

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

Case Number	22WC001086
Case Name	Vaughn Caldwell v. Collinsville Unit 10 School District
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	<b><i>Corrected Decision</i></b>
Commission Decision Number	24IWCC0423
Number of Pages of Decision	22
Decision Issued By	Raychel Wesley, Commissioner

Petitioner Attorney	Nathan Lanter
Respondent Attorney	Matthew Terry

DATE FILED: 12/12/2024

*/s/Raychel Wesley, Commissioner*  
Signature

STATE OF ILLINOIS )  
 ) SS.  
COUNTY OF MADISON )

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

VAUGHN CALDWELL,  
  
Petitioner,

vs.

NO: 22 WC 01086  
IWCC: 24IWCC0423

COLLINSVILLE UNIT 10 SCHOOL DISTRICT,  
  
Respondent.

CORRECTED 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 on December 3, 2021, whether Petitioner's left shoulder condition is causally related to the work accident, entitlement to Temporary Total Disability benefits, entitlement to medical expenses, and the nature and extent of any permanent disability, and being advised of the facts and law, modifies the Decision of the Arbitrator as stated below, but otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

CONCLUSIONS OF LAW

I. Causal Connection

The Arbitrator found Petitioner sustained an accidental injury arising out of and occurring in the course of his employment on December 3, 2021, and his current left shoulder condition is causally related to the accident. Our review of the evidence yields the same result, however, we write separately to clarify our causal connection analysis and address Respondent's chain of events argument on Review.

It is well established that an accident need not be the sole or primary cause—as long as employment is a cause—of a claimant's condition. *Sisbro, Inc. v. Industrial Commission*, 207 Ill. 2d 193, 205 (2003). Furthermore, an employer takes its employees as it finds them (*St. Elizabeth's*

*Hospital v. Illinois Workers' Compensation Commission*, 371 Ill. App. 3d 882, 888 (5th Dist. 2007)), and a claimant with a pre-existing condition may recover where employment aggravates or accelerates that condition. *Caterpillar Tractor Co. v. Industrial Commission*, 92 Ill. 2d 30, 36 (1982). With this standard in mind, we consider the competing causation opinions of Dr. W. Christopher Kostman and Dr. Gregory Simmons.

Respondent's expert, Dr. Kostman, diagnosed Petitioner with a chronic rotator cuff tear and degenerative joint disease, neither of which were affected by the work accident. In his February 24, 2022 §12 report, Dr. Kostman acknowledged Petitioner had increased pain after the December 3, 2021 fall but opined Petitioner's presentation was consistent with a "longstanding chronic left shoulder rotator cuff tear." RX3, DepX2. During his deposition, Dr. Kostman testified he reviewed the January 27, 2022 MRI images and noted chronic findings:

...number one, it's a large rotator cuff tear. Fatty atrophy involving both the supraspinatus and subscapularis indicates that both of those have been torn for a while to develop fatty atrophy within the muscle belly. And also humeral head migration is a finding that indicates a longstanding rotator cuff tear because the cuff has to tear from its attachment point, it has to retract a certain distance, you know, to, for instance, the glenoid surface, and then over time that muscle, because it's not being used, loses its normal consistency and becomes more fatty and that's a progressive thing, and then also the humeral head then moves from its normal position and alignment with the glenoid to develop some superior migration and, in fact, goes through the defect of the rotator cuff kind of like two spoons becoming out of alignment or sync with each other, and that takes a period of time, as well, so there's several findings on this MRI scan indicating longstanding cuff tear. RX2, p. 12.

Dr. Kostman further testified he reviewed the accident video and did not believe falling as Petitioner did would cause bruising on the front of the shoulder, nor did he believe it would cause the pathology identified on the MRI: "I do not believe his mechanism of injury is consistent with those findings, and those findings on MRI scan all appear chronic." RX2, p. 20-21.

Dr. Simmons, in turn, concluded Petitioner's condition is causally related to the accident. During his deposition, Dr. Simmons, who is Petitioner's longtime physician and performed his two prior left shoulder surgeries, testified that from 2017 through November 2021, Petitioner was on a three-month cycle of cortisone injection therapy for his shoulder impingement, and those injections continued to be beneficial; Dr. Simmons confirmed Petitioner had not had recurrent weakness (PX8, p. 14), and he explained that although the injection visits were handled by his physician's assistant, there is nothing in the records to suggest PA Sullivan's physical examinations of Petitioner revealed anything worrisome for a recurrent rotator cuff tear or suggestive of worsening symptoms to warrant further workup:

Most of our notes still state impingement as the treatment for his left shoulder. I don't think we noted any concern like we did with our December 8th visit that - - there was some sort of change in him over time that would warrant further workup to look for rotator cuff tear, like an MRI. (PX8, p. 27)

Because usually when we give injection therapies, we can't charge for the visit. So we usually just make really short notes and charge for the injection. If you notice, some of his exams are kind of the same. And that really - - when that happens though, that tells me that Michael didn't see any change in his work habits, his overall symptoms, reports of any new traumas, or anything like that. PX8, p. 41 (Emphasis added).

Dr. Simmons further explained there was a notable change in Petitioner's condition at the December 8, 2021 visit. Dr. Simmons testified Petitioner reported significant pain and weakness in the shoulder, and his physical examination findings were significant for tenderness to palpation across the shoulder, especially anteriorly, as well as bruising "from where the rotator cuff occurs from the distal clavicle all the way down through the proximal arm," decreased range of motion, and weakness with external rotation. PX8, p. 11. Dr. Simmons concluded the mechanism of injury and symptoms warranted further evaluation for a recurrent tear of the rotator cuff tendons: "...I'd seen the patient for many years. He really showed me no symptoms of increasing weakness. He had a trauma. Physical exam showed increasing weakness. So I wanted an MRI of his shoulder." PX8, p. 13-14. Dr. Simmons testified the subsequent MRI revealed a traumatic re-tear of the supraspinatus, infraspinatus, and subscapularis tendons; the basis of the diagnosis was "the patient's presentation and change in presentation after his injury" as well as the physical exam findings, MRI images, and intraoperative findings. PX8, p. 23. Dr. Simmons addressed Dr. Kostman's contrary interpretation of the MRI and disagreed with Dr. Kostman's belief that Petitioner had a chronic, longstanding rotator cuff tear:

...being his treating physician, and always seeing the patient get treated, go back to work, never had any issues with his shoulder. But when I visited with him, I saw a noticeable injury on him, bruising. Noticeable increase in weakness on his exam. And he had an identifiable cause of rotator cuff tear, which is trauma. PX8, p. 30.

Dr. Simmons further explained he reviewed the accident video and the mechanism of injury shown is a competent cause of Petitioner's symptoms, exam findings, as well as the pathology noted on the MRI and intraoperatively, and he opined the fall "caused the tear or exacerbated his recurrent condition to worsen the tear of his left shoulder." PX8, p. 25.

The Commission finds Dr. Simmons' conclusions are credible, persuasive, and consistent with the medical evidence, and we adopt same. We also note Dr. Simmons' assessment of the accident video is in keeping with our own. We have reviewed the video and observe Petitioner's fall resulted in a jarring impact of the left upper body/side into the bleacher bench, such that Petitioner remains prone on the bleacher aisle and a co-worker hurries to his aid.

We now turn to Respondent's argument that reliance on chain of events principles is "grossly misplaced" because Petitioner "failed to prove a previous condition of good health." Respondent's Statement of Exceptions, p. 17. The Commission disagrees and emphasizes Respondent's position is contrary to law. To be clear, there is decades-old appellate precedent establishing the applicability of the chain of events theory to claims involving pre-existing conditions. *See Price v. Industrial Commission*, 278 Ill. App. 3d 848, 854 (1996) ("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.”) (Emphasis added). As the Appellate Court more recently held in *Schroeder v. Illinois Workers’ Compensation Commission*, 2017 IL App (4th) 160192WC, the inquiry focuses on whether there has been a deterioration in the claimant’s condition:

That is, if a claimant is in a certain condition, an accident occurs, and following the accident, the claimant’s condition has deteriorated, it is plainly inferable that the intervening accident caused the deterioration. The salient factor is not the precise previous condition; it is the resulting deterioration from whatever the previous condition had been. *Schroeder* at ¶ 28.

Therefore, while our causal connection determination is predicated primarily on the direct evidence (the expert medical opinions), we note our determination is further corroborated by the circumstantial evidence (chain of events). The Commission finds Petitioner’s left shoulder condition is causally connected to the December 3, 2021 accident.

## II. Correction

The Commission observes the Arbitrator correctly calculated the Temporary Total Disability (“TTD”) benefit period as 52 3/7 weeks, however we correct the Decision to reflect the end date is December 5, 2022. Petitioner’s stipulated average weekly wage of \$791.71 yields a TTD rate of \$527.81. The Commission finds Petitioner is entitled to TTD benefits of \$527.81 per week for 52 3/7 weeks, representing December 4, 2021 through December 5, 2022. Per the parties’ stipulation, Respondent is entitled to credit for prior IMRF payments. T. 7-8, ArbX1, RX9.

All else is affirmed.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed April 17, 2023, as modified above, is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of \$527.81 per week for a period of 52 3/7 weeks, representing December 4, 2021 through December 5, 2022, that being the period of temporary total incapacity for work under §8(b) of the Act. Per the parties’ stipulation, Respondent is entitled to credit for prior IMRF payments.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay the medical expenses incurred for the treatment of Petitioner's left shoulder detailed in Petitioner's Exhibit 7, as provided in §8(a), subject to §8.2. Pursuant to the parties' stipulation, Respondent shall pay the medical providers directly. Respondent shall be given a credit for medical benefits that have been paid, and Respondent shall hold Petitioner harmless from any claims by any providers of the services for which Respondent is receiving this credit, as provided in §8(j) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of \$475.02 per week for a period of 125 weeks, as provided in §8(d)2 of the Act, for the reason that the injuries sustained caused the 25% loss of use of the person as a whole.

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

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

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.

**December 12, 2024**

/s/ *Raychel A. Wesley*

RAW/mck

O: 7/24/24

/s/ *Stephen J. Mathis*

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/s/ *Deborah L. Simpson*

ILLINOIS WORKERS' COMPENSATION COMMISSION

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Case Number	22WC001086
Case Name	Vaughn Caldwell v. Collinsville Unit 10 School District
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Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	16
Decision Issued By	Edward Lee, Arbitrator

Petitioner Attorney	Nathan Lanter
Respondent Attorney	Matthew Terry

DATE FILED: 4/17/2023

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

*/s/Edward Lee, Arbitrator*

\_\_\_\_\_  
Signature

STATE OF ILLINOIS )  
 )SS.  
 COUNTY OF MADISON )

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

**ILLINOIS WORKERS' COMPENSATION COMMISSION  
 ARBITRATION DECISION**

**VAUGHN CALDWELL**  
 Employee/Petitioner

Case # **22 WC 1086**

v.

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

**COLLINSVILLE UNIT 10 SCHOOL DISTRICT**  
 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 **EDWARD LEE**, Arbitrator of the Commission, in the city of **COLLINSVILLE**, on **03/29/23**. 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 **12/03/21**, 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.

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

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

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

In the year preceding the injury, Petitioner earned **\$41,168.71**; the average weekly wage was **\$791.71**.

On the dates of accident, Petitioner was **61** years of age, *married* with **0** dependent children.

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

Respondent shall be given a credit of **\$0.00** 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 **\$any paid** under Section 8(j) of the Act.

ORDER

*Respondent shall pay reasonable and necessary medical services for his left shoulder as identified in Petitioner's Exhibit 7, as provided in Sections 8(a) and 8.2 of the Act, subject to the fee schedule and shall receive a credit if any medical bills were paid through its group plan for which credit may be allowed under Section 8(j) of the Act. The Respondent shall hold Petitioner harmless for medical expenses paid.*

*Respondent shall pay Petitioner temporary total disability benefits from 12/04/21 thru 12/08/22, a total of 52 3/7 weeks. Respondent is entitled to no credit because it did not pay TTD, TPD, maintenance, nonoccupational indemnity disability benefits, or other benefits for which credit may be allowed under Section 8(j) of the Act.*

*Respondent shall pay Petitioner permanent partial disability benefits of \$475.02/week for 125 weeks because the injuries sustained caused 25% loss of use of the body as a whole, as provided in Section 8(d)2 of the Act since the injuries partially incapacitate Petitioner from pursuing the duties of usual and customary line of employment.*

**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 \_\_\_\_\_  
Signature of Arbitrator

**APRIL 17, 2023**

**Findings of Fact**

Petitioner filed an Application for Adjustment of Claim which alleged he sustained an accidental injury arising out of and in the course of his employment by Respondent on December 3, 2021. According to the Application, Petitioner sustained a work-related accident when Petitioner “tripped and fell while setting up bleachers up in the gym” and sustained an “acute injury to head, neck, low back, MAW & other body parts” (Arbitrator’s Exhibit 2). This case was tried on March 29, 2023 in Collinsville, Illinois. The parties stipulated to AWW, notice, Respondent’s Section 8(j) credit, and Petitioner not seeking future medical treatment at the time of hearing. The issues in dispute are accident, Respondent’s liability for unpaid medical bills, unpaid TTD, and nature and extent. Respondent also disputes liability based on causal relationship (Arbitrator’s Exhibit 1).

On the date of trial, Petitioner was 63 years old. (T. 8) He is married and has been for 42 years. (T. 8) They live in Caseyville, Illinois. (T. 9) Petitioner is a Collinsville high-school graduate. (T. 9) After high school he worked as a welder and belonged to Local 27, out of St. Louis. (T. 9) He worked in the welding field for 22 years. (T. 9-10) He also has some computer training. (T. 10) He is right-hand dominant. (T. 10)

In December 2021, Petitioner was employed full-time by the Respondent. (T. 10) He began working for the Respondent in September 2004. (T. 10) His job title was custodian. (T. 10) Initially, he was required to clean rooms and mop floors. In December 2021, his job title was light maintenance. (T. 11) He took care of the building, fixed any cracks in the walls, and replaced toilet seats and light fixtures. (T. 11) The job involved anything that had to do with light general maintenance. (T. 11) Before working for the Respondent, he took and passed a pre-employment physical. (T. 11-12)

Petitioner testified about treatment he received to his left shoulder prior to the December 2021 injury. (T. 12) He underwent two left shoulder surgeries by Dr. Simmons on 11/24/15 and 11/15/17. (T. 12) After the second surgery, he received periodic left shoulder cortisone injections. (T. 12-13)

Petitioner testified, in the year prior to December 3, 2021, he had not suffered any injuries specifically to his left shoulder. (T. 13) He was not given and was not under any physical restrictions by a physician for his left shoulder. (T. 13) He worked full duty doing light maintenance. (T. 13) He did not at any time refuse to perform any duties asked of him due to left shoulder symptoms. (T. 13) In the year prior to the date of the work-related injury, he did not undergo a left shoulder MRI and no physician had recommended a third left shoulder surgery. (T. 15)

Prior to December 2021 Petitioner did experience some left shoulder soreness. (T. 13-14) The periodic cortisone injections did provide relief from the left shoulder soreness. (T. 14) Before the date of his work-related injury, he received a left shoulder cortisone injection in early November 2021. (T. 14) He had also received cortisone injections to his left shoulder in April and in August 2021. (T. 14) Regarding the appointment at Dr.

Simmons' office on 11/05/21, he remembers the appointment, seeing Dr. Simmons' physician's assistant, undergoing a physical exam of his left shoulder, and receiving the left shoulder cortisone injection. (T. 14-15)

On December 3, 2021, Petitioner was setting up bleachers in the gym. (T. 16) The bleachers have backs that have to be raised up and put into position. (T. 16) As he was doing this, his feet got tangled up with one another, and he fell to his left side and hit his shoulder. (T. 16) He fell sideways on his left side. (T. 16) The first part of his body to hit the bleacher was probably his hip. (T. 16) His left shoulder also struck the ground. (T. 16) Immediately following the fall, he experienced extreme left shoulder pain. (T. 16) He had been told by the Respondent to do the job activity he was performing when he was injured. (T. 17) He immediately notified a supervisor Josh Dewitt about the injury. (T. 17)

Petitioner testified he reviewed two video clips (RX 1) several times, including the morning before the hearing. (T. 18) Petitioner testified he was the person in the videos. (T. 18)

Petitioner reviewed a group of photographs marked as PX9. (T. 19) Petitioner testified he recognized the photos, and he was the person in the photos. (T. 19) His wife took the photos. (T. 19) The photos showed bruising of his left shoulder. (T. 19) Petitioner testified the bruising shown in the photos was not present in the days before 12/03/21 and he did not notice the bruising being present prior to 12/03/21. (T. 19-23)

Petitioner testified, when he fell, the backside of his left shoulder struck the bleacher. (T. 23) He gave a recorded statement to the Respondent's workers' compensation carrier after he had been released from the emergency room and given pain medication, including morphine. (T. 24) He doesn't recall what he may have said when he gave the statement. (T. 24) He was very tired, out of it, like he was on cloud 9. (T. 24)

Petitioner testified, after the fall, he was taken by ambulance to St. Elizabeth's Hospital. (T. 25) When his was picked up by the ambulance, he was experiencing severe left shoulder pain. (T. 25) On the way to the hospital, the EMS personnel administered morphine. (T. 25)

Petitioner testified Dr. Simmons saw him on 12/08/21. (T. 24). During the time of the fall until his saw Dr. Simmons, he had difficulty and pain in his left shoulder when raising his left arm. (T. 25) He did not have this kind of problem in the days and weeks prior to the fall. (T. 25) After the fall he felt a tugging and pulling sensation in his left shoulder when using his left arm. (T. 26) He did not experience this sensation in the days and weeks before 12/03/21. (T. 26-27) After the fall, he experienced left shoulder weakness and struggled to lift items. (T. 27)

Petitioner testified Dr. Simmons performed left shoulder surgery on 03/01/22 and he underwent post-surgery physical therapy. (T. 27) Dr. Simmons found Petitioner had reached maximum medical improvement on 12/05/22. (T. 27) Dr. Simmons also gave permanent restrictions. (T. 27-28) Petitioner notified his employer about the permanent

restrictions. (T. 28) He notified Josh Dewitt. (T. 28) The Respondent did not accommodate these restrictions. (T. 28) He has not worked anywhere since the date of injury. (T. 28) He is still an employee of the Respondent. (T. 28)

Petitioner testified he currently has difficulty picking up a glass or trying to pour a pitcher of tea. (T. 29) He has difficulty tying his shoes. (T. 29) The pulling and tugging in the left shoulder and its range of motion make it difficult. (T. 29) For his current left shoulder symptoms, he takes Meloxicam and Hydrocortisone for pain if he sleeps wrong on his left shoulder. (T. 29) He testified the most recent surgery took the pain out of his shoulder quite a bit. (T. 30) He believed the fall in the bleachers made his left shoulder worse. (T. 30) He testified if the Respondent told him it could accommodate his restrictions, he would attempt to return to work. (T. 30-31)

On cross-examination, Petitioner testified he'd received treatment for his left shoulder since at least 2005. (T. 31) He agreed that after the November 2015 surgery but before the November 2017 injury he received at least six left shoulder injections. (T. 31) He agreed after the November 2017 surgery through 11/05/21 he had received at least 13 left shoulder injections. (T. 31-32) He agreed he received a left shoulder injection on 11/05/21. (T. 32) Petitioner testified, prior to 12/03/21, whenever he saw Dr. Simmons' office and saw the physician's assistant, he always underwent an examination. (T. 33-34) The physical exam by the physician's assistant before 12/03/21 was very similar to the one performed by Dr. Simmons on 12/08/21. (T. 34) When he would go in for an injection, the physician's assistant would normally spend around 15 to 20 minutes with Petitioner. (T. 34-25) He would not dispute if the records indicated 12/29/17 was the last time he saw Dr. Simmons and through 11/05/21 he only saw the physician's assistant. (T. 35-36) He agreed his was actively treating for left shoulder issues before 12/03/21. (T. 36) He agreed the injection he received on 11/05/21 was the same as the injection he received on 12/08/21. (T. 36) He agreed when the EMS personnel came to the school, he told them he got his feet tangled and fell from standing onto the bleaches at the same level he had been standing. (T. 37) He agreed on 12/08/21 he told Dr. Simmons he lost his balance. (T. 38) He agreed what he told Section 12 examiner Dr. Kostman, that he tripped over his own feet, was consistent with testimony. (T. 39) He agreed what he told Dr. Kostman, that he fell from third tier to the second tier directly onto his left shoulder and denied falling on his buttocks or back when he fell, was not true. (T. 39) When asked why he told Dr. Simmons and Dr. Kostman he fell forward when he didn't fall forward, Petitioner testified, in his mind's eye, he had finished doing that tier of bleachers and was getting ready to go down to the next tier, so that how he thought he went down. (T. 39-40) In his mind's eye, he felt as though he went forward. (T. 40) He testified he did not fall off a ladder on or around his visit with Dr. Simmons on 12/31/22. (T. 41) He never told Dr. Simmons he fell off a ladder. (T. 41) Petitioner testified the photo (PX9, 579), taken on 12/07/23, showed a little indentation where he had his previous left shoulder incision. (T. 43-44) Petitioner testified the photo (PX9, 582), taken on 12/16/21, also showed the incision. (T. 44) Petitioner testified he took the photos (PX9) for documentation of proof of injury. (T. 44) He did not show the photos to Dr. Simmons because he found doing so to be unnecessary, since he was seeing Dr. Simmons in person. (T. 44). He testified he is still employed by the school district, is on

unpaid leave, and is still receiving Respondent's health insurance. (T. 44-45) Petitioner testified he is not aware of Dr. Simmons recommending another procedure. (T. 45) He testified he doesn't want to undergo the reverse total arthroplasty procedure offered by Dr. Simmons. (T. 46) He testified he and his wife go camping every once in a while. (T. 46)

On redirect, Petitioner testified he also received injections to other parts of his body, not just his left shoulder, when he received injections between the first left shoulder surgery and the second left shoulder surgery. (T. 47)

### **MEDICAL RECORDS (PX1-PX6)**

A chronological review of the post-injury medical records, beginning with Petitioner's Exhibit 1, start with those of City of Collinsville Fire Department. (PX1) The narrative notes state, "called out for a 61 yr old male who fell and tore his shoulder". (PX1, p. 6) Petitioner was found lying on the bleachers. This history was consistent with Petitioner's testimony. (PX1, p. 6-7) His left arm was placed sling. He was given morphine for pain. (PX1, p. 7) He was transported by ambulance to St. Elizabeth's Hospital.

At the hospital emergency room, Petitioner's primary complaints were a fall and shoulder injury. (PX2, p. 11) The primary diagnosis was a shoulder contusion. (PX2, p. 11) The history was consistent with his testimony. (PX2, p. 10) He reported pain worsened with range of motion. (PX2, p. 17) Physical exam was positive for left shoulder swelling, tenderness, and decreased range of motion. (PX2, p. 21) Left shoulder x-rays were taken. His left arm was placed in a sling. (PX2, p. 22) He was given a morphine injection, prescribe Baclofen and Hydrocodone, and told to follow-up with his primary care provider. (PX2, p. 22) He was also taken off work. (PX2, p. 10)

On 12/08/21, Petitioner saw Dr. Gregory Simmons, who noted since the fall Petitioner had been having a lot of left shoulder pain and weakness. (PX4, p. 108) Physical exam showed tenderness to palpation across the left shoulder, especially anteriorly, and some ecchymosis of the medial proximal biceps. (PX4, p. 109) The left shoulder ROM was limited secondary to pain and infraspinatus testing was painful. (PX4, p. 109) Dr. Simmons administered a left shoulder subacromial cortisone injection. (PX4, p. 109) He ordered a left shoulder MRI. The impression included a traumatic complete tear of left rotator cuff, initial encounter. (PX4, p. 110) Dr. Simmons was concerned Petitioner had suffered a recurrent rotator cuff tear. (PX4, p. 110) Dr. Simmons took Petitioner off from work until further notice. (PX4, p. 113)

On 01/31/22, Petitioner returned to Dr. Simmons. (PX4, p. 114) Petitioner reported continued difficulty lifting his arm to shoulder level with pain and it still felt very weak and painful. (PX4, p. 114) Dr. Simmons reviewed the MRI dated 01/27/22 which showed three massive tears of the supraspinatus, infraspinatus, and subscapularis tendons. (PX4, p. 115; PX5, p. 187) His impression was a traumatic complete tear of the left rotator cuff. (PX4, p. 115) He noted Petitioner's symptoms had not improved since the initial injury 6 weeks ago. (PX4, p. 115) He recommended a left open rotator cuff repair. (PX4, p. 115) Dr. Simmons kept Petitioner off work until further notice. (PX4, p. 117)

On 03/01/22, Dr. Simmons performed a left rotator cuff repair. (PX5, p. 224) The post-operative diagnosis was traumatic tear of the left rotator cuff. (PX5, p. 224) The interoperative findings included a full-thickness complete rupture of the near entire rotator cuff. (PX5, p. 244)

On 03/16/22, Petitioner returned to Dr. Simmons. (PX4, p. 123) Petitioner reported the left shoulder was doing pretty well as far as overall pain but was still having pain over the incision site. (PX4, p. 123) Dr. Simmons removed the staples and recommended discontinuation of the sling. (PX4, p. 123) He kept Petitioner off work. (PX4, p. 124)

On 04/20/22, Dr. Simmons recommended formal physical therapy and keep Petitioner off work. (PX4, p. 125)

Petitioner underwent twelve sessions of physical therapy from 04/20/22 through 06/03/22 at Athletico Physical Therapy. (PX6) The discharge summary, dated 06/23/22, stated Petitioner's goals were partial achieved, he provided good effort, subjective reports were consistent with objective findings, Petitioner had partially recovered, and was told to transition to self-management to address remaining deficits. (PX6, p. 440-441)

On 06/08/22, Petitioner returned to Dr. Simmons, who noted Petitioner had pain and difficulty raising the arm over his head, but his strength had improved internally and externally. (PX4, p. 118) Dr. Simmons noted Petitioner had completed a round of physical therapy. (PX4, p. 118) He administered a left shoulder cortisone injection. (PX 4, p. 118) Dr. Simmons advised Petitioner to continue home exercises. (PX4, p. 119) He kept Petitioner off work. (PX4, p. 119)

On 07/25/22, Petitioner returned to Dr. Simmons, who noted Petitioner was still having difficulty fully lifting his arm and had significant weakness and did not have full active range of motion, but overall, his pain had improved. (PX4, p. 143) Dr. Simmons kept Petitioner off work. (PX4, p. 145)

On 09/07/22, Petitioner returned to Dr. Simmons. (PX4, p. 146) Petitioner reported range of motion difficulty, especially when reaching outwards since the last office visit. He kept Petitioner off work. (PX4, p. 148)

On 10/19/22, Petitioner returned to Dr. Simmons, who noted Petitioner was having some left shoulder discomfort but was learning how to adapt and was really unable to do anything overhead. (PX4, p. 149) Dr. Simmons remarked, "Patient had significant rotator cuff tear in the face of having degeneration aggravated by a significant traumatic event". (PX4, p. 149) Dr. Simmons opined Petitioner is definitely going to be unable to return to any function above his shoulder level and a reverse shoulder arthroplasty will completely rid him of this situation. (PX4, p. 149) Dr. Simmons also noted Petitioner had been very diligent with his exercise program. (PX4, p. 149-150) He kept Petitioner off work. (PX4, p. 151)

On 12/05/22, Petitioner returned to Dr. Simmons, who opined Petitioner had been working full duty with previous shoulder difficulty then had a traumatic work event which incited a full-thickness large rotator cuff tear. (PX4, p. 164) Dr. Simmons believed Petitioner's progression through physical therapy had been a failure because, despite Petitioner's diligence with the exercise program, he has failed to achieve any strength from an overhead position and unable to abduct the arm fully overhead. (PX4, p. 164) When he can get the arm overhead, he doesn't have enough strength to change a light bulb. (PX4, p. 164) Dr. Simmons opined the rotator cuff surgery had failed overall secondary to the traumatic tear. (PX4, p. 165) He believed the surgery was reasonable, but the circumstances presented a significant chance of failure. (PX4, p. 165) Only a reverse shoulder arthroplasty could restore shoulder mobility. (PX4, p. 165) Dr. Simmons opined Petitioner had reached MMI. (PX4, p. 165) He gave Petitioner the following permanent restrictions: no overhead activity, no climbing, no kneeling or getting on the floor due to difficulty getting up with use of the left arm, no pushing or pulling greater than 10 pounds, no lifting greater than 10 pounds, only one-third use of arms at the side, and limited reaching. (PX4, p. 165-166) Dr. Simmons believe these limitations would limit Petitioner's ability to get back to his previous work occupation. (PX4, p. 165)

#### **MEDICAL RECORDS (RX3-RX7)**

Petitioner's prior medical records were offered and admitted into evidence. These include Dr. Gregory Simmons' office records dated 08/05/05 through 11/05/21. (RX3) The records document Petitioner's complaints of bilateral knee pain and bilateral shoulder pain, for which he received periodic injections to both knees and both shoulders. The records also include treatment for left elbow pain. (RX3)

On 03/18/13 Petitioner underwent a left shoulder MRI at Mid America Imaging. (RX4) He underwent left shoulder x-rays at St. Elizabeth's Hospital on 08/08/13 and 10/07/13. (RX5) He underwent left shoulder x-rays at Memorial Hospital on 03/09/14. (RX6, p. 1-2) On 01/16/17, he underwent a left shoulder MRI. (RX7)

The operative report for the 11/24/15 left shoulder surgery shows the procedure was a left open shoulder rotator cuff repair, acromioplasty, and distal clavicle excision. (RX6, p. 3) The operative report for the 11/15/17 left shoulder surgery shows the procedure was a left open rotator cuff repair, acromioplasty, and distal clavicle excision. (RX6, p. 5-6)

On 11/05/21, Petitioner was examined by Dr. Simmons' physician's assistant, who noted Petitioner presented for further treatment of bilateral shoulder impingement syndrome and bilateral knee osteoarthritis. (RX3, p. 107) It was noted cortisone injection therapy continued to work well. (RX3, p. 107) Physical exam of the bilateral shoulders revealed diffuse tenderness on palpation of the subacromial spaces but the skin was intact with no erythema. The assessment included impingement syndrome of the left shoulder. Injections were administered to both knees and both shoulders. (RX3, p. 107-108)

**EVIDENCE DEPOSITION OF DR. GREGORY SIMMONS (PX8)**

Dr. Gregory Simmons was deposed on 08/11/22, and his deposition was received into evidence at trial. On direct examination, Dr. Simmons' testimony was consistent with his medical reports, and he reaffirmed the opinions contained therein. Specifically, regarding causality, Dr. Simmons testified Petitioner suffered a traumatic recurrent tear as result of the 12/03/21 work-related fall. (PX8, p. 542-543) This opinion was based on his review of the 01/27/22 left shoulder MRI, his review of the videos (RX1), his physical exam findings, and Petitioner's presentation and change in presentation after his injury. (PX8, p. 542) He believed the type of fall, as shown in the videos, could injure or aggravate the condition of a person's left shoulder and make it symptomatic. (PX8, p. 543) He opined the trauma caused the tear or exacerbated Petitioner's recurrent condition to worsen the tear of his left shoulder. (PX8, p. 543-544) Dr. Simmons believed, before 12/03/21, Petitioner's left shoulder was compromised, and prior to 12/03/21 Petitioner was receiving treatment for left shoulder impingement and degenerative changes. (PX8, p. 545) He testified when he initially examined Petitioner after the 12/03/21 fall, on 12/08/21, Petitioner had bruising and ecchymosis, which was consistent with the St. Elizabeth's Hospital contusion diagnosis and was not present according to the records from before the fall. (PX8, p. 546-547) Dr. Simmons testified, on 12/08/21, when he examined Petitioner, he saw a noticeable injury, bruising, a noticeable increase in weakness on physical exam, and an identifiable traumatic cause of a rotator cuff tear. (PX8, p. 550) Petitioner couldn't lift his arm above shoulder level or even up to 30 degrees after the injury. (PX8, p. 567) He testified the rotator cuff covers the entire front, superior and posterior aspect of the humeral head, so falling backward can cause anterior shoulder bruising if there's a tear to the rotator cuff or biceps tendon. (PX8, p. 551-552)

**EVIDENCE DEPOSITION OF SECTION 12 EXAMINER DR. WILLIAM CHRISTOPHER KOSTMAN (RX2)**

At the direction of Respondent, Petitioner was examined by Dr. William Christopher Kostman. On direct examination, Dr. Kostman's testimony was consistent with his Section 12 report and the additional medical records reviewed, and he reaffirmed the opinions contained therein. Specifically, regarding causality, he did not believe Petitioner's condition of ill-being and need for medical treatment was related in any way to the 12/03/21 accident. (RX2, p. 20) He did not believe Petitioner required left shoulder restrictions as result of the 12/03/21 accident. (RX2, p. 20) The factors in support of his opinion, included Petitioner having a left shoulder pre-existing condition and the mechanism of injury, based on his review of the videos, not being consistent with the MRI findings and Dr. Simmons' interoperative findings. (RX2, p. 21) He did not believe falling backwards, as Petitioner did in the videos, would not cause bruising on the front of the shoulder. (RX2, p. 21)

On cross-examination, he agreed Petitioner's left shoulder had pre-existing conditions prior to December 2021. (RX2, p. 23) He didn't review anything indicating that a year before 12/03/21 work injury Petitioner was under any left shoulder restrictions given by a physician. (RX2, p. 23) It was his understanding, during the year prior to 12/03/23,



Petitioner was working as a custodian full duty. (RX2, p. 22) He didn't review anything indicating Petitioner had refused to perform any job duties asked of him due to left shoulder symptoms. (RX2, p. 22) He agreed signs of a rotator cuff tear included difficulty and pain when using the arm, and popping and clicking sounds or sensations when using the arm. (RX2, p. 22-23) He agreed, in some cases, signs of a rotator cuff tear included shoulder pain that grew worse at night, when resting the arm, and shoulder weakness and struggling to lift items. (RX2, p. 23-24) He testified sometimes an MRI scan can show edema or swelling within the bone from a significant impact or soft tissues aside from the skin and surface structures, and contusions can come in a variety of forms depending on how significant and how deep. (RX2, p. 24) He agreed his report didn't say anything about whether he believed Petitioner to be honest. (RX2, p. 24) He agreed his report didn't say anything about if he believed Petitioner was exaggerating. (RX2, p. 25) He didn't recall if he reviewed the two videos (RX1) before or after his examination of Petitioner. (RX2, p. 26) He agreed Petitioner suffered a fall while at work based on the videos and the history Petitioner provided. (RX2, p. 27) He admitted it was possible the fall could cause left shoulder bruising, swelling and tenderness, but he opined, from what he saw on the video, Petitioner fell backwards, struck his backside, and rolled onto his left side, which didn't appear to be consistent. (RX2, p. 27) He didn't believe Petitioner's fall was consistent with a change in a pre-existing underlying shoulder condition based on what he saw. (RX2, p. 28) Based on his experience, most, but not all, events that cause a significant change in underlying conditions do have objective findings that support that, like MRI findings. (RX2, p. 28) Based on the information he had to date, he did not believe the mechanism of injury as shown in the videos caused an injury or aggravated the preexisting condition of Petitioner left shoulder and made it symptomatic. (RX2, p. 28-29)

### **ACCIDENT VIDEO (RX1)**

During trial, the Arbitrator and the parties reviewed two videos, entered into evidence by the Respondent. Both videos were of poor visual quality. The first video was 31 seconds in length. It shows an individual walking along the bleachers, from right to left, on a single level. When the individual attempts to step down to the next level, he loses his footing and falls backward onto his back, left side, and left shoulder on the same level on which he had been walking. The second video is 20 second in length. The individual is walking toward the camera. It shows the individual walking on the bleachers and falling in the same manner described earlier, while attempting to step from one bleacher level to the bleacher level below. (RX1)

### **PHOTOS (PX9)**

Petitioner offered into evidence six photographs of his left shoulder. The photos were admitted into evidence. Petitioner testified the photos were taken on 12/07/21 through 12/16/21. The photos show bruising to the posterior and anterior portions of his left shoulder. (PX9)

**CONCLUSIONS OF LAW**

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

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

The Arbitrator concludes an accident did occur on December 3, 2021 that arose out of and in the course of Petitioner's employment by Respondent.

Acts that are incidental to and causally connected to an individual's employment are considered to be arising out of the employment if the individual was instructed by the employer to perform the acts or if the acts are ones the employee might reasonably be expected to perform incident to his assigned job duties. *McAllister v. IWCC*, 2020 IL 124848, 181 N.E.3d 656, 450 Ill. Dec. 309 (2020).

Petitioner testified, on December 3, 2021, he was setting up bleachers in the gym at the direction of the Respondent, as part of his job duties as a light maintenance custodian. The bleachers have backs that have to be raised up and put into position. As he was doing this, his feet got tangled up with one another, and he fell to his left side and hit his shoulder. This is supported by the videos, which show him walking along the bleachers, from right to left, on a single level. When Petitioner attempted to step down to the next bleacher level, he loses his footing and falls backward onto his back, left side, and left shoulder on the same level on which he had been walking.

Under *McAllister*, Petitioner's injury clearly arose out of his employment because the evidence established, at the time of the occurrence, Petitioner's injury was caused by one of the risks distinctly associated with his employment, performing his job duties in the bleachers and stepping down from one bleacher level to another.

Additionally, Petitioner's injury clearly occurred in the course of his employment because it occurred in the morning during his shift and in the bleachers were located in the Respondent's gymnasium.

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

The Arbitrator concludes Petitioner's current condition of ill-being is casually related to the accident of December 3, 2021.

In support of this conclusion the Arbitrator notes the following:

In addition to or aside from expert medical testimony, circumstantial evidence may also be used to prove a causal nexus between an accident and the resulting injury. *Gano Electric Contracting v. Indus. Comm'n*, 260 Ill.App.3d 92, 631 N.E.2d 724 (4th

Dist. 1994); *International Harvester v. Indus. Comm'n*, 442 N.E.2d 908 (1982). 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 workers' compensation claimant's injury. *Shafer v. Illinois Workers' Comp. Comm'n*, 2011 IL App (4th) 100505WC, 976 N.E.2d 1 (2011).

An accident need not be the sole or primary cause as long as employment is a cause of a claimant's condition. *Sisbro, Inc. v. Industrial Comm'n*, 207 Ill. 2d 193, 205 (2003). An employer takes its employees as it finds them. *St. Elizabeth's Hospital v. Illinois Workers' Compensation Comm'n*, 371 Ill. App. 3d 882, 888 (2007). A claimant with a preexisting condition may recover where employment aggravates or accelerates that condition. *Caterpillar Tractor Co. v. Industrial Comm'n*, 92 Ill. 2d 30, 36 (1982).

Dr. Simmons opined Petitioner suffered a traumatic recurrent tear as result of the 12/03/21 fall. This opinion was based on his review of the 01/27/22 left shoulder MRI, his review of the videos, his physical exam findings, and Petitioner's presentation and change in presentation after his injury. He believed the type of fall, as shown in the videos, could injure or aggravate the condition of a person's left shoulder and make it symptomatic. He opined the trauma caused the tear or exacerbated Petitioner's recurrent condition to worsen the left shoulder tear. Dr. Simmons believed, before 12/03/21, Petitioner's left shoulder was compromised, and prior to 12/03/21 Petitioner was receiving treatment for left shoulder impingement and degenerative changes. He testified when he initially examined Petitioner after the 12/03/21 fall, on 12/08/21, Petitioner had bruising and ecchymosis, which was consistent with the St. Elizabeth's Hospital contusion diagnosis and this was not present according to the records from before the fall. Dr. Simmons testified when he examined Petitioner, he saw a noticeable injury, bruising, a noticeable increase in weakness on physical exam, and an identifiable traumatic cause of a rotator cuff tear. Petitioner couldn't lift his arm above shoulder level or even up to 30 degrees after the injury. He testified the rotator cuff covers the entire front, superior and posterior aspect of the humeral head, so falling backward can cause anterior shoulder bruising if there's a tear to the rotator cuff or biceps tendon.

Dr. Kostman, on the other hand, did not believe Petitioner's condition of ill-being and need for medical treatment was related in any way to the 12/03/21 accident. He did not believe Petitioner required left shoulder restrictions as result of the 12/03/21 accident. The factors in support of his opinion, included Petitioner having a left shoulder pre-existing condition and the mechanism of injury, based on his review of the videos, not being consistent with the MRI findings and Dr. Simmons' interoperative findings. He did not believe falling backwards, as Petitioner did in the videos, would not cause bruising on the front of the shoulder.

Dr. Kostman didn't review anything indicating that a year before 12/03/21 work injury Petitioner was under any left shoulder restrictions given by a physician. It was his understanding, during the year prior to 12/03/21, Petitioner was working as a custodian full duty. He didn't review anything indicating Petitioner had refused to perform any job

duties asked of him due to left shoulder symptoms. He agreed signs of a rotator cuff tear included difficulty and pain when using the arm, and popping and clicking sounds or sensations when using the arm. He agreed, in some cases, signs of a rotator cuff tear included shoulder pain that grew worse at night, when resting the arm, and shoulder weakness and struggling to lift items. He did believe a rotator cuff repair, like the one performed by Dr. Simmons, was a treatment option, despite having a poor prognosis for healing.

The Arbitrator notes, in the year prior to December 3, 2021, Petitioner had not suffered any injuries specifically to his left shoulder. He worked full duty doing light maintenance. He did not at any time refuse to perform any duties asked of him due to left shoulder symptoms. In the year prior to the date of the work-related injury he did not undergo a left shoulder MRI and no physician had recommended a third left shoulder surgery.

The Arbitrator also notes Dr. Simmons has been Petitioner treating physician since 2005. Since the date of the second left shoulder surgery, he was treating Petitioner for left shoulder impingement syndrome. While Petitioner did receive several injections to his left shoulder in 2021 before date of injury, he was not given and was not under any physical restrictions by a physician for his left shoulder.

Furthermore, on November 5, 2021, Dr. Simmons's physician's assistant, when administering an injection to Petitioner's left shoulder for left shoulder impingement syndrome, did not chart any bruising to the posterior or anterior parts of the left shoulder.

After the fall on December 3, 2021, Petitioner had a significant change in left shoulder symptomatology, including severe left shoulder pain and loss of range of motion. He felt a tugging and pulling sensation in the shoulder, which he did not have prior to the fall. He had significant bruising to the posterior and anterior parts of the left shoulder, as show in the photographs, the ER records, and Dr. Simmons' 12/08/21 physical exam. Based on this change in presentation, Dr. Simmons ordered a left shoulder MRI and kept Petitioner off work, and ultimately performed surgery to repair a recurrent traumatic tear of the left rotator cuff.

The Arbitrator finds the opinion of Dr. Simmons regarding causality to be more persuasive and creditable than that of Dr. Kostman. The record supports a finding of causal connection of ill-being under the "chain of events" as the December 3, 2021 fall aggravating the pre-existing condition of Petitioner's already compromised left shoulder.

**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?**

Upon establishing causal connection and the reasonableness and the necessity of recommended medical treatment, employers are responsible for necessary

prospective medical care required by their employees. *Plantation Mfg. Co. v. Indus. Comm'n*, 294 Ill.App.3d 705, 691 N.E.2d. 13 (1997). This includes treatment required to diagnose, relieve, or cure the effects of claimant's injury. *F & B Mfg. Co. v. Indus. Comm'n*, 325 Ill. App. 3d 527, 758 N.E.2d 18 (2001). The right to be compensated for medical costs associated with work-related injuries is at the very heart of the Workers' Compensation Act. *Hagene v. Derek Polling Const.*, 388 Ill. App. 3d 380, 383, 902 N.E.2d 1269, 1273 (2009).

Based upon the above findings as to causal connection the Arbitrator finds Petitioner is entitled to reasonable and necessary medical care, including the surgery performed by Dr. Simmons. Respondent shall pay the reasonable and necessary medical expenses outlined in Petitioner's Exhibit 7 that were incurred on and after 12/03/21 for Petitioner's left shoulder, pursuant to the medical fee schedule or PPO agreement (whichever is less), as provided in Section 8(a) and Section 8.2 of the Act. Respondent shall be given a credit for any amounts previously paid under Section 8(a) of the Act for medical benefits and hold Petitioner harmless from any claims arising from the expenses for which it receives credit.

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

The law in Illinois holds that "[a]n employee is temporarily totally incapacitated from the time an injury incapacitates him for work until such time as he is as far recovered or restored as the permanent character of his injury will permit." *Archer Daniels Midland Co. v. Indus. Comm'n*, 138 Ill.2d 107, 561 N.E.2d 623 (Ill. 1990). The ability to do light or restricted work does not preclude a finding of temporary total disability. *Archer Daniels Midland Co. v. Indus. Comm'n*, 138 Ill.2d 107, 561 N.E.2d 623 (Ill., 1990) citing *Ford Motor Co. v. Indus. Comm'n*, 126 Ill. App. 3d 739, 743, 467 N.E.2d 1018, 1021 (1984).

Based on the above findings as to causal connection, the Arbitrator finds Petitioner is entitled to temporary total disability benefits. Respondent shall therefore pay temporary total disability benefits for the period 12/04/21 through 12/08/22, representing 52 3/7 weeks.

**Issue L: What is the nature and extent of Petitioner's injury?**

Pursuant to Section 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 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 treatment 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 physician gave an opinion regarding an AMA rating. Based on this, the Arbitrator gives no weight on this factor.
- (ii) **Occupation.** Petitioner is under significant permanent restrictions. The Respondent has not accommodated these restrictions. He cannot return

to work as a custodian, his usual and customary line of employment. Therefore, the Arbitrator places significant weight on this factor.

(iii) **Age.** Petitioner was 61 years old on the date of the injury. He several work years left during which time he will need to deal with the residual effects of the injury. The Arbitrator places some weight on this factor.

T (iv) **Earning Capacity.** Petitioner is unable to return to work as a custodian. Therefore, the Arbitrator places substantial weight on this factor.

(v) **Disability.** Petitioner's testimony and corroboration by the medical records, particularly those of Dr. Simmons, show he continues to have substantial left shoulder symptoms because of the 12/03/21 injury. He has significant permanent restrictions. He still takes over-the-counter pain medication for the left shoulder symptoms. The Arbitrator puts significant weight on this factor.

Therefore, the Arbitrator finds Petitioner's permanent partial disability to be 25% body as a whole under Section 8(d)2 of the Act.