

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

Case Number	19WC020090
Case Name	Diane Steele v. Macy's Inc
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	<b><i>Corrected Decision</i></b>
Commission Decision Number	[24IWCC0014]
Number of Pages of Decision	15
Decision Issued By	Kathryn Doerries, Commissioner

Petitioner Attorney	Bruce Rafalson
Respondent Attorney	Robert Smith

DATE FILED: 1/29/2024

*/s/ Kathryn Doerries, Commissioner*

Signature

STATE OF ILLINOIS )  
 ) SS.  
COUNTY OF COOK )

<input type="checkbox"/> Affirm and adopt (no changes)	<input type="checkbox"/> Injured Workers' Benefit Fund (§4(d))
<input checked="" type="checkbox"/> Affirm with changes	<input type="checkbox"/> Rate Adjustment Fund (§8(g))
<input type="checkbox"/> Reverse <input type="text" value="Choose reason"/>	<input type="checkbox"/> Second Injury Fund (§8(e)18)
<input 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

DIANE STEELE,  
  
Petitioner,

vs.

NO: 19 WC 20090  
24IWCC0014

MACY'S INC.,  
  
Respondent.

CORRECTED DECISION AND OPINION ON REVIEW

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

The Commission corrects a scrivener's error in the Arbitrator's decision, in the section entitled, Arbitrator's Credibility Assessment, second and fourth lines, and strikes "2020," and replaces it with "2019."

The Commission corrects a scrivener's error in the Arbitrator's decision, in the Conclusions of Law section, second to last paragraph, and strikes "1/18/21," and replaces it with "1/18/20."

The Commission corrects a scrivener's error in the Arbitrator's decision, in the nature and extent section, fifth paragraph, and strikes "1/18/21" and replaces it with "1/18/20."

Also, in the nature and extent section, the Commission strikes in its entirety the fourth to last paragraph which states, "There is no record of Petitioner visiting a doctor after September 24, 2020, for a medical condition regarding the work incident of July 3, 2019, until October 26, 2021,

when Petitioner was discharged from Dr. Sompalli's care."

The Commission corrects a scrivener's error in the Arbitrator's decision, in the nature and extent section, third to last paragraph, and strikes "10/26/21" and replaces it with "12/11/20," and also strikes the word "thereafter" in the last sentence of the same paragraph.

The Commission corrects factor (v) in the nature and extent section of the Arbitrator's decision, and adds the following sentence, "Therefore, this factor is given substantial weight."

The Commission corrects the scrivener's error in the Arbitrator's decision, in the medical services section, and strikes "Preferred Open MRI," and replaces it with "Premier Open MRI."

The Commission, in the Arbitrator's Findings section, adds Petitioner's earnings for the year preceding the date of injury as "\$30,581.20."

The Commission corrects a scrivener's error in the Arbitrator's decision, the Order section, paragraph one, and strikes "\$4,284.7" and replaces it with "\$2,912.45." The Commission corrects a scrivener's error in the Arbitrator's decision, the Conclusions of Law section, top of page 11, and strikes "\$4,284.7" and replaces it with "\$2,912.45." The Commission adds "2/9/20-3/31/20" for the dates TTD benefits were awarded. The Commission strikes "7-2/7 weeks," and replaces it with "7-3/7 weeks."

The Commission corrects a scrivener's error in the Arbitrator's decision, in the Findings section regarding credit for TTD paid, and strikes "\$0" and replaces it with "\$10,529.88," as stipulated to by the parties, for the period of TTD paid from 7/6/19 to 8/26/19 and from 4/1/20 to 8/26/20, for a total number of 28-4/7 weeks.

The Commission adds to the Order section the number of weeks awarded as "91.19 total weeks" for the permanent partial disability.

The Commission corrects scrivener's errors in the Arbitrator's decision, in the Order section regarding medical expenses awarded, and strikes "\$7,186.00," and replaces it with "\$7,185.00," and strikes "Enterprise Victory, Inc.," and replaces it with "Victory Enterprises II, Inc."

All else is affirmed and adopted.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed December 13, 2022, is hereby, otherwise, affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of \$392.06 per week for a period of 7-3/7 weeks, that being the period of temporary total incapacity for work under §8(b) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of \$352.86 per week for a period of 91.19 total weeks, as provided in §8(e)(12), §8(e)(11),

and §8(e)(10) of the Act, for the reason that the injuries sustained caused the 35% loss of use of her left leg (75.25 weeks), 5% loss of use of her left foot (8.35 weeks), and 3% loss of use of her left arm (7.59 weeks).

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of \$7,185.00 for medical expenses under §8(a) of the Act.

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

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

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of \$31,900.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

**January 29, 2024**

o-11/21/23  
KAD/jsf

/s/ Kathryn A. Doerries

Kathryn A. Doerries

/s/ Maria E. Portela

Maria E. Portela

/s/ Amylee H. Simonovich

Amylee H. Simonovich

ILLINOIS WORKERS' COMPENSATION COMMISSION  
DECISION SIGNATURE PAGE

Case Number	19WC020090
Case Name	STEELE, DIANE v. MACY'S, INC
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	11
Decision Issued By	Charles Watts, Arbitrator

Petitioner Attorney	Bruce Rafalson
Respondent Attorney	Robert Smith

DATE FILED: 12/13/2022

THE INTEREST RATE FOR THE WEEK OF DECEMBER 13, 2022 4.63%

*/s/ Charles Watts, Arbitrator*

\_\_\_\_\_  
Signature

STATE OF ILLINOIS )  
 )SS.  
COUNTY OF COOK )

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

**ILLINOIS WORKERS' COMPENSATION COMMISSION  
ARBITRATION DECISION**

**DIANE STEELE**  
Employee/Petitioner

Case # **19 WC 20090**

v.

Consolidated cases: **N/A**

**MACY'S, INC**  
Employer/Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Charles Watts**, Arbitrator of the Commission, in the city of **Chicago**, on **June 17, 2022**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

**DISPUTED ISSUES**

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

**FINDINGS**

On **July 3, 2019**, Respondent *was* operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned \$ ; the average weekly wage was **\$588.10**.

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

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

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

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

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

**ORDER**

Petitioner has established the right to receive TTD benefits at the rate \$392.06 for a period of 7 and 2/7 weeks, an amount totaling \$4,284.7.

Petitioner established disability in the amount of 35% loss of use of the left leg, 5% loss of use of the left foot, and 3% loss of use of the left arm. Petitioner established an entitlement to receive \$352.86 per week.

The arbitrator finds that Petitioner has established that the following unpaid medical expenses are reasonable, necessary and related to the work-related accident of July 3, 2019:

1. Advanced Urgent Care \$4,490.00.
2. Enterprises Victory Inc. \$2,495.00.
3. Molecular Imaging of Chicago \$200.

The arbitrator awards medical expenses to Petitioner totaling \$7,186.00, subject to the fee schedule.

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

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



**DECEMBER 13, 2022**

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Signature of Arbitrator

STATE OF ILLINOIS     )  
   )  
 COUNTY OF COOK        )       SS

**BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION**

Diana Steele,	)		
	)		
	)	Petitioner,	
	)		
vs.	)		No. 19 WC 20090
	)		
Macy's Inc.,	)		Arb. Charles Watts
	)		
	)	Respondent.	

**ARBITRATOR'S FINDINGS OF FACT**

The parties agree that Petitioner sustained an accident and injury on July 3, 2019, while she was working as a clerk for Respondent. The disputed issues include the nature and extent of Petitioner's injury, whether Petitioner is entitled to a disputed period of TTD benefits, and lack of payment for certain medical expenses. (Arb. Exhibit 1).

Petitioner testified that she had worked for Macy's for approximately 13 years at the time of her injury. She testified that she was working at Respondent's store located at Orland Square Mall. Petitioner testified that she worked as a clerk in both the "Intimates" and "Junior's" department.

On July 3, 2019, Petitioner arrived at the store at approximately 9:45 AM. (P. 8). She testified that her first duty was to handle online orders, which requires her to walk to the Junior's department. After collecting the required items, she began walking back to her station, which required her to walk over carpet that, unknown to her, was wet due to a recent cleaning. (P. 9-10) Petitioner stepped off the carpet onto a tile floor. Due to her shoes being wet from the carpet, Petitioner's left foot slipped. (P. 10). Upon slipping, Petitioner's body went up in the air; her knee, ankle, elbow, and shoulder hit the tile floor upon landing. (P. 11). Petitioner denied loss of consciousness but felt immediate pain in her knee and ankle on her left side. (P. 12). Petitioner was initially unable to stand and crawled over to a ladder and made unsuccessful attempts to pull herself up to her feet. (P. 12-13). Eventually with the assistance of a customer, Petitioner was able to walk back to the Intimates department. At that point, Petitioner called the store manager; a person named "Pat C.", to whom the incident was reported. (P. 13).

Petitioner was directed to seek medical attention at Advanced Urgent Care which was located across the parking lot from Macy's. (P. 14). At that facility she saw Mohamad R. Alzein, MD, who noted a history of a slip and fall while working at Macy's due to a wet floor and carpet. Petitioner complained of pain in her left knee, ankle, foot, shoulder, elbow and back. (Pet. Ex. 2). The initial assessment of Plaintiff was: 1. Left elbow swelling; 2. Left anterior knee pain; 3. Left foot pain; 4. Fall initial encounter. Petitioner continued visit Advanced Urgent Care until February



2020 to receive treatment and medication for her injuries to her left knee, ankle, and elbow.

Petitioner also saw Fred Turk, DC at Advanced Urgent Care. Dr. Turk treated Petitioner for the injuries to her left elbow, left knee and left ankle. On July 9, 2019, Dr. Turk diagnosed Petitioner with 1). Left elbow synovitis; 2). Left elbow sprain; 3). Left knee meniscus tear; 4). Left knee sprain. (Pet. Ex. 1). Dr. Turk ordered diagnostic testing, provided therapy services for Petitioner. Dr. Turk saw Petitioner from July 9, 2019, through March 3, 2020.

When Petitioner returned to Advanced Urgent Care on July 9, 2019, she reported she had pain in the left knee, neck, and left wrist. An examination of the back showed no muscle atrophy, no tenderness, and no spasm. The assessment was swelling of the left elbow, left anterior knee pain, and left foot pain. (PX 2). Petitioner received two injections to the buttock for left foot pain and was to follow up in 2-3 days. (PX 2).

Dr. Turk also referred Petitioner to Podiatrist, Nick Andriacchi, OD, who first saw Petitioner on July 22, 2019. (Pet. Ex. 2). Dr. Andriacchi noted pain and swelling in the left ankle. He prescribed an MRI which was positive for “posttraumatic soft tissue bruising with a small associated tibiotalar effusion”. On August 14, 2019, Petitioner was fitted for custom orthotics. She was later placed in a walking boot and an ankle brace. On September 9 Petitioner was limited to no more than 4 hours per day of standing or walking. An MRI was performed on Petitioner’s left knee on July 11, 2019 which revealed 1. Degenerative joint disease in the medial compartment with a small medial meniscus tear and 2. Degenerative joint disease in the patella-femoral compartment.

On September 24, 2019, Petitioner went to Illinois Orthopedics and ultimately Elite Orthopedics. Petitioner was initially treated by Eugen Lipov, MD. A pain management physician. Dr. Lipov’s examination revealed that Petitioner had positive medial joint line tenderness and negative lateral joint line tenderness. Dr. Lipov opined that the MRI of July 11, 2019, revealed a small medial meniscus tear and degenerative joint disease of the patellofemoral compartment with an association joint fusion. Dr. Lipov recommended continued physical therapy and a steroid injection was administered into the left knee. Petitioner was placed on a “sit only” work restriction. *Id.*

Dr. Lipov referred Petitioner to orthopedic surgeon, Kevin Tu, MD. Dr. Tu’s reading of the left knee MRI demonstrated significant degenerative changes of the patellofemoral and medial compartment. The assessment was degenerative changes of the medial and patellofemoral compartment and left knee medial meniscus tear. A total knee arthroplasty was recommended. The Petitioner was released to work with restrictions, which included no prolonged walking or standing, and no kneeling, no squatting activities, and no lifting greater than 10 pounds. *Id.* Dr. Tu referred Petitioner to Chandrasekhar Sompalli, MD who first examined Petitioner on October 29, 2019. On exam, she reported her knee pain as 10/10 and described it as constant, sore, and achy at rest, increasing to sharp and shooting with movement. Petitioner denied back problems. She was diagnosed with left knee pain, effusion in the left knee, and instability. She was to undergo an MRI, perform a home exercise program, obtain x-rays, an injection for the knee condition, and total knee replacement were recommended, and she could return to light duty work/sedentary work only. *Id.*

At the request of Respondent, an Independent Medical Exam was performed on Petitioner by Brian

Cole, MD on January 6, 2020. (Pet. Ex. 13). In addition to conducting a physical examination of Petitioner, Dr. Cole reviewed the relevant medical records and imaging studies. The primary purpose of the IME was to assess the condition of Petitioner's left knee, including but not limited to; 1. The necessity for future care and treatment; 2. The causal relationship between the condition of Petitioner's right knee and the work-related accident sustained by Petitioner on July 3, 2019. In his report, Dr. Cole opined that Petitioner had advanced osteoarthritis in her right knee as well as a degenerative medial meniscus tear. He opined that Petitioner had undergone all reasonable forms of conservative treatment including cortisone injections, physical therapy and oral medication which proved to be unsuccessful. Dr. Cole further opined the following:

“A causality standpoint, her fall at work certainly did not cause the osteoarthritis, but likely brought on the need for total knee replacement sooner than otherwise would have been necessary. On a more likely than not basis, she was headed for total knee, even absent of this fall, but the timing of said total knee replacement is indeterminate. It is my opinion that, on a more likely than not basis, she has arrived at a need for definitive care with total knee replacement sooner than otherwise would have been necessary absent of the fall on July 3, 2019.” (Pet. Ex. 13).

Petitioner was seen at Advanced Urgent Care on January 18, 2020, for right knee pain and swelling that started three days prior. She reported surgery was scheduled for her left knee. The examination of the back revealed no muscle atrophy or tenderness and no spasm. The assessment was left knee pain and lumbar radicular pain. She was to start prednisone and was given a Toradol injection for her lumbar radicular pain. (PX 2).

Petitioner returned to Advanced Urgent Care on February 6, 2020, complaining of a lot of pain in her left knee/leg. She had been undergoing physical therapy. The examination of the back revealed no muscle atrophy or tenderness and no spasm. The assessment was left leg pain, left leg numbness, and lumbar radiculopathy. An MRI of the lumbosacral spine was ordered, and Petitioner was given a Toradol injection and was to start prednisone. (PX 2).

After conservative treatment failed, a total left knee replacement was performed by Chandrasekhar Sompalli, MD on April 1, 2020. The operative report contained the following:

“**Indications:** This is a patient who injured her left knee at work on July 3, 2019. She had injured her knee and developed severe pain. She did have arthritis in the past, but it was asymptomatic until the injury happened. She does have severe pain in her knee, failed cortisone injection therapy, anti-inflammatories, requested a total knee arthroplasty.” (Pet. Ex. 15).

Following her knee replacement surgery, Petitioner was admitted to Harmony nursing facility for a period of one week. (P. 25). After her release, she was prescribed a portable intermittent compression device. (P.27). Along with the prescription, Dr. Sompalli provided a letter of medical necessity. (Pet. Ex 10). Respondent has not paid for the cost of this device. Petitioner continued oral anti-inflammatories and engaged in physical therapy at ATI from April 30, 2020, through August 28, 2020. (Pet. Ex. 16). Petitioner was kept off work until she showed significant improvement and was released back to work on October 16, 2020, with the restriction of no standing for prolonged periods of time. She was later released to full duty without restriction on

December 20, 2020. On that date Petitioner did continue to complain of the onset of swelling after prolonged standing.

A second IME was performed by Dr. Cole on September 24, 2020, almost six months after her left total knee replacement. Dr. Cole noted that Petitioner was happy with the results of her surgery and had improved significantly. He placed Petitioner at MMI. Dr. Cole opined that Petitioner had an impairment rating of 21-25 %. (Pet. Ex 13). Dr. Cole noted that Petitioner has not returned to work. She has what Dr. Cole characterized as mild to moderate limitation with her activities.

### **ARBITRATOR'S CREDIBILITY ASSESSMENT**

Petitioner was a credible witness. Her testimony was unimpeached and her version of the facts of the July 3, 2020, were corroborated throughout the medical records admitted into evidence. Petitioner admitted in her testimony that she had been diagnosed with arthritis in her left knee prior to July 3, 2020. The opinions offered by Brian Cole, MD., the Independent Medical Examiner, indicate that Petitioner was truthful and credible during the examination process. The Arbitrator found the Petitioner's testimony to be credible.

### **CONCLUSIONS OF LAW**

**In connection with the Arbitrator's Decision regarding Issue (F), whether Petitioner's current condition of ill-being is causally related to the alleged incident, the Arbitrator concludes as follows:**

The Arbitrator concludes that the Petitioner has failed to prove by a preponderance of the evidence that Petitioner's current condition of ill-being regarding the lower back is causally related to the July 3, 2019, work incident.

It is well established that a Petitioner carries the burden of proving his case by a preponderance of the evidence. The preponderance of the evidence standard dictates the evidence which is of greater weight or more convincing than the evidence offered in opposition to it; it is evidence which as a whole shows that the fact to be proved is more probable than not. Parro v. Industrial Commission, 260 Ill. App. 3d 551 (1st Dist. 1993); Central Rug & Carpet v. Industrial Commission, 361 Ill. App. 3d 684 (1st Dist. 2005).

Among the factors to be considered in determining whether a claimant has sufficiently carried his burden is his credibility. *See, Parro*, supra. Credibility is the quality of a witness, which renders his evidence worthy of belief. The Arbitrator, whose province it is to evaluate witness credibility, evaluates the witness's demeanor and any external inconsistencies with testimony.

The Commission is not required to find for a claimant merely because there is some testimony which, if it stood alone and undisputed, might warrant such a finding. Burgess v. Industrial Commission, 169 Ill. App. 3d 370 (1st Dist. 1988). The mere existence of testimony does not require its acceptance, U.S. Steel Corporation v. Industrial Commission, 8 Ill. 2d 407 (1956).

To determine whether a claimant has met her requisite burden of proof by a "preponderance of credible evidence," it is necessary for the Arbitrator to look for consistency and corroboration

between a witness' testimony, conduct, and other documentary evidence to determine the truth of the matter. Where that other evidence tends to impeach or undermine a claimant's testimony, there may be sufficient cause to find that a claimant has failed to meet her requisite burden.

Concerning the alleged medical condition regarding the back, the Arbitrator concludes that Petitioner failed to prove that her current condition of ill-being is causally related to the work incident of July 3, 2019. The claimed condition is not supported by the medical record evidence or by Petitioner's testimony.

Petitioner was working for Respondent on July 3, 2019, when she suffered an injury to her left knee. Petitioner saw a physician on July 3, 2019, but did not report any issue regarding her back. Petitioner only mentioned having prior lower back issues.

Petitioner testified that an injection was administered on July 3, 2019, to her bottom. (Tr. 37). The medical records showed that Petitioner received an injection for left foot complaint. (PX 2). As there was no record of more than one injection received on this date of treatment, Petitioner's treatments were directed to her left foot.

The medical records do not indicate that there was a causal relationship between the work incident of July 3, 2019, and Petitioner's diagnosis regarding the lower back on January 18, 2021. Petitioner's diagnosis regarding the lower back was a little over six months after the work incident. Petitioner herself consistently denied any medical issues regarding her back.

Applying the applicable case law to the above-captioned matter, based on the totality of the circumstances, and weighing the evidence; the Arbitrator concludes that the Petitioner failed to sustain her burden of proof by a preponderance of evidence that her alleged back condition is causally related to the work incident of July 3, 2019.

**What is the nature and extent of the injury? The Arbitrator concludes as follows:**

It is well established that a Petitioner carries the burden of proving his or her case by a preponderance of the evidence. The preponderance of the evidence standard dictates the evidence which is of greater weight, or more convincing, than the evidence offered in opposition to it; it is evidence which as a whole shows that the fact to be proved is more probable than not. Parro v. Industrial Commission, 260 Ill. App. 3d 551 (1st Dist. 1993); Central Rug & Carpet v. Industrial Commission, 361 Ill. App. 3d 684 (1st Dist. 2005).

Based on the testimony presented at hearing and the exhibits admitted into evidence, it is the decision of the arbitrator that Petitioner has established that the undisputed work accident of July 3, 2019 caused an aggravation of her pre-existing osteoarthritis condition in her left knee, which created the necessity for a total knee replacement, performed on April 1, 2020.

Petitioner admitted to having past knee pain, and further admitted to having been diagnosed with osteoarthritis in her left knee. Petitioner testified that she had not had any treatment for at least one year prior to July 3, 2019. The mechanism of injury, as described by Petitioner, is consistent with causing an aggravation of her arthritic condition. Her testimony and the medical records admitted into evidence support the position that Petitioner's left knee injury of 2019 was the result of the July 3 work related accident.

All the exhibit's admitted into evidence, including the report of the Independent Medical Examiner submitted by Respondent, indicate that Petitioner did not respond to conservative treatment. The treatment records and IME report indicate that the total knee replacement was reasonable and necessary, and related to the July 3, 2019 work related accident. The Arbitrator has considered all the facts, including the impairment rating contained in the September 24, 2020 IME performed by Brian Cole, MD. The records also indicate that Petitioner suffered an injury to her left ankle which caused her continued pain and inability to walk or stand for long periods of time.

However, the medical records do not indicate that there was a causal relationship between the work incident of July 3, 2019, and Petitioner's diagnosis regarding the lower back on January 18, 2021. Petitioner's diagnosis regarding the lower back was a little over six months after the work incident. Petitioner herself consistently denied any medical issues regarding her back.

Pursuant to the findings above, the Arbitrator concludes that Petitioner has failed to prove a compensable accident involving her lower back.

Because the accident occurred after September 1, 2011, the Arbitrator looks to Section 8.1b of the Act for guidance in assessing permanency. This section sets forth five factors to be considered in determining the nature and extent of an injury, with no single factor predominating.

With regard to subsection (i) of §8.1b(b), the Arbitrator notes that the record contains, specifically attached to RX 2, an impairment rating of 21% of the lower extremity as determined by Dr. Cole pursuant to the most current edition of the American Medical Association Guides to the Evaluation of Permanent Impairment. (RX 2). The Arbitrator also notes that there is no impairment rating regarding the elbow. The Arbitrator notes that this level of impairment does not necessarily equate to permanent partial disability under the Workers' Compensation Act, but instead is a factor to be considered in making a disability evaluation. In making his evaluation, Dr. Cole noted mild range of motion deficit in flexion, but overall good quads. The Arbitrator therefore gives some weight to this factor.

With regard to subsection (ii) of §8.1b(b), the occupation of the employee, the Arbitrator notes that Petitioner was able to return to work in a full duty capacity. Petitioner was discharged to full duty starting November 1, 2020 by Dr. Sompalli. Petitioner testified that she has returned to work. Therefore, the Arbitrator gives some weight to this factor.

With regard to subsection (iii) of §8.1b(b), the Arbitrator notes that Petitioner was 57 years old at the time of the accident and Petitioner has presented no evidence as to how her age might affect her future earnings. Therefore, the Arbitrator gives no weight to this factor.

With regard to subsection (iv) of §8.1b(b), Petitioner's future earnings capacity, the Arbitrator notes that there was no evidence of impairment of earning capacity. Petitioner testified that she was earning \$14.70 per hour at Macy's. Petitioner also testified that she was currently working with Addus Home Care earning \$15.70 per hour. Petitioner did not suffer any decrease in income as a result of the work incident of July 3, 2019. Petitioner is currently earning at a higher rate than when she was working with Respondent. Therefore, the Arbitrator gives no weight to this factor.

With regard to subsection (v) of §8.1b(b), evidence of disability corroborated by the treating

medical records, the Arbitrator notes that when Petitioner presented to Dr. Cole for an examination on September 24, 2020, petitioner reported that she took pain medication as needed. Petitioner denied knee pain. Dr. Cole noted that Petitioner had +1 to 100+ range of motion in the left knee, good quads, and the left knee was neurovascularly intact. X-rays of the left knee obtained on September 24, 2020 showed no adverse findings and no complications. The physician concluded that Petitioner had reached maximum medical improvement (MMI) and could return to work full duty without restrictions. The physician also concluded that Petitioner did not require further treatment after September 24, 2020.

There is no record of Petitioner visiting a doctor after September 24, 2020, for a medical condition regarding the work incident of July 3, 2019, until October 26, 2021, when Petitioner was discharged from Dr. Sompalli's care.

Although, Petitioner testified to continued pain and discomfort in her left knee, she last saw the treating surgeon, Dr. Sompalli, in December of 2020. Petitioner was discharged from care and returned to full duty by Dr. Sompalli on October 26, 2021. Petitioner thereafter reported a 1/10 pain on December 11, 2020.

The Arbitrator notes that Petitioner's complaint of elbow pain was reported to be 8/10 on July 16, 2019, 3/10 on August 20, 2019, and 0/10 on September 3, 2019. The medical records do not contain evidence that treatments were directed to Petitioner's elbow.

Based on the above factors, and the record taken as a whole, the Arbitrator finds that Petitioner sustained permanent partial disability to the extent of 35% of the left leg, 5% of the left foot, and 3% of the left arm.

**In connection with the Arbitrator's Decision regarding Issue K, what temporary total disability benefits are in dispute, the Arbitrator concludes as follows:**

Petitioner is claiming temporary total disability (TTD) from February 10, 2020 through March 31, 2020.

To prove entitlement to any TTD, the employee must show not only that she did not work but that she was unable to work. Schmidgall v. Industrial Comm'n, 268 Ill.App.3d 845, 847 (4th Dist. 1984); Boker v. Industrial Comm'n, 141 Ill.App.3d 51, 55, 489 N.E.2d 913 (3d Dist. 1986).

Petitioner testified that she experienced pain and swelling in her knee and was unable to stand for the entire duration of her shifts. Petitioner's Exhibit #5, Elite Orthopedics, contains a note from January 14, 2020, returning Petitioner to work with sedentary restrictions on January 17, 2020. Petitioner testified that her employer could not accommodate the restriction. (p. 41-42). Petitioner testified that she was not paid TTD from February 10, 2020, through March 31, 2020, despite the evidence that she was unable to work during this period. These were also the two months before her surgery was to take place on April 1, 2020.

The parties agree that Petitioner's average weekly wage was \$588.10. Petitioner was paid TTD beginning on April 1, 2020, the date of her knee replacement surgery. The Arbitrator finds that Petitioner is entitled to TTD benefits from February 9, 2020, through March 31, 2020.

The Arbitrator awards Petitioner 7 and 2/7 weeks of TTD benefits, an amount equal to \$4,284.7.

**In connection with the Arbitrator's Decision regarding issue J, were the medical services that were provided to Petitioner reasonable and necessary and has Respondent paid all appropriate charges for all reasonable and necessary medical services, the Arbitrator concludes as follows:**

Section 8(a) of the Act provides that the "employer shall provide and pay ... for all necessary first aid, medical and surgical services and all necessary medical, surgical and hospital services day after incurred, limited however, to that which is reasonably required to cure or relieve from the effects of the accidental injury." 820 ILCS 305/8(a) (2011). A claimant bears the burden of proving, by a preponderance of the evidence, his entitlement to an award of medical expenses under Section 8(a). Westin Hotel v. Industrial Comm'n, 372 Ill. App. 3d 527, 546 (2007).

Although Respondent paid for the cost of most Petitioner's medical expenses, Petitioner alleges that Respondent failed to pay the following medical bills which were admitted into evidence without objection:

1. Advanced Urgent Care (Pet. Ex 2) \$4,490.00.
2. Preferred Open MRI (Pet. Ex. 9) \$1,500.00.
3. Enterprises Victory Inc. (Pet. Ex. 10) \$2,495.00.
4. Molecular Imaging of Chicago (Pet. Ex. 12) \$200

The arbitrator finds that the above listed unpaid bills for Molecular Imaging of Chicago, Advanced Urgent Care, and Victory Enterprises were for treatment, testing and medical devices related to the injuries suffered by Petitioner in her work-related accident of July 3, 2019.

Petitioner underwent an MRI of her lumbosacral spine at Premier Open MRI on March 6, 2020. Petitioner also testified that she underwent an MRI for her back in March 2020. (Tr. 39-41). Petitioner did not present any tangible evidence documenting treatments to her back as related to the work incident of July 3, 2019. The treatment received at Premier Open MRI is therefore not causally related to the work incident of July 3, 2019.

The Arbitrator awards payment of Molecular Imaging of Chicago, Advanced Urgent Care, and Victory Enterprises bills by Respondent to Petitioner in the amount of \$7,186.00.

The Arbitrator otherwise denies the payment of Premier Open MRI bill by Respondent to Petitioner.

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

Case Number	20WC032175
Case Name	Dawn Oles v. Sedgwick
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	24IWCC0020
Number of Pages of Decision	15
Decision Issued By	Amylee H. Simonovich, Commissioner

Petitioner Attorney	Robert Smoler
Respondent Attorney	Aukse Grigaliunas

DATE FILED: 1/19/2024

*/s/Amylee H. Simonovich, Commissioner*  

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Signature



STATE OF ILLINOIS )  
 ) SS.  
COUNTY OF DU PAGE )

<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 checked="" type="checkbox"/> Reverse Accident	<input type="checkbox"/> Second Injury Fund (§8(e)18)
<input type="checkbox"/> Modify	<input type="checkbox"/> PTD/Fatal denied
	<input checked="" type="checkbox"/> None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

DAWN OLES,

Petitioner,

vs.

NO: 20 WC 32175

SEDGWICK,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Petitioner herein and notice given to all parties, the Commission, after considering the issues of accident, causal connection, medical expenses, prospective medical care, nature and extent, penalties under §19(k) and §19(l) of the Act, and fees under §16 of the Act, and being advised of the facts and law, reverses the Decision of the Arbitrator. The Commission finds Petitioner did sustain an accidental injury arising out of and occurring in the course of her employment with Respondent on May 5, 2020.

FINDINGS OF FACT

*I. Background and Accident*

Petitioner testified to her employment history dating back to 1988 when she began as a Bank Teller. She worked in banking for the next 25 years, until she chose to leave the profession in March of 2013. On July 16, 2014, Petitioner was hired by Respondent as a Biller. Petitioner checked insurance companies billings, verifying that the adjuster's rates and mileage were correct. Once everything was input on the computer with all necessary corrections, Petitioner would invoice it and send it back to the office that sent it in. Petitioner's Work Order Reports indicate that on a daily, weekly, and monthly basis, she put through more work orders than her colleagues. See PX 7. To perform her duties, Petitioner sat at a typical office computer workstation, with an adjustable chair and an eye-level monitor. She worked eight hours a day.

After a probationary period, Petitioner was allowed to work some days remotely. Her workstation at home was her kitchen table, where she sat on a wooden chair which was not adjustable. She used a laptop, keyboard, and mouse.

On March 16, 2020, due to COVID-19, Petitioner was told to work from home until further notice. She was allowed a 15 minute break in the morning and afternoon, as well as 30 minutes for lunch. In April of 2020, Petitioner switched her kitchen table to a high-top table with bar stool-height chairs.

From March 16, 2020 through May 5, 2020, Petitioner worked 8a.m. to 4:30 or 5p.m. At the end of every month, she would work an additional two hours Monday through Friday if needed, and four to eight hours on Saturday and Sunday.

Petitioner testified that prior to May 5, 2020, she had no neck injuries and had not received any medical treatment for her neck. On that date, Petitioner testified she felt fine at the beginning of her workday. However, by late morning/early afternoon, while typing and using the mouse, she felt a stabbing pain in her neck, along with “tingling and some weirdness” in her right middle and ring fingers. *Transcript, p.21*. She called her family physician and set up an appointment. She also notified Respondent, who sent Petitioner to Concentra that same day at the end of her shift.

## *II. Medical Treatment*

On May 5, 2020, Petitioner presented to Concentra with a chief complaint of cervical and right hand pain while doing a lot of computer work. She had intermittent stabbing pain in her neck 10 out of 10, and intermittent right middle and ring finger pain, 8 or 9 out of 10. *PX 1, p.79*. Physical examination revealed right hand palmar tenderness, limited right middle and ring finger flexion with pain, and decreased right hand grip strength. An examination of her cervical spine revealed tenderness from C5 to C7, full range of motion with pain at the end of the range movements except right rotation, and limited flexion and extension. *PX 1, p.81*. Right hand and cervical x-rays were negative. *PX 1, p.82-83*. Petitioner was diagnosed with a neck strain, strain of the right hand and finger, and a repetitive strain injury of the right hand. She was started in occupational therapy for her right hand and physical therapy for her neck strain. *PX 1, p.85-86*. She was placed on modified duty of no repeated neck movements. *PX 1, p. 86-87*.

On May 9, 2020, Petitioner underwent a telehealth appointment with her primary care physician, Dr. Jain. She complained of neck and right hand pain. *PX 2*. Petitioner testified she subsequently discontinued treating with Dr. Jain for these issues, as she was treating with Concentra.

On May 14, 2020, Petitioner followed up with Dr. Diadula at Concentra, noting that her neck pain had increased yesterday while doing computer work. Her pain was intermittent and did not radiate to her arms, but she still had intermittent aching pain in her right middle and ring fingers. Dr. Diadula’s physical examination yielded similar results as Petitioner’s initial visit, and her diagnosis was the same. Petitioner was continued on modified duty, physical and occupational therapy, and a cervical MRI was ordered. *PX 1, p.6-7*.

On June 9, 2020, a cervical spine MRI was performed. On June 11, 2020, Dr. Diadula discussed the MRI results with Petitioner, finding C4-5 diffuse broad based disc bulge-osteophyte complex resulting in mild spinal canal stenosis and mild bilateral neural foramen stenosis, C5-6 diffuse broad based and right paracentral disc bulge-osteophyte complex resulting in mild spinal canal stenosis and mild bilateral neural foramen stenosis, C6-7 right foraminal disc bulge-osteophyte complex resulting in moderate neural foramen stenosis, C7-T1 diffuse broad based disc bulge and left paracentral disc extrusion with extruded segment resulting in mild spinal canal stenosis, and mild right and moderate left neural foramen stenosis causing impingement of nerve roots. Dr. Diadula referred Petitioner for pain management and restricted her from repeated neck movements. *PX 1.*

On June 15, 2020, Petitioner presented to Dr. Sajjad Murtaza for pain management. Petitioner complained of neck pain radiating to her left trapezius and scapular region. Dr. Murtaza reviewed the June 9, 2020 cervical spine MRI, finding C6-7 disc osteophyte complex resulting in moderate right foraminal stenosis and impingement of the nerve root. At C7-T1 there was a left paracentral disc extrusion with extruded segment causing mild spinal, mild right, and moderate left foraminal stenosis and impingement of the nerve root. Dr. Murtaza diagnosed cervical radiculopathy. He also recommended a left C7 epidural steroid injection and released Petitioner to regular duties. *PX 1.*

The epidural injection was performed August 13, 2020. On August 31, 2020, Petitioner reported no change in pain after the injection. She was diagnosed with cervical radiculopathy and was referred to neurosurgeon Dr. Sean Salehi. Petitioner was allowed to work eight-hour days, but was restricted from working overtime. *PX 1.*

On September 24, 2020, Petitioner was evaluated by Dr. Salehi. She complained of neck pain radiating to her left shoulder and scapular region. Dr. Salehi reviewed the June 9, 2020 cervical spine MRI, and diagnosed cervical spondylosis from C4 to C7. He noted Petitioner had neck pain secondary to the work injury of May 5, 2020, and she was referred back to Dr. Murtaza for 1 to 2 facet injections on the left C6-7. *PX 1.*

On October 5, 2020, Dr. Murtaza agreed it was best to move forward with left-sided cervical facet injections from C5 to C7, and continued restrictions of Petitioner working only 40 hours per week. *PX 1.*

On December 7, 2020, Dr. Murtaza recommended left-sided medial branch blocks from C5-C7. He also continued Petitioner's restrictions. *PX 1.*

On January 9, 2021, Petitioner followed up with Dr. Jain for a referral to neurosurgery. She still complained of neck pain and was diagnosed with cervical radiculitis. Dr. Jain noted the cervical MRI report of June 9, 2020 indicated disc bulges from C4 to C7, with a right foraminal disc bulge osteophyte complex at C6-C7 with moderate right neural foraminal narrowing. Petitioner complained of pain when looking left, tingling in her third and fourth fingers, and decreased right hand grip strength. Physical examination revealed limited range of motion in the neck, pain with flexion on the left side of the neck, trapezius spasms and sternomastoid musculature, and right sided neck tenderness. Petitioner was referred to a neurosurgeon. *PX 2.*

On February 2, 2021, Petitioner treated with Thomas L. Pittman, P.A. for Dr. William Scheuler at Edward Neuroscience Institute. She complained of cervical pain which increased when looking left, sitting at her desk for long periods, driving, and sleeping. She also had pain in the left upper trapezius. Petitioner denied any specific trauma to her neck on the date of accident other than prolonged sitting at her computer. Physical examination revealed tenderness over the spinous processes from C4 to C7. P.A. Pittman reviewed the June 9, 2020 cervical spine MRI, finding loss of normal lordosis, spondylosis from C4 to C7, with spondylitic bulging at the same levels. Foraminal stenosis at multiple levels was also found. P.A. Pittman diagnosed C4 to C7 spondylosis with spinal stenosis, left cervical facet joint pain, and cervical pain. He continued Petitioner's restrictions of working no more than eight hours a day, five days a week, with no overtime. He also referred Petitioner to the pain clinic for cervical facet injections and possible trigger points, and recommended cervical spine x-rays. He opined Petitioner suffered an exacerbation of underlying spondylosis and facet arthrosis on the accident date in question. *PX 3, p.2-5*. P.A. Pittman also completed an ADA Substantiation form on this date, indicating Petitioner's condition substantially limited her ability to lift, perform manual tasks, reach, read, sit, sleep, stand, and walk. He also opined it substantially limited the function of Petitioner's cervical spine. He ordered additional 10-15 minute breaks throughout the day. *PX 5*.

On March 23, 2021, Petitioner followed up with Dr. Scheuler, and continued complaining of neck pain radiating to her shoulder, worse when working. Dr. Scheuler reviewed the June 9, 2020 cervical MRI and had findings similar to those of P.A. Pittman. Dr. Scheuler diagnosed cervical spondylosis and cervical pain. He recommended cervical x-rays, trigger point injections, facet injections, and pain management. He also recommended Petitioner keep her computer at eye level and use a stand-up desk. He wanted Petitioner to return after receiving the injections. *PX 4, p.2-3*.

On December 22, 2021, Petitioner underwent the recommended trigger point injections with Dr. David Peng. *See PX 9*. Petitioner testified that in February of 2022 she followed up with P.A. Pittman for the final time. At that time, she was told her choices were to either deal with the pain or undergo surgery which would result in a two to three inch scar across the front of her neck. She noted Mr. Pittman did not recommend the surgery because the scar was ugly, as he had one himself. *Transcript, p.31-32*.

### *III. Respondent's §12 Examiner*

On November 6, 2020, Petitioner underwent a §12 examination at Respondent's request with Dr. Tibor Boco. Dr. Boco noted there was no particular mechanism of injury reported, and that Petitioner's work mostly included sitting behind a computer and typing. Petitioner complained of neck pain, mostly localized on the left side and periscapular area. Pain worsened when she turned to the left. Dr. Boco reviewed medical records, including the June 9, 2020 cervical spine MRI films, finding proper alignment of the cervical vertebral bodies with some loss of regional cervical lordosis secondary to diffuse spondylotic changes. Spondylotic disease was most significant from C4 to C7. At C4-C5 and C6-C7 there was moderate right lateral recess stenosis. At C5-C6 there was severe right lateral recess stenosis secondary to disc osteophyte complex. Upon physical examination Dr. Boco noted discomfort in the left paraspinal area in the area of the

thoracocervical junction when flexing or rotating to the left. He diagnosed cervicalgia and spondylosis without myelopathy or radiculopathy. He noted Petitioner's right arm/hand pain had resolved. Dr. Boco noted Petitioner had significant spondylotic disease of the cervical spine, but found no mechanism of injury that would support an acute pathology. He also opined the cervical MRI revealed chronic degenerative changes throughout the cervical spine, which supported a pre-existing degenerative process. He stated Petitioner's disability was a natural progression of an underlying disease process and had nothing to do with her work activity. He opined that continued care for cervical pain was appropriate, but unrelated to any work activity, and any work restrictions would be related to her preexisting cervical disease rather than any work injury. *RX 2.*

On December 2, 2020, Petitioner received an email from Shannon Casey, her case manager at Sedgwick. Shannon Casey informed Petitioner that, based on Dr. Boco's report, Respondent was terminating all benefits with regard to her claim. *PX 8.*

Dr. Boco's deposition was taken on April 22, 2022. Dr. Boco is a board-certified neurological surgeon. He testified consistent with his §12 examination report. He reiterated his findings upon reviewing the June 9, 2020 cervical spine MRI, adding that spondylosis is a degenerative disease and osteophyte complex is essentially a manifestation of degenerative disease at two bridging bones (in other words, bone overgrowth).

Dr. Boco opined Petitioner suffered a temporary exacerbation of her preexisting degenerative cervical disease, but that no objective injury occurred, and there was no evidence of any acute injury in the MRI. He reiterated his opinion that Petitioner's cervical findings had nothing to do with her work activities. He went further to state that any work restrictions would be related to her neck pain, but that it made no sense to opine that any restrictions would be based on Petitioner typing in front of a computer. Dr. Boco also added that by the time of his §12 examination, Petitioner had been well beyond maximum medical improvement.

#### *IV. Additional Information*

Currently, although Petitioner has moved to Florida, she continues working for Respondent in the same position, and has worked overtime as well. She has also received raises. She now works at home on a desk that is about the same height as her raised kitchen table. The desk has shelving units, holds her laptop, and also holds a television that she uses as a monitor. She has a cushioned chair similar to a formal dining room chair. It has no wheels and is not adjustable.

Petitioner still complains of all day pain, especially when working. By 2p.m., her pain level is 7 or 8 out of 10. She takes four Aleve and usually logs off between 4 and 4:30p.m. She then takes an hour of rest before preparing dinner. She props her head up against a pillow to alleviate pain. She has difficulty getting comfortable at night and usually takes four more Aleve before bedtime. Ever since the August 2020 injection with Dr. Murtaza, she has been unable to fully turn her neck to the left without pain, and must turn her whole body when driving in order to merge into a left lane.

## CONCLUSIONS OF LAW

*A. Accident and Causal Connection*

In the instant case, Petitioner alleges that on May 5, 2020, she developed stabbing neck pain, along with tingling in her right middle and ring fingers, while performing her job duties as a Biller for Respondent. Her job duties on that date required prolonged exposure to sitting and typing at the computer. In order to be compensable under the Act, the injury complained of must be one “arising out of and in the course of” her employment. 820 ILCS 305/2. An injury “arises out of” one’s employment if it originates from a risk connected with, or incidental to, the employment, involving a causal connection between the employment and the accidental injury. *Parro v. Industrial Commission*, 167 Ill. 2d 385, 393 (1995).

A day of repetitive work that results in an acute exacerbation of a previously asymptomatic pre-existing degenerative cervical condition meets this standard. Petitioner need not claim that anything unusual happened for her regular job duties to cause injury. The Commission also finds that Petitioner sustained right upper extremity tendinitis as a result of her work duties on May 5, 2020.

Here, the evidence supports a finding that Petitioner had a pre-existing degenerative cervical condition prior to the May 5, 2020 accident date. This finding is based on the opinions of both treater Thomas L. Pittman, P.A., as well as Dr. Boco, Respondent’s §12 examiner. However, the record reflects that after being hired by Respondent on July 16, 2014, Petitioner worked full duty with no cervical spine complaints until the instant accident. After the accident, Petitioner was diagnosed with cervical spondylosis from C4-C7 and a repetitive strain injury to the right hand. Immediately after the accident, she began complaining of stabbing pain and tenderness in her neck, right hand palmar tenderness, limited right middle and ring finger flexion with pain, and decreased right hand grip strength. She was initially treated with occupational therapy for her right hand and physical therapy for her neck. A June 9, 2020 cervical MRI revealed stenosis causing impingement of the nerve roots, leading Dr. Diadula to refer Petitioner for pain management. Petitioner was also restricted from making repeated neck movements.

Although the record reflects Petitioner’s right upper extremity issues eventually resolved, conservative care for her cervical condition continued, including an epidural injection performed on August 13, 2020. However, this did not decrease Petitioner’s symptoms, which remained ongoing. Eventually, Petitioner was recommended for left-sided medial branch blocks from C5-C7 and was referred to the Edward Neuroscience Institute. It was there where P.A. Pittman completed an ADA Substantiation form, indicating that Petitioner’s condition substantially limited the function of her cervical spine, as well as her ability to perform activities of daily living. He recommended Petitioner take additional breaks throughout each day. Subsequently, Dr. Scheuler at Edward Neuroscience recommended cervical x-rays, trigger point injections, facet injections, and pain management. Petitioner subsequently underwent trigger point injections.

The Commission has considered the opinions of §12 examining physician Dr. Boco, but does not find them persuasive. During his deposition, Dr. Boco opined that Petitioner suffered a temporary exacerbation of her pre-existing degenerative cervical disease, but that no objective

injury occurred. Petitioner's testimony and medical records support a finding that her cervical condition never returned to baseline after the accident. Her ongoing treatment and symptoms post-accident coupled with a referral to neurosurgery, recommendations for additional injections, work modifications, and limited ability to remain active reflects the significant deterioration in her condition following the accident. Moreover, Dr. Sean Salehi noted Petitioner had neck pain secondary to the work injury, and P.A. Pittman opined Petitioner suffered an exacerbation of underlying spondylosis and facet arthrosis on the accident date in question. The opinions of Dr. Salehi and P.A. Pittman are corroborated by Petitioner's testimony and the medical records.

The record reflects Petitioner had cervical spondylosis with consistent and objectively supported corroborating symptomatology, proving by a preponderance of evidence that the accident suffered May 5, 2020 did aggravate and accelerate Petitioner's pre-existing cervical condition. Petitioner now has constant pain and requires modifications and pain medication to continue working. The record also reflects that the now resolved repetitive strain injury to the right hand was also caused by the work accident based upon Dr. Boco's opinion. The work accident is a factor in Petitioner's current cervical condition. We reverse the Arbitrator's denial of accident and causal connection.

#### *B. Medical Expenses*

In accordance with the reversal of accident and causation, the Commission also awards medical expenses to Petitioner. The record reflects Petitioner paid \$60.00 out-of-pocket for the trigger point injections recommended by Dr. Scheuler and administered by Dr. Peng. *See PX 9*. The record supports a finding that these injections and associated bills were reasonable and necessary to diagnose, relieve, or cure the effects of Petitioner's cervical condition. *See Absolute Cleaning/SVMBL v. Illinois Workers' Compensation Commission*, 409 Ill. App. 3d 463, 470 (2011).

#### *C. Permanent Disability*

In determining the nature and extent of Petitioner's disability, the Commission analyzes the five factors enumerated in §8.1b(b) of the Act.

##### §8.1b(b)(i) – Impairment rating

Neither party submitted an impairment rating. As such, the Commission assigns no weight to this factor.

##### §8.1b(b)(ii) – Occupation of the injured employee

Petitioner was a Biller for Respondent. Following her conservative treatment, she returned to her pre-accident occupation and has even worked overtime on occasion. Moderate weight is given to this factor. The Commission finds this factor weighs in favor of decreased permanent disability.

§8.1b(b)(iii) – Age at the time of the injury

Petitioner was 51 years old on the date of her accidental injury. The Commission notes that due to her age, Petitioner is more likely to experience her residual complaints for a somewhat extended period as her remaining work life could potentially be a decade or more. Moderate weight is given to this factor. This factor weighs in favor of increased permanent disability.

§8.1b(b)(iv) – Future earning capacity

There is no direct evidence Petitioner's work accident had an adverse impact on her future earning capacity. In fact, Petitioner testified she has received raises since returning to work. Substantial weight is given to this factor. The Commission finds this factor weighs in favor of reduced permanent disability.

§8.1b(b)(v) – Evidence of disability corroborated by treating medical records

Petitioner's work accident resulted in a now resolved right upper extremity strain, as well as symptomatic cervical spondylosis. Petitioner underwent occupational therapy for her right upper extremity, and physical therapy, epidural and trigger point injections, and modified work restrictions for her cervical condition. P.A. Mr. Pittman completed an ADA Substantiation form, indicating that Petitioner's condition substantially limited the function of her cervical spine, as well as her ability to perform activities of daily living.

Today, although still working, Petitioner still complains of all day pain, especially when working. She takes four Aleve during the day, usually logs off between 4 and 4:30p.m., and then rests for an hour before preparing dinner. She has difficulty getting comfortable at night and usually takes four more Aleve before bedtime. Ever since the August 2020 injection with Dr. Murtaza, she has been unable to fully turn her neck to the left without pain, and must turn her whole body when driving in order to merge into a left lane. The Commission gives substantial weight to this factor. The Commission finds this factor weighs in favor of increased permanent disability.

Based on the above, the Commission finds Petitioner sustained a 10% loss of use of her person as a whole.

*D. Penalties and Fees*

Although we find Respondent's reliance on the opinions of Dr. Boco to be in error, we decline to award penalties and fees as requested by Petitioner. We find that, although incorrect, Respondent's denial of benefits was not unreasonable, vexatious nor in bad faith. Penalties and attorney fees are denied.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed November 7, 2022 is hereby reversed.



IT IS FURTHER ORDERED BY THE COMMISSION that Petitioner sustained an accidental injury arising out of and occurring in the course of her employment on May 5, 2020.

IT IS FURTHER ORDERED BY THE COMMISSION that Petitioner's resolved right upper extremity condition and current cervical condition are both causally related to said accident.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay the sum of \$60.00 for out-of-pocket medical expenses, as provided in §8(a) and subject to §8.2 of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of \$479.66 per week for a period of 50 weeks, as provided in §8(d)(2) of the Act, for the reason that the injuries sustained caused a 10% loss of use of Petitioner's person as a whole.

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

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

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of \$24,100.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

**January 19, 2024**

AHS/wde

O: 12/13/23

43

*/s/ Amylee H. Simonovich*

*/s/ Carolyn M. Doherty*

*/s/ Deborah L. Simpson*

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

Case Number	20WC032175
Case Name	Dawn Oles v. Sedgwick
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	5
Decision Issued By	Gerald Granada, Arbitrator

Petitioner Attorney	Robert Smoler
Respondent Attorney	Christopher Jarchow

DATE FILED: 11/7/2022

**THE INTEREST RATE FOR THE WEEK OF NOVEMBER 1, 2022 4.44%**

*/s/ Gerald Granada, Arbitrator*  
Signature

STATE OF ILLINOIS )  
 )SS.  
 COUNTY OF DU PAGE )

- |                                     |                                       |
|-------------------------------------|---------------------------------------|
| <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**

**Dawn Oles**

Employee/Petitioner

v.

**Sedgwick**

Employer/Respondent

Case # **20 WC 032175**Consolidated cases: **Not Applicable**

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Gerald Granada**, Arbitrator of the Commission, in the city of **Wheaton**, on **September 27, 2022**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

**DISPUTED ISSUES**

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

## FINDINGS

On **May 5, 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 not* sustain an accident that arose out of and in the course of employment.

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

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

In the year preceding the injury, Petitioner earned **\$41,570.36**; the average weekly wage was **\$799.43**.

On the date of accident, Petitioner was **51** years of age, *single* with **0** dependent children.

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

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

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

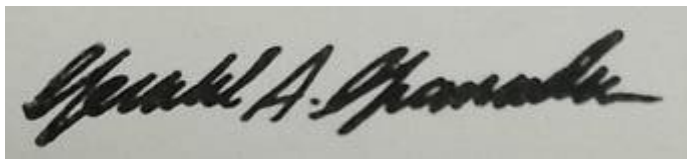
Respondent is entitled to a credit of **\$0.00** under Section 8(j) of the Act.

## ORDER

The Arbitrator finds that Petitioner failed to meet her burden of proof on the issues of accident and therefore all benefits are denied.

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

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



Signature of Arbitrator Gerald Granada

**November 7, 2022**

**FINDINGS OF FACT**

This case involves Petitioner Dawn Oles, who alleges to have sustained injuries while working for the Respondent Sedgwick on May 5, 2020. Respondent disputes Petitioner's claims, with the issues being: 1) accident; 2) causation; 3) medical expenses; 4) nature and extent; and 5) penalties and attorney fees.

Petitioner was employed by Sedgwick as a billing clerk since 2014. Petitioner testified that prior to March 2020 she worked in an office setting in a cubicle in a normal cubicle at a normal desk in a normal rolling chair for about 8 hours a day inclusive of a 30-minute lunch and two 15-minute breaks. Petitioner testified she would use a typical mouse and laptop and would hook up a computer monitor to her laptop. She further testified that there was nothing unique about her workspace or work equipment. Petitioner testified that beginning March 16, 2020 she began working remotely due to the COVID-19 pandemic. She worked at her kitchen table on a laptop. After she was sent to work remotely at home, she purchased a high-top kitchen table in April 2020 where she would conduct her work. Her normal work hours were typically 8:00 AM to 4:30 PM or 5:00 PM.

Petitioner testified that nothing unusual happened on May 5, 2020 though later in the morning she started to feel neck pain. Petitioner described that she would also feel tingling into her right hand. Petitioner testified that she reported the injury immediately to her employer.

On May 5, 2020 Petitioner sought treatment at Concentra Medical Center. She described she was doing computer work when she started to complain of intermittent stabbing pain rated at 10/10 in the neck. Her pain did not radiate into the arms and she denied numbness and tingling. She complained of intermittent pain in the right middle finger rated at 8-9/10. An x-ray of the cervical spine revealed straightening of the normal cervical lordosis, possibly secondary to muscle spasm. There were degenerative changes with no evidence of acute osseous injury involving the cervical spine. She was referred to occupational therapy and assessed with a neck strain and sprain of the right hand and finger. On May 7, 2020, she returned for a recheck and continued to complain of 10/10 pain in the neck. (PX1)

On August 13, 2020, Petitioner underwent a C7 epidural steroid injection. On August 31, 2020 Petitioner reported to Dr. Murtaza she had slight relief from the steroid injection. Dr. Murtaza referred Petitioner to nDr. Salehi for further neurosurgical recommendations. Dr. Murtaza placed Petitioner on an eight-hour workday with no overtime work restrictions. (PX1) Dr. Murtaza subsequently noted that Petitioner had a large disc herniation at C7.

On September 24, 2020 Petitioner was evaluated by Dr. Sean Salehi. Dr. Salehi reviewed Petitioner's June 9, 2020 MRI and diagnosed Petitioner with cervical spondylosis from C4-C7. He indicated that Petitioner was not a surgical candidate and did not need to return. Dr. Salehi referred her back to Dr. Murtaza and kept Petitioner on a 40 hour per week work restriction. (PX1)

On November 6, 2020 Petitioner was evaluated by Dr. Tibor Boco for an Independent Medical Examination. Dr. Boco concluded that due to the underlying degenerative conditions and lack of a sufficient mechanism of injury petitioner's current condition is not related to any work event of May 5, 2020. (RX2, p. 7-8)

Petitioner's final visit with Dr. Murtaza was December 7, 2020. Petitioner continued to complain left sided neck pain. Dr. Murtaza recommended medial branch blocks on the left side at C5-C7 as a diagnostic and prognostic treatment plan. (PX1)

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Petitioner returned to Dr. Jain on January 9, 2021. Petitioner did complain of some neck pain. Dr. Jain indicated that she would request referral for a different neurosurgical group to be evaluated. (RX5, p. 58-60)

Petitioner was seen by Physician's Assistant Thomas Pittman of Edward Neuroscience Institute on February 2, 2021. Petitioner was assessed with spondylosis and spinal stenosis at C4-5 C5-6 and C6-7. Petitioner was recommended to undergo cervical facet injections with possible trigger points. (PX3)

Petitioner testified she continues to work for Respondent in her same role as she did at the time of the May 2020 date of accident. Petitioner testified that her earnings increased and that she remains one of the top producers in her department. Petitioner testified that she continues to work overtime hours. She has not treated since February 2022 and is not currently treating with a physician in Florida, nor does she have any appointments scheduled with a doctor to address her cervical problems any time in the foreseeable future.

### **CONCLUSIONS OF LAW**

1. With regard to the issue of accident, the Arbitrator finds that the Petitioner has failed to meet her burden of proof. In support of this finding, the Arbitrator relies on the Petitioner's testimony and the medical evidence, which fail to show that Petitioner had an accident as the result of a direct trauma or repetitive trauma from her employment activities. The Arbitrator notes that Petitioner denied a specific injury to her neck. On direct examination when asked what if anything unusual happened on May 5, 2020 she replied "nothing unusual happened" though expressed that she began feeling neck pain. She did not describe the mechanism of injury, nor did she describe a work event that caused her neck pain. Instead, she merely testified she began to feel pain in her neck while sitting at her kitchen table working on a laptop. Furthermore, the facts do not show evidence of any specific repetitive job activities that would support a claim for repetitive trauma. Based on the facts presented at trial, the Arbitrator concludes that the Petitioner failed to prove she sustained an accident arising out of and in the course of her employment on May 5, 2020.

2. Based on the Arbitrator's findings regarding the issue of accident, all other issues are rendered moot.