

ILLINOIS WORKERS' COMPENSATION COMMISSION
DECISION SIGNATURE PAGE

Case Number	20WC031655
Case Name	Adriana Hernandez v. Blair Bakery, LLC dba Nothing Bundt Cakes
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b) Remand Arbitration
Decision Type	<i>Corrected Decision</i>
Commission Decision Number	[24IWCC0042]
Number of Pages of Decision	16
Decision Issued By	Carolyn Doherty, Commissioner

Petitioner Attorney	Matthew Jones
Respondent Attorney	Kelly Kamstra

DATE FILED: 2/5/2024

/s/ Carolyn Doherty, Commissioner

Signature

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STATE OF ILLINOIS)
) SS.
COUNTY OF LAKE)

<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 <input type="text" value="Choose direction"/>	<input type="checkbox"/> PTD/Fatal denied
	<input type="checkbox"/> None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

ADRIANA HERNANDEZ,

Petitioner,

vs.

NO: 20 WC 031655
24IWCC0042

BLAIR BAKERY, LLC, dba NOTHING
BUNDT CAKE,

Respondent.

CORRECTED DECISION AND OPINION ON REVIEW

Timely Petition for Review under Section 19(b) having been filed by Petitioner herein and proper notice given, the Commission, after considering the issues of causal connection, medical expenses, temporary total disability, and prospective medical care, and being advised in the facts and applicable law, modifies 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).

On December 22, 2020, Petitioner filed an application for adjustment of claim alleging that on November 18, 2020, she sustained injuries to her back, right leg, right knee, and right foot, that arose out of and in the course of her employment. Petitioner, who was 35 years old at the time of the accident, testified on direct examination that she worked for Respondent as a baker assistant/dishwasher since September 13, 2020.

A 19(b) hearing was conducted on December 21, 2022. The Arbitrator found that Petitioner sustained a work-related injury on November 18, 2020, that resulted in a neuropraxia that reached maximum medical improvement (MMI) on January 26, 2022. Petitioner was awarded reasonable and necessary medical expenses through January 26, 2022. The Arbitrator denied total temporary

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disability benefits after January 26, 2022, based upon the opinion of Dr. Simon Lee, Respondent's Section 12 examiner that Petitioner had reached MMI, and denied prospective medical care.

Petitioner testified in Spanish through a translator. Petitioner described the incident as follows: "I had some cake molds. Somebody had thrown—well water on the floor. When I went to take the molds, I slipped in the water." Petitioner stated that she was carrying multiple baking molds- eight to nine of them and that each individual mold weighed about eight pounds. When she slipped all the baking molds fell on her right foot.

She testified that she was wearing steel toed shoes, but the baking molds fell on the upper part of her right foot, and she experienced immediate pain. Petitioner notified her supervisor of the accident and requested to be sent home. The supervisor denied her request and directed Petitioner to finish her shift.

On November 19, 2020, Petitioner presented to Advocate Medical Group where she was examined, and a radiolucent line was identified on her right foot x-ray suggesting a possible fracture. She was given an orthotic shoe and was restricted to sedentary work. Petitioner testified that she continued working for Respondent until November 25, 2020. Respondent assigned her work as a dishwasher which was outside her sedentary work restrictions. November 25, 2020 was Petitioner's last day of employment with Respondent.

On December 1, 2020, Petitioner presented to Dr. Mandal, an orthopedic specialist. Dr. Mandal noted moderate edema over the dorsum of the right foot, tenderness over the dorsum, and posterior to the medial malleolus as well as the heel, and over the ATFL. Dr. Mandal ordered Petitioner off work and referred her to physical therapy, which she attended through February 26, 2021.

Petitioner next consulted Dr. Poepping at G&T Orthopedics on January 22, 2021. On physical examination he noted tenderness across the plantar fascia, anterior aspect of the ankle, and dorsal foot with swelling. Dr. Poepping continued Petitioner off work and ordered a right foot MRI.

On February 22, 2022, Petitioner consulted Dr. Hare, a podiatrist. Dr. Hare charted a positive Tinel's sign to the tibial nerve, painful range of motion, and peak pain at the anterior aspect of the right ankle. He diagnosed right tarsal tunnel syndrome and a right foot contusion. Dr. Hare administered a steroid injection into Petitioner's right foot and ankle. He continued Petitioner's off work restrictions.

Petitioner had an MRI of the right foot and ankle on February 24, 2021. The MRI of the right ankle revealed tibiotalar, subtalar synovial effusion, and intertarsal, tarsometatarsal and metatarsophalangeal synovial effusion and tendinosis of the right flexor hallucis longus and tibialis posterior tendons. The right foot MRI showed tibiotalar, subtalar, intertarsal metatarsophalangeal synovial effusion with degenerative changes at the first metatarsal joint and plantar calcaneal spur.

Dr. Hare continued treating Petitioner, which included steroid injections through August 2, 2021, when she had her last treatment. During treatment Dr. Hare administered the cortisone

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injections to the right tarsal tunnel and right ankle which gave limited relief. On May 24, 2021 Dr. Hare discussed a tarsal tunnel release for persistent symptoms. Petitioner's physical findings remained constant throughout treatment. Dr. Hare continued Petitioner's off work restrictions.

On August 25, 2021, Petitioner underwent an EMG of the right lower extremity, the scope of which was limited by Petitioner's pain. The study showed the bilateral plantar nerve as abnormal. Petitioner commenced treatment with Dr. Anderson on September 7, 2021, complaining of constant pain on the top of her right foot and lateral ankle which limited her ability to stand to thirty minutes. Dr. Anderson's physical examination yielded a positive Tinel's sign to the tibial nerve and percussion of the superficial and deep peroneal nerves at the anterior and anterolateral ankle. Dr. Anderson diagnosed a contusion of the right foot, traumatic injury to the deep peroneal nerve, closed injury superficial peroneal nerve, right tarsal tunnel syndrome, and arthralgia of the ankle.

Petitioner continued to be symptomatic in her right foot and lower extremity. On physical examination Dr. Anderson also noted a palpable mass/ganglion cyst on the dorsum of Petitioner's right foot which he injected on September 28, 2021. Dr. Anderson recommended a surgical excision of the ganglion cyst and decompression of the deep peroneal nerve on October 28, 2021, noting that a course of conservative treatment had failed to yield any sustained pain relief or improvement in physical findings.

On November 24, 2021, Respondent's utilization review ("UR") declined certification of Dr. Anderson's surgery request. A second UR on December 14, 2021, authorized the surgery as "medically reasonable and appropriate." Citing the ODG, peer review physician Dr. John Shine stated in his report that, "[p]alpable masses about the foot and ankle are most commonly related to trauma or mechanical instability, with non-neoplastic causes such as ganglion cysts and calluses predominating." He agreed that "a reasonable course of conservative treatment including topical and oral medications" failed.

Dr. Anderson kept Petitioner off work until July 12, 2022, when he released her to return to work with permanent restrictions including no lifting over 20 pounds, no prolonged standing or walking and orders to alternate between walking and standing. Dr. Anderson continued his surgical recommendation for decompression of the deep peroneal nerve with anterior tarsal tunnel release. Petitioner testified that she continues to experience pain in her right foot and leg and takes pain medication. She further testified that Dr. Anderson's work restrictions allow her to work six hours per day only.

On January 26, 2022, Dr. Simon Lee performed a Section 12 examination on Petitioner at the request of Respondent. Petitioner's complaints remained consistent as did her history of work injury. Dr. Lee diagnosed a right foot contusion with neuritis. He opined that the injury was causally connected to the work accident. Dr. Lee further opined that Petitioner did not require any further treatment and that she was at MMI. Dr. Lee disagreed with the second UR on the reasonableness and necessity of the surgery recommended by Dr. Anderson. Dr. Lee based his finding that surgery was not indicated on his opinion that Petitioner's "anatomic distribution, symptoms, and complaints are not within a specific distribution of a nerve and there is no ganglion cyst."

Dr. Lee issued an addendum report on April 14, 2022, in which he commented that the pans which fell on Petitioner's foot typically weigh under two pounds each and that the total weight that fell on her foot did not exceed ten to twelve pounds. He further noted that Petitioner was wearing steel-toed shoes. Dr. Lee acknowledged that a ganglion cyst could benefit from a nerve release but failed to note the presence of a ganglion in the charting of Dr. Anderson and on that basis diagnosed Petitioner's condition as neuropraxia. Dr. Lee further commented that Petitioner's symptoms reflected a nerve distribution that was non-specific.

In modifying the arbitrator's decision, the Commission notes that Dr. Lee's opinions are predicated upon significant misapprehensions of the record. Petitioner testified that the baking molds that fell on her foot were made of iron, each weighed seven to eight pounds, and that eight molds fell on her right foot. Dr. Lee was under the impression that the baking pans weighed only two pounds each. As a result, Dr. Lee underestimated the degree of trauma to Petitioner's right foot. Dr. Lee stated that there was no ganglion cyst present. As he had not reviewed Petitioner's prior medical records, he failed to appreciate the objective description of a ganglion cyst by Dr. Anderson that accompanied his surgical recommendation. For the foregoing reasons, the Commission finds the opinion of Dr. Anderson more persuasive than the opinion of Dr. Lee.

Accordingly, the Commission finds that Petitioner did not attain MMI on January 26, 2022, given the pending surgical recommendation of Dr. Anderson as certified by the UR physician, and that Petitioner's current condition of ill-being in her right foot is causally related to her work accident on November 18, 2020.

The Commission further finds that Petitioner is entitled to reasonable and necessary medical expenses incurred from November 18, 2020, through December 21, 2022. The Commission further finds that Petitioner is entitled to prospective medical care in the form of the ganglion excision and deep peroneal nerve release surgery recommended by Dr. Anderson and certified by the UR physician.

The Commission further finds that Petitioner is entitled to TTD benefits commencing November 26, 2020, through October 22, 2022. Petitioner was initially placed on sedentary work restrictions by Advocate Medical Group on November 19, 2020. Respondent assigned Petitioner to a position as a dishwasher which required that she stand in violation of Petitioner's medical work restrictions. As a result, Petitioner's last day of work was November 25, 2020. Thereafter, Petitioner was taken off work completely commencing December 1, 2020, through July 12, 2022, per the orders of her treating physicians. On July 12, 2022, Dr. Anderson placed Petitioner on light duty work restrictions. Petitioner testified that she secured employment with QLS Staffing commencing October 23, 2022, which accommodates her light duty restrictions and she returned to work on that date.

For the foregoing reasons, the Commission hereby modifies the Decision of the Arbitrator.

IT IS HEREBY ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed March 9, 2023, is hereby modified for the reasons stated above.

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IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner TTD benefits from November 26, 2020, through October 22, 2022, in the amount of \$400.00 per week which is the applicable statutory minimum rate for a total of 99 and 3/7 weeks that being the period of temporary total incapacity for work under Section 8(b) of the Act. Respondent shall receive credit for amounts paid.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay Petitioner all reasonable and necessary medical bills including Midwest Specialty Pharmacy,\$5,818.06; Illinois Orthopedic Network, \$464.14; and La Clinica,\$206.68 incurred through December 21, 2022, pursuant to the Medical Fee Schedule as provided in Sections 8(a) and 8.2 of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall authorize and pay for all reasonable and necessary prospective medical care and treatment as recommended by Dr. Anderson, including, but not limited to, surgical decompression of the deep peroneal nerve on Petitioner's right lower extremity, and ganglion excision on her right foot, pursuant to the Medical Fee Schedule as provided in Sections 8(a) and 8.2 of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that this case be remanded to the Arbitrator for further proceedings consistent with this Decision, but only after the latter of the 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 for any judicial proceedings, if such a written request has been filed.

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

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

Bond for removal of this cause to the Circuit Court by Respondent shall be fixed at the sum of \$5,500.00. 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.

February 5, 2024

o-12/13/23

CMD/msb

045

/s/ Carolyn M. Doherty
Carolyn M. Doherty

/s/ Deborah L. Simpson
Deborah L. Simpson

/s/ Amylee H. Simonovich
Amylee H. Simonovich

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	20WC031655
Case Name	Adriana Hernandez v. Blair Bakery, LLC d/b/a Nothing Bundt Cakes
Consolidated Cases	
Proceeding Type	19(b)/8(A) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	10
Decision Issued By	Michael Glaub, Arbitrator

Petitioner Attorney	Matthew Jones
Respondent Attorney	Robert Sabetto

DATE FILED: 3/9/2023

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

/s/ Michael Glaub, Arbitrator

Signature

STATE OF ILLINOIS)
)SS.
 COUNTY OF LAKE)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)/8(A)

Adriana Hernandez

Employee/Petitioner

v.

Blair Bakery, LLC d/b/a Nothing Bundt Cakes

Employer/Respondent

Case # **20 WC 31655**

Consolidated cases: _____

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Michael Glaub**, Arbitrator of the Commission, in the city of **Waukegan** on **December 21, 2022**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On the date of accident November 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 not* causally related to the accident.

In the year preceding the injury, Petitioner earned \$2,655.58; the average weekly wage was \$402.36.

On the date of accident, Petitioner was 35 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 \$24,228.57 for TTD, \$0 for TPD, \$0 for maintenance, and \$16,673.08 for ~~other~~ **medical** benefits, for a total credit of \$40,901.65.

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

ORDER

Petitioner sustained an injury to the top of her right foot on November 18, 2020, that resulted in a neuropraxia that reached MMI by January 26, 2022. Medical treatment through this date was reasonable and necessary. Respondent has paid all appropriate charges for all reasonable and necessary medical services

The Arbitrator denies Petitioner's request for prospective medical, specifically a surgical excision of the ganglion and decompression of the deep peroneal nerve.

Petitioner failed to prove that she is entitled to TTD after January 26, 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.

Michael Glaub

Signature of Arbitrator

MARCH 9, 2023

ILLINOIS WORKERS' COMPENSATION COMMISSION

Adriana HernandezCase # 20 WC 031655

Employee/Petitioner

v.

Consolidated cases: _____

Blair Bakery, LLC d/b/a Nothing Bundt Cakes

Employer/Respondent

I. Findings of Fact.*Petitioner's Testimony*

Petitioner began working for Respondent, a bakery, on September 13, 2020. *Transcript at page 11 (hereafter "Tr. 11")*. She worked from 8:30 a.m. to 12:30 p.m., five days a week. *Tr. 11-12*. She initially frosted cakes and pastries but was reassigned to washing dishes. *Tr. 11*.

On November 18, 2020, she slipped on water that was on the floor while carrying Bundt cake molds. *Tr. 12, 13, 29*. The molds were about 10 inches tall and an inch or two thick, and she was carrying about eight or nine of them. *Tr. 13*. She testified that each mold weighed about eight pounds. *Tr. 13*. Her right foot slipped and she fell backward, dropping the molds onto the top of her right foot. *Tr. 14-15, 30*.

Petitioner testified that her foot began to swell, and she could not walk. *Tr. 15*. Her supervisor came to her because she heard the sound of the molds dropping. *Tr. 15*. She apologized but made petitioner finish her shift. *Tr. 15-16*.

Petitioner sought medical attention at Advocate Medical Group on November 19, 2020, and she was placed on seated work. *Tr. 16, 30*. She testified that Respondent placed her back on washing dishes, which she did for a week. *Tr. 16, 17*. Her foot swelled while she stood washing dishes and she could not tolerate the pain. *Tr. 17*. She did not return after November 25, 2020. *Tr. 18*.

Petitioner then consulted Dr. Ronnie Mandal of Illinois Orthopedic Network ("ION") on December 1, 2020. *Tr. 16-17*. On cross exam, Petitioner testified that she went to ION after her brother told her about it. *Tr. 34*. Dr. Mandal took her off work and prescribed physical therapy. *Tr. 18*. She attended physical therapy at La Clinica from December 4, 2020, through February 26, 2021, and she performed exercises to strengthen her muscles and tendons. *Tr. 18*. Physical therapy helped a little. *Tr. 19*.

Petitioner was referred to a podiatrist, Dr. Hare, of Advanced Foot and Ankle on February 22, 2021. *Tr. 19*. Dr. Hare kept petitioner off work, administered a right tarsal tunnel injection, and prescribed an MRI. *Tr. 19*. She continued treating with Dr. Hare throughout 2021, and he kept her off work the entire time. *Tr. 19, 20*. He also ordered an EMG of her right lower extremity, which she underwent on August 25, 2021. *Tr. 20*.

She began seeing another podiatrist, Dr. Anderson, also of Advanced Foot and Ankle, starting on September 7, 2021. *Tr. 20-21*. She treated with Dr. Anderson throughout 2021 and 2022. *Tr. 21*. Her last visit with him was on July 12, 2022. *Tr. 21*. On that date, he released her to work with restrictions until she had surgery. *Tr. 24*.

Presently, petitioner's right foot still hurts. *Tr. 21*. She identified the top middle part of her foot as the source of her pain. *Tr. 21*. She also feels a "pins and needles" sensation in her

right foot. *Tr. 26.* Her symptoms prevent her from exercising, cleaning, and shopping. *Tr. 26-27.*

Petitioner claims that she developed three cysts at the top of her right foot. *Tr. 22.* She denied that she had cysts before the accident. *Tr. 22.* She can wear only open-type shoes now. *Tr. 22.*

Throughout the course of treatment, she underwent seven injections to her right ankle, right foot, and cysts between February 22, 2021, and October 28, 2021. *Tr. 22-23.* According to her testimony, they helped for only about five days. *Tr. 23.* Dr. Anderson recommended surgery to remove the cysts and decompress her peroneal nerve. *Tr. 23-24.* She would like to undergo surgery. *Tr. 24, 27.*

According to Petitioner, Respondent never contacted her about accommodating her permanent restrictions. *Tr. 25.* She started working for QLS Staffing on October 23, 2022. *Tr. 9-10, 25.* QLS placed her in a position in a hotel with a waterpark in it, where she performs “houseman” duties like stripping sheets and taking out garbage in the morning and hands out passes to the waterpark in the afternoon. *Tr. 9, 10, 25-26, 37-38.* The duties she performs are within her restrictions. *Tr. 26.* She admitted that she works “on her feet,” though she testified that it is only for a short while. *Tr. 38.*

On cross exam, Petitioner testified that she was wearing steel-toed nonslip shoes on the accident date. *Tr. 28.* The molds were made of iron, and she carried a stack of them. *Tr. 29.* She knew they weighed eight pounds because she had to weigh them on a scale before filling them with cake batter. *Tr. 30.*

She did not remember being asked to return for follow-up in two weeks when she went to Advocate. *Tr. 30-31.* Petitioner initially testified that she last worked for respondent on November 25, 2020. *Tr. 31.* She testified that she sent a text to her supervisor that she was not going to be in that day and then Respondent’s owner, Kathy, called her to ask why she was not at work. *Tr. 31-32.* She then testified that Respondent was “shut down” on November 23 and 24, 2020, and she did not go in on November 25, 2020. *Tr. 32.* She then testified that she worked on November 23, 2020 and did not go in on November 24, 2020. *Tr. 32.* Kathy sent her a text asking why she did not go to work on November 25, 2020. *Tr. 32-33.* On redirect exam, she testified that she stopped going to work for Respondent on November 25, 2020, because her ankle was swollen from standing. *Tr. 39-40.* She denied that Respondent accommodated her seated only restrictions. *Tr. 40.*

When asked, Petitioner pointed to the top of her right foot to identify where her symptoms were throughout her treatment at ION. *Tr. 34, 41.* Despite not submitting into evidence any prescription bills after May 2022, she testified that she is currently taking pain medication. *Tr., 34-35.*

Petitioner remembered attending Dr. Simon Lee’s medical exam, which Respondent scheduled. *Tr. 35-36.* She denied that she told Dr. Lee or Dr. Anderson that she lost 170 pounds after her accident, and instead testified that it was during 2017 to 2020. *Tr. 36.* She was paid TTD until after Dr. Lee’s exam. *Tr. 36.*

When asked on cross examination, Petitioner denied that she returned to work folding towels for any other company before QLS. *Tr. 37.* She works from 9:00 a.m. until 3:00 p.m. or 3:30 p.m. *Tr. 38.* She testified that Dr. Anderson’s restrictions only allow her to work six hours a day. *Tr. 38, 42, 43.*

Medical Evidence

Petitioner sought medical attention at Advocate Medical Group in Libertyville the day after the accident. *Petitioner's Exhibit 1 (hereafter "PX1")*. She gave a history of trays falling onto her right foot. *PX1, page 6*. She complained of pain on the top of her foot and discomfort with weightbearing. *Id.* X-rays showed a line at the dorsum of the medial cuneiform that the radiologist interpreted as a possible fracture or overlap of the adjacent cuneiform bones. *PX1, page 8*. Petitioner was placed in a postop shoe and released to work sedentary duty. *Id.* She was to return in two weeks. *Id.*

On December 1, 2020, Petitioner consulted Dr. Ronnie Mandal of Illinois Orthopedic Network ("ION"). *PX2, page 4*. The doctor documented that on November 17, 2020, Petitioner slipped and fell on a puddle while she carried a "dirty cupcake tray to the dishwasher," twisted her left leg behind her and her right leg in front of her and dropped the tray onto the top of her right foot. *Id.* Dr. Mandal referred to Advocate as "the company clinic" and alleged that Respondent did not honor restrictions. *Id.* On exam, the doctor noted that Petitioner's right foot exhibited edema with diffuse tenderness over the dorsum, under the medial malleolus, and the heel. *PX2, page 5*. He prescribed Celebrex, Lidocaine ointment, and cyclobenzaprine, ordered physical therapy, and took her off work. *PX2, page 5, 6*.

Petitioner underwent chiropractic care at La Clinica. *PX3*. Dr. Fernando Perez documented Petitioner's complaints of right foot and ankle, right lower extremity, and low back pain. *PX3, page 6*. The notes show that therapy consisted of exercises, manual therapy, ultrasound, and hot packs through February 2021. *PX3, page 24, 26*.

On January 22, 2021, Dr. Thomas Poepping of G&T Orthopedics and Sports Medicine examined Petitioner for right foot and ankle pain. *PX2, page 8*. She told him that a steel mold fell onto her foot at work. *Id.* He noted that she walked on her toes and forefoot, avoiding any pressure on her heel. *PX2, page 8*. He noted that on exam, she exhibited diffuse tenderness along the plantar fascia and mild swelling at the anterior ankle joint and dorsal foot. *Id.* His impression was a crush injury and traumatic plantar fasciitis of the left foot, for which he ordered an MRI. *PX2, page 8*.

On February 22, 2021, Dr. Daniel Hare, also of ION, examined Petitioner. *PX2, page 11*. She reported carrying wet pans to a sink, slipping on a wet floor, and dropping a dish onto her right foot at work on November 16, 2020. *Id.* Dr. Hare documented that she was unable to work for three days and "was told" to see a doctor. *Id.* Petitioner related that she went to Advocate, but she indicated that x-rays were not taken. *Id.* Dr. Hare noted her symptoms of numbness and tingling up the right leg, and his impression was tarsal tunnel syndrome. *PX2, page 12*. He administered a cortisone injection into the right tarsal tunnel. *Id.*

An MRI on February 24, 2021, showed "mild" tibiotalar and subtalar synovial effusion and tendinosis of the right flexor hallucis longus and posterior tibialis tendons. *PX2, page 14-15*. A second MRI on the same date showed "mild" tibiotalar, subtalar, intertarsal tarsometatarsal, and metatarsophalangeal synovial effusion with degenerative changes at the first metatarsophalangeal joint. *PX2, page 16-17*. A plantar calcaneal spur was also noted. *PX2, page 17*.

Dr. Hare administered another cortisone injection into the tarsal tunnel on March 8, 2021, and yet another one on May 3, 2021. *PX2, page 18-19, 25*. Petitioner reported “great relief” when she followed up with Dr. Hare on May 24, 2021. *RX2, page 27*. He noted new complaints at the lateral gutter of the right ankle, and he administered a Kenalog/dexamethasone injection. *PX2, page 27-28*. On June 14, 2021, he ordered an EMG/NCV and orthotics. *PX2, page 31*. He kept Petitioner off work the entire time. *PX2, page 12, 19, 22, 24, 29, 31*.

An EMG/NCV of the lower extremity was performed on August 25, 2021. *PX2, page 37-39*. The study, which was “limited by patient pain,” was abnormal for bilateral plantar nerve conduction. *PX2, page 39*. The interpreting physician stated that the study “must be interpreted with caution, as the left lower extremity is asymptomatic.” *Id.* The study showed no electrodiagnostic evidence of a distal right peroneal, tibial, or sural nerve injury. *Id.*

On September 7, 2021, Dr. Joel Anderson of ION appears to have assumed care. *RX2, page 40-42*. He noted a history of a slip and fall and Petitioner dropping cake molds weighing about 60 pounds on her right foot. *RX2, page 40*. He added that she was wearing steel-toed shoes. *Id.* By now, she denied doing any home exercise and taking “only Gabapentin for pain.” *RX2, page 41*.

On September 28, 2021, Dr. Anderson noted a “palpable mass/ganglion” at the dorsum of the right foot at the midfoot and over the extensor hallucis longus (“EHL”) and extensor hallucis brevis (“EHB”) tendons. *PX2, page 44*. He administered cortisone injections at that visit and on October 12, 2021. *PX2, page 44, 47*. His impression was a right foot contusion, ganglion, superficial injury to the peroneal nerve, right tarsal tunnel syndrome, tenosynovitis of the right foot, and ankle joint effusion. *PX2, page 44, 47*. Dr. Anderson noted that “no clear ganglion at the anteromedial ankle or along the tibialis anterior tendon” was found during an ultrasound. *PX2, page 48*. Nonetheless, he recommended excision of the ganglion and decompression of the deep peroneal nerve. *Id.* He administered another cortisone injection on October 28, 2021. *PX2, page 51*.

On November 16, 2021, Petitioner reported that the injection provided a week of relief. *PX2, page 55*. Dr. Anderson deemed her to have failed conservative care and ordered surgery. *PX2, page 56*.

On November 24, 2021, Respondent’s utilization review (“UR”) declined to certify the surgery request. *Respondent’s Exhibit 3 (hereafter “RX3”)*. However, a second UR on December 14, 2021, authorized it as “medically necessary and appropriate.” *RX4, page 5 of 6*. Citing the ODG, peer review physician Dr. John Shine stated in the body of his report that, “[p]alpable masses about the foot and ankle are most commonly related to trauma or mechanical instability, with non-neoplastic causes such as ganglion cysts and calluses predominating.” *RX3, page 5 of 6*. He agreed that “a reasonable course of conservative treatment including topical and oral medications” failed. *RX3, page 4 of 6*.

On February 26, 2022, Dr. Simon Lee examined Petitioner for an IME. *RX1*. Petitioner told him that she worked for Respondent for three months as a dishwasher but also performed other tasks associated with baking. *RX1, page 1*. Before that, she was a housewife. *Id.* She reported carrying five Bundt cake molds when her right foot slipped and caused her to drop them onto the top of her right foot and ankle. *Id.* Noting her treatment, he stated that she had localized care but no therapy or rehabilitation. *Id.* His impression was a right foot contusion with neuritis that he connected to her work

accident. *RX1, page 3*. However, he opined that she had reached a plateau. *Id.* He did not recommend surgery because “her anatomic distribution, symptoms, and complaints are not within a specific distribution of a nerve and there is no ganglion cyst.” *Id.* He opined that she reached MMI and recommended accommodative shoe wear.

Regarding causation, Dr. Lee noted that Petitioner was wearing steel-toed nonslip shoes with thick dorsal leather covering at the time of her accident and that Bundt cake pans “should not be significantly heavy objects.” *RX1, page 3*. He conceded that it was possible that she may have developed a nerve contusion, but he saw no diagnostic studies that confirmed “any significant nerve injury that would require additional treatment.” *Id.* He called Dr. Anderson’s surgical recommendation “questionable,” citing a lack of evidence of a ganglion cyst on any objective studies like an MRI and the “diffuse distribution” of Petitioner’s symptoms. *Id.* For some reason, Petitioner told him she weighed 400 pounds over the preceding year and lost 170 pounds, which Dr. Lee found inconsistent with disability. *RX1, page 3*. He saw no contraindication for returning to full duty other than accommodative shoe wear as tolerated. *Id.*

On March 1, 2022, Petitioner complained to Dr. Anderson that she was unable to wear shoes that place pressure at the top of her foot and said she was getting shooting pain and an “antsy” feeling at the top of the foot from the front of the ankle to the first and second toes. *PX2, page 70*. She had not been taking medication. *Id.* She reported going to “an event” and standing for about six hours, after which her foot “blew up” and “got very swollen at the top of the foot and ankle.” *Id.* Dr. Anderson responded to Dr. Lee’s opinion: “Per the patient, each pan weighed nine to ten pounds and she was carrying a stack of six. He estimated the weight to be from 45 to 60 pounds.” *PX2, page 71*.

Dr. Anderson conceded that the EMG did not show a distal deep peroneal nerve injury, but he opined that a lack of such a finding “is not inconsistent with the limitations of that test.” *RX2, page 71*. According to him, a negative finding of a proximal nerve injury is suspect for a distal nerve injury. *Id.*

He also discussed Petitioner’s comments to Dr. Lee that she lost 170 pounds since her accident. *RX2, page 71*. According to him, Petitioner lost weight through intermittent fasting and “upper body type” and sitting exercises. *Id.* He explained that she copied these exercises from *My Six Hundred Pound Life*, a reality television show. *Id.*

Dr. Anderson reiterated his recommendation for surgery. *RX2, page 71*. He also prescribed Lidopro ointment and patches, Gabapentin, and Celebrex. *Id.* He released Petitioner to return to work with a 20-pound limit and no prolonged standing or walking with alternate standing and sitting a maximum of two hours sitting and one hour standing. *Id.*

After this, Dr. Anderson resubmitted his surgery request. On March 30, 2022, Respondent’s UR again declined to certify the request because no EMG or imaging reports were provided for review. *RX5, page 7 of 9*. On April 5, 2022, however, Respondent’s UR again authorized the surgery. *RX6*. In the body of his report, peer review physician Dr. Junaid Makda agreed that “the EMG confirmed the concerns of a deep distal peroneal neuritis by being negative for a proximal injury.” *RX6, page 6 of 7*. He concluded that Dr. Anderson’s surgery was medically necessary. *Id.*

In an addendum dated April 14, 2022, Dr. Lee disagreed with the peer review physician. *RX2*. Citing no indication of a ganglion cyst in any of the objective studies, he opined

that Petitioner's injury was a neuropraxia. *RX2, page 1*. Reiterating that Petitioner's symptoms of nerve distribution were nonspecific and not anatomically related to "just the peroneal nerve," he concluded that her symptoms would actually worsen after Dr. Anderson's procedure. *Id.* He found significant Waddell signs on physical exam and minimal evidence of any atrophy in the calves and lower extremities to corroborate Petitioner's demonstrated lack of range of motion. *RX2, page 1-2*. Dr. Lee further found no evidence of any mass, noting that radiographs, MRI, and EMG were all normal. *RX2, page 2*. He concluded that a deep peroneal nerve compression is unlikely to improve Petitioner's symptoms. *Id.*

On July 12, 2022, Dr. Anderson examined Petitioner one last time. *PX2, page 72-74*. She was wearing lace-up canvas shoes, and she told him she had returned to work folding towels part-time. *PX2, page 73*. He deemed her to be at MMI unless she underwent surgery. *Id.* He released her to work with a 20-pound limit and no prolonged standing or walking, alternating both with a maximum of two hours intermittent standing. *Id.* He released her to work eight hours a day. *Id.* He discharged her from care. *Id.*

II. Conclusions of Law.

In support of his conclusions on Issue F., Is Petitioner's current condition of ill-being causally related to the injury?, and Issue K., Is Petitioner entitled to any prospective medical care?, the Arbitrator finds the following:

It is Petitioner's burden to establish all the elements of her claim by a preponderance of the credible evidence. Ingalls Memorial Hospital v. Industrial Commission, 241 Ill. App. 3d 710 (1993). Her burden includes proving a causal connection between the accident and her condition of ill-being. Lee v. Industrial Commission, 167 Ill. 2d 77 (1995). Liability cannot rest on imagination, speculation, or conjecture. Chicago Park District v. Industrial Commission, 263 Ill.App.3d 835 (1994).

It is undisputed that Petitioner injured her right foot when she slipped, fell, and dropped a stack of Bundt pans onto it while working for Respondent on November 18, 2020. Respondent paid TTD compensation through January 26, 2022, *Arbitrator's Exhibit 1 ("AX1")*, and medical bills through date of service January 25, 2022. *RX7*. The primary dispute here is over the injury, specifically the physical condition that the accident caused.

Petitioner testified repeatedly that her injury was to the top of her foot. *Tr. 21, 22, 34, 41*. The records of Advocate Medical Group, *PXI*, corroborate her testimony. The x-ray taken there the day after the accident showed a translucent line at the dorsum of the medial cuneiform that the radiologist interpreted as a possible fracture or overlap of the adjacent cuneiform bones.

The records of ION reflect that Petitioner told Dr. Mandal at her initial visit on December 4, 2020, that she injured the top of her right foot. Dr. Mandal noted edema with diffuse tenderness not just over the dorsum under the medial malleolus but also, curiously, at the heel. His note does not reflect that she complained of heel pain.

By the time Petitioner saw Dr. Poepping in January 2021, he documented plantar fasciitis symptoms and shifted treatment to her tarsal tunnel. The MRI in February 2021 confirmed "mild" effusion and a plantar calcaneal spur, the latter of which no doctor connected to her work injury or her symptoms. The EMG/NCV in August 2021 showed no electrodiagnostic evidence of a distal right peroneal, tibial, or sural nerve injury.

Dr. Anderson opined that Petitioner developed a ganglion and peroneal nerve injury as a result of her work accident, and he recommends an excision of the ganglion and decompression of the deep

peroneal nerve. The evidence taken as a whole contradicts his opinions on both the condition and surgery. No mention of a ganglion is documented in any medical records until October 12, 2021, and Dr. Anderson is the only physician who documented it. He indicated that there was no clear evidence of a ganglion on the right foot when he used ultrasound to perform an injection on the same day. He also conceded that the EMG did not show a distal deep peroneal nerve injury.

Dr. Shine opined that a ganglion cyst can be the result of trauma. However, Dr. Lee, who physically examined her, opined that Petitioner does not have a ganglion cyst. He pointed to the normal results of radiographs, MRI, and EMG in support of his conclusion. Citing no existence of a ganglion cyst in any of the objective studies, he opined that Petitioner's injury was a neuropraxia. Dr. Lee's opinion comports with the evidence, and thus the Arbitrator finds it persuasive and adopts it.

Dr. Lee also opined that a deep peroneal nerve decompression is unlikely to improve Petitioner's symptoms, and in fact will make them worse. He found that her symptoms of nerve distribution to be nonspecific and not anatomically related to "just the peroneal nerve." He found that Petitioner exhibited significant Waddell signs on physical exam and only "minimal" atrophy in the calves and lower extremities to corroborate her demonstrated lack of range of motion when he examined her. The Arbitrator finds that Petitioner's testimony supports Dr. Lee's opinions. The Arbitrator observed Petitioner's demeanor as she testified. She is not a reliable witness, and the medical records refute her testimony on a number of collateral facts. Her testimony was at times self-contradictory and confused.

Based on the above, the Arbitrator finds that Petitioner sustained an injury to the top of her right foot on November 18, 2020, and that her injury resulted in a neuropraxia that reached MMI by the time of Dr. Lee's exam on January 26, 2022. The Arbitrator denies Petitioner's request for prospective medical, specifically a surgical excision of the ganglion and decompression of the deep peroneal nerve.

In support of his conclusions on 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 the following:

Having found that Petitioner's neuropraxia reached MMI by January 26, 2022, the Arbitrator finds that medical treatment through this date was reasonable and necessary, and that respondent has paid all appropriate charges for all reasonable and necessary medical services.

In support of his conclusions on Issue L., What temporary benefits are in dispute?, the Arbitrator finds the following:

Petitioner claims that she is entitled to TTD through October 2, 2022. Having found that her neuropraxia reached MMI by January 26, 2022, and finding no contraindication for returning to full duty other than accommodative shoe wear as of that date, the Arbitrator denies Petitioner's request for further TTD. The Arbitrator notes that although she denied it, Petitioner had already returned to work folding towels by the time Dr. Anderson released her to do so on July 12, 2022.