Fact and Conclusions of Law to address the issue of Petitioner's admitted use of marijuana. On July 18, 2022, when Petitioner first sought treatment at OSF OneCall Urgent Care, the clinic administered a drug test which was positive for the presence of marijuana in the Petitioner's urine sample. (Px #4) When Petitioner later presented for an initial orthopedic evaluation with Dr. Williams on August 5, 2022, the documented social history indicated " Recreational Drug use – Marijuana, daily." (Px #3) At trial, Petitioner testified on direct examination that he smoked marijuana recreationally on a daily basis after work. (T. 29) Petitioner testified that smoking marijuana was something he did to wind down after work and get ready for bed. (T. 29-30) Petitioner further testified he smoked the night of June 23, 2022, at approximately 8:30 p.m. (T. 29) Petitioner testified he was not impaired; however, at the time of the lifting incident at work on June 24, 2022. (T.30) Petitioner testified his injury occurred around 2:30 p.m., or about 18 hours after he smoked marijuana cigarettes. (T. 12) On cross-examination, Petitioner was further questioned regarding his marijuana habit and testified he used both edibles and marijuana cigarettes and typically smoked anywhere from two to three "blunts" playing card games with his cousin in the evening. (T. 35) Petitioner testified it would be fair to say he probably smoked two to three blunts on the evening of June 23, 2022. (T. 35-36)

Pursuant to Section 11 of the Act, Respondent contends that Petitioner's positive drug test within a few weeks of the accident and his admitted use of marijuana the night before his accident creates a rebuttable presumption that "Petitioner may have been impaired and under the influence of marijuana at the time of the injury." Respondent further contends that Petitioner failed to rebut the presumption and urges the Commission to find that Petitioner's injury did not arise out of and in the course his employment. For the reasons discussed below, we find that the evidence presented did not meet the threshold needed to create the rebuttable presumption under Section 11.

Section 11 of the Act provides in pertinent part:

> No compensation shall be payable if (i) the employee's intoxication is the proximate cause of the employee's accidental injury or (ii) at the time the employee incurred the accidental injury, the employee was so intoxicated that the intoxication constituted a departure from the employment. Admissible evidence of the concentration of (1) alcohol, (2) cannabis as defined in the Cannabis Control Act, * * * shall be considered in any hearing under this Act to determine whether the employee was intoxicated at the time the employee incurred the accidental injuries.
>
> ***If at the time of the accidental injuries,*** there was 0.08% or more by weight of alcohol in the employee's blood, breath, or urine ***or if there is any evidence of***

> ***impairment due to the unlawful or unauthorized use of*** (1) cannabis as defined in the Cannabis Control Act * * * then there shall be a rebuttable presumption that the employee was intoxicated and that the intoxication was the proximate cause of the employee's injury. 820 ILCS 305/11. (Emphasis added)

When the rebuttable presumption is triggered, the burden then shifts to the claimant to rebut the presumption. As the Commission noted in *Pozzie vs. Exterior Cleaning Services*, 2020 Ill. Wrk. Comp. LEXIS 1106, 20 IWCC 0739, where a drug test revealed the use of marijuana but not the recency of its use, the statutory language provides that the rebuttable presumption is triggered when "any" evidence of impairment is presented, and in that case we found the expert testimony of Dr. Conibear was sufficient to qualify as evidence of impairment to trigger the rebuttable presumption. Section 11 further provides that the claimant may overcome the rebuttable presumption by the preponderance of the admissible evidence that the intoxication was not the sole proximate cause of the accidental injuries. 820 ILCS 305/11. Thus, compensation will not be negated under Section 11's intoxication provision if one or more additional factors are found to have causally contributed to the work injury. *Pozzie vs. Exterior Cleaning Services*, 2020 Ill. Wrk. Comp. LEXIS 1106, 20 IWCC 0739, citing the Supreme Court's decision in *Paganelis vs. Industrial Comm'n*, 132 Ill. 2d 468, 481, 548 M.E.2d 1033 (1989).

The statutory language in Section 11 has three components relevant to the question of when the rebuttable presumption is triggered in situations where marijuana is involved. First, there must be "any evidence of impairment." Second, the impairment must exist at the time of the accident. Third, the impairment must be "due to the unlawful or unauthorized use" of the cannabis. The primary goal of statutory interpretation is to ascertain and give effect to the intent of the legislature. *King vs. Industrial Commission*,189 Ill. 2d 167, 174, 724 N.E.2d 896 (2000). The best indication of legislative intent is the statutory language, given its plain and ordinary meaning. *Id*. at 171. We are required to construe all the words in a statute so that each word, clause, and sentence, if possible, is given a reasonable meaning and not rendered superfluous. *Sylvester vs. Industrial Commission*, 197 Ill. 2d 225, 232, 756 N.E.2d 822 (2001). "Where the language is clear and unambiguous, a court may not depart from the plain language by reading into the statute exceptions, limitations, or conditions that the legislature did not express." *Perez vs. Ill. Workers' Comp. Comm'n*, 2018 IL App (2d) 170086WC, P18. The Commission cannot engraft new or additional terms into a statute (*King vs. Industrial Commission*,189 Ill. 2d 167, 174, 724 N.E.2d 896 (2000)), and the Commission must avoid any interpretation which would render any portion of the statute meaningless or void. *Sylvester vs. Industrial Commission*, 197 Ill. 2d 225, 232, 756 N.E.2d 822 (2001). Applying these rules of statutory construction, the Commission finds that if the legislature had intended to create a rebuttable presumption based solely on *consumption or use* of cannabis, a controlled substance, or alcohol, then the legislature would not have included the phrase "evidence of impairment." To require nothing more than evidence of use or consumption to trigger the rebuttable presumption would necessitate reading out the requirement that there be any evidence of impairment at the time of the accident.

The drug test was administered on July 18, 2022, twenty-four days after the accident on June 24, 2022. Respondent did not present any expert toxicology opinion or medical opinion evidence in this matter. As such, the positive drug test showing the presence of marijuana in Petitioner's urine sample collected on July 18, 2022 cannot be relied upon to draw any reasonable inferences or conclusions relevant to the question of impairment twenty-four days earlier at the time of the accidental injury.

Respondent further relies on Petitioner's testimony admitting to daily recreational use of the marijuana, and more specifically, Petitioner's testimony admitting that he probably smoked two or three "blunts" the night before at 8:30 p.m. As mentioned, Respondent did not present any expert toxicology opinion or medical opinion addressing the question of impairment. As such, Respondent failed to present any expert testimony addressing the amount of marijuana that would have likely been absorbed by the body with three marijuana cigarettes. Respondent also failed to present any expert testimony addressing the amount of marijuana that would have likely remained in the body after 18 hours had elapsed. There was also no expert testimony as to whether Petitioner would have or could have been impaired 18 hours after smoking three marijuana cigarettes. There was no evidence that Petitioner used the drug during the morning or day of the injury.

Additionally, there was no testimony by any coworkers to show Petitioner exhibited signs for impairment or was behaving strangely at the time of the accident. Petitioner's accident was not the type of accident that would ordinarily be associated with intoxication. Petitioner did not place himself in a zone of danger or expose himself to a dangerous instrumentality due to impaired judgment. (Compare *Botkin vs. Walter D. Laud Construction*, 2023 Ill. Wrk. Comp. LEXIS 347, 23 IWCC 0237, where claimant's spouse sustained fatal injuries at a construction site while walking behind a moving dump truck with its lights and sirens activated.) Petitioner's shoulder injury resulted from lifting cases of beer which he was performing in his normal and usual manner. The record showed evidence of drug *use* the night before, not impairment the following day. The Commission therefore finds that Respondent failed to present any evidence of impairment at the time of the accidental injury. Accordingly, we find the rebuttable presumption was not triggered.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent shall pay to the Petitioner the sum of $446.97 per week for a period of 19-5/7 weeks, that being the period of temporary total incapacity for work under §8(b), and that as provided in §19(b) of the Act, this award in no instance shall be a bar to a further hearing and determination of a further amount of temporary total compensation or of compensation for permanent disability, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay Petitioner the reasonable and necessary medical services set forth in PX #1 as provided in Sections 8(a) and 8.2 of the Act. Respondent shall receive a credit for amounts paid.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall authorize and pay, pursuant to the fee schedule, the treatment recommended by Dr. Williams for the right shoulder, including but not limited to physical therapy.

IT IS FURTHER ORDERED BY THE COMMISSION that this case be remanded to the Arbitrator for further proceedings consistent with this Decision, but only after the latter of expiration of the time for filing a written request for Summons to the Circuit Court has expired without the filing of such a written request, or after the time of completion of any judicial proceedings, if such a written request has been filed.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner interest under §19(n) of the Act, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall have credit for all amounts paid, if any, to or on behalf of Petitioner on account of said accidental injury.

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $10,427.46. 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.

August 30, 2024

KAD/swj
O 7/9/24
42

/s/*Kathryn A. Doerries*
Kathryn A. Doerries

/s/*Maria E. Portela*
Maria E. Portela

/s/*Amylee H. Simonovich*
Amylee H. Simonovich

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	22WC032202
Case Name	Justin Dobyns v. Lakeshore Beverage
Consolidated Cases	
Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	13
Decision Issued By	Roma Dalal, Arbitrator

Petitioner Attorney	Mark Wilson
Respondent Attorney	Ilir Imeri

DATE FILED: 3/8/2023

THE INTEREST RATE FOR THE WEEK OF MARCH 7, 2023 4.97%

/s/ Roma Dalal, Arbitrator

Signature

STATE OF ILLINOIS)
)SS.
COUNTY OF **Kankakee**)

☐ Injured Workers' Benefit Fund (§4(d))
☐ Rate Adjustment Fund (§8(g))
☐ Second Injury Fund (§8(e)18)
☒ None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

Justin Dobyns
Employee/Petitioner

v.

Lakeshore Beverage
Employer/Respondent

Case # **22** WC **032202**

Consolidated cases: _____

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Roma Dalal**, Arbitrator of the Commission, in the city of **Kankakee**, on **1/31/23**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below and attaches those findings to this document.

DISPUTED ISSUES

A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
B. ☐ Was there an employee-employer relationship?
C. ☒ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
D. ☐ What was the date of the accident?
E. ☐ Was timely notice of the accident given to Respondent?
F. ☒ Is Petitioner's current condition of ill-being causally related to the injury?
G. ☐ What were Petitioner's earnings?
H. ☐ What was Petitioner's age at the time of the accident?
I. ☐ What was Petitioner's marital status at the time of the accident?
J. ☒ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
K. ☒ Is Petitioner entitled to any prospective medical care?
L. ☒ What temporary benefits are in dispute?
☐ TPD ☐ Maintenance ☒ TTD
M. ☐ Should penalties or fees be imposed upon Respondent?
N. ☐ Is Respondent due any credit?
O. ☐ Other

FINDINGS

On the date of accident, **6/24/22**, Respondent ***was*** operating under and subject to the provisions of the Act.

On this date, an employee-employer relationship ***did*** exist between Petitioner and Respondent.

On this date, Petitioner ***did*** sustain an accident that arose out of and in the course of employment.

Timely notice of this accident ***was*** given to Respondent.

Petitioner's current condition of ill-being ***is*** causally related to the accident.

In the year preceding the injury, Petitioner earned $**38,863.40**; the average weekly wage was $**670.45**.

On the date of accident, Petitioner was **34** years of age, ***single*** with **1** dependent children.

Petitioner ***has not*** received all reasonable and necessary medical services.

Respondent ***has not*** paid all reasonable and necessary charges for all reasonable and necessary medical services.

Respondent shall be given a credit of $**0** for TTD, $**165.60** for TPD, $**0** for maintenance, and $**0** for other benefits, for a total credit of $**165.60**.

Respondent is entitled to a credit of $**0** under Section 8(j) of the Act.

ORDER

- Respondent shall pay Petitioner temporary disability benefits of $446.97/week for 19 5/7 weeks, commencing August 26, 2022 through January 11, 2023 as provided in Section 8(b) of the Act. Respondent shall receive credit for amounts paid.

- Respondent shall pay reasonable and necessary medical services, pursuant to the medical fee schedule regarding Petitioner's right shoulder condition as provided in Sections 8(a) and 8.2 of the Act. Respondent shall receive credit for amounts paid.

- Pursuant to Section 8(a) of the Act, the Respondent shall authorize and pay for, pursuant to the fee schedule, the treatment recommended by Dr. Williams for the right shoulder, including but not limited to physical therapy.

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
ICArbDec19(b)

MARCH 8, 2023

STATE OF ILLINOIS)
) SS
COUNTY OF KANKAKEE)

ILLINOIS WORKERS' COMPENSATION COMMISSION

Justin Dobyns,	)	
	)	
Petitioner,	)	
	)	
v.	)	
	)	Case No. 22 WC 032202
Lakeshore Beverage,	)	
	)	
	)	
Respondent,	)	

FINDINGS OF FACT

This matter proceeded to hearing on January 31, 2023 in Kankakee, Illinois before Arbitrator Roma Dalal on Petitioner's 19(b) Hearing. Issues in dispute include accident, causation, unpaid medical, TTD, and prospective medical. (Arb. Ex.1, T.4).

Justin Dobyns, (hereinafter referred to as the "Petitioner") was 34 years old, single and had one dependent at the time of hearing. He testified he worked at the Lakeshore Beverage (hereinafter referred to as the "Respondent") since July 18, 2018 a bulk route merchandiser. (T.9). Petitioner testified his duties as a bulk route merchandiser primarily involved breaking down the beverage deliveries, filling and rotating the back stock, filling the beer coolers, and reporting any beverage breakages. (T.10).

Petitioner testified on June 24, 2022 he was breaking down a Walmart delivery. He was on the second to last pallet and had two Bush Light pallets left. He was working in the beer cooler and removed the shrink wrap off of one of the pallets. He went to pull two cases off the top, performing like an upright row and felt a sharp pain in his right shoulder similar to hitting his funny bone. (T.10). The motion caused him to drop the case, losing a bit of feeling in his hand. (T.10-11). Petitioner continued picking up the beer off the ground and completed the rest of his day. (T.11). Petitioner described the pallets were about chest height. He noted he would have to reach up top, with a case of beer in each hand. Petitioner noted his hands were extended from the chest and went above his shoulder. (T.11-12). Petitioner testified the weight of the cases was 25-27 pounds. (T.12).

Petitioner testified he continued to work after his accident. (T.12). He did not notify his supervisor because he did not think it was serious. (T.14). On Monday, the pain was still there but he continued to work through it. (T.16). Gradually, his shoulder continued to get worse, and he eventually notified his supervisor, Jonathan Pinkham. (T.16). Petitioner testified he notified him on July 11, 2022. (T.17). Petitioner indicated Mr. Pinkham reached out to him to fill out paperwork for HR for a pay raise, and he advised him he was experiencing shoulder pain. (T.17). Petitioner testified he told him he was

experiencing shoulder pain that was getting worse and worse. (T.18). Petitioner assumed it was from repetitive lifting. (T.18).

On July 18, 2022 Petitioner filled out a formal incident report (T.18). Petitioner testified that on the accident report, he stated he was working a Friday delivery, feeling a sharp pain in his shoulder. After his shift he continued to work until the pain became unbearable. He testified he indicated the accident date was June 24, 2022. (T.20, PX7, RX1). The Employee's Report of Injury indicated a date of accident of June 24, 2022. The Report stated: "while working the Friday delivery, I started feeling a sharp pain in my right shoulder. After my shift, I took it easy and woke up with grinding and popping in my right shoulder. I continued to work the last three weeks until the pain under load became unbearable." (PX7, RX1). The document indicated it was reported on July 11, 2022 and signed by the employee on July 18, 2022. (RX1). The supervisor accident report indicating Petitioner was hurt from repeatedly lifting cases of beers. The date of accident is noted as July 18, 2022. (RX1, PX2). Petitioner stated he filled out the paperwork at the OSF Urgent care parking lot. (T.21). Petitioner further indicated he did not want to report the injury because he felt like he was complaining. (T.61). Petitioner indicated the pain became too excruciating to keep working so he had to report it on July 18, 2022. (T.61).

Petitioner testified he never received medical treatment for his right shoulder prior to June 24, 2022. (T.12). On July 18, 2022 Petitioner presented to OSF On Call Urgent Care. The record indicated his symptoms and exam were most consistent with acute pain of the right shoulder, likely overuse injury related to work. (PX2, p.3). Petitioner advised he had right shoulder pain for the past three weeks, due to heaving lifting at work. (PX2, p.3). Petitioner noted the pain started approximately three weeks ago and did not recall any inciting injury to trauma. Petitioner delivered beverages to stores which required pushing, pulling, and overhead lifting of heavy cases of beverages. Petitioner was diagnosed with shoulder pain. *Id*. at 4-5. Petitioner testified he did not tell OSF about an inciting event because he was just performing his typical duties. He assumed an injury or trauma was something like a slip, trip or fall. (T.22).

On August 5, 2022, Petitioner presented to Dr. Williams for his right shoulder. Petitioner complained of right shoulder pain for the past 1.5 months Petitioner noted he was at work grabbing two cases of beer, one case in each hand and felt sharp pain in the right shoulder. Petitioner noted he had popping and grinding for a month and a half ever since throwing several cases at work. He now had trouble with overhead activities. Petitioner had positive labral tear signs in clinic and needed an MR arthrogram. Petitioner was diagnosed with acute pain of the right shoulder and superior glenoid labrum lesion of the right shoulder. The Doctor noted Petitioner likely had some significant labral pathology with posterior superior tearing. Petitioner was to undergo the MR arthrogram. (PX3, p.13-14)

On August 23, 2022 Petitioner underwent a right shoulder MRI that revealed a SLAP lesion along the base of the super/posterosuperior labrum with apparent near-circumferential extension. (PX3, p.22).

Petitioner followed up on August 26, 2022 with Dr. Williams. Petitioner presented after having an MRI of the right shoulder. The Doctor noted he had a SLAP lesion on the right side. Petitioner was recommended six weeks of therapy and an injection. If that did not help him, they would have to move forward with some sort of operative intervention. Dr. Williams administered an injection that day. Petitioner was to follow up in four weeks. (PX3, p.16-17).

On September 29, 2022, Petitioner presented to Dr. Bryan Neal for an independent medical examination ("IME"). (RX6). Dr. Neal reviewed the medical records and examined Petitioner. Petitioner advised him that at the end of June he really started feeling pain in his shoulder. (RX6, p.5). Petitioner advised Dr. Neal he was working on June 24, 2022, breaking down a pallet of beer. He was working with the top layer of the pallet overhead and reaching up with both hands and felt a grinding causing him to drop a case of beer. *Id*. at 6. Dr. Neal opined Petitioner sustained a right shoulder labral tear confirmed by MRI, but it was not work-related. *Id.* at 13. He opined the medical records did not support an acute work injury. *Id.* at 14.

Petitioner returned to Dr. Williams on October 21, 2022. Petitioner underwent an injection which did not provide a great deal of relief. The Doctor noted Petitioner unfortunately was unable to do physical therapy. He still wanted him to undergo the same. The Doctor did note an acute injury at the time of the start. He stated in the anterior aspect of the shoulder it caused problems on a daily basis. Petitioner was recommended therapy again and to return in four weeks. (PX3, p.19-20). On November 18, 2022 Petitioner returned to Dr. Williams. Petitioner was still having shoulder pain. *Id.* at 10. On December 21, 2022 Petitioner followed up with Dr. Williams. Petitioner reported pain of a 6 out of 10. Petitioner continued to have a positive posterior and superior labral signs. Petitioner continued to be on light duty at work and was recommended therapy. It was noted an intraarticular injection was tried but would not help the pain long-term. Petitioner was to return in four weeks. (PX3, p.7). Petitioner was last seen with Dr. Williams on January 18, 2023. Petitioner continued to complain of right shoulder pain. He had a confirmed SLAP lesion on his MRI. He was still waiting for therapy to move forward but may be in line for a biceps tenodesis. Petitioner was recommended therapy and was to follow up. (PX3, p.2-3).

Petitioner testified consistently with his medical records. (T.23-25). Petitioner testified he did not receive any workers' compensation benefits from August 26, 2022 through January 11, 2023. (T.26). He advised he obtained a parttime job as a bartender on January 12, 2023. (T.27). Petitioner testified the physical demands were not much. He was required to lift bottle of beers or pour liquor bottles, noting he did not lift anything over 10 pounds. (T.27). Petitioner testified this did not violate the restrictions by Dr. Williams. (T.27). Petitioner testified he worked this job approximately 20 hours per week. (T.27).

Currently, Petitioner continues to feel a dull ache. When he exerts it, moves it, or uses his arm for any physical activity the pain levels increase. He noted sleeping and laying down on it make it extremely painful. (T.28). Petitioner further testified he would undergo the physical therapy and possibly surgery. (T.28). Petitioner also testified he tested positive for marijuana on July 18, 2023. He noted he smokes recreationally on a daily basis after work. (T.29, RX4). He advised he was not impaired during the June 24, 2022 lifting accident.

On Cross-Examination, Petitioner confirmed he did not report the injury on June 24, 2022 until July 11, 2022. (T.31). He testified he continued to work his regular shift full duty after June 24, 2022. (T.31). Petitioner confirmed on July 11 he told Mr. Pinkham he was experiencing right shoulder pain but did not advise him it was work related until July 18, 2022. (T.32-33). Petitioner testified the medical professional advised him his condition was due to repetitive trauma. (T.34). Petitioner thought his injury was because of repetitive trauma but Dr. Neal, the IME, and Dr. Williams also explained it was not repetitive. (T.37).

Petitioner testified when he extends his arm to reach for things, his pain increases. (T.38). He testified he went mushroom picking, but utilized his left hand, so did not hurt his right hand. (T.38). He further testified on October 9, 2022; he removed a motor from one Jeep Liberty to the another but did it with the assistance of a hydraulic lift. (T.38). He clarified he was able to remove the entire engine because he utilized a 3000-pound hydraulic life. (T.39). Petitioner clarified he had to extend his shoulder while doing this. He noted it usually took him a weekend to complete the project, however this project took him approximately a month of taking breaks in between pain. (T.39). This was confirmed by Petitioner's Facebook post. (RX11). In regards to his bartending job, Petitioner testified he works 6 to 7 hours. He has discomfort but is able to do the job for the most part. (T.43). Lastly, he testified he does not go to the gym. (T.44).

Respondent subsequently called Jonathan Pinkham who was employed as a sales manager at Lakeshore Beverage and acted as Petitioner's supervisor. (T.46). Mr. Pinkham testified Petitioner reported pain to him on July 11 and a work accident on July 18. (T.46). On July 11, Petitioner reported his shoulder was sore but did not describe a work incident. (T.47). He then testified Petitioner called him on July 18, 2022 and indicated he heard a pop at one of the stops. Mr. Pinkham testified he dropped what he was doing and got him drug tested and filled out an accident report. (T.48). Mr. Pinkham noted Petitioner filled out the accident report. (T.48). After July 18, 2022, Petitioner worked light duty. (T.49). Mr. Pinkham testified he was unaware if the Respondent could continue to accommodate Petitioner's light duty restrictions. (T.49).

On Cross-Examination, Mr. Pinkham testified Petitioner was considered a good employee and was getting a pay raise. (T.51). Mr. Pinkham further noted that on July 18, he did mention a pop in his shoulder. (T.51). He noted the incident report Petitioner filled out stated a date of accident of June 24, 2022. (T.54).

Dr. Williams's Deposition

The parties proceeded with Dr. Robert Williams's deposition on December 6, 2022. (PX4). Dr. Williams is an orthopedic surgeon for Morris Hospital Orthopedics who specializes in the upper extremity, particularly the shoulder. *Id*. at 4-5. The Doctor went over his medical care with Petitioner noting Petitioner indicated he sustained a work injury when he was moving or throwing cases of beer. He felt a pop and then noticed grinding and popping in the shoulder. *Id.* at 6-7. The Doctor went over his examination and diagnosed him with a SLAP lesion, which is a superior labral anterior posterior tear which was confirmed by MRI. *Id.* at 8-10. The Doctor testified consistently with his records eventually recommending physical therapy. *Id.* at 8-13. Dr. Williams noted this was an acute injury that occurred one and half months prior to seeing him in August. There was no specific cutoff for acute versus chronic pain. Petitioner also did not have any issues prior to the incident in question. *Id.* at 13. Dr. Williams opined based on the information given by Petitioner and clinical examination there is likely a causal relationship within a reasonable degree of medical certainty. *Id.* at 15.

He opined lifting a case of beer weighing approximately 27 pounds in an upright row motion more likely than not could definitely cause Petitioner's right shoulder condition. (PX4, p.16-17). Based on the facts presented to him, he believed the work accident was from a specific injury on June 24, 2022 based on Petitioner's account. *Id.* at 22, 32. The Doctor noted Petitioner sustained an injury, and the repetitive

lifting afterwards would cause increased pain. (PX4, p.24). Dr. Williams testified it would be appropriate for Petitioner to undergo physical therapy before determining whether surgery is approximately. *Id.* at 26.

On Cross Examination, Dr. Williams testified he found the injury to be acute. (PX4, p.28). Dr. Williams stated he was unaware of the type of treatment Petitioner had received before being seen for the first time on August 5, 2022. (PX4, p.28-30). Dr. Williams noted Petitioner told him he was carrying cases of beer and felt sharp pain in the shoulder. He later felt grinding and popping in the shoulder. *Id.* at 30. The Doctor testified the injury stemmed from the initial date of complaint. *Id.* at 32.

Dr. Williams indicated the OSF record of Petitioner not recalling an inciting injury was inconsistent with his record. (PX4, p.33). He noted if the time frame still lined up and he started having pain within six months of seeing the doctor, it would be called an injury, despite the fact he didn't necessarily have a trauma, like falling the stairs. The beer case incident would still be an acute event. *Id.*at 34. Dr. Williams testified an upright row motion as well as rotational and overhead throwing are mechanisms of injury that would cause a SLAP tear acutely. *Id.*at 36. Dr. Williams further testified whether an activity was labeled as repetitive or a one-time event, he would deem it causally related if Petitioner had no antecedent shoulder pain and then had shoulder pain after doing the activity. *Id.* at 43.

Dr. Neal's Deposition

The parties proceeded with Dr. Bryan Neal's deposition on December 9, 2022. (RX7). Dr. Neal testified consistently with his Section 12 report. *Id.* at 7-15. Dr. Neal testified based on the MRI, Petitioner was suffering from a right shoulder SLAP tear with near circumferential abnormality. *Id.* at 15. Dr. Neal opined putting or taking apart cans of beer was not sufficient to cause a near circumferential labral abnormality. *Id.* at 16. Dr. Neal opined he did not think Petitioner had a specific injury to his shoulder, whether it was an acute or overuse injury. He believed his labrum abnormality developed over time, not due to an injury. *Id.* at 18.

Dr. Neal concluded Petitioner had a torn labrum. (RX7, p.20). It was his opinion that he did not injure his shoulder from any work activity on June 24, 2022 or on July 18, 2022. He based his opinion on being a board-certified orthopedic surgeon for 26 years. *Id*. 20-21. He also based it on the fact the medical records did not support an acute work injury. *Id*. at 21.

Dr. Neal did indicate the specific inciting event that Petitioner described of moving could cause a tear to the labrum but would not expect it to be a circumferential tear. (RX7, p.24). Dr. Neal noted that someone with that tear might be able to work. *Id.* at 25-26. Dr. Neal noted Petitioner did not need any additional treatment or work restrictions for any work injury. Irrespective of causation, he could work but would have shoulder symptoms. *Id.* at 26-27.

On Cross-Examination, Dr. Neal indicated he did not have any preexisting records in regards to Petitioner's right shoulder. (RX7, p.49). Dr. Neal also diagnosed Petitioner with a labral tear, indicating his subjective complaints and objective findings were highly consistent with this diagnosis. *Id*. 49-50. Dr. Neal continued to opine the labral tear was intrinsic to his shoulder. *Id*. at 53. Dr. Neal further noted Petitioner is a surgical candidate. *Id*. at 57. Lastly the Doctor stated it was possible that lifting as discussed could make a preexisting asymptomatic condition symptomatic. It was also possible to have sustained a labral tear from a onetime lift. *Id*. at 60

CONCLUSIONS OF LAW

The Arbitrator adopts the above Findings of Fact in support of the Conclusions of Law set forth below.

Decisions of an arbitrator shall be based exclusively on the evidence in the record of the proceeding and material that has been officially noticed. 820 ILCS 305/1.1(e). Credibility is the quality of a witness which renders his evidence worthy of belief. The Arbitrator, whose province it is to evaluate witness credibility, evaluates the demeanor of the witness and any external inconsistencies with his/her testimony. Where a claimant's testimony is inconsistent with his/her actual behavior and conduct, the Commission has held that an award cannot stand. *McDonald v. Industrial Commission,* 39 Ill. 2d 396 (1968); *Swift v. Industrial Commission,* 52 Ill. 2d 490 (1972).

It is the function of the Commission to judge the credibility of the witnesses and to resolve conflicts in the medical evidence and assign weight to witness testimony. *O'Dette v. Industrial Commission,* 79 Ill.2d 249, 253, 403 N.E.2d 221, 223 (1980); *Hosteny v. Workers' Compensation Commission*, 397 Ill. App. 3d 665, 674 (2009). Internal inconsistencies in a claimant's testimony, as well as conflicts between the claimant's testimony and medical records, may be taken to indicate unreliability. *Gilbert v. Martin & Bayley/Hucks,* 08 ILWC 004187 (2010).

In the case at hand, the Arbitrator observed Petitioner during the hearing and finds his testimony to be persuasive. The Arbitrator compared Petitioner's testimony with the totality of the evidence submitted and finds the witness reliable. While the Arbitrator did note some inconsistencies, the Arbitrator recognizes that there was no evidence to contradict his testimony.

With regard to Issue "C", whether an accident occurred that arose out of and in the course of Petitioner's employment, the Arbitrator finds as follows:

For accidental injuries to be compensable under the Workers' Compensation Act, a claimant must show such injuries arose out of and in the course of his or her employment. *Navistar Intern. Transp. Corp. v. Industrial Com'n,* 315 Ill.App.3d 1197 (2000). "In the course of employment" refers to the time, place and circumstances surrounding the injury. *Sisbro, Inc. v. Indus. Comm'n*, 207 Ill. 2d 193, 203 (2003). It is not enough, however, to simply show that an injury occurred during the work hours or at the place of employment. The injury must also "arise out of" the employment. *Id.* The "arising out of" component is primarily concerned with causal connection. To satisfy this requirement it must be shown that the injury had its origin in some risk connected with, or incidental to, the employment so as to create a causal connection between the employment and the accidental injury. *Id.*

After a careful review of the record, including Petitioner's testimony and the medical evidence available in this case, the Arbitrator finds Petitioner did sustain an "accident" as defined by the Act. Petitioner's description that he was unwrapping a pallet and lifting two beer cases is consistent throughout the evidence both testimonial and medical.

Petitioner testified on June 24, 2022 he was breaking down a beer pallet, removing the shrink wrap off the pallets. As he pulled the two cases off the top, he performed an upright row and felt a sharp pain in his right shoulder. (T.10). The Arbitrator does not dispute Petitioner sustained an accident. Petitioner

tried to continue working until the pain became unbearable. Petitioner reported the injury. The incident report corroborates the June 24, 2022 accident date. (PX7).

Respondent's witness, John Pinkham, testified that Petitioner was a good employee. While Petitioner officially reported the injury on July 18, he did advise Mr. Pinkham his shoulder was in pain on July 11. While there is some discrepancy of Petitioner believing this was a repetitive trauma injury, the Arbitrator finds that was because OSF initially advised him of the same. (T.34). The Arbitrator notes Petitioner is not a medical professional. In fact, he advised Dr. Neal, the IME, and Dr. Williams explained his injury was not repetitive. (T.37).

The Arbitrator finds Petitioner was performing the job duties he was hired to do when he felt a pop in his shoulder. The Arbitrator also finds Petitioner's medical history to be consistent with a work-related injury. Weighing the evidence, the testimony of the Petitioner, his accident report, and the medical records prove Petitioner sustained an accident that arose out of and in the course of his employment, mainly he injured his right shoulder when lifting the cases of beer.

With regard to Issue "F", whether Petitioner's current condition of ill-being is causally related to the injury and Issue "K" whether Petitioner is entitled to any prospective medical care, the Arbitrator finds as follows:

The Findings of Fact and Conclusions of Law, as stated above, are adopted herein. To obtain compensation under the Act, a claimant must prove that some act or phase of his employment was a causative factor in her ensuing injuries. A work-related injury need not be the sole or principal causative factor, as long as it was *a* causative factor in the resulting condition of ill-being. "A chain of events which demonstrates a previous condition of good health, an accident, and a subsequent injury resulting in disability may be sufficient circumstantial evidence to prove a causal nexus between the accident and the employee's injury." *International Harvester v. Industrial Com.*, 93 Ill. 2d 59, 63 442 N.E.2d 908 (1982). Prior good health followed by a change immediately following an accident allows an inference that a subsequent condition of ill-being is the result of the accident. *Navistar International Transportation Co. v. Industrial Commission*, 315 Ill. App. 3d 1197, 1205, 248 Ill. Dec. 609, 734 N.E.2d 900 (2000).

When a preexisting condition is present, a claimant must show that "a work-related accidental injury aggravated or accelerated the preexisting [condition] such that the employee's current condition of ill-being can be said to have been causally connected to the work-related injury and not simply the result of a normal degenerative process of the preexisting condition." *St. Elizabeth's Hospital v. Workers' Compensation Commission*, 864 N.E.2d 266, 272-273 (5th Dist. 2007). Even when a preexisting condition exists, recovery may be had if a claimant's employment is a causative factor in his or her current condition of ill-being. *Sisbro, Inc. v. Industrial Commission*, 797 N.E.2d 665 (2003). Allowing a claimant to recover under such circumstances is a corollary of the principle that employment need not be the sole or primary cause of a claimant's condition. *Land & Lakes Co. v. Industrial Commission*, 834 N.E.2d 583 (2d Dist. 2005).

It is axiomatic that the weight accorded an expert opinion is measured by the facts supporting it and the reasons given for it; an expert opinion cannot be based on guess, surmise, or conjecture. *Wilfert v. Retirement Board,* 318 Ill.App.3d 507, 514-15 (1st Dist. 2000).

In the instant case, the Arbitrator finds Petitioner's current condition of ill-being is causally related to his work accident. Petitioner testified he never had any prior shoulder problems and never missed any time from work due to shoulder problems. Petitioner was working full duty and subsequently fell pain in his right shoulder after June 24, 2022. Petitioner attempted to work for three weeks but eventually had to report the accident. Petitioner reported a work injury on July 18, 2022 to the urgent care indicating he injured his arm three weeks ago, which correlates to a June 24, 2022 injury. Petitioner also filled out an accident report citing a June 24, 2022 injury. In addition, the chain of events presented in this case show Petitioner's right shoulder became symptomatic after his work accident. There is no evidence whatsoever that prior to Petitioner's work accident, he received any medical treatment for these body parts. The record does not reflect Petitioner had ever taken time off work due to his right shoulder. No evidence was introduced about Petitioner's pre-accident work performance not being satisfactory. There was no mention Petitioner requested any accommodation because of his shoulder.

In addition, the Arbitrator reviewed the medical opinions from both physicians. The Arbitrator finds that Dr. Williams noted Petitioner sustained an acute work injury. He explained Petitioner sustained an acute injury that occurred one and half months prior to seeing him in August. There was no specific cutoff for acute versus chronic pain. Petitioner also did not have any issues prior to the incident in question. (PX4). Dr. Williams also opined lifting a case of beer weighing approximately 27 pounds in an upright row motion more likely than not could cause Petitioner's right shoulder condition. Based on the facts presented to him, he believed the work accident was from a specific injury on June 24, 2022. Dr. Williams also noted based on the OSF medical note the timeframe still lined up and could be called an injury even though there was no trauma, like falling down the stairs. The lifting of the beer case would still be an acute event.

In contrast, Dr. Neal opined Petitioner did not sustain any acute accident based on the medical records. As he found no accident, he indicated that there was no causal connection. Dr. Neal noted Petitioner's condition was related to a preexisting condition. Based on the same the Arbitrator finds Dr. Williams's opinions more persuasive.

First, as the Arbitrator finds an accident occurred, Dr. Neal does not address clearly whether the mechanism of injury could be causally related to Petitioner's current condition. Rather he just indicates Petitioner has pain that is preexisting. The fact that he had pre-existing conditions, even though the same result may not have occurred had the Petitioner been in normal health, does not preclude a finding that the employment was a causative factor. *St. Elizabeth Hospital v. IWCC* 371 Ill. App.3d 882, 885 (5th Dist. 2007) Every natural consequence that flows from an injury which arose out of and in the course of the Petitioner's employment is compensable under the Act. *Cent. Rug & Carpet v. IWCC* 361 Ill. App.3d 684, 690 (1st Dist. 2005) It is also well-settled that an employee is fully entitled to benefits if a pre-existing condition has been aggravated, exacerbated, or accelerated by an accidental injury. *See Lopez v.*

Braner USA Inc. 07 IWCC 8678. Causation in a workers' compensation claim may be established by a chain of events showing prior good health, an accident, and a subsequent injury. *Schroeder v IWCC*, 2017 Il App (4th) 160192WC.

In this case there are no medical records documenting any preexisting medical care. It is undisputed Petitioner was fully capable of performing his job duties until three weeks after the accident. Petitioner continues to try to work in an alternative job but with pain. There was no medical evidence introduced that Petitioner sustained any other injuries his right shoulder subsequent to the accident in question. There has been no interruption in Petitioner's consistent complaints of significant shoulder pain following the accident necessitating treatment. Even Dr. Neal noted Petitioner had subjective and objective complaints that warrant surgery. Therefore, the Arbitrator finds Petitioner's current condition of ill-being in regards to his right shoulder is causally related to the subject accident.

The Arbitrator finds Petitioner met his burden of proof by a preponderance of the evidence that his condition of ill-being was causally related to his work accident based on the chain of events in addition to the medical opinions contained in the record giving causal connection.

In regards, to Petitioner's right shoulder, it is found Petitioner's condition is causally related to his work accident and has not stabilized or otherwise reached MMI. Based on the same the Arbitrator finds Petitioner is entitled to prospective medical care as recommended by Dr. Williams, for his right shoulder to undergo a course of physical therapy. For the reasons stated above, Respondent shall authorize and pay for this and such other reasonable medical treatment pursuant to the statutory fee schedule.

With regard to issue "J", whether the medical services provided to Petitioner were reasonable and necessary and whether Respondent has paid all appropriate charges for reasonable and necessary medical services, the Arbitrator finds as follows:

The Arbitrator incorporates by reference the above Findings of Fact and refers to them by reference herein. The medical records entered evidence demonstrate Petitioner sustained injuries to his right shoulder. Based on the record in its entirety, the Arbitrator finds Petitioner's treatment to be reasonable and necessary. Given the Arbitrator's finding of causation between Petitioner's June 24, 2022 work accident and his condition of ill-being regarding his right shoulder, Respondent is liable for reasonable and necessary medical treatment of the causally related condition.

The Arbitrator orders Respondent to pay Petitioner all other reasonable and necessary medical expenses incurred in connection with the care and treatment of his causally related condition pursuant to Sections 8 and 8.2 of the Act. Respondent shall receive credit for amounts paid.

With regards to Issue "L", what temporary benefits are in dispute, the Arbitrator finds as follows:

In order to prove entitlement to TTD benefits, a claimant must establish not only that he did not work, but that he was unable to work. *Sharwarko v. Illinois Workers' Compensation Comm'n*, 2015 IL App (1st) 131733WC. An employee is temporarily totally disabled from the time that an injury incapacitates him from work until such time as he is as far recovered or restored as the permanent character of his injury will permit. *Archer Daniels Midland Co. v. Industrial Comm'n*, 138 Ill. 2d 107,

118 (1990). Once an injured employee's physical condition stabilizes or he has reached MMI, he is no longer eligible for temporary total disability benefits. *Archer Daniels Midland Co.*, 138 Ill. 2d at 118. A claimant reaches MMI when he is as far recovered or restored as the permanent character of his injury will permit. *Nascote Industries v. Industrial Comm'n*, 353 Ill. App. 3d 1067, 1072 (2004). Factors to be considered in determining whether a claimant has reached MMI include whether he has been released to return to work, medical evidence, testimony concerning the claimant's injury, the extent of his injury, and whether the injury has stabilized. *Nascote Industries*, 353 Ill. App. 3d at 1072. The period of time during which a claimant is temporarily and totally disabled is a question of fact to be determined by the Commission, and its resolution of the issue will not be disturbed on appeal unless it is against the manifest weight of the evidence. *Archer Daniels Midland*, 138 Ill. 2d at 119-20.

Petitioner is claiming TTD benefits from August 26, 2022 through January 11, 2023. Petitioner disputes the same.

Petitioner has either been off work or on work restrictions since July 18, 2022. (PX5). In regards to Petitioner's TPD claim, from August 7, 2022 through August 20, 2022, Petitioner testified that Respondent initially accommodated his restrictions. (T.22-23). Respondent agreed to this period per the stipulation sheet. (Arb.Ex.1). The only period in dispute is the TTD period. In regards to the same, Petitioner was placed off work as of August 26, 2022. (PX5, p.3). Petitioner remained off work until October 21, 2022 when he was put on sedentary work. *Id.* at 4. Petitioner testified he spoke with the HR representative and the restrictions were not accommodated. (T.26). Even Respondent's witness, Mr. Pinkham testified he was unaware if the Respondent could continue to accommodate Petitioner's light duty restrictions. (T.49). Petitioner testified he did not receive any benefits from August 26, 2022 through January 11, 2023. (T. 26) On January 12, 2023, he obtained a part-time job. *Id.* Temporary total disability benefits are not being claimed after Petitioner obtained his part-time job.

Based on the same, the Arbitrator awards TTD benefits from August 26, 2022 through January 11, 2023, i.e., 19 5/7 weeks at a rate of $446.97. Respondent shall receive credit for amounts paid.